



Llywodraeth Cymru  
Welsh Government

# Renting Homes (Fees Etc.) (Wales) Act 2019: Guidance for tenants

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

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**Note: this document is intended as a guide to aid understanding of the Renting Homes (Fees etc.) (Wales) Act 2019 prior to *A Home in the Private Rented Sector: a Guide for Tenants in Wales* being updated.**

## **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?**

- You can only be charged for rent, a security deposit, a holding deposit, payments in default if you breach your tenancy agreement and for payments in respect of utilities, council tax, a TV licence or communications services when renting under an assured shorthold tenancy<sup>1</sup>. Anything else is considered a “prohibited payment” under the Act. This is referred to in this guidance as “the ban”.
- A landlord or agent cannot require the grant of a loan to them, or require you 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 you have entered into prior to 1 September 2019 will not be subject to the requirements of the Act.

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

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<sup>1</sup> Any tenancies other than assured shorthold tenancies are not affected by this Act.

The Act will however apply when your current tenancy agreement ends and you enter into a new one, either with the same landlord or agent, or if you start renting somewhere else.

### **Terminology in the Act**

The Act refers to a standard occupation contract and contract-holder. This is because under the Renting Homes (Wales) Act 2016, a standard occupation contract will replace an assured shorthold tenancy.

However, the Renting Homes Act is not yet in force. As a result of Regulations made by powers under the Act, references to a standard occupation contract should be read as references to an 'assured shorthold tenancy' and references to a contract-holder are to be read as references to a tenant.

As a result the ban will apply to **assured shorthold tenancies** (AST) from 1 September 2019.

### **What can I be asked 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.

These permitted payments are explained further later in this guidance.

### **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 and guarantor fees are prohibited payments.

If you think you are being asked to make such a payment, 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](#).

## **Non-binding tenancy agreement terms**

If a landlord or agent includes a term in a tenancy agreement that requires you to either:

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

then it is not a binding part of the agreement. The rest of the agreement will, however, continue to have effect.

## **Payment for ending a tenancy agreement early**

In situations where you want 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 you may be able to come to an agreement which allows you to leave the tenancy early. This may mean that you have to pay a lesser amount to cover any period where the landlord does not receive rent whilst they are looking for a replacement tenant.

The Act does not prohibit any such agreement being reached.

## **Payments for change of sharer**

You cannot be contractually required to pay for requesting or requiring changes to 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**

Similarly, should either you or the landlord wish to amend your tenancy agreement, you cannot be contractually required to pay 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, for example should you wish to keep a pet.

## **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 you as a new tenant with a preferred provider.

However, you are not obliged to enter into any specific contract for services, for example where an agent specifies that you must only receive gas and electricity from a certain utility provider (and where you are responsible for paying the provider directly).

If you think you are being asked to enter into such a contract, you should consider contacting Citizens Advice Bureau, Shelter Cymru, your local authority's Housing department, or [Rent Smart Wales](#). You may also wish to seek your own independent legal advice.

## 2. Other parts of the Act

### Evictions

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

If you have been served a section 21 notice but think you may have been asked to pay a banned fee, you should consider contacting Citizens Advice Bureau, Shelter Cymru, or obtaining your own independent legal advice. You could also contact your local authority's Housing department, or [Rent Smart Wales](#).

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<sup>2</sup> Section 21 of the Housing Act 1988.



### **3. Rent (and limits upon rent)**

#### **Rent fluctuations**

The amount of rent you are charged must be the same across similar periods (so the same each month, or week etc. depending on what your rental period is).

Where this is not the case the difference between the two amounts is a 'prohibited payment'. For example, if you were asked 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, and you can seek to claim it back. An exception to this is under a "permitted variation".

#### **Permitted variations**

A "permitted variation" is one made by agreement between you and the landlord 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).

#### **Rent in advance**

A landlord or agent can ask for rent in advance, or for 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.

Any such arrangements would need to be made clear to you, and this cannot be added on to the holding deposit.

## 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.<sup>3</sup>

Typically, this would be equivalent to around one month’s rent.

### Tenancy Deposit Protection legislation

A landlord or agent must put any deposit in a government-backed tenancy deposit scheme (TDP) if they let a property 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 typically tend to be the equivalent of one month’s rent, there may be circumstances which mean a landlord or agent asks for a slightly higher amount of deposit, for example, should you have a pet. This is permitted under the Act.

### Tenancy deposit alternatives

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

Should you wish to use such a scheme, you should discuss this with your landlord or agent. A landlord and agent cannot, however, require you to enter into any such scheme with a particular provider as a requirement of your tenancy.

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<sup>3</sup> Housing Act 2004

## 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 and 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 week's rent.

A holding deposit gives you the right of first refusal on a property and a landlord or agent can only accept one holding deposit for one tenancy at any one time. You cannot be asked 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, a landlord or agent cannot 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.

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

### References / credit checks

A landlord or agent may ask you to provide information to help them 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**
- **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.

A landlord or agent cannot charge you for a credit check.

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

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.

### **Deadline for agreement and repayment**

The holding deposit must be repaid within 15 calendar days of payment. This is known as the deadline for agreement. It can be extended, though only by agreement of you and the landlord (or agent) 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 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.

### **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 a genuine mistake.

In a case where a landlord has provided false or misleading information to a tenant before taking a holding deposit, a tenant may be able to claim their deposit back even if they no longer wish to enter into the tenancy.

If you feel this may have happened to you, you should consider contacting Citizens Advice Bureau, Shelter Cymru, or obtaining your own independent legal advice. You could also contact your local authority's Housing department, or [Rent Smart Wales](#).

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

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

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

## 6. Payments in Default

When the Act comes into force on 1 September a tenant may be required to make a payment in default, provided that payment is required under the tenancy agreement.

However, the Act provides the Welsh Ministers with powers to make regulations in respect of any additional descriptions of default payments and prescribing limits on default payments (Schedule 1, paragraph 6) and the information a prospective tenant must be provided with before they pay a holding deposit (Schedule 2, paragraph 11(3)).

Any regulations made under paragraph 6 of Schedule 1 would come into force as provided for in the Regulations, if agreed by the Assembly.

### 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 they arise as a result of the actions of the tenant.

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

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.

### **How a landlord or agent seeks a payment in default**

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 inform you that they believe a breach of the contract has taken place. You should be given the opportunity to explain your position, should you disagree that a breach has taken place.

Any demand for a payment in default should then be sent to you in writing.

### **Payments in default – deductions from tenancy/security deposit**

A landlord or agent may choose to reclaim losses they incurred during a tenancy as a result of the actions of a tenant, from the security deposit, rather than seeking a specific payment in default. The Act does not change the landlord or agent's ability to do this.

## **7. Other permitted payments**

In addition to rent, security deposit, holding deposit and payments in default, there are a number of other permitted payments which may be relevant if you enter into an agreement which includes various bills.

### **Payment in respect of council tax**

If you are required to pay the council tax under the tenancy agreement, then this is a permitted payment.

### **Payment in respect of provision of utilities**

A payment required under the tenancy agreement for or in connection with the provision of a utility (water, sewerage (including cesspits), gas, electricity or other fuel) is permitted.

A payment towards energy efficiency improvements under a Green Deal Plan is permitted if it is required under a tenancy agreement and made in respect of the property you are renting is permitted.

### **Payment in respect of television licence**

Any payment that your tenancy agreement requires you to make to the British Broadcasting Corporation in respect of a television licence is a permitted payment.

### **Payment in respect of communication service**

Similarly, you can be charged payments for or in connection with a communication service, if required under a tenancy agreement and made in respect of the property you are renting. 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 (see below) 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 this 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 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.

## **What should I do if I think I have been charged a prohibited payment, or I am being asked to make such a payment?**

Enforcement is carried out by the local authorities or by Rent Smart Wales (where permission is granted by local authorities for them to take action on their behalf).

There are also organisations who can help you consider whether you have been asked to pay something you should not have been, including:

- Your local authority;
- Shelter Cymru (<https://sheltercymru.org.uk/>);
- Citizens Advice Cymru (<https://www.citizensadvice.org.uk/wales/>).

If you are a student in higher education, as well as the organisations above you may also wish to contact:

- National Union of Students Wales (<https://www.nusconnect.org.uk/nus-wales/>); and/or
- your University's Accommodation Office.

## **Recovering a prohibited payment**

Should you have been charged a prohibited payment, you may apply to a county court for repayment of the prohibited payment or holding deposit.

However, if the landlord or agent is subject to criminal proceedings in relation to the prohibited payment or holding deposit then you would not be able to pursue a separate claim because a judge may order repayment of a prohibited payment or holding deposit on conviction.

## **Restrictions on seeking possession of property**

If a landlord has taken a prohibited payment but has not repaid it or 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) then the landlord will not be able to issue a valid section 21 notice to seek to evict you from the property.

If you think this to be the case then you should contact the organisations listed above.