

Guidance on Residential Lettings

(Fees etc.) (Wales) Act 2019 for Letting Agents

The Renting Homes (Fees etc.) Act 2019 and applies to occupation contracts from 01 September 2019 and applies to the contract-holder can

Under the Act, landlords and letting agents in Wales are prohibited from charging certain fees to a contract-holder and must be capped and must be fully refunded within strict time frames, except in certain circumstances.

It is a criminal offence for a letting agent to charge any prohibited payments, as defined in the Act, and a summary conviction. The enforcement authority may issue a fixed penalty of £1,000 as an alternative.

Landlords, or letting agents, will not be able to serve a valid no-fault eviction notice (s173 notice) until they have repaid any prohibited payments to the contract-holder.

This Guidance summarises the key provisions of the Act, which payments can be charged to a contract-holder, which payments are prohibited, the treatment of holding deposits, which contracts are affected and the penalties for non-compliance.

1. Which contracts are covered by the Act?

This Act applies to occupation contracts, including tenancies which were granted on or after 01 September 2019 and which converted to occupation contracts on 01 December 2022. It also applies to occupation contracts entered into prior to 01 September 2019 which were entered into prior to the requirements of the Act.

2. What payments are prohibited by the Act?

2.1. Landlords or letting agents are prohibited from charging a fee for property management services.

2.2. Landlords or letting agents are prohibited from charging a fee for property management services.

3. A contract-holder is prohibited from:

1. Rent (all payments for the use of the property)
2. A refund of a holding deposit (if the rent is unpaid for more than 7 days). The rate of interest is capped at no more than one week's rent);
3. A refund of a holding deposit (if the rent is unpaid for more than 7 days). The rate of interest is capped at no more than one week's rent);
4. Payment of a fee for the following:
 - a. for the use of the property
 - as explained below
 - b. Interest on a holding deposit (if the rent is unpaid for more than 7 days). The rate of interest is capped at no more than one week's rent);

2019 ('the Act') came into force on 01 September 2019. The main purpose of the Act is to reduce the "hidden" costs that a contract-holder pays for an occupation contract.

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It is a criminal offence for a letting agent to charge any prohibited payments, as defined in the Act, and a summary conviction to an unlimited fine. The enforcement authority may issue a fixed penalty of £1,000 as an alternative.

Landlords, or letting agents, will not be able to serve a valid no-fault eviction notice (s173 notice) until they have repaid any prohibited payments to the contract-holder.

This Guidance summarises the key provisions of the Act; which payments can be charged to a contract-holder, which payments are prohibited, the treatment of holding deposits, which contracts are affected and the penalties for non-compliance.

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5. Council tax
6. Utilities (gas, electricity, heating, fuel, water or sewerage), if the payments are required to be made by the contract-holder to the dwelling subject to that contract;
7. Communications (landline or mobile phone, internet/cable or satellite television), if the payments are required to be made by the contract-holder to the dwelling subject to that contract;
8. TV Licence, if the payments are required under the occupation contract and relate to the dwelling subject to that contract.

4. What payments are prohibited?

Landlords, or letting agents, are prohibited from charging contract-holders any fees which are not permitted by the Regulations (described above).

1. Letting fees: A landlord or letting agent must not charge a contract-holder and must be fronted entirely by the landlord or letting agent. This includes:
 - Variation fees
 - Renewal fees
 - Initial fees
 - Professional fees
 - Commission fees
 - Holding deposit fees
2. Landlord's fees: A landlord must not charge a contract-holder in consideration of a variation or assignment or termination of the contract.
3. Landlord's fees: A landlord must not charge a contract-holder for professional cleaning services; and
4. The amount of any fee which exceeds the cap referred to above will be prohibited.
5. Renewal fees: A landlord must not charge a contract-holder a fee for the renewal of the occupation contract; and
6. If more than one rental period is provided for in the contract, the additional rent is a premium (unless an exception applies). If the rental periods vary in length, the additional rent may be charged as long as the daily rate of rent for each period does not exceed the daily rate of rent for the other period. An exception may apply where: 1) the parties to the contract agree a rent review provision; 2) the contract includes a rent review provision.

5. Holding Deposits

5.1. Capped Holding Deposits

A holding deposit is a sum of money paid by a contract-holder to secure a dwelling prior to signing the occupation contract. A landlord or letting agent may charge a holding deposit to reserve a dwelling whilst they are carrying out a suitability check on prospective contract-holders, but you must not charge more than the amount specified in the guidance published by the Welsh Government states that in order to secure a dwelling, the monthly rent should be divided by 4.35.

5.2. Specified Information

Under supplementary provisions, landlords and/or agents in Wales must provide the following information to prospective contract-holders before collecting a holding deposit on or after the 28 February 2020 as follows (as set out at Regulation 3(2) of The

Renting Homes (Fees etc.) (Wales) Regulations 2019):

- a) amount of the deposit;
- b) address of the premises to which the deposit is paid;
- c) where a letting agent is to be paid to a letting agent, the name and contact details of the letting agent;
- d) where a deposit is paid to a landlord, the name and contact details of that landlord;
- e) duration of the occupation contract;
- f) proposed terms of the occupation contract;
- g) amount of the holding deposit;
- h) rental period;
- i) any proposed terms or proposed modifications to fundamental terms of the occupation contract proposed to be omitted from the contract;
- j) amount of the holding deposit;
- k) whether the contract-holder will undertake, and, if so, any relevant conditions;
- l) reference to the letting agent (if any) will undertake; and
- m) information required from the prospective contract-holder.

The above 'Specified Information' must be provided in writing and may be given in person, or sent electronically. The contract-holder consents to this.

If the holding deposit is not all the Specified Information is provided, the contract-holder.

5.3. Repayment

There are strict rules about the holding deposit. Under the Act, the holding deposit must be applied to the first instalment of the occupation contract being entered into (although the holding deposit may be applied to the first instalment of rent, or towards the security deposit). There is no requirement for the holding deposit being applied to the rent or security deposit.

If the landlord agrees to enter into an occupation contract within 15 days of receipt of the holding deposit, the contract-holder ('the Deadline for Agreement') the landlord must repay the holding deposit to the contract-holder by the Deadline for Agreement.

A holding deposit may only be repaid in limited circumstances:

- i) where a letting agent provides misleading or false information; or
- ii) if the contract-holder has taken all reasonable steps to enter into the contract (even though the contract has not been entered into); or

iii) the contract-holder has not entered into an occupation contract (this exception does not apply if the landlord or letting agent has behaved reasonably).

If a landlord or letting agent has taken all reasonable steps to enter into the contract and the contract-holder has refused to enter into the contract, the SRA may require the landlord (or letting agent), to the extent that the holding deposit was paid.

6. Prohibited Arrangements

Neither a landlord nor a letting agent can require a contract-holder to make a prohibited payment to a third party (other than for the supply of utilities); or require a contract-holder to make a loan in consideration of the grant, renewal or continuation of an occupation contract. For example, you cannot require a contract-holder to provide a service such as reference checks or credit checks.

There is an exception for services under which any of the services will be provided by a person who occupies the dwelling. This might include a caretaker or live-in nanny.

7. Consumer Rights

The Act gives the Consumer Rights Act 2015, on third party websites.

8. What are the penalties for non-compliance?

8.1. It is a criminal offence for a landlord or letting agent to charge any prohibited payment. Penalties for non-compliance can be:

- a. Found liable by a court to an unlimited fine; or
- b. The enforcement authority issuing a fixed penalty (£1,000) instead. If a fixed penalty is not paid within 21 days to avoid criminal conviction;
- c. The court ordering the prohibited payment be repaid.

8.2. Landlords or letting agents will not be able to serve a valid no-fault eviction notice or exercise a landlord's break notice) until the contract-holder has repaid the prohibited payment or returned an unlawfully retained holding deposit.

8.3. A term in a contract-holder's occupation contract will not be required to pay this sum under the contract.

8.4. The enforcement authority has specific powers to require information from landlords and letting agents for the investigation of a potential breach of the Act. It is an offence to provide false or misleading information, and a person

can be liable for a breach.

8.5. A landlord who is found to be in breach of the licensing provisions of the Housing Wales Act 2019 may have their Rent Smart Wales licence revoked if the landlord is not fit and proper to hold a licence under the Act.

8.6. Where an offence is committed by a company, a senior officer of that company may be liable for the offence.

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