**Briefing Note - Tenant Fees Act 2019**

The Tenant Fees Act 2019 comes into force on 1st June 2019. It will give statutory protection to tenants in the private rented sector to tackle poor practices by landlords and letting agents.

From 1st June 2019, landlords and letting agents will no longer be able to charge certain fees for new tenancies signed on or after that date. They will only be able to charge for payments which are defined as ‘permitted’ in the Act.

**Who will be affected?**

It will apply to all landlords and letting agents in respect of new tenancy agreements (including tenancy agreements which are renewed). Holding deposits paid before 1st June 2019 will not be affected.

**Will older tenancies be affected?**

After 12 months, i.e. on 1st June 2020, the tenant fees ban will apply to pre-existing tenancy agreements, and any clauses within them will no longer apply. If a landlord or agent takes a prohibited payment after that date, they will have 28 days to return it or otherwise be in breach of the Act.

**Which fees are banned?**

Anything not permitted, that the tenant (or someone acting on their behalf like a guarantor or parent) is required to pay as a condition of the 'grant, continuance, assignment, termination or renewal' of an assured shorthold tenancy or licence agreement.

This includes payments to third parties, either for services throughout the tenancy or for specific performance of a job and loans from third parties.

In short this means that most fees that are in the tenancy agreement will be void unless they are exempt.

Examples of banned fees then would be:

* Charging for a guarantor form
* Credit checks
* Inventories
* Cleaning services
* Referencing
* Professional cleaning
* Having the property de-flead as a condition of allowing pets in the property
* Administrative charges
* Requirements to have specific insurance providers
* Gardening services

**Which Fees are exempted?**

[Holding deposits](https://www.rla.org.uk/landlord/documents/prelet/doc_holdingdep.shtml), rent, [deposits](https://www.rla.org.uk/landlord/tenancy_deposits/tds.shtml) and charges for defaulting on the contract are all exempted from this ban.

However, all 4 are subject to additional restrictions as part of the legislation and landlords and agents will need to be mindful of these changes.

In addition, most required payments to third parties are prohibited, however a landlord can require the tenant to use a specific utility or communications provider. Agents are not allowed to require this however.

Finally, landlords may charge tenants for allowing them to vacate the property early. However, this is subject to restrictions on costs.

**Are rents being restricted?**

There will be a ban on setting rent at a higher level for the first portion of the tenancy and then dropping it down afterwards. This is to prevent landlords or agents trying to offset the ban on fees by artificially increasing the rent for the initial period to make up the costs.

**How are holding deposits affected?**

Holding deposits are often used to secure a property for a tenant. They will be limited to a maximum of 1 week's rent and subject to statutory legislation on the repayment should the tenancy not go ahead. Briefly, this is proposed to be:

1. The landlord has 15 days to make a decision once a holding deposit is taken.
2. If the tenancy does not go ahead then the money must be repaid in full within 7 days of the deadline being reached or the landlord backing out.
3. Repayment does not need to be in full if the tenant backs out of the tenancy agreement themselves, fails immigration checks, has provided false or misleading information, or where the landlord tries their best to get the information needed but the tenant fails to provide it within the 15 days.
4. If the tenancy does go ahead, the holding deposit must be returned within 7 days of agreement, unless it is converted into part payment of the actual deposit or used towards the initial rent payment.

**Will deposits be restricted?**

Yes. Deposits will be limited to 5 weeks rent as a maximum amount for tenancies where the annual rent is below £50,000. This has gone up from the originally proposed limit of one month.

Deposits for tenancies where the annual rent is £50,000 or more are limited to the equivalent of 6 weeks rent.

Landlords should bear in mind that deposits are considered to be taken at the start of every new tenancy. As such, if they renew the tenancy on or after June 1st 2019 then they should make sure that their deposit is not more than 5 weeks rent (6 where the annual rent is £50,000 or more). If it is, then any amount above the limit should be returned.

For statutory periodic tenancies, if the deposit is created on or after June 1st 2020 then they should return any amount above the limit within 28 days of the start of the statutory periodic tenancy.

**What if a tenant causes damage to a property?**

Where the tenant has breached their tenancy agreement and caused damage as a result, then landlords may still seek compensation via deductions from the deposit or court action. They should also be able to leave clauses in their contract stating that the landlord may seek their costs for damages.

What they will not be able to do is insert a clause in the tenancy which sets a fixed fee for the damages incurred (a default fee) unless it is specifically permitted.

**What about late payment of rent or loss of keys?**

Landlords are allowed to charge tenants who lose keys and for late payment of rent. Both are subject to restrictions.

For the loss of keys, landlords are allowed to charge the reasonable cost that they can evidence in writing. Anything landlords cannot evidence in writing with receipts will likely be considered a prohibited payment.

For late payment of rent, landlords and agents may only charge 3% above the Bank of England base rate in interest on the late payment of rent from the date the payment is missed. At the time of writing this would be 3.75% interest. They may not charge for sending reminder letters.

**What if the tenant requests a change to the tenancy?**

While most costs related to assignment or surrender of a tenancy are prohibited, landlords and agents are still allowed to charge certain small sums to tenants if the tenant requests a change in tenant or an early surrender.

Where the tenants have requested a change in the tenancy (such as swapping tenants), the landlord may charge a fee of £50 for the change or the costs incurred. They must be able to evidence in writing any costs incurred if they do go above £50 and the draft guidance makes it clear that £50 is considered the norm for landlords and agents.

Where the tenants have requested early surrender of the tenancy, the landlord or agent may charge fees equivalent to the loss incurred. As charges such as referencing, tenancy drafting, etc. are prohibited landlords will not be able to show a loss has been incurred for the provision of these services. Instead, landlords and agents will be able to charge the equivalent of the rent lost due to the unforeseen void period. As the void period may not be clear at the point of charging many landlords and agents will likely start to regularly refuse tenants looking to surrender early as a result.

**Can landlords and agents insert clauses in regard to payments for TV licenses or Council Tax?**

Yes, such clauses are acceptable.

**Can landlords insert clauses in regard to landlords’ costs from specific service providers for utilities and communications services?**

Yes, such clauses are acceptable so long as they do not exceed the charges made to the landlord.

**Who is the Enforcement Authority?**

In the Act, “enforcement authority” means either a local weights and measures authority in England, or a district council that is not a local weights and measures authority:

a) Local weights and measures authorities (“Trading Standards”) – it is the **duty** of every local weights and measures authority in England to enforce in its area:

• Section 1 (prohibitions applying to landlords),

• Section 2 (prohibitions applying to letting agents), and

• Schedule 2 (treatment of holding deposits).

b) District councils – a district council that is not a local weights and measures authority **may enforce** sections 1, and 2, and Schedule 2.

c) The lead enforcement authority (Secretary of State unless SoS appoints local weights and measures authority) – the lead enforcement authority **has the power** to take steps to enforce the relevant letting agent legislation where necessary or expedient to do so.

Clearly, Warwick District Council needs to liaise with Warwickshire County Council (weights and measures) to establish enforcement responsibilities.

**What are the financial penalties for breaches of the Act?**

Where a breach has occurred and a banned fee or payment is taken, tenants will be able to get any money wrongly paid back via the county court. Local Trading Standards are supposed to assist tenants with this once it comes into force.

The landlord or agent may be charged interest on this from the day that the prohibited payment was taken.

In addition, local trading standards will be required to enforce this legislation and will issue a fine of up to £5,000 for a first offence. Subsequent breaches are criminal offences or alternatively, the landlord can be fined up to £30,000 as a civil penalty and be subject to a banning order.

**Will I be restricted from serving a Section 21 notice if I charge fees?**

Yes. A [Section 21](https://www.rla.org.uk/landlord/documents/section-21-for-england.shtml) notice cannot be given so long as a prohibited payment was requested, paid by a tenant and is still being held by the landlord or agent.

Landlords and agents can either refund the prohibited payment or, with the permission of the tenant, use that money as payment towards rent or the deposit.

**What tenancy types does this legislation apply to?**

Assured Shorthold Tenancies, including student accommodation, and licenses. [Company lets](https://www.rla.org.uk/landlord/documents/tenancy_agreement/company_let_agreement.shtml) and [non-assured tenancies](https://www.rla.org.uk/landlord/documents/tenancy_agreement/non_assured_tenancy_agreement.shtml) will be exempt.

**What do landlords need to be thinking about before the ban comes in?**

Landlords and agents will have to consider their current business models carefully. The prohibition on fees will impact heavily on some business models and this is likely to lead to increasing rents or heavier costs to the landlords.

Similarly, it is vital that landlords and agents consider whether their current tenancy agreements and holding deposit forms are fit for purpose once the new legislation comes into force.

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