

**Letting Agent Fee Ban**

The government announced, at the [2016 Autumn Statement](#), that it would consult on introducing a ban on letting agent fees paid by tenants, to improve competition in the private rental market and give renters greater clarity and control over what they will pay.

The Council distributed the consultation (7<sup>th</sup> April – 2<sup>nd</sup> June 2017) to all known agents, landlords and tenants (via RotherFed) operating within Rotherham borough. [Also, refer to timeline attached at Appendix 1]

The outcome of the consultation, [Banning letting agent fees paid by tenants](#) resulted in the Government publishing a draft Tenants' Fees Bill (1<sup>st</sup> November 2017), which set out the following;

The main measures contained in the draft Tenant Fees Bill will:

- Ban letting agents or landlords from charging fees for the granting, renewal or continuation of a tenancy.
- Cap holding deposits at no more than one week's rent and security deposits at no more than 6 weeks' rent. The draft bill also sets out the proposed requirements on landlords and agents to return a holding deposit to a tenant.
- Create a civil offence with a fine of £5,000 for an initial breach of the ban on letting agent fees and creating a criminal offence where a person has been fined or convicted of the same offence within the last 5 years. Civil penalties of up to £30,000 can be issued as an alternative to prosecution.
- Require Trading Standards to enforce the ban and to make provision for tenants to be able to recover unlawfully charged fees.
- Appoint a lead enforcement authority in the lettings sector.
- Amend the [Consumer Rights Act 2015](#) to specify that the letting agent transparency requirements should apply to property portals such as Rightmove and Zoopla.

The publication of the draft Tenants Fees Bill marked a step towards banning fees charged by letting agents and landlords as a condition of granting, renewal or continuance of a tenancy in England.

January 2019 - Tenant Fees Bill passed into law and now prevents landlords and agents from charging: 'Anything not exempted, that the tenant is required to pay as a condition of the 'of the grant, renewal, continuance, variation, assignment, novation or termination 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.

Deposits will be limited to five weeks, where annual rent is below £50,000 with new, stricter rules on holding deposits.

Damages caused by the tenant's breach of tenancy, such as the costs of cleaning the property after the tenancy ends, will still be deductible from the deposit. In addition there are two other 'default fees' you will be able to charge, if either:

- the tenant loses their keys or
- is late paying the rent.

These fees will also be limited.

Landlords can still charge for a change to the tenancy requested by the tenant, or if a tenant wants to leave early. A [full guide to the Tenant Fees Bill](#) is available on the RLA website.

Further guidance can be found in Appendix 2, but the following is an overview. The fee ban;

- applies to both agents and landlords
- will apply to renewals of tenancies, excluding statutory and contractual periodic tenancies that arise after the Tenant Fees Act comes into force on 1<sup>st</sup> June 2019
- examples are;
  - 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
  - Admin charges
  - Requirements to have specific insurance providers
  - Gardening services
- exempts holding deposits, rent, deposits and charges for defaulting on the contract, although there are additional restrictions
- will prevent setting rent at an initial higher level then dropping it to account for offsetting the ban
- will restrict holding deposits to a max of 1 weeks rent and refunded if tenancy doesn't go ahead but not if tenant pulls out
- will see deposits limited to 5 weeks rent
- allow charging for two types of default payments - loss of keys and late payment of rent, although both are subject to restrictions.
- applies to ASTs, student accommodation, and licences

## Appendix 1 – Letting Agent Fees Ban: Timeline

### Timeline

Plans to ban tenants' fees were first mooted in the Autumn statement in 2016, despite the, then housing minister, Gavin Barwell tweeting just a week earlier that [such a plan was a 'bad idea'](#).

RLA chairman Alan Ward said at the time: "Agent fees have to be paid by somebody. If any additional fees are passed on to landlords, tenants will end up paying them forever as market rents will increase."

The government began its [consultation into the plans](#) in April 2017, despite the [previous four housing ministers saying such a move would raise rents](#). It included plans to cap deposits – that had not previously been mentioned.

In June the RLA submitted a [consultation response](#) saying landlords should not be expected to shoulder the full cost of agents' services that benefit tenants and should still be expected to pay for the check in inventory and checks and referencing.

It also objected to the introduction of a deposit cap and the extra financial burden the changes would put on landlords – already shouldering the burden of a number of recent tax changes.

Later that month, [The Queen's Speech](#) revealed the plans would be published as a Draft Bill for further scrutiny.

The RLA asked the government to look at [better enforcing existing rules](#) over letting agent fees before looking to ban them outright.

In December research from the RLA [found one in five landlords were considering ditching their agent](#) as a result of the ban – with 57% planning to increase rents to cover increased agent charges.

In January last year RLA policy director [David Smith told the Communities and Local Government Select Committee](#) that landlords would be left counting the cost of the Bill, and in March the association warned plans to cap deposits would be a [charter for rent cheats](#).

David Smith's evidence to the Select Committee was backed up in May when the [government's official response to the HCLG Select Committee's report](#) on the draft Tenant Fees' Bill estimated the ban would cost landlords £82.9million in the first year with letting agents paying £157.1m.

The bill also had its second reading in May – where it received [all party support](#).

RLA policy director David Smith gave [evidence to the Tenant Fees Bill Select Committee](#) in June warning, once again, about the impact on landlords and tenants alike.

The RLA had major concerns about [amendments to the bill, announced in December last year](#) – including the reduction of the deposit cap from six to five weeks and changes to Client Money Protection arrangements, that could leave landlords vulnerable.

These issues were subsequently [raised by Peers in the Lords](#).

However, the amendments were accepted, and this week the Bill went back to the Commons where Lords' amendments – with the exception of a Labour amendment to reduce the deposit cap to three weeks – were approved.

The Act will now be [implemented on June 1 this year](#).

The Act applies in England, with plans for a [similar ban on tenants' fees in Wales still being debated](#).

**Appendix 2 – Tenant Fees Ban in England: Guidance from the RLA (Dec 2018)****TENANT FEES BAN IN ENGLAND****Introduction**

The government continues to move forward with a planned ban on fees charged by letting agents and landlords to their tenants. While this is yet to come into force, and draft legislation is always subject to change, it is very likely to come into force in much the same format so landlords and agents should start considering the impact on their business now. This guide will act as a primer for landlords and agents to help them prepare for these upcoming changes.

This guidance is based on legislation that has not yet come into force. Landlords and agents should be aware that it remains subject to change.

**Does the fee ban apply to agents and landlords?**

Yes, it will apply to both agents and landlords.

**Does the ban apply in Wales?**

England and Wales are separate jurisdictions for this purpose. They are both passing their own versions of the legislation. There will be differences between them in terms of details, especially around enforcement. This note is directed toward the English legislation.

**Will the fees ban apply to older tenancies?**

Not immediately. It will apply to renewals of [tenancies](#), excluding statutory and contractual periodic tenancies that arise after the Tenant Fees Act comes into force.

After one year the ban will attach to pre-existing tenancies and clauses that charge fees in them will become ineffective. If a landlord or agent takes a prohibited payment after that date they will have 28 days to return it or be considered in breach of this legislation.

**What fees are banned?**

Anything not exempted, 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 pretty much any fee that is in the tenancy agreement will be void unless it is 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-fleaed as a condition of allowing pets in the property
- Admin charges
- Requirements to have specific insurance providers
- Gardening services

### **What is exempted from the banned list?**

[Holding deposits](#), rent, [deposits](#) 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 for changing tenants or allowing tenants to vacate the property early. This is subject to restrictions on costs however.

### **Restrictions on rent**

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.

Of course, a higher rent than you would normally charge for the property, that is consistent throughout the tenancy will be fine. The government believes this is unlikely to happen though, as tenants will shop around for the lowest price.

### **Holding Deposits**

Holding deposits will be limited to a maximum of 1 week's rent and subject to statutory legislation on the repayment of this 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 right to rent 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.

### Deposits

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.

### Breaches of the tenancy agreement (damages)

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.

### Breaches of the tenancy agreement (default payments)

Previously it was expected that landlords would be able to charge for sending reminder letters. The latest draft of the legislation has tightened up the rules on default payments significantly however.

Under the current draft of the legislation landlords are allowed to charge for two types of default payments - loss of keys and 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.

## How to calculate interest on the rent

The calculation is (rent amount in arrears) x 0.0375 / 365 x (the amount of days since the arrears began).

### For example

A tenant misses a rent payment of £500 on 1<sup>st</sup> January and a further payment on 1<sup>st</sup> February, on February 28<sup>th</sup> the tenancy ends and the landlord intends to charge for payment.

£500 for the rent amount for the first 31 days

$£500 \times 0.0375 = £18.75$

$£18.75 / 365 = 5\text{p per day}$

$5\text{p} \times 31 = \mathbf{£1.55}$  for the first 31 days of arrears at that total.

£1000 = rent amount in arrears for the last 27 days

$£1,000 \times 0.0375 = £37.50$  annual interest

$£37.50 / 365 = \mathbf{10\text{p per day}}$

27 days have passed since the tenant went into arrears so  $10\text{p} \times 27 = \mathbf{£2.70}$ .

$\mathbf{£2.70} + \mathbf{£1.55} = £4.25$  in arrears can be charged for the late rent.

**Changes 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.

**Third party payments**

A number of third party payments can be required as part of the tenancy agreement. Most can be used by landlords and agents, but some are exclusive to landlords.

Landlords and agents

1. A contractual clause insisting on the tenants paying the television licence is an acceptable payment
2. A clause insisting on the tenant paying the council tax is an acceptable payment

Landlords only

1. A clause requiring the tenants to pay for the landlord's costs from a specific service provider for utilities is a permitted payment.
2. A clause requiring tenants to pay the landlord's cost for a specific communication service (phones, broadband, cable/Sky TV) is permitted for landlords.

If the landlord seeks to charge more than the billed costs for these services then any excess will be considered a prohibited payment.

**What are the financial penalties for this?**

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 in some fashion 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.

No [Section 21](#) notice may 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?**

Only ASTs, student accommodation, and licences are caught by this. [Company lets](#) and [non-assured tenancies](#) will be exempt.

What do I 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. The RLA will be updating our documents to ensure compliance with the ban on fees prior to it coming into force. We would urge any of our members to use the new documents once they are published.

### **Is there anything else to be aware of?**

This guidance is based on the current draft of the Tenant Fees Bill. It is current as of the 11<sup>th</sup> December 2018 and will be updated as and when further information is provided.