



Llywodraeth Cymru
Welsh Government

Renting Homes (Fees Etc.) (Wales) Act 2019: Guidance for landlords and agents

August 2019

Contents

1. About the ban.....	4
What the Act provides:.....	4
What does this mean?.....	4
When does the ban start?.....	4
Does this apply to current tenancy agreements?	4
Standard Occupation Contracts.....	4
What can I ask a tenant to pay (permitted payments)?	5
What does the Act ban (prohibited payments)?	5
Non-binding tenancy agreement terms	5
Payment for ending a tenancy agreement early	6
Payments for change of sharer	6
Payments for amendment to a tenancy agreement	6
Payments between a landlord and an agent.....	6
Referral fees.....	7
2. Other parts of the Act	8
Other offences	8
3. Rent (and limits upon rent).....	9
Rent fluctuations	9
Permitted variations	9
4. Security/Tenancy deposits.....	10
What is a security / tenancy deposit?	10
Tenancy Deposit Protection legislation	10
Extra security deposit for different circumstances.....	10
Excess security deposit (if a limit is prescribed by regulations)	10
Tenancy deposit alternatives.....	10
5. Holding deposits.....	12
What is a holding deposit?	12
How much is a week's rent?	12
Deadline for agreement and repayment.....	13
Right to use a holding deposit for rent or security deposit.....	14
Right to retention of holding deposit for providing false and misleading information	14
Right to retention of holding deposit for failing to enter a tenancy agreement	14
Excess holding deposit.....	14
6. Payments in Default.....	16
Definition of a payment in default	16

Payments in default in a contract with a tenant	16
How to charge payments in default when something goes wrong.	17
Payments in default – deductions from tenancy/security deposit	17
7. Other permitted payments	18
Payment in respect of council tax	18
Payment in respect of provision of utilities	18
Payment in respect of television licence	18
Payment in respect of communication service	18
8. Offences and enforcement	19
What are the offences that the Act introduces?	19
What are the penalties for these offences?	19
Tenant’s ability to recover prohibited payments	20
Restrictions on seeking possession of property	20
Will any enforcement action count against my Rent Smart Wales licence?	20
Who will be carrying out the enforcement?	20

Note: this document is intended as a guide to aid compliance with the Renting Homes (Fees etc.) (Wales) Act 2019, and related matters. It is non-statutory.

1. About the ban

What the Act provides:

Sections 2 and 3 of the Renting Homes (Fees Etc.) (Wales) Act 2019 (“the Act”) create offences for a landlord or agent to require a person to make a payment which is prohibited, or to enter into a contract for services, or to require the grant of a loan in consideration of the grant, renewal or continuance of a standard occupation contract, or pursuant to a term of a standard occupation contract.

What does this mean?

- Any payment a tenant is required to pay, unless permitted by the Act, is banned and is a “prohibited payment”. This is referred to in this guidance as “the ban”.
- Landlords and agents can’t require the grant of a loan to them, or require a person to enter into a contract for services with them as a condition of a tenancy.

When does the ban start?

The ban starts when the Act comes into force, on 1 September 2019.

Does this apply to current tenancy agreements?

No. Any tenancy agreement which is entered into prior to 1 September 2019 will not be subject to the requirements of the Act.

However, the ban does not apply where a requirement to make a payment, grant a loan or enter into a contract for services, was imposed before 1 September 2019 or in respect of a requirement forming part of a tenancy agreement entered into before that date. So a tenant who signed a tenancy agreement on 31 August 2019 could still be required to pay for something which would otherwise be prohibited by this Act.

The Act will apply when the term of that tenancy agreement has finished, and a new tenancy agreement is entered into.

Standard Occupation Contracts

The Act refers to a standard occupation contract and contract-holder. Under the Renting Homes (Wales) Act 2016, a standard occupation contract will replace an

assured shorthold tenancy. However, the 2016 Act is not yet in force. By virtue of regulation 3 of the Renting Homes (Fees etc.) (Wales) Act 2019 (Transitional Provision for Assured Shorthold Tenancies) Regulations 2019, references to a standard occupation contract are to be read as references to an assured shorthold tenancy and references to a contract-holder are to be read as references to a tenant under an assured shorthold tenancy under Part 1 of the Housing Act 1988.

As a result the ban will apply to **assured shorthold tenancies** once it become operational on 1 September.

What can I ask a tenant to pay (permitted payments)?

- a. Rent;
- b. Security deposit;
- c. Holding deposit;
- d. Payments in default;
- e. Payments in respect of council tax;
- f. Payments in respect of utilities;
- g. Payments in respect of a television licence;
- h. Payments in respect of communication services.

What does the Act ban (prohibited payments)?

Anything which is not permitted is prohibited, and banned by the Act.

This means any payments required after 1 September 2019 in relation to tenancy agreements, such as check-in fees, check-out (or 'exit') fees, administration fees, inventory fees, guarantor fees etc. are prohibited payments.

If you are uncertain as to whether or not a payment is permitted, you should consider contacting Citizens Advice Bureau, or obtaining independent legal advice. You could also contact your local authority's Housing department, or [Rent Smart Wales](#).

You may also wish to seek advice from a professional body who represent landlords and/or agents.

Non-binding tenancy agreement terms

Any term of a tenancy agreement that requires a tenant to either:

- make a prohibited payment;
- enter into a contract for services; or

- make a loan

is not binding on the tenant. The rest of the contract will, however, continue to have effect.

Payment for ending a tenancy agreement early

In situations where a tenant wants to leave a fixed-term tenancy early, the landlord or agent is fully within their rights to expect to be paid for the entirety of the tenancy.

However, there are situations where the landlord or the agent may come to an agreement with the tenant to allow them to leave early. This may be, for example, an agreement that a tenant will pay a lesser amount which may cover any void period while a landlord finds a replacement tenant. The Act does not prohibit any agreement that a landlord and tenant may reach should the tenant wish to leave the tenancy early.

Payments for change of sharer

Landlords or agents are unable to charge tenants to change a joint tenancy agreement to reflect a change of sharer, should one tenant leave and be replaced by another.

Payments for amendment to a tenancy agreement

Should either party wish to amend a tenancy agreement, a fee cannot be charged for the amendment.

An example of this may be an agreement to pay an increased tenancy deposit (to be protected as required), and to include more conditions in the tenancy agreement, should a tenant wish to keep a pet.

Payments between a landlord and an agent

A payment of money is permitted if it is payable by a landlord to a letting agent in respect of lettings work or property management work¹ carried out by the agent on behalf of the landlord.

The Act does not affect the contractual relationship, or any fees agreed between a landlord and their agent.

¹ As defined in the Housing (Wales) Act 2014

Referral fees

Agents may receive referral fees from certain providers for referring the business of a tenant to them, for example arranging the set-up of broadband for the new tenant with a preferred provider.

This practice is not banned, but it must be clear to the tenant that they are not obliged to enter into any specific contract for services, for example specifying that they must only receive gas and electricity from a certain utility provider (if the tenant is responsible for paying the provider directly).

2. Other parts of the Act

Other offences

It is an offence for a landlord or agent to require a tenant or a third party to enter into a contract for services to the landlord, agent or anyone else as in relation to a tenancy agreement.² For example, you can't specify that somebody must sign up to a certain provider of communication services as a condition of their contract. The exception to this is if the tenant is provided with accommodation as a condition of their job, such as a live-in caretaker, or an au-pair.

A landlord or agent can't serve notice to evict a tenant using the section 21 possession procedure³ if they have required a prohibited payment which has not been repaid or returned a holding deposit where failure to repay amounts to a breach of the requirements of Schedule 2 to the Act .

² This does not affect the ability for a landlord and agent to enter into a contract for services in relation to a tenancy agreement.

³ Section 21 of the Housing Act 1988.

3. Rent (and limits upon rent)

Rent fluctuations

Rent must be the same across similar periods. Where any payment of rent for one period is greater than the amount of rent payable in any other period of equivalent duration, the difference between the two amounts is a prohibited payment. For example, you can not require a tenant to pay £600 in month one and £450 in month two onwards – the additional amount of £150 in month one will be a prohibited payment.

Permitted variations

An exception to this is under a “permitted variation”. A “permitted variation” is one made by agreement between the landlord and the tenant, or under a term in the contract providing for rent variation, or by or as a result of other legislation (for instance if another Act required a rent variation, this would be a permitted variation).

4. Security/Tenancy deposits

What is a security / tenancy deposit?

A security or “tenancy” deposit is any sum of money intended to be held by the landlord or agent otherwise as security against any losses incurred through the actions of the tenant.⁴

Typically, this would be equivalent to around one months rent.

Tenancy Deposit Protection legislation

As a landlords and agent, you must put any deposit in a government-backed tenancy deposit scheme (TDP) if you let your home on an assured shorthold tenancy that started after 6 April 2007. Deposits can be registered with:

[Deposit Protection Service](#)

[MyDeposits](#)

[Tenancy Deposit Scheme](#)

Extra security deposit for different circumstances

Although average security deposits tend to be around the equivalent of one month to six weeks rent, there may be circumstances which mean that you may wish to take a slightly higher amount of deposit, for example, should a tenant have pets, which may provide you with peace of mind should damages occur due to those pets. It is permissible to ask for a higher amount of deposit in these circumstances.

Excess security deposit (if a limit is prescribed by regulations)

There is currently no limit placed on an amount of deposit, but should a limit be introduced, any amount above that limit will be regarded as a prohibited payment.

Tenancy deposit alternatives

Some companies may offer alternatives to a traditional deposit, such as an insurance-based deposit, where a tenant may pay a lump sum to a third-party provider, followed by an annual fee. These schemes guarantee that any amounts

⁴ Housing Act 2004

payable to a landlord at the end of a tenancy that would ordinarily be deducted from a deposit, are paid direct to the landlord by the scheme provider. The tenant then becomes liable to repay the scheme provider.

If a landlord or agent agrees, a tenant may wish to enter into such an arrangement. Landlords and agents must not, though, require that a tenant enter into any such contract with a particular provider as a requirement of their tenancy.

5. Holding deposits

What is a holding deposit?

A holding deposit is a small deposit which is paid by a tenant to secure a property. It allows the landlord or agent to check the suitability of a tenant. It serves as a guarantee to the landlord that the tenant is committed to taking on the property and a guarantee to the tenant that the landlord will hold the property for them, pending successful completion of their suitability tests.

A holding deposit can be any amount up to a maximum of the equivalent of one weeks' rent.

Landlords and agents can't ask a tenant for more than one week's rent as a holding deposit (this cap is based on the total agreed rent for the property). For example, if there are three tenants who are jointly liable for the agreed total weekly rent of £240, you can't charge each tenant a £240 holding deposit. The maximum this group of tenants could be asked to pay as a holding deposit between them would be £240. They may then choose to split this equally so that each person would pay £80.

The cap of one week's rent on holding deposits is not a recommended amount, but simply the maximum that can be taken. You are not obliged to take a holding deposit and should consider on a case by case basis whether it is appropriate to take a holding deposit and the appropriate level of deposit to take.

A holding deposit confers the right of first refusal on a property to a tenant, so you may only accept one holding deposit for one property at any one time.

How much is a week's rent?

If you charge rent monthly, a simple calculation is to divide the monthly amount by 4.35. So, for example, an offered monthly rent of £650 would give you a weekly amount of £149.43. This would then be the maximum amount of holding deposit that you could ask for.

References / credit checks

You may ask a tenant to provide information which supports you to carry out a reference check, such as:

- **bank statements** – to assess a tenant's income and ability to pay rent
- **a reference from a previous landlord** (you can't ask a tenant to pay for this)

- **proof of address history** (usually up to 3 years)
- **details of current employer** – an employer can verify a tenant's income and confirm whether they are trustworthy, reliable and honest

Welsh Ministers have the power to make regulations which may set out a list of the information that must be provided to a tenant before a holding deposit can be taken.

There are several third-party organisations, including agent and landlord associations, which will carry out professional referencing checks for landlords and agents at a small cost – typically a full tenant reference check should cost no more than £30. This cost can not be passed on to the tenant.

Landlords and agents can also pay a small fee to check the Register of Judgments, Orders and Fines to see whether a tenant has received a County Court Judgment (CCJ) in the last six years. A CCJ is a judgment that a county court issues when someone has failed to pay money that they owe - a CCJ could indicate money problems or trouble paying bills. You should not rely wholly on this information alone as tenants may be fully able to meet the terms of a tenancy, even if they have a CCJ.

Landlords and agents can also search the bankruptcy and insolvency register for free – this will tell you whether a tenant has gone bankrupt or signed an agreement to deal with their debts in England and Wales. The register is available here: <https://www.insolvencydirect.bis.gov.uk/eiir/>.

Any information requested must be treated in accordance with relevant data protection legislation, including most recently, the General Data Protection Regulation which came into force in May 2018, and the Data Protection Act 2018.

Can I charge for a credit check?

No, but a tenant could run a credit check themselves, though you must not require them to use or enter into a contract with a specific provider for this service.

Deadline for agreement and repayment

A holding deposit must be repaid to the tenant within 15 calendar days of payment. This is known as the deadline for agreement. It can be extended, though only by agreement of both parties in writing.

Subject to offsetting against rent or security deposit, if both parties agree to enter into a tenancy, then the deposit must be repaid to the tenant within seven calendar days of that agreement.

If both parties do not agree to enter into a tenancy, then the deposit must be repaid within seven days of the deadline for agreement, whether that is 15 days from receipt, or another date as agreed in writing.

Right to use a holding deposit for rent or security deposit

A landlord or agent may not have to repay a holding deposit if that amount is to be put towards either the first payment of rent or the security deposit for that tenant.

Right to retention of holding deposit for providing false and misleading information

A landlord or agent may be entitled to retain a holding deposit should a tenant have provided false or misleading information at the time of applying for a tenancy.

Examples of this could include (but are not limited to) information coming back from reference checks being different from that provided by the tenant when applying for the tenancy, such as false references, misleading details of current employment (including overall employment status) or CCJs being discovered when the tenant has stated that they do not have any.

It is important to note that each case will be different and a landlord or agent would need to be content that the information provided was false or was intended to mislead, rather than being due to the tenant having made a mistake.

Right to retention of holding deposit for failing to enter a tenancy agreement

Should a tenant choose not to enter a tenancy agreement, or fail to take reasonable steps to enter a tenancy agreement, a landlord or agent may be able to retain the holding deposit.

Reasonable steps would include providing the information a landlord or agent would require to set up a tenancy when requested. Again, each case will be different and a landlord or agent would need to be content that a tenant was clear of what was required of them, but had failed to necessary steps as agreed.

Excess holding deposit

Any amount of holding deposit above one week's rent is a prohibited payment.

It may be necessary for a landlord or agent to require rent in advance, or the security deposit, before a tenancy agreement has been signed. This could be in cases where a tenant is not physically available to sign an agreement before the term of the tenancy begins. Provided the tenant is clear that any such payment was an advance

payment of rent, or the security deposit, then this would not be classed as excess holding deposit. It may help to document the payments in writing e.g. receipts.

6. Payments in Default

The Welsh Ministers may make regulations to prescribe a list of payments in default which would be permitted payments under the Act, as well as a limit on what is permitted.

Definition of a payment in default

A payment in default is a payment required by the landlord or agent arising from a breach of the tenancy agreement by the tenant, whether late payment of rent by its due date or some other breach.

These are occasions where it would be unfair for the landlord to be responsible for meeting the cost to them as a result of the actions of the tenant.

Examples of types of default payments could be:

- **Missed appointments** – such as a landlord arranging with a tenant for a contractor to carry out remedial work at a property, and a tenant subsequently refusing entry, or not being home to allow entry, resulting in charges to the landlord.
- **Avoidable or purposeful damage to property** – damage to a property caused by neglect or careless or wilful behaviour by the tenant.
- **Replacement keys** – loss of keys by the tenant requiring a landlord to arrange for the cutting of new keys and delivery of those keys to the tenant.
- **Emergency/out of hours call-out fees** – fees incurred as a result of a landlord arranging for someone to attend the tenant's property at the request of a tenant, such as a locksmith or an emergency glazier at the early hours of the morning, when the problem had been caused by the tenant in the first place, such as a window broken on purpose, or keys locked inside a house.

Payments in default in a contract with a tenant

A payment in default can only be charged if there is a specific term in the tenancy agreement allowing for such a payment.

If a landlord tried to charge a payment in default which was not set out in the tenancy agreement, then that payment is prohibited.

How to charge payments in default when something goes wrong.

When something goes wrong, a landlord or agent should first refer to the tenancy agreement to establish whether a breach of a term has taken place. If there was no breach of the tenancy agreement, then no payment can be required.

A landlord or agent should then contact the tenant to inform them that they believe a breach of the contract has taken place. A tenant should be allowed to explain their position, should they disagree that a breach has taken place.

Any demand for a payment in default should be made in writing.

A landlord or agent may also wish to consider the tenant's personal circumstances before requiring a payment in default. For example, a tenant may be unable to afford to pay a payment in default all in one go, but may be able to afford to pay it over a longer period of time in instalments.

Payments in default – deductions from tenancy/security deposit

The Act does not alter a landlord's ability to reclaim actual losses incurred during a tenancy as a result of the actions of a tenant, from the tenant's security deposit.

7. Other permitted payments

Payment in respect of council tax

A payment that a tenant is required to make to a council in respect of council tax is a permitted payment.

Payment in respect of provision of utilities

A payment for or in connection with the provision of a utility (water, sewerage (including cesspits), gas, electricity or other fuel). A payment towards energy efficiency improvements under a Green Deal Plan (within the meaning of section 1 of the Energy Act 2011) is permitted if it is required under a tenancy agreement and made in respect of the dwelling subject to the contract.

Payment in respect of television licence

A payment that a tenant is required to make to the British Broadcasting Corporation in respect of a television licence is a permitted payment.

Payment in respect of communication service

A payment that a tenant is required to make for or in connection with a communication service is a permitted payment if required under a tenancy agreement and made in respect of the dwelling subject to the contract. This includes payments to enable internet access, cable or satellite television or for the use of a telephone other than a mobile telephone.

8. Offences and enforcement

What are the offences that the Act introduces?

It is an offence for a landlord to require a prohibited payment, or to require that a tenant pay a loan, or enter into a contract for services in relation to their tenancy.

It is an offence for a letting agent to require a prohibited payment, or to require that a tenant pay a loan, or enter into a contract for services in relation to their tenancy.

It is an offence for any person to either fail to comply with a notice issued by an enforcement authority under the Act, requiring information, or to supply false or misleading information in relation to that notice.

What are the penalties for these offences?

An enforcement authority is able to issue landlords or letting agents a fixed penalty notice of £1,000 for the offences of:

- requiring a tenant to make a prohibited payment, or
- requiring a tenant to enter into a contract for services in relation to a tenancy, or
- requiring a tenant to make a loan in relation to a tenancy.

An enforcement authority may choose to prosecute which, if convicted, may result in a fine (not subject to any statutory limit) for:

- requiring a tenant to make a prohibited payment, or
- requiring a tenant to enter into a contract for services in relation to a tenancy, or
- requiring a tenant to make a loan in relation to a tenancy, or
- providing false or misleading information in relation to a notice issued seeking information.

An enforcement authority may choose to prosecute an offence if there is a failure to comply with a notice issued under section 10 of the Act. A person who commits an offence under section 11(1) is liable on conviction to a fine not exceeding level 4 on the standard scale (at the time the guidance is issued, the current maximum is £2,500).

The court by which a person is convicted of an offence under section 2(1) or 3(1) of the Act may order the offender to pay the amount of the payment concerned or

where part of the payment has been repaid, the outstanding amount of the payment to whom it was paid

Tenant's ability to recover prohibited payments

A tenant may apply to a county court for repayment of any prohibited payment or holding deposit. They are, though, unable to do so if the landlord or agent is subject to criminal proceedings in relation to the prohibited payment or holding deposit. This is because a judge may order repayment of a prohibited payment or holding deposit on conviction.

Corporate bodies

Where a body corporate (for instance, a limited company) commits an offence under the Act, a "senior officer", or a person who is deemed to be acting as a senior officer of the company, may also be liable to be prosecuted for the offence.

Restrictions on seeking possession of property

A landlord will be unable to issue a section 21 notice, seeking possession of a property, if:

- a landlord has taken a prohibited payment but has not repaid it.
- a landlord has taken a holding deposit but has not repaid it as required by the Act, unless it is being used towards the security deposit, or the first months' rent.

Will any enforcement action count against my Rent Smart Wales licence?

Local authorities have a duty to inform Rent Smart Wales of any convictions made as a result of the Act. Rent Smart Wales must consider any convictions as part of their consideration of whether someone is "fit and proper" to hold a licence under Part 1 of the Housing (Wales) Act 2014.

Rent Smart Wales also have the power to take into account anything which they regard as relevant as to someone's fitness to hold a licence, which may also include details of fixed penalty notices for offences under this Act.

Who will be carrying out the enforcement?

The enforcement will be carried out by the local authorities or by Rent Smart Wales if permission is granted by local authorities for them to take action on their behalf.