

Tenant Fee Act - Update

The Bill proposes to ban letting agents and landlords (or anyone acting on the tenant's behalf) in England from (as a condition of, or of making arrangements for, the granting, renewal or continuance of a tenancy):

1. Requiring tenants and licensees in the private rented sector to pay fees or other charges on top of the rent, except for a capped refundable Tenancy Deposit, a capped refundable Holding Deposit and tenant

Default fees;

2. Requiring tenants and licensees in the private rented sector to secure and pay for services or insurance from any third party or to make a loan.

NB: A landlord and their agent must not require (except for utilities and communication services) a tenant to secure and pay for services from any third party in connection with a tenancy (e.g. a reference provider, an inventory service or an insurer).

Why should I be interested?

The ban applies in relation to an Assured Shorthold Tenancy, a licence to occupy or a tenancy which meets the conditions set out in paragraph 8 (letting to students) of Schedule 1 to the Housing Act 1988, The vast majority of all properties let in England will fall under the jurisdiction of the Tenant Fee Act when it comes into force on the 1st of June 2019.

What can you charge?

PERMITTED PAYMENTS

1. Rent: A tenant's regular payment to a landlord for the use of the property.
2. A refundable Holding Deposit of no more than one weeks' rent: A
3. Holding Deposit is a payment made by a tenant to a landlord (or to an agent acting on the landlord's behalf) to reserve that property.
4. A refundable Tenancy Deposit of no more than five weeks' rent: A Tenancy Deposit is money held by the landlord (or agent acting on the landlord's behalf) as security during the period of the tenancy and reserved for any damages or defaults by the tenant.

5. Payments in the event of a default: Landlords and letting agents may require a tenant to make a payment in the event of a default (e.g. requesting a replacement for a lost key). The amount charged cannot exceed the loss suffered by the landlord. The tenancy agreement must specify the circumstances in which these payments may be required. If the amount of payment exceeds the loss suffered by the landlord because of the default, the amount in excess is a prohibited payment.
6. Charging to vary a tenancy: When a tenant has requested it, landlords and agents can charge to vary, assign or replace a tenancy. Such fees are capped at £50 unless the landlord can demonstrate that greater costs were incurred.
7. Payment on termination of a tenancy: Agents and landlords can require a tenant to make a payment for an early termination of the tenancy agreement at the tenant's request. The payment cannot exceed the loss suffered by the landlord or reasonable costs incurred by the letting agent. (If the amount of payment exceeds the reasonable costs of the letting agent or landlord in respect of the termination of the tenancy, the amount of the excess is a prohibited payment).
8. Council Tax payments: Letting agents and landlords may require tenants to pay the Council Tax on the property they rent.
9. Payments for the provision of utilities: Agents and landlords are permitted to charge tenants fees associated with utilities, such as electricity, gas or other fuel, water or sewerage, if this is clear in the tenancy agreement.
10. Green Deal: Green Deal payments are exempt from the ban. Green Deal charges must be outlined in the tenancy agreement and prospective tenants must be made aware of any obligation to pay a Green Deal charge, so they can make an informed decision.
11. Payments for a television licence: A payment that a tenant is required to make to have a television licence is a permitted payment if the tenant is required by the tenancy agreement to make the payment.
12. Communication services: Agents and landlords are permitted to charge tenants fees associated with communication services, such as telephone (other than a mobile), internet, cable/satellite television, if this is clear in the tenancy agreement. (Where a tenant is required to make a payment to a landlord, if the amount exceeds the reasonable costs incurred by the landlord or in connection with the provision of the service, the amount of excess is a prohibited payment. Prohibited payments are not binding on the tenant).

In short everything else falls foul of the legislation and therefore will be subject to enforcement action.

ENFORCEMENT:

The Bill places a duty on Trading Standards to enforce the Bill but District Councils that are not Trading Standards authorities will have power to enforce if they chose to do so. (Tenants can recover unlawfully charged fees through the First-tier Tribunal and landlords are unable to recover possession of their property via a Section 21 Notice until they have repaid any unlawfully charged fees).

Each authority would be responsible for enforcement within their areas.

Where a breach occurs in housing located in more than one area, the breach would be taken to have occurred in each of those areas.

Local authorities will be able to retain the money raised through financial penalties with this money reserved for future local housing enforcement.

Financial Penalties

A breach of the fees ban will be a civil offence with a financial penalty of up to £5,000.

Successive breaches of the ban within five years (where a financial penalty has been issued or conviction secured in respect of the earlier breach) would be a criminal offence with an unlimited fine. The Enforcement Authority may impose a financial penalty of up to £30,000 as an alternative to criminal prosecution.

Enforcing authorities can also apply for a Banning Order under the Housing and Planning 2016. If the Court makes a Banning Order, the local authority must make an entry in the Database of Rogue Landlords and Letting Agents.

An entry to the Database of Rogue Landlords and Letting Agents may also be made if a person is convicted of two financial penalties in a 12-month period. See our Housing & Planning Act Fact Sheets on Banning Orders and the Database of Rogue Landlords and Letting Agents.

Before imposing a financial penalty, the local authority must give the landlord or agent notice of their intention to do so. This notice must be given within a period of six months, beginning with the first day on which the authority has evidence of the person's breach of the ban or if the breach is a continuing breach, while the breach is continuing or within six months of the last day on which the breach occurred. The notice must set out the amount of the penalty, the reasons for imposing it and information about the right to make representations.