

GUIDANCE ON THE TRANSITIONAL PROVISIONS OF THE TENANT FEES ACT 2019

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This publication is also available from our website at: www.ntselat.uk.

The contents of this guidance does not constitute legal advice merely the application of the law as interpreted by the National Trading Standards Estate and Lettings Agency Team; only a court of law can provide certainty.



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Introduction

The Tenant Fees Act ('the Act') allows a transitional period of one year from the commencement date for tenancy agreements that were entered into before commencement of the Act ("pre-commencement tenancies"). Pre-commencement tenancies are:

- a) Tenancies entered into before the commencement date; and
- b) Statutory periodic tenancies that arose during the year after commencement.

Note: the Act refers to "relevant person" - that is tenants, any representative or their respective guarantors¹. References to tenants throughout this guidance should be interpreted to also include those appropriate persons.

Why is NTSELAT providing this guidance?

One year after the implementation of the Act for new tenancies the concept of Prohibited Payments applies to all tenancy agreements which are within scope, irrespective of the date of that agreement. It has retrospective effect for tenancy agreements within scope which are dated before 1st June 2019.

Contractual clauses within those older agreements which would have obligated the tenant make a "Prohibited Payment" have no legal effect.

Can payments still be made under a pre 1st June 2019 agreement?

After the transitional period, on 1st June 2020, the Act applies to all applicable tenancy agreements regardless of when the agreement was entered into. Any term that is prohibited by the Act in a tenancy agreement entered into prior to the commencement date would cease to be binding on the tenant and any enforcement of the term by a landlord or agent would be prohibited from the end of the transitional period. Where a landlord or agent accepts a payment under such a term and does not return it to the tenant within 28 days, this is a prohibited payment.

Example: a tenancy agreement that was signed before commencement of the Act and has a clause that requires the tenant to pay a fee to renew a fixed-term agreement. This term would not be binding on the tenant after 1 June 2020.

Sanctions for requiring a prohibited payment to be paid

A landlord or letting agent who has required such a payment to be made would be in breach of the TFA. Enforcement authorities could impose a sanction of a monetary penalty of up to £5000 for an initial breach, or up to a £30000 monetary penalty (or a criminal prosecution that could result in the imposition of an unlimited fine) for a subsequent breach within 5 years.

¹ A relevant person does not include a local housing authority or the Greater London Authority, or any representative acting on behalf of those bodies.

Any subsequent breach is also deemed a “banning order” offence of which a First Tier Tribunal could prohibit a landlord or letting agent from engaging in letting or managing properties.

Furthermore should a tenant be required to pay a prohibited payment after 1st June 2020 (or before then if the date of the tenancy agreement is after 1st June 2019) a Section 21 Notice under the Housing Act 1988, the mechanism for invoking a no-fault eviction, cannot be served upon the tenant.

Information concerning tenancy/security deposits

Tenancy deposits in respect of tenancy agreements dated on or after 1st June 2019 are subject to the cap of 5 weeks rent for an annual rent of less than £50,000 or 6 weeks rent where the annual tenancy is higher than £50,000 but does not exceed £100,000.

Pre-TFA tenancies where there was no cap on the tenancy/security deposit are not expressly addressed in the Act and there is no compulsion to refund any surplus on the deposit while the tenancy subsists.

Should a tenancy agreement lapse through the expiry of time and a new agreement is negotiated between the landlord and the tenant in relation to the same property, this new agreement will then require a refund to the tenant of any deposit in excess of the legislative cap.

What should happen next?

NTSELAT suggests landlords and letting agents check, and amend if necessary, tenancy agreements to ensure any clause requiring a tenant to make any payment which is deemed prohibited is appropriately deleted. There is no compulsion to do this, though landlords and letting agents must be aware such clauses will not have legal force.

The imposition of a fee upon any tenant for varying the tenancy agreement specifically to remove unenforceable terms is prohibited.

Further advice

Further advice concerning the lawfulness of any term within a tenancy agreement can be sought from independent legal advisors, local authorities, or any affiliated professional trade body or association. Information is also available on the NTSELAT website ntselat.uk.