



# Tenant Fees Act 2019

## 2019 CHAPTER 4

### *Enforcement*

#### **6 Enforcement by local weights and measures authorities**

- (1) It is the duty of every local weights and measures authority in England to enforce in its area—
  - (a) section 1 (prohibitions applying to landlords),
  - (b) section 2 (prohibitions applying to letting agents), and
  - (c) Schedule 2 (treatment of holding deposit).
- (2) The duty in subsection (1) is subject to sections 14(5) (enforcement by another enforcement authority) and 26 (enforcement by the lead enforcement authority).
- (3) Where a breach of section 1 or 2 or Schedule 2 relates to housing which is located in the area of more than one local weights and measures authority, the breach is taken to have occurred in each of those areas.
- (4) A local weights and measures authority in England must have regard to any guidance issued by the Secretary of State or the lead enforcement authority (if not the Secretary of State) about the exercise of its functions under this Act.
- (5) For the investigatory powers available to a local weights and measures authority in England for the purposes of enforcing this Act, see Schedule 5 to the Consumer Rights Act 2015.
- (6) In paragraph 10 of Schedule 5 to the Consumer Rights Act 2015 (duties and powers to which Schedule 5 applies), at the appropriate place insert “section 6 of the Tenant Fees Act 2019”.

#### **7 Enforcement by district councils**

- (1) A district council which is not a local weights and measures authority may enforce sections 1 and 2 and Schedule 2.

- (2) A district council must have regard to any guidance issued by the Secretary of State or the lead enforcement authority (if not the Secretary of State) about the exercise of its functions under this Act.
- (3) For the investigatory powers available to a district council for the purposes of enforcing this Act, see Schedule 5 to the Consumer Rights Act 2015.
- (4) In paragraph 10 of Schedule 5 to the Consumer Rights Act 2015 (duties and powers to which Schedule 5 applies), at the appropriate place insert “section 7 of the Tenant Fees Act 2019”.
- (5) In this Act “enforcement authority” means—
  - (a) a local weights and measures authority in England, or
  - (b) a district council which is not a local weights and measures authority.

## **8 Financial penalties**

- (1) Where an enforcement authority is satisfied beyond reasonable doubt that a person has breached section 1 or 2 or Schedule 2, the authority may impose a financial penalty on the person in respect of the breach.
- (2) The financial penalty—
  - (a) may be of such amount as the authority determines, but
  - (b) subject to subsection (3), must not exceed £5,000.
- (3) If the enforcement authority is satisfied beyond reasonable doubt that the person has committed an offence under section 12, the financial penalty—
  - (a) may exceed £5,000, but
  - (b) must not exceed £30,000.
- (4) An enforcement authority may not impose a financial penalty under this section on a person in respect of any conduct amounting to an offence under section 12 if—
  - (a) the person has been convicted of an offence under that section in respect of the conduct,
  - (b) criminal proceedings for an offence under that section in respect of the conduct have been instituted against the person and the proceedings have not been concluded, or
  - (c) criminal proceedings for an offence under that section in respect of the conduct have been concluded and the person has not been convicted of the offence.
- (5) An enforcement authority may not impose a financial penalty under this section on a person for a breach of paragraph 3 of Schedule 2 in relation to a holding deposit if—
  - (a) the person failed to return the deposit in accordance with that Schedule because the person believed that the landlord was prohibited by section 22 of the Immigration Act 2014 from granting a tenancy of the housing to the tenant, and
  - (b) the person’s belief was based on incorrect information provided by the Secretary of State.
- (6) Only one financial penalty under this section may be imposed in respect of the same breach.

- (7) An enforcement authority may impose a financial penalty under this section in respect of a breach which occurs outside that authority's area (as well as in respect of a breach which occurs within that area).
- (8) Schedule 3 makes further provision about financial penalties under this section and other payments required to be made under this Act.

## **9 Power to amend maximum financial penalties**

- (1) The Secretary of State may by regulations made by statutory instrument amend the amount for the time being set out in section 8(2)(b) or (3)(a) or (b) (financial penalties).
- (2) The power in subsection (1) may be exercised only where the Secretary of State considers it is expedient to do so to reflect changes in the value of money.
- (3) Regulations under this section may make transitional, transitory or saving provision.
- (4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## **10 Recovery by enforcement authority of amount paid**

- (1) Subsection (2) applies where an enforcement authority—
  - (a) imposes a financial penalty under section 8 on a landlord or letting agent for breaching section 1 or 2,
  - (b) is satisfied on the balance of probabilities that the breach resulted in a relevant person making a prohibited payment to a landlord, letting agent or third party, and
  - (c) is satisfied on the balance of probabilities that all or part of the prohibited payment has not been repaid to the relevant person.
- (2) The enforcement authority may require the landlord or letting agent to pay to the relevant person—
  - (a) if none of the prohibited payment has been repaid to the relevant person, the amount of the prohibited payment;
  - (b) if part of the prohibited payment has been repaid to the relevant person, the remaining part of the prohibited payment.
- (3) But subsection (2) does not apply in relation to a prohibited payment if or to the extent that, with the consent of the relevant person—
  - (a) the prohibited payment, or the remaining part of it, has been applied towards a payment of rent under the tenancy, or
  - (b) the prohibited payment, or the remaining part of it, has been applied towards the tenancy deposit in respect of the tenancy.
- (4) Subsection (5) applies where an enforcement authority—
  - (a) imposes a financial penalty under section 8 on a landlord or letting agent for breaching section 1 or 2,
  - (b) is satisfied on the balance of probabilities that the breach resulted in a relevant person entering into a contract with a third party, and
  - (c) is satisfied on the balance of probabilities that the relevant person has made a payment or payments under the contract.

- (5) The enforcement authority may require the landlord or letting agent to pay to the relevant person an amount which does not exceed the amount of the payment or (as the case may be) the aggregate amount of the payments that the relevant person has made.
- (6) Subsection (8) applies where an enforcement authority—
- (a) imposes a financial penalty under section 8 on a landlord or letting agent for breaching Schedule 2 (treatment of holding deposit), and
  - (b) is satisfied on the balance of probabilities that all or part of the holding deposit has not been repaid to the relevant person.
- (7) Subsection (8) also applies where an enforcement authority—
- (a) could have imposed a financial penalty under section 8 on a landlord or letting agent for breaching paragraph 3 of Schedule 2 but for subsection (5) of that section (incorrect belief that immigration-related prohibition on granting tenancy applied), and
  - (b) is satisfied on the balance of probabilities that all or part of the holding deposit has not been repaid to the relevant person.
- (8) The enforcement authority may require the landlord or letting agent to pay to the relevant person—
- (a) if none of the holding deposit has been repaid to the relevant person, the amount of the holding deposit;
  - (b) if part of the holding deposit has been repaid to the relevant person, the remaining part of the holding deposit.
- (9) But subsection (8) does not apply in relation to a holding deposit if or to the extent that, with the consent of the relevant person—
- (a) the holding deposit, or the remaining part of it, has been applied towards a payment of rent under the tenancy, or
  - (b) the holding deposit, or the remaining part of it, has been applied towards the tenancy deposit in respect of the tenancy.
- (10) Subsection (2), (5) or (8) does not apply if the relevant person has made an application under section 15 (application to the First-tier Tribunal) for recovery of all or part of the amount or (as the case may be) the aggregate amount referred to in that subsection.

## **11 Interest on payments under section 10**

- (1) Where an enforcement authority requires a landlord or letting agent to pay an amount under section 10, the authority may require the landlord or letting agent to pay interest on that amount.
- (2) If an enforcement authority requires a landlord or letting agent to pay interest on an amount under subsection (1)—
- (a) the amount carries interest from the day specified in subsection (3) until the day on which the amount is paid;
  - (b) the rate of interest is the rate for the time being specified in section 17 of the Judgments Act 1838.
- (3) That day is—
- (a) where the amount is required to be paid under section 10(2), the day on which the prohibited payment was made;

- (b) where the amount is required to be paid under section 10(5), the day on which the payment or (as the case may be) the first of the payments under the contract was made;
  - (c) where the amount is required to be paid under section 10(8)—
    - (i) in a case within paragraph 4 of Schedule 2, the day after the end of the period within which the holding deposit is required to be repaid in accordance with that paragraph, or
    - (ii) in a case within paragraph 5 of that Schedule, the day after the end of the relevant period within the meaning of that paragraph.
- (4) The total amount of interest imposed under subsection (1) must not exceed the amount required to be paid under section 10.

## 12 Offences

- (1) A person commits an offence if—
- (a) the person breaches section 1 or 2,
  - (b) a relevant penalty has been imposed on the person in respect of a different breach of the same section and the final notice imposing the penalty has not been withdrawn, or the person has been convicted of an offence in respect of such a breach, and
  - (c) the breach mentioned in paragraph (a) occurs within the period of five years beginning with the day on which the relevant penalty was imposed or the person was convicted.
- (2) For the purposes of subsection (1)(c) a relevant penalty is imposed on the date specified in the final notice in respect of that penalty as the date on which it is served.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine.
- (4) A person may not be convicted of an offence under this section in respect of the breach mentioned in subsection (1)(a) if a financial penalty has been imposed under section 8 in respect of that breach.
- (5) In this section “relevant penalty” means a financial penalty which is imposed under section 8 where—
- (a) the period for bringing an appeal against the penalty under paragraph 6 of Schedule 3 has expired without an appeal being brought,
  - (b) an appeal against the financial penalty under that paragraph has been withdrawn or abandoned, or
  - (c) the final notice imposing the penalty has been confirmed or varied on appeal.
- (6) In section 14 of the Housing and Planning Act 2016, after subsection (4) insert—
- “(5) An offence under section 12 of the Tenant Fees Act 2019 is also a banning order offence for the purposes of this Part.”

## 13 Offences by bodies corporate

- (1) Where an offence under section 12 (offences) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of a body corporate, the officer as well as the

body corporate commits the offence and is liable to be proceeded against and punished accordingly.

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were an officer of the body corporate.

#### **14 Duty to notify when taking enforcement action**

- (1) Where a local weights and measures authority in England ("LA1") proposes to take enforcement action in respect of a breach which occurs (or which also occurs) in the area of a different local weights and measures authority in England ("LA2"), LA1 must notify LA2 that it proposes to do so.
- (2) If LA1 notifies LA2 under subsection (1) but does not take the action referred to in that subsection, LA1 must notify LA2 of that fact.
- (3) Where a district council proposes to take enforcement action in respect of a breach, the district council must notify the local weights and measures authority for the area in which the breach occurs (or in which the breach also occurs) that it proposes to do so.
- (4) If a district council notifies a local weights and measures authority under subsection (3) but does not take the action referred to in that subsection, the district council must notify the local weights and measures authority of that fact.
- (5) Where a local weights and measures authority receives a notification under subsection (1) or (3), the authority is relieved of its duty to take enforcement action in relation to the breach unless the authority receives a notification under subsection (2) or (4).
- (6) An enforcement authority must notify the lead enforcement authority as soon as reasonably practicable if—
- (a) the enforcement authority imposes a financial penalty under section 8 (financial penalties),
  - (b) a financial penalty imposed under that section by the enforcement authority is withdrawn,
  - (c) a financial penalty imposed under that section by the enforcement authority is quashed on appeal, or
  - (d) the enforcement authority brings proceedings for an offence under section 12 and the defendant in the proceedings is convicted of the offence.
- (7) Subsection (8) applies where—
- (a) an enforcement authority has imposed a financial penalty under section 8(3),
  - (b) the breach to which the penalty relates occurred in the area of a local housing authority which is not the enforcement authority which imposed the penalty, and
  - (c) the final notice imposing the penalty has not been withdrawn.
- (8) The enforcement authority must notify the local housing authority as soon as reasonably practicable if—
- (a) the period for bringing an appeal against the penalty under paragraph 6 of Schedule 3 expires without an appeal being brought,
  - (b) an appeal against the penalty is withdrawn or abandoned, or

- (c) the final notice imposing the penalty is confirmed or varied on appeal.
- (9) Subsection (10) applies where—
  - (a) an enforcement authority has brought proceedings against a person for an offence under section 12, and
  - (b) the conduct to which the offence relates occurred in the area of a local housing authority which is not the enforcement authority which has brought the proceedings.
- (10) The enforcement authority must notify the local housing authority as soon as reasonably practicable if the person is convicted of the offence.
- (11) In this section—
  - (a) “local housing authority” has the meaning given by section 1 of the Housing Act 1985, and
  - (b) a reference to an enforcement authority taking enforcement action is a reference to that authority—
    - (i) imposing a financial penalty under section 8, or
    - (ii) bringing proceedings against a person for an offence under section 12.

## **15 Recovery by relevant person of amount paid**

- (1) Subsection (3) applies where—
  - (a) a landlord or a letting agent breaches section 1 or 2, as a result of which the landlord or letting agent, or a third party, receives a prohibited payment from a relevant person, and
  - (b) all or part of the prohibited payment has not been repaid to the relevant person.
- (2) Subsection (3) also applies where—
  - (a) a landlord or letting agent breaches Schedule 2 in relation to a holding deposit paid by a relevant person, and
  - (b) all or part of the holding deposit has not been repaid to the relevant person.
- (3) The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of—
  - (a) if none of the prohibited payment or holding deposit has been repaid to the relevant person, the amount of the prohibited payment or holding deposit;
  - (b) if part of the prohibited payment or holding deposit has been repaid to the relevant person, the remaining part of the prohibited payment or holding deposit.
- (4) Subsection (5) applies where—
  - (a) a landlord or letting agent breaches section 1 or 2, as a result of which a relevant person enters into a contract with a third party, and
  - (b) the relevant person has made a payment or payments under the contract.
- (5) The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of the amount of the payment or (as the case may be) the aggregate amount of the payments that the relevant person has made.
- (6) Subsection (3) does not apply in relation to a prohibited payment or holding deposit if or to the extent that, with the consent of the relevant person—



- (a) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards a payment of rent under the tenancy, or
  - (b) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards the tenancy deposit in respect of the tenancy.
- (7) Subsection (3) or (5) does not apply where an enforcement authority has commenced criminal proceedings against the landlord or the letting agent for the same breach.
- (8) Subsection (3) or (5) does not apply where an enforcement authority has required the landlord or letting agent to pay to the relevant person all or part of the amount or (as the case may be) the aggregate amount referred to in that subsection.
- (9) On an application under subsection (3) or (5), the First-tier Tribunal may order the landlord or the letting agent to pay all or any part of the amount or (as the case may be) the aggregate amount referred to in that subsection to the relevant person within the period specified in the order.
- (10) A period specified under subsection (9) must be a period of at least 7 days but not more than 14 days beginning with the day after that on which the order is made.
- (11) An order of the First-tier Tribunal under this section is enforceable by order of the county court as if the amount payable under the order were payable under an order of that court.

## **16 Assistance to recover amount paid**

- (1) An enforcement authority may help a relevant person—
- (a) to make an application under section 15 (recovery by relevant person of amount paid), or
  - (b) to recover all or part of an amount which the First-tier Tribunal orders to be paid to the relevant person under that section.
- (2) An enforcement authority may, for example, help a relevant person by conducting proceedings or by giving advice to the relevant person.

## **17 Restriction on terminating tenancy**

- (1) This section applies if—
- (a) a landlord breaches section 1(1) by requiring a relevant person to make a prohibited payment in connection with an assured shorthold tenancy, and
  - (b) the relevant person makes a prohibited payment to the landlord as a result of the requirement being made.
- (2) This section also applies if—
- (a) a landlord breaches Schedule 2 in relation to a holding deposit paid by a relevant person, and
  - (b) the deposit relates to an assured shorthold tenancy.
- (3) No section 21 notice may be given in relation to the tenancy so long as all or part of the prohibited payment or holding deposit has not been repaid to the relevant person.
- (4) Subsection (3) does not apply where none of the prohibited payment or holding deposit has been repaid to the relevant person if, with the consent of the relevant person—



- (a) the payment or deposit has been applied towards a payment of rent under the tenancy,
  - (b) the payment or deposit has been applied towards the tenancy deposit in respect of the tenancy, or
  - (c) some of the payment or deposit has been applied as mentioned in paragraph (a) and the rest has been applied as mentioned in paragraph (b).
- (5) Subsection (3) does not apply where part of the prohibited payment or holding deposit has been repaid to the relevant person if, with the consent of the relevant person—
- (a) the remaining part has been applied towards a payment of rent under the tenancy,
  - (b) the remaining part has been applied towards the tenancy deposit in respect of the tenancy, or
  - (c) some of the remaining part has been applied as mentioned in paragraph (a) and the rest has been applied as mentioned in paragraph (b).
- (6) In this section “section 21 notice” means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (recovery of possession on expiry or termination of assured shorthold tenancy).