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JUNE 2018

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Tenant Fees Bill
publications.parliament.uk/pa/bills/cbill/2017-2019/0203/18203.pdf

Follow the stages of the Bill
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Tenant Fees Bill

CONTEXT

Following a draft Bill, public consultation and evidence sessions with the Housing Committee, the Tenant Fees Bill was introduced on 2 May 2018.

THE CHANGES

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).

ELIGIBILITY

The Government intends that the ban on tenant fees will apply only in relation to tenancy agreements and licenses entered into after any legislation has come into force. This includes Statutory Periodic Tenancies that arise after the legislation is introduced. The Bill will apply in relation to housing in **England only**.

NB: 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. It does not include a long lease, any non-Housing Act tenancies, a tenancy of social housing, or a licence to occupy holiday accommodation.

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WHAT DOES THIS MEAN?

The Bill outlines what payments are not allowed (prohibited) and those that are allowed (permitted). The Secretary of State can amend the list of permitted payments.

PERMITTED PAYMENTS

Rent: A tenant's regular payment to a landlord for the use of the property.

A refundable Holding Deposit of no more than one weeks' rent: A 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.

A refundable Tenancy Deposit of no more than six 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.

NB: Six weeks' rent means six times one week's rent and one week's rent means the amount of the annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by fifty-two. Taking more than what is allowed in either case would mean that the amount in excess is a prohibited payment.

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.

NB: If the amount of payment exceeds the loss suffered by the landlord because of the default, the amount in excess is a prohibited payment.

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.

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.

NB: 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.

Council Tax payments: Letting agents and landlords may require tenants to pay the Council Tax on the property they rent.

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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.

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.

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.

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.

NB: 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.

WHAT YOU NEED TO DO

Holding Deposits
The Bill requires agents and landlords to refund the Holding Deposit except in circumstances where the tenant withdraws, fails a Right to Rent check or provides false or misleading information, which the landlord is reasonably entitled to consider in deciding whether to grant the tenancy because this materially affects their suitability to rent the property. See our *Right to Rent Immigration Checks* Fact Sheet.

NB: False or misleading information is information provided by the tenant that is not factually correct and seriously affected the landlord's decision to let the property.

NB: A 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. If the amount of a holding deposit exceeds one week's rent, the amount of the excess is classed as a prohibited payment.

If the landlord decides not to rent the property to the tenant or fails to take reasonable steps to enter into the tenancy agreement by the deadline for agreement, then the Holding Deposit must be refunded within seven days of the date of that decision or the deadline for agreement.

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NB: The deadline for agreement is 15 days following the receipt of the Holding Deposit for the landlord to enter into an agreement with the tenant to grant the tenancy (unless an alternative date is agreed in writing with the tenant).

Landlords may 'repay' the Holding Deposit by allowing the tenant to deduct the equivalent sum from the first payment of rent or the Tenancy Deposit.

NB: If the Holding Deposit is applied to the Tenancy Deposit, under the deposit protection requirements, that money is classed as received on the date the tenancy agreement was signed.

Changes to the Consumer Rights Act 2015
The Bill amends the Consumer Rights Act 2015 to require letting agents who advertise on a third-party website (such as a property portal) to, on that website, publish details of any relevant fees, Client Money Protection and redress scheme memberships or a link to the correct part of the agent's website that lists those details. This is in addition to publishing on their own website and in their offices.

WHAT YOU NEED TO BE AWARE OF

Lead Enforcement Authority
The Bill allows the Secretary of State, or a Trading Standards authority designated by the Secretary of State, to be a Lead Enforcement Authority to provide oversight, guidance and support with the enforcement of requirements on letting agents.

NB: This includes the requirement for letting agents to be members of a redress scheme, the fees transparency requirements under the Consumer Rights Act 2015, the requirement for letting agents to be a member of a Client Money Protection scheme (under the Housing and Planning Act 2016) and the ban itself.

Changes to the Housing and Planning Act 2016
The Bill amends the Housing and Planning Act 2016, to give District and County Councils the ability to enforce mandatory Client Money Protection scheme membership.

Restrictions on Section 21 Notices
A landlord may not give a Section 21 Notice in relation to an Assured Shorthold Tenancy if the landlord has firstly, breached the requirement to repay a Holding Deposit to a tenant and secondly, if the landlord has previously required a tenant to make a prohibited payment and failed to repay this payment or apply it to rent or the Tenancy Deposit.

FACT SHEET

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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.

NB: 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.

NB: 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.

NB: 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.

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A person who is given a notice of intent has 28 days to make representations to the local authority. After the end of the period for representations, the local authority must decide whether to impose a financial penalty and if so, the amount of the penalty.

NB: If the local authority decides to impose a penalty, it must give the person a final notice imposing the penalty. The final notice must require payment of the penalty within 28 days and must set out certain information, including the amount of the penalty, the reasons for imposing it, how and when to pay, the rights of appeal and consequences of failing to comply with the notice.

A local authority may at any time withdraw a notice of intent or a final notice. The authority may also reduce the amount specified in a notice of intent or a final notice or amend a notice to remove a requirement to repay a prohibited payment or holding deposit. The person who has received the notice must be notified in writing of any such withdrawal, reduction or amendment.

NB: There is a right of appeal to the First-tier Tribunal against a final notice. If a landlord or agent makes an appeal, the final notice is suspended until the appeal is determined or withdrawn. On appeal, the First-tier Tribunal may confirm, vary or cancel the final notice. The maximum penalty that the First-tier Tribunal can impose is the same as the maximum amount that the local authority could have imposed.

If a landlord or agent fails to pay all or part of a financial penalty, the local authority may recover the penalty or part of it on the order of the County Court, as if it were payable under an order of the Court.

Where an enforcement authority requires a landlord or letting agent to make a payment to a tenant they may require the landlord or letting agent to pay interest (currently set at 8%).

TIMETABLE

A Bill is a draft law. It goes through several set stages before it must be approved by both the House of Commons and the House of Lords. This can take up to 12 months. Once passed by both Houses of Parliament it receives Royal Assent from the Queen and becomes an Act of Parliament.

Based on the provisions in the Bill, for the Act to come into force, the Secretary of State will need to issue a Commencement Order, so the ban won't come in immediately after the Act is passed.

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