

Tenant Fees Bill – An Overview

- 1 Through this Bill, the Government aims to make renting fairer and more affordable for tenants by reducing the costs at the outset of a tenancy. This Bill also aims to improve transparency and competition in the private rental market. The Bill delivers the manifesto commitment to ban letting fees paid by tenants in England and other measures to improve fairness, competition and affordability in the lettings sector.
- 2 This Bill seeks to achieve this by banning landlords and their agents from requiring tenants and licensees of privately rented housing in England and persons acting on their behalf or guaranteeing their rent (together “relevant persons”) to make any payments in connection with a tenancy with the exception of:
 - the rent;
 - a refundable tenancy deposit (reserved for any damages or defaults on the part of the tenant) capped at no more than six weeks’ rent;
 - a refundable holding deposit (to reserve a property) capped at no more than one week’s rent;
 - payments on assignment, novation or variation of a tenancy when requested by the tenant capped at £50, or reasonable costs incurred if higher;
 - payments associated with early termination of the tenancy, when requested by the tenant;
 - payments in respect of utilities, communication services and council tax; and
 - payments in the event of a default of the tenant (such as replacing a lost key or late rent payment fine), capped at the level of the landlord’s loss.
- 3 In the Bill “in connection with a tenancy” includes payments required:
 - by a landlord in consideration of the grant, renewal, continuance, variation, novation, assignment or termination of a tenancy;
 - by a letting agent in consideration for arranging the grant, renewal, continuance, variation, novation, assignment or termination of a tenancy;
 - on entry into an agreement containing relevant provisions;
 - pursuant to a provision of an agreement which requires or purports to require the person to do any of those things in the event of an act or default of the person; and
 - in consideration of providing a reference for a former tenant.
- 4 The ban applies in relation to assured shorthold tenancies, tenancies of student accommodation and licenses to occupy. In this memorandum ‘tenant’ includes licensees.
- 5 The Bill bans landlords and their agents from requiring tenants and other relevant persons to secure and pay for services from any third party (other than landlords in relation to utilities and communication services) or to make a loan.
- 6 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 take into account in deciding whether to grant the tenancy because this materially affects their suitability to rent the property.
- 7 The Bill places a duty on trading standards authorities to enforce the Bill but district councils that are not trading standards authorities will have power to enforce if they chose to do so. The Bill makes provision enabling tenants and other relevant persons to recover unlawfully charged fees and compensation for any monies paid under a contract that they were unlawfully required to enter into. Any loan which the tenant was unlawfully required to make is repayable on demand. The Bill also prevents landlords from

recovering possession of their property via the section 21 Housing Act 1988 procedure until they have repaid any unlawfully charged fees.

- 8 A breach of the fees ban will usually be a civil offence with a financial penalty of £5,000, but if a breach is committed within 5 years of the imposition of a financial penalty or conviction for a previous breach this will be a criminal offence. The penalty for the criminal offence, which will be a banning order offence under the Housing and Planning Act 2016, is an unlimited fine.
- 9 Where the offence is committed local authorities may impose a financial penalty of up to £30,000 as an alternative to prosecution. In such a case, local authorities will have discretion whether to prosecute or impose a financial penalty but guidance on this will be issued. Where a financial penalty is imposed this does not amount to a criminal conviction.
- 10 A breach of the requirement to repay the holding deposit is a civil offence and will be subject to a financial penalty of up to £5,000.
- 11 Local authorities will be able to retain the money raised through financial penalties with this money reserved for future local housing enforcement.
- 12 The Bill makes some amendments to the transparency requirements in Chapter 3 of Part 3 of the Consumer Rights Act 2015, which require an agent in England to display information about their relevant fees and membership of redress and client money protection schemes prominently in their office and on their website. The amendments are to apply those requirements in relation to property portals (e.g. Rightmove, Zoopla), to make new provision regarding fines in the event of a continuing breach of the requirements in England and to require letting agents to display the name of their Client Money Protection scheme (rather than simply whether they are a member of such a scheme).
- 13 The Bill also amends the Housing and Planning Act 2016, which will have the effect of moving the enforcement responsibility for mandatory client money protection scheme membership from district councils to county councils (in non-unitary authorities).
- 14 Finally, the Bill makes provision for 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. This includes the ban on letting fees and related provisions.
- 15 The Bill proposals were subject to a public consultation, which ran for 8 weeks from 7 April until 2 June 2017. The consultation received 4,724 responses from stakeholders across the private rented sector. These responses and additional stakeholder engagement have informed the implementation approach.
- 16 The Bill was published in draft on 1 November 2017 and was subject to pre-legislative scrutiny by the Housing, Communities and Local Government Committee.¹ The Committee published their report and recommendations on 29 March 2018 further to receiving over 60 written submissions and holding five oral evidence sessions with a range of stakeholders across the private rented sector.² The Committee's recommendations have been fully considered and have informed the final Bill.

¹ Tenant Fees Bill was published in draft on 1 November 2017 and is accessible at: <https://www.gov.uk/government/publications/draft-tenants-fees-bill>.

² The Committee's pre-legislative scrutiny report was published on 29 March 2018 and is accessible at <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/583/583.pdf>