



# Tenant Fees Act 2019 (the Act) and FAQs

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## Introduction

With the Tenant Fees Act (The Act) in full force from 1 June 2020, following an initial 12 month transition period, we have updated this guide with answers to some of the most commonly asked questions so far. Please note that the information below is correct as at 1 July 2020 and may be subject to future changes.

First, just a reminder that the Act applies to:

- Tenancy Agreements signed on or after 1 June 2019
- Assured shorthold tenancies, student accommodation tenancies and licences to occupy housing in the private rented sector
- Landlords, agents and tenants in England ONLY.

The Act lists 11 types of permitted payments (some of which are capped):

- Rent
- Tenancy deposit
- Refundable holding deposit
- Tenancy security deposit
- Default fees including:
  - late payment of rent
  - replacing security devices
- Fees for variation, assignment or renewal of a tenancy
- Early termination of a tenancy
- Payment in respect of:
  - council tax
  - utilities
  - TV licence
  - communication services.

If a payment is not on this list, it is banned

Read more about 'permitted' payments at [GOV.UK](https://www.gov.uk).

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Holding deposits:

*What is a holding deposit?*

This is the fee taken by the landlord, or agent, to reserve the property for a prospective tenant, while referencing and other checks are carried out and the tenancy agreement is prepared for signing.

*What can an agent or landlord charge a prospective tenant as a holding deposit?*

A landlord or agent can only:

- Take up to one week's rent as a holding deposit, on the total agreed rent for the property
- Take one holding deposit for one property at any one time; not multiple holding deposits for the same property.

*How long can a landlord or agent hold this deposit?*

The holding deposit can be held for up to 15 days while all the necessary checks are carried out and the tenancy agreement is prepared. This is the default 'deadline for agreement' and for the tenancy to start. However, if all parties agree the deadline for agreement can be shortened or lengthened, although as a safeguard this should be put in writing.

If the tenant's application is successful and the tenancy begins, you must refund the holding deposit within seven days, unless it has been mutually agreed that it can be used towards the first month's rent.

*Can the landlord or agent avoid applicants withdrawing once the application process has already begun?*

You cannot stop a tenant backing out of their application. However, if the tenant pulls out during the application process of their own choosing, they'll forfeit their holding deposit.

The law has been drafted deliberately to stop tenants applying for multiple properties while they decide which one to take.

*What happens to the holding deposit if the landlord or agent withdraws from the process?*

You must refund the holding deposit in full, within seven days.

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*What happens if either party does not keep to the agreed timescales?*

If the tenant is delaying the process and, for example, not responding to emails or not giving the referencing agency what they need for longer than 15 days, the tenant would forfeit their holding deposit as long as they have been informed of the reasons, by the landlord or agent, in writing within seven days.

If it's the landlord or agent who's delaying the process and the delay extends beyond the 15 days deadline for agreement, they would have to refund the holding deposit in full within seven days.

*What happens if a landlord or agent just took the holding deposit from a prospective tenant without giving them any information, or a draft tenancy agreement?*

The Act is specific in saying that the landlord, or agent, has a duty, before taking a holding deposit, to provide specific 'clear information' and a draft tenancy agreement.

For more detailed information on holding deposits, including guidance on the 'clear information', please refer to The Property Redress Scheme's website guide <https://www.theprs.co.uk/Resource/Consumer>

Rent:

*As an agent, can I charge a balloon payment on every rent taken from 1 June and then have some of the additional funds taken out in replacement of a traditional 'fee'?*

No. ALL costs must be upfront and cannot be hidden from tenants.

*Can a tenant pay extra on top of their rent in a month if they wish to?*

Yes. However, the landlord or agent must be able to demonstrate the reason why this is happening and the rent paid must be as advertised. Any agents or landlords found to be flouting the Act will face enforcement from Trading Standards or the First Tier Tribunal with severe penalties for non-compliance (see enforcement section below).

*As an agent can I still charge rent inclusive of utilities?*

Yes. Charging rent 'inclusive' of utilities is 'permitted', providing that it is clear to the tenants at the start of the tenancy; NOT in addition to, or 'plus', the rent. It will be interpreted according to the wording in the tenancy agreement.

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Fees:

*Can a tenant voluntarily pay a fee?*

No. Even if the tenant has 'agreed' voluntarily to pay a fee this may still be considered a prohibited fee.

However, if the tenant chooses/opt to pay for a service, without it being a condition of the tenancy, then the tenant will be responsible for this fee, for example to pay for their own inventory on the property where the landlord doesn't want to have one.

*Will landlords or agents be able to charge any move-in fees?*

No. The ban applies across the private rented sector; to landlords, agents and third parties, such as referencing agencies.

*Can a landlord or agent charge guarantor's administration or referencing fees?*

No. These are fees which are banned under the Act, which applies to the 'relevant person', not just tenants, and is anyone involved in the granting, continuation, renewal or termination of a contract, including prospective tenants, actual tenants, guarantors, etc. It's exceedingly widely drafted.

*Can landlords or agents keep the fees that have been charged on a tenancy signed before 1 June 2019?*

During the transition period, any fees charged before the Act was in force could still be applied. Now that the transition period and from 1st June 2020, whether a tenancy which was signed before 1st June 2019 and is still in the fixed term or lapsed into a periodic tenancy, any of those fees (now prohibited by the Act), must be refunded.

*Can landlords or agents receive commission when selling insurance products to a tenant prior to a tenancy starting?*

Yes, but they must be optional and cannot be a condition of the tenancy. For example, if an agent advises a tenant to take out contents insurance or tenants' liability insurance and recommends their preferred suppliers, leaving the decision and choice to the tenant, that would be fine. If the insurance requirement is a condition of the tenancy, it will be a prohibited fee.

REMEMBER that the transparency of any fees, or commission you may earn, is vital when looking to sell a service or product to a tenant. For more on this see Trading Standards guidance on declaring fees which is recommended for lettings as well as sales.

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*What is the rule on displaying fees to tenants now?*

Landlords and letting agents have a duty under the Consumers Rights Act to display any fees clearly and this has been extended further by the Tenant Fees Act 2019. See our guide on Publishing Fees You can also refer to the previous answer and the Trading Standards guidance.

Tenancy Deposits:

*If a tenant signed the tenancy agreement before 1 June 2019 and paid a tenancy deposit which exceeds the cap, now that the transition period is over does the landlord or agent need to refund the excess?*

If the tenancy is still in the fixed term, landlords or agents do not have to immediately refund part of a tenancy deposit that exceeds the new cap. If the fixed term has ended and the contract is continuing as a contractual or a statutory periodic agreement, the excess amount over the five or six week cap must be refunded.

*Can the landlord or agent charge an insurance premium for a deposit replacement scheme?*

Yes, but only if they are given a choice between paying a five-week refundable deposit or a non-refundable insurance premium, and if all parties agree to it. Landlords and agents cannot make it a requirement for tenants to use a deposit replacement product, as the upfront charge will be seen as a prohibited payment.

However, it is important that tenants understand the products being offered. You can find out more about [Ome](#), a deposit replacement product run by the Hamilton Fraser Group.

*If I cannot put a cleaning clause in my contract, can I still deduct an amount from the tenant's deposit for cleaning at the end of the tenancy?*

Yes, if the evidence shows that the tenant has not returned the property cleaned to the same standard that it was in when the tenancy began. This would be a breach of the contract, and a reasonable deduction can be made from the tenancy deposit.

No, if the property has been left cleaned to the same standard it was in at the start of the tenancy.

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**Pets:**

*Can the landlord or agent take an increased tenancy deposit for permitting the tenant to have a pet?*

**No.** A pet 'deposit' OR any additional deposit which totals more than five or six weeks' rent, depending on the annual rent, will be a prohibited fee.

**Note.** A landlord or agent CAN negotiate an increased rent for permitting a pet in the property. However, an agent MUST ensure this fee is advertised in brochures, and is transparent, ahead of the tenant viewing the property, to comply with the Consumer Protection Regulation Act 2008.

*If the tenancy was signed before 1 June 2019 and the tenant has now requested permission for a pet, can a landlord or agent still charge a pet deposit?*

In our view, the pet deposit in this instance would be a prohibited payment having been taken after the fee ban is in place.

However, if the protected deposit is less than the five/six week cap, an additional deposit could be taken, up to the permitted limit.

In addition, the agent would be able to charge a permitted fee of up to £50 for preparing an addendum to the contract, allowing the pet.

*Can the landlord or agent insist that a tenant has pet insurance when renting one of our properties?*

**No.** This would be a condition of the granting of a tenancy and this is a prohibited fee.

*Can the landlord or agent take out pet insurance, make the tenant aware that this policy has been taken out and is part of the tenancy and then charge them for this?*

**No.** A landlord or agent could purchase the pet insurance, but you cannot pass the cost on to the tenant. This would constitute a 'fee' which is prohibited under the Act. Should the tenant choose to purchase the insurance, without it being a condition of the tenancy, then the tenant is responsible for the cost.

## Enforcement:

### *What will happen if the landlord or agent does not refund the prohibited fee?*

- It will prevent the landlord from taking possession of their property using a Section 21 notice
- The tenant can inform their local Trading Standards or can apply to the First Tier Tribunal for the prohibited fee to be refunded
- The landlord will be liable for a £5000 penalty, per prohibited fee charged

### *Who is going to enforce the ban?*

Trading Standards have a duty to enforce as well as local authorities.

Tenants or 'relevant persons' can inform their local Trading Standards, apply to the First Tier Tribunal for a refund of the prohibited fee, or apply to the relevant redress scheme.

You can find your local trading standards office here. Tenants have the option of recovering prohibited fees through the First Tier Tribunal.

Read more about your local trading standards authority.

Tenants have the option of recovering prohibited fees through the First Tier Tribunal. <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

### *If a landlord or agent is charged a penalty fee, will they be added to the database of rogue landlords and property agents?*

No. Not for a single offence. However, if two or more financial penalties are issued within a 12 month period, the local housing authority has the discretion to apply for the landlord, or agent, to be added to the database.

### *Can a landlord or agent appeal against the fine?*

Yes. There are two types of appeal which can be made to the First Tier Tribunal, within 28 days from the day after the final notice was served:

- Against the decision to impose a penalty
- The amount of the penalty imposed