Comprehensive guide the the Tenant Fees Act 2019

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The [Tenant Fees Act 2019](https://www.legislation.gov.uk/ukpga/2019/4/contents/enacted) commences from 1 June 2019 and applies to England only (for the time being as it has the ability to extend to Wales).

The Act controls what payments a landlord or letting agent may require “in connection with a tenancy of housing in England.” and restricting what third-party contracts a tenant or guarantor may be required to be bound by for services and insurance.

The starting point to understand is that ALL payments are essentially prohibited unless the payment is expressly “permitted” under the Act. For example, rent and deposits are permitted under the Act but even they have restrictions (yes, even rent has some restrictions).

Throughout this article, a reference to a landlord includes a prospective, current or former landlord. It also includes a prospective, current or former licensor. In addition, it generally includes a letting agent acting on behalf of a landlord although a relocation agent acting solely on behalf of the tenant is excluded from the prohibitions applying to letting agents. Where rules are different for landlords or agents we will try to expressly distinguish.

“Letting agent” means a person who engages in letting agency work (whether or not that person engages in other work) except if the person is someone who is authorised and carrying on a “reserved legal activity” (solicitor etc).

A reference to a tenant or a ‘relevant person’ includes a prospective, current or a former tenant. In addition, a reference to a tenant or relevant person also includes a guarantor or anybody acting on behalf of the tenant. It also includes a licensee (prospective, current or former).

Tenancies to Which the Act Applies

The Act defines a tenancy (for the purposes of the Act) as:

assured shorthold tenancies

licences (lodger lettings for example)

student lettings (provided by a specified educational institution)

The Act does not apply to contractual tenancies which would be used if the tenancy is for a company let or if it’s not to be the individuals only or principal home for example.

The Act also doesn’t apply to an assured tenancy (where no section 21 notice is ever available to the landlord).

When Does the Tenant Fees Ban Apply and Transitional Provisions

The relevant parts of the Act take effect from 1 June 2019 and will apply to all new tenancies (as defined above) and renewals granted from that date onwards.

In respect of a holding deposit, the Act only applies in relation to a holding deposit paid from 1 June 2019.

Transitional Provisions for Landlords

Subject to a one year transition (see in a moment), the prohibitions relating to landlords do not apply to-

a requirement imposed before 1 June 2019, or

a requirement imposed by or pursuant to a tenancy agreement entered into before 1 June 2019.

Further, subject to below, the prohibitions do not apply to a statutory periodic tenancy arising on or after 1 June 2019, where the fixed term tenancy was entered into before 1 June 2019.

Where a tenancy was granted before 1 June 2019, if any provision of the tenancy would be prohibited (had the tenancy been granted from 1 June 2019), the provision ceases to be binding on the tenant (or a relevant person) after 1 year from commencement of section 1 of the Act (but the agreement continues, so far as practicable, to have effect in every other respect).

If, after 1 June 2020, the landlord (or a letting agent) accepts a payment from a relevant person pursuant to a prohibited provision, the landlord or letting agent must return the payment within 28 days otherwise, the landlord or agent is to be treated as having required the relevant person to make a prohibited payment. There is no requirement for this repayment to be requested by the tenant (or other relevant person) so this is a strict time-limit and the landlord or agent must be proactive in returning the money.

Transitional Provision for Letting Agents

Subject to a one year transition (see in a moment), in respect of the prohibitions applying to letting agents, they do not apply to:

a requirement imposed before 1 June 2019, or

a requirement imposed by or pursuant to an agreement between a letting agent and a relevant person entered into before 1 June 2019.

If any provision of an agreement between a letting agent and a relevant person would be prohibited (had the agreement been entered into from 1 June 2019), the provision ceases to be binding on the relevant person after 1 year from commencement of section 2 (but the agreement continues, so far as practicable, to have effect in every other respect).

If, after 1 June 2020, the letting agent accepts a payment from a relevant person pursuant to a prohibited provision, the letting agent must return the payment within 28 days otherwise, letting agent is to be treated as having required the relevant person to make a prohibited payment. There is no requirement for this repayment to be requested by the relevant person so this is a strict time-limit and the agent must be proactive in returning the money.

Prohibitions Under the Act

Next, we discuss the various prohibitions contained within the Act.

A landlord or letting agent must not require a relevant person (tenant, guarantor or anyone acting on behalf of a tenant) to-

make a prohibited payment to the landlord or an agent in connection with a tenancy of housing in England

make a prohibited payment to a third party in connection with a tenancy of housing in England

enter into a contract with a third party in connection with a tenancy of housing in England if that contract is a contract for the provision of a service, or insurance (except utilities or communication services, see later), or

make a loan to any person in connection with a tenancy of housing in England.

The requiring of a prohibited payment, entering into a third party contract or making a loan applies if the landlord or agent requires any of those things in consideration of the grant, renewal, continuance, variation, assignment, novation, termination, an act or default of such a tenancy (or other agreement in connection with the housing such as a guarantee agreement). It’s also prohibited if it requires the person to do any of those things in consideration of providing a reference in relation to that person in connection with the person’s occupation of housing.

Prohibited Payments to the Landlord, Letting Agent or Third Party

As stated at the outset, it’s essential to understand that effectively ALL payments in connection with a tenancy of housing in England are prohibited unless they are specifically permitted under the Act.

It’s not only an offence for a landlord or letting agent to require a prohibited payment but it’s also an offence for a landlord or letting agent to require a relevant person to make a prohibited payment to a third party (for example asking a tenant to pay directly to a referencing company is prohibited).

So what permitted payments are landlords or letting agents allowed to receive? The permitted payments are contained in [Schedule 1](https://www.legislation.gov.uk/ukpga/2019/4/schedule/1/enacted) of the Act and they are:

Rent

Tenancy deposit

Holding deposit

Payment in the event of a default

Payment on variation, assignment or novation of a tenancy

Payment on termination of a tenancy

Payment in respect of council tax

Payment in respect of utilities etc

Payment in respect of a television licence

Payment in respect of communication services

Each one has restrictions and limitations which are discussed individually next.

Rent

Payment of rent under a tenancy is a permitted payment (phew). However, if you were thinking you could charge a higher than normal rent for month one (for example) and then a reduced rent for the remainder of the term, think again! They already thought of people trying to avoid the legislation that way!

Although receiving rent is a permitted payment, it is subject to the following:

If the amount of rent payable in respect of any relevant period (“P1”) is more than the amount of rent payable in respect of any later relevant period (“P2”), the additional amount payable in respect of P1 is a prohibited payment.

For example, if we say a tenancy starts on 1 July and we say the rent for July is £900.00 (P1) and then from 1 August it’s £700 per month (P2), as the amount for P1 is greater than P2, the difference is prohibited (in our example the difference is £200 and it is that which is the prohibited payment – the £700 being a permitted payment).

If a landlord or agent tries to delay a higher amount, that’s covered too!

Where there is more than one later relevant period in respect of which the amount of rent payable is lower than the amount of rent payable in respect of P1—

(a) if different amounts of rent are payable for different later relevant periods, P2 is the relevant period for which the lowest amount of rent is payable;

(b) if the same amount of rent is payable for more than one later relevant periods, P2 is the first of those periods.

To explain this, let’s say a tenancy starts on 1 July. The rent due is payable as follows:

1 July – £600
1 August – £600
1 September – £800
1 October – £600
1 November – £600

First, we establish which of the payments are regarded as “P1”. Remember, P1 is rent payable for any relevant period which is higher than a later period. Therefore, in our example, 1 September (£800) is higher than a later period.

Next, we establish which is P2 so we can calculate the difference (and therefore the prohibited payment).

1 July can’t be P2 because in order to apply it must be in respect of a “later period”. In our example, 1 October and 1 November are later periods with a lower amount and  if the same amount of rent is payable for more than one later relevant periods, P2 is the first of those periods so 1 October in our case.

Therefore in this example, we have 1 September £800 (P1) – 1 October £600 (P2), difference £200. The £200.00 is a prohibited payment.

Now, what about a fairly common student letting where three or four payments are sought throughout the term which ties in with dates of grants? Surely such a scheme could be caught?

For example, we may have a situation as follows (the rents and dates below are totally made up and random, we haven’t done any calculations):

1 September – £1,250 payable
1 January – £1,500 payable
15 April – £1,300 payable
4 June – £820 payable

Here, we have higher and lower payments during the term but this is acceptable as long as when creating the payment terms, the rent being sought is proportionate to the length of the period. The best way for this type of scenario is to ensure the daily amount is exactly the same for the whole term and the amounts are adjusted depending on what date they are payable:

Where the later relevant period is a different length of time to the earlier relevant period, the amount of rent payable in respect of the later period is to be treated as the proportionate amount of rent that would be payable in respect of that period if it were the same length of time as the earlier period.

A rent increase or reduction according to circumstances specified in the tenancy is allowed. Also, an agreement to increase or reduce the rent after the tenancy has been entered into can be made:

There is to be left out of account any difference between the rent payable in respect of the earlier relevant period and the rent payable in respect of the later relevant period as a result of a variation of the rent payable in respect of the later period—

(a) pursuant to a term in the tenancy agreement which enables the rent under the tenancy to be increased or reduced, according to the circumstances, or
(b) by agreement between the landlord and the tenant after the tenancy agreement has been entered into.

Finally, the references above to a “relevant period” does not include time after one year from the beginning of the tenancy so a rent increase or reduction after one year is acceptable and excluded from these prohibitions.

(7) In this paragraph “relevant period”, in relation to a tenancy, means any period of time in respect of which rent is payable under the tenancy.

(8) But “relevant period” does not include a period of time which begins after the end of one year beginning with the first day of the tenancy.

Tenancy Deposit

A tenancy deposit (which is taken to secure the performance of the tenancy) is a permitted payment. No change is made to the requirements of protecting and prescribed information etc.

However, the amount that can be requested by a landlord or agent is changed.

Where the annual rent is less than £50,000 per annum, the maximum tenancy deposit allowed is five weeks. Where the annual rent is equal to or greater than £50,000, up to six weeks deposit is allowed.

In order to calculate the 5 or 6 weeks rent amount, you first take the annual rent and divide by 52 to get one weeks rent and then multiply by 5 or 6 as appropriate.

Any excess over and above the 5 or 6 weeks amount would be a prohibited payment.

Tenancy Deposit Transitional Provisions

We have discussed earlier that for an existing tenancy (entered into before 1 June 2019), any term that requires a prohibited payment after 1 June 2020 ceases to be binding and any prohibited payment received must be repaid within 28 days.

What about a deposit higher than 5 or 6 weeks (depending on the rent) that was taken in respect of a tenancy granted before 1 June 2019? Does that need repaying within 28 days from 1 June 2020?

It will be for the courts to decide but in our view no.

In order for that provision to apply, the term simply ceases to be binding on the tenant or relevant person but the 28 days for repayment is only triggered if the landlord or a letting agent accepts a payment from a relevant person pursuant to the provision. As long as no payment is sought nor accepted, that part should not be triggered and it’s only a failure to repay within 28 that then triggers it as being a prohibited payment.

However, if a renewal is done on or after 1 June 2019, any excess of the deposit should first be repaid because where there is a renewal the deposit is deemed to have been received again ([Superstrike Ltd v Rodrigues](https://www.landlordsguild.com/deposit-protection-for-statutory-periodic-tenancies-and-renewals-superstrike-ltd-v-rodrigues-2013/) [2013] EWCA Civ 669).

If, after the end of the period of one year beginning with the date on which section 1 comes into force—

(a) the landlord or a letting agent accepts a payment from a relevant person pursuant to the provision, and
(b) the landlord or letting agent does not return the payment before the end of the period of 28 days beginning with the day on which it is accepted,
the landlord or letting agent is to be treated for the purposes of this Act as having required the relevant person to make a prohibited payment of that amount at that time.

Holding Deposit

A holding deposit is not to be confused with a tenancy deposit as detailed above.

A holding deposit is a permitted payment taken before the granting of the tenancy and is ordinarily used whilst the landlord or agent takes steps to grant a tenancy to the payer (such as referencing etc):

… money which is paid by or on behalf of a tenant to a landlord or letting agent before the grant of a tenancy with the intention that it should be dealt with by the landlord or letting agent in accordance with Schedule 2 (treatment of holding deposit).

There is a strict procedure to be followed under Schedule 2 in relation to accepting and repaying a holding deposit.

The maximum holding deposit allowed is up to one week’s rent calculated the same as the tenancy deposit (annual rent divided by 52).

Only one holding deposit may be held at any one time for the same letting unit so taking multiple holding deposits from multiple prospective tenants is not allowed. If a holding deposit has been repaid to a previous prospective tenant, a further one for the same housing can then be taken from a new prospective tenant. If the landlord or agent is entitled to retain a holding deposit (e.g. due to false information resulting in a tenancy not being granted) the landlord or agent can then take a further holding deposit from another prospective tenant.

Procedure for Dealing With Holding Deposits

From the time a holding deposit of up to one week’s rent is received by a landlord or agent, there is a deadline for agreement which is fifteen days from the date the holding deposit was received. A deadline for agreement can be shortened or extended but only by agreement in writing with the tenant.

The holding deposit must be repaid by the person who received it if:

the landlord and the tenant enter into a tenancy agreement relating to the housing and in this case, it must be repaid within 7 days from the date of the tenancy agreement

the landlord decides before the deadline for agreement not to enter into a tenancy agreement relating to the housing and in this case it must be repaid within 7 days of the decision, or

the landlord and the tenant fails to enter into a tenancy agreement relating to the housing before the deadline for agreement and in this case it must be repaid within 7 days from the deadline for agreement date.

Landlord and Tenant Enter Into a Tenancy Agreement

If the landlord and tenant enter into a tenancy agreement (not just agree to do so at some future date), the holding deposit doesn’t have to be repaid to the tenant if the payer consents for the holding deposit to be applied towards the first payment of rent under the tenancy or towards the payment of a tenancy deposit in respect of the tenancy. It’s important to note that the payer must consent for this to be allowed otherwise the holding deposit must be repaid (and then simply take the full rent and tenancy deposit in respect of the tenancy). The payer might not be the tenant – it could be a charity, relative or local authority for example so their consent will need to be sought.

Where the holding deposit is repaid by offsetting towards the tenancy deposit, the holding deposit amount is treated as a tenancy deposit being received from the date of the tenancy agreement (for the purposes of when the 30 days to protect and give prescribed information starts).

It is our recommendation when deciding whether to use the holding deposit for rent or tenancy deposit, to choose tenancy deposit (where there is to be a tenancy deposit).

Landlord Decides Before the Deadline Date Not to Enter Into a Tenancy Agreement

Where the landlord decides before the deadline date not to enter into a tenancy, the starting position is that it must be repaid within 7 days of that decision.

However, there are limited circumstances when the holding deposit can be retained by a landlord or agent.

If it is decided that the person who received the holding deposit is not going to repay it, a notice in writing must be given to the person who paid it  explaining why the person who received it intends not to repay it within 7 days of the decision by the landlord not to enter an agreement. A failure to provide the written notice within 7 days means the holding deposit must be repaid (regardless of any entitlement to retain it).

The holding deposit can be retained by the landlord or agent if any of the below apply:

the landlord is prohibited by section 22 of the Immigration Act 2014 (persons disqualified by immigration status) from granting a tenancy of the housing to the tenant and the landlord (or letting agent acting for the landlord) did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted, or

if the tenant provides false or misleading information to the landlord or letting agent and the landlord is reasonably entitled to take into account the difference between the information provided by the tenant and the correct information in deciding whether to grant a tenancy to the tenant, or the landlord is reasonably entitled to take the tenant’s action in providing false or misleading information into account in deciding whether to grant such a tenancy.

If deciding not to repay a holding deposit on the basis of false information provided by the prospective tenant, the landlord or agent will need to be sure that the misleading information is sufficiently reasonable not to offer a tenancy and the explanations will need to be inserted into the notice. If in doubt, it will probably be easier to just repay the holding deposit and move on! If no written notice is given to the payer within 7 days of the decision, the holding deposit must be repaid regardless.

In addition to the above reasons, there is a further reason under this heading enabling a holding deposit to be retained:

if the tenant notifies the landlord or letting agent before the deadline for agreement that the tenant has decided not to enter into a tenancy agreement

However, the above reason is not a valid reason and the holding deposit would nevertheless have to be repaid if:

the landlord or letting agent has imposed on the tenant or a relevant person, a prohibited payment, prohibited third-party contract or a prohibited making of a loan, or

the landlord or letting agent behaves towards the tenant or a person who is a relevant person in relation to the tenant, in such a way that it would be unreasonable to expect the tenant to enter into a tenancy agreement with the landlord, or

no notice explaining why the holding deposit is not being repaid has been given in writing within 7 days of the decision not to enter a tenancy agreement having been made.

It’s important to note that where the tenant notifies they have decided not to enter into a tenancy, it’s nevertheless the landlord deciding not to enter into a tenancy. The tenant’s notification is simply the reason why the landlord has decided not to enter into a tenancy and would need to be explained in the written notice to the payer within 7 days of the decision.

No Tenancy Agreement Entered Into Before the Deadline Date

Where a tenancy agreement has not been entered into before the deadline for agreement date (note the word before, which effectively means the tenancy must be entered into by day 14), the holding deposit must be repaid.

However, the holding deposit may be retained if the landlord (and letting agent if one) takes all reasonable steps to enter into a tenancy agreement before the deadline for agreement, but the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date and the landlord (or agent) has served a written notice within 7 days of the deadline date to the payer explaining why the holding deposit is not being repaid. If the written notice is not given within 7 days, the holding deposit must be repaid regardless.

The above allowance to retain the holding deposit does not apply if:

the landlord or letting agent has imposed on the tenant or a relevant person, a prohibited payment, prohibited third-party contract or a prohibited making of a loan, or

the landlord or letting agent behaves towards the tenant or a person who is a relevant person in relation to the tenant, in such a way that it would be unreasonable to expect the tenant to enter into a tenancy agreement with the landlord, or

no notice explaining why the holding deposit is not being repaid has been given in writing within 7 days of the decision not to enter a tenancy agreement having been made.

Payment in the Event of a Default

Certain defaults under a tenancy agreement can be charged for with restrictions.

Firstly, a landlord (or an agent acting on behalf of a landlord) may seek payment for a “relevant default” which means:

the loss of a key to, or other security device giving access to, the housing to which the tenancy relates, or

a failure to make a payment of rent in full before the end of the period of 14 days beginning with the date (“the due date”) on which the payment is required to be made in accordance with the tenancy agreement.

The Loss of a Key

In order for a payment in respect of the loss of a key or other security device to be a permitted payment, the cost must be reasonably incurred by the landlord or letting agent as a result of the default, and supported by evidence in writing which is provided to the person on whom the requirement to make the payment is imposed.

Any excess over and above what costs have been reasonably incurred are a prohibited payment.

If requesting payment under this heading, the actual receipt for the new key, security fob or whatever was reasonably incurred must be provided and that would be all that can be charged.

Failure to Pay Rent in Full

In addition to the rent itself, payment of interest is a permitted payment as long as the amount of interest charged is:

the aggregate of the amounts found by applying, in relation to each day after the due date for which the rent remains unpaid, an annual percentage rate of 3% above the Bank of England base rate to the amount of rent that remains unpaid at the end of that day.

Therefore a daily rate may be calculated and can be added from day 15 of non-payment onwards (but the interest can then be applied back to the day after the ‘due date’).

For example, if a rent of £650.00 was due on 1 August and if the [Bank of England Base Rate](https://www.bankofengland.co.uk/monetary-policy/the-interest-rate-bank-rate) is 0.75% on 15 August, an annual percentage rate of 3.75% can be added for each day it remains unpaid (6p – rounding down). In this example, the interest can be applied back to 2 August (but only if payment hasn’t been made before 15 August). Anything above would be a prohibited payment.

Only the landlord OR agent can request the interest payment. If the landlord requests payment and the agent subsequently requests the interest payment, the agent is deemed to have requested a prohibited payment. The same goes the other way round (so if an agent has already requested and then the landlord subsequently requests an interest payment, the landlord has requested a prohibited payment).

A Payment of Damages for Breach of an Agreement

Payment of damages for breach of a tenancy agreement or an agreement between a letting agent and a relevant person (tenant, guarantor or person acting on behalf of a tenant) is a permitted payment.

The Consumer Rights Act 2015 already requires that any term of a tenancy be “fair” so the Tenancy Fees Act 2019 doesn’t go any further than this for this permitted payment.

This allows for damages such as repairs to be claimed at the end of a tenancy for example.

Payment on Variation, Assignment or Novation of a Tenancy

Only if the tenant requests to a landlord or letting agent a  variation, assignment or novation is a payment in consideration for performing the request a permitted payment. But, if the amount exceeds the greater of £50, or the reasonable costs of the person to whom the payment is to be made in respect of the variation, assignment or novation of the tenancy, the amount of the excess is a prohibited payment.

Payment on Termination of a Tenancy

A payment is a permitted payment if it is a payment to a landlord or letting agent in consideration of the termination of a tenancy at the tenant’s request.

That can be a request by the tenant either before the end of a fixed term or in the case of a periodic tenancy, without the tenant giving the period of notice required under the tenancy agreement or by virtue of any rule of law.

However, in order to be a permitted payment, the amount cannot exceed the loss suffered by the landlord or the reasonable costs to the letting agent as a result of the termination of the tenancy and any excess is a prohibited payment.

Note that depending on who the payment is made to, the calculation as to the amount permitted is different. The legislation specifically distinguishes between payment to a landlord and payment to an agent.

In respect of a payment to a landlord in consideration of the termination of a tenancy at the tenant’s request (highlights added):

But if the amount of the payment exceeds the loss suffered by the landlord as a result of the termination of the tenancy, the amount of the excess is a prohibited payment.

And, in respect of a payment to a letting agent in consideration of the termination of a tenancy at the tenant’s request:

But if the amount of the payment exceeds the reasonable costs of the letting agent in respect of the termination of the tenancy, the amount of the excess is a prohibited payment.

The reference in each part is to “a payment” (in the singular) so it’s unclear whether two payments can be sought or just one. It may be possible that one payment to the landlord to cover loss suffered can be sought and then a further payment to an agent to cover reasonable costs can be sought.

Payment in Respect of Council Tax

A payment to a billing authority in respect of council tax is a permitted payment.

Note: only a payment of council tax to a billing authority is permitted. It’s not permitted for a council tax payment to be made to anybody else (including landlord or agent).

Payment in Respect of Utilities Etc

A payment for or in connection with the provision of a utility is a permitted payment if the tenancy agreement requires the payment to be made and “utility” means—

electricity

gas

other fuel

water, or

sewerage.

It’s also a permitted payment towards energy efficiency improvements under a green deal plan.

There appears to be no reason why a landlord or agent cannot receive payment directly for a utility. Unlike the council tax prohibition before, this part does not require payment be made to the utility supplier.

The re-sale of gas and electricity is already governed by legislation (it can only be re-sold for the same price it cost).

Payment in Respect of a Television Licence

A payment to the British Broadcasting Corporation in respect of a television licence is a permitted payment if the tenancy agreement requires the payment to be made.

Similar to the council tax before, the payment is only permitted if made to the BBC.

Payment in Respect of Communication Services

A payment for or, in connection with the provision of a communication service is a permitted payment if the tenancy agreement requires the payment to be made and “communication service” means a service enabling any of the following to be used:

a telephone other than a mobile telephone;

the internet;

cable television;

satellite television.

However, if the payment is made to a landlord and if the amount of the payment exceeds the reasonable costs incurred by the landlord for or in connection with the provision of the service, the amount of the excess is a prohibited payment.

Prohibition on Requiring a Tenant to Enter Into a Third Party Contract

A landlord or letting agent must not require a relevant person to enter into a contract with a third party in connection with a tenancy of housing in England if that contract is —

a contract for the provision of a service, or

a contract of insurance.

The only exception allowed is if the landlords contract term is for the provision of:

a utility to the tenant (electricity, gas, other fuel, water or sewerage, Green Deal plan) or,

a communication service to the tenant (a telephone other than a mobile telephone, the internet, cable television or satellite television).

Note: this exemption is only available to landlords. It will not be possible for an agent to bind a tenant to a utility or communication service by some separate agreement between themselves. Any tenancy agreement the agent produces should be in the landlord’s name so the exemption is allowed in that case.

Requiring a tenant to be bound to any other third party contract that’s not a utility or communication service is prohibited.

For example, if a tenancy agreement contained a clause requiring a tenant to use ABC Professional Cleaning Services Ltd at the end of the tenancy, that would be prohibited under the Act and not binding on the tenant. If the tenancy is not clean at the end, the landlord or agent will still be able to make a claim for the costs of cleaning as damages as that will be a permitted payment. It’s the requiring the tenant to be contracted with a specific company that’s prohibited.

Similarly, any term requiring the tenant to use a specific inventory clerk for check out or check in is prohibited (in any event, the charging for an inventory is prohibited).

Likewise, commonly there are rent guarantee insurance schemes or zero deposit schemes available where the tenant is asked to pay. This too is prohibited. It will still be okay for a landlord or agent to enter into a contract themselves (and pay themselves) for the insurance or warranty.

Prohibition on Requiring a Loan

It is prohibited under the Act for a landlord or letting agent to require a relevant person to make a loan in connection with a tenancy.

Enforcement and Penalties

Enforcement is by every local weights and measures authority in England and provisions are in place for cross border offences. A district council which is not a local weights and measures authority may also enforce.

Financial Penalties

The penalty for a first offence is up to £5,000. If a person commits a second offence within 5 years, a penalty of up to £30,000 is payable. In addition, a second offence is a criminal offence. Furthermore, a second offence is a [banning order offence](https://www.landlordsguild.com/banning-orders-housing-and-planning-act-2016/).

Any financial penalty is on top of being required to repay any prohibited payments or holding deposit received.

Where an offence is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of a body corporate, the officer as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.

Any financial penalty imposed is enforceable as if it were an order of the county court (allowing the request of bailiffs, attachment of earnings or a charge on property etc).

Penalty Notice

Before the enforcement authority imposes a financial penalty, they must serve a notice on the landlord or letting agent of its proposal to do so (a “notice of intent”).

The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the enforcement authority has sufficient evidence of the breach or, anytime whilst the breach is continuing or, within 6 months of the last day of a breach (if a breach occurs on multiple occasions).

The notice of intent must set out—

the date on which the notice of intent is served,

the amount of the proposed financial penalty,

the reasons for proposing to impose the penalty, and

information about the right to make representations

A person who receives a notice of intent may, within 28 days, make written representations to the authority.

After the 28 day period, the authority must decide whether to impose a financial penalty and the amount of the penalty.

A “final notice” must then be given to the person by the authority requiring the penalty to be paid within a period specified in the notice (between 7 and 28 days depending on the nature of the breach).

A person on whom a final notice is served may appeal to the First-tier Tribunal against—

the decision to impose the penalty, or

the amount of the penalty.

The appeal must be made within the period specified for payment to be made in the final notice.

Recovery by Relevant Person of Amount Paid

A relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of any prohibited payment or holding deposit which has not been repaid to the relevant person.

The First-tier Tribunal may order the landlord or agent to repay any amounts due and such an order is enforceable by the relevant person as if it were an order of the county court.

A local authority may assist a relevant person in recovering any amounts due for example, help by conducting proceedings or by giving advice.

Restriction on Terminating Tenancy

As has become commonplace in modern housing legislation, in addition to a financial penalty, there are often restrictions on serving a section 21 notice (tenancy deposits, EPC, gas safety etc).

The Tenant Fees Act 2019 is no different although it must be said it makes a much more balanced and fairer approach than other legislation.

If a landlord requires a relevant person who has an assured shorthold tenancy to make a prohibited payment and, the person makes a prohibited payment as a result of the requirement or, a landlord breaches the holding deposit rules where the holding deposit relates to an assured shorthold tenancy, no section 21 notice may be given in relation to the tenancy so long as all or part of the prohibited payment or holding deposit has not been repaid to the relevant person.

As an alternative to repayment, the relevant person can consent to:

the payment or deposit being applied towards a payment of rent under the tenancy,

the payment or deposit being applied towards the tenancy deposit in respect of the tenancy, or

some of the payment or deposit be applied to the rent and the rest be applied towards a tenancy deposit.

It’s important to note the relevant person must consent for that to be allowed otherwise the money will need to be repaid in order to serve a section 21.

With the consent of the relevant person, it’s possible to repay part of a prohibited payment directly and then another part towards rent, tenancy deposit or a combination of both. As long as ultimately the whole prohibited payment has been repaid, a section 21 notice can then be served.

Only when the landlord requests and receives a prohibited payment do the restrictions on serving a section 21 apply. If a letting agent makes such a request and receives payment, the landlord is unaffected for section 21 purposes. Compare for example tenancy deposit schemes where if an agent fails to protect or give correct information, the landlord is (unfairly in our view) restricted from serving a section 21. It’s nice to see this legislation being fairer in this regard.

Other Provisions

Some amendments are also made to the Consumer Rights Act 2015 in relation to displaying fees for agents and some changes to the upcoming requirement for agents to belong to a client money protection scheme (regs are yet to be published from the draft).

Displaying Fees

Section 83 of the Consumer Rights Act 2015 (duty of letting agents to publicise fees etc) is amended and where an agent is carrying on letting agency work in England and advertises a dwelling-house on a third party website, the agent must ensure that a list of the agent’s relevant fees is published on the third party website, or there is a link on that website to a part of the agent’s website where a list of those fees is published.

This additional requirement to display fees will include physically displaying fees (or a link directly to a page with fees) on websites such as Rightmove, Zoopla etc.

Although most tenant fees are banned, there will still be landlord fees which must be displayed this way (in addition to the usual displaying requirements – prominently in an office and on own website).

Client Money Protection Schemes

[The Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018](https://www.legislation.gov.uk/id/uksi/2018/751) are amended and the changes which aren’t really necessary for this article [can be seen here](https://www.legislation.gov.uk/ukpga/2019/4/section/22/enacted).

Also, [The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019](https://www.landlordsguild.com/agents-must-have-client-money-protection-from-1-april-2019/) are amended (which commence from 1 April 2019)

The amendments simply make it that when an agent belongs to a scheme, any money which is a tenancy deposit and is correctly protected, won’t require cover under the scheme.

Conclusions

It’s going to be more important than ever for landlords to operate efficiently, especially at the beginning of a tenancy and especially if a holding deposit is taken. In addition to normal information being obtained, landlords and agents should ensure they have the bank account details of a prospective tenant ([our application form](https://www.landlordsguild.com/product/application-for-accommodation/) asks for this already). 7 days to repay a holding deposit is not a long time especially if a cheque is being posted so having bank details will allow speedy repayment. Where a holding deposit is to be retained (actually quite a rare event), written notices will have to be speedily sent to ensure they are given within the 7 days allowed.

If you ask yourself, whether a charge to a tenant is prohibited, you’re asking the wrong question. Essentially all charges are prohibited. The question should be – is the charge in the list of permitted payments? If not, then play it safe and don’t make a request.

Our tenancy agreements are currently being updated to reflect the changes (for example by changing the interest rate for unpaid rent and a few other tweaks). We will also be producing a new holding deposit form seeking appropriate consents as well as templates to use should a holding deposit wish to be retained.

In our view, although the holding deposit rules are particularly complex, it’s a useful part of the procedure for letting a property. Without a holding deposit, we find you can’t be sure if that person is genuinely interested and without one, they could go round expressing interest in many properties and see what happens. The holding deposit is the only real way to test if someone is genuinely interested. But, the pressures of getting everything done and signed within 14 days could be tricky (but that can be extended by agreement).

Source: [Landlords Guild](https://www.landlordsguild.com/)

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