The housing advice bulletin from Shelter for the National Homelessness Advice Service

Housing matters

Issue 130 June 2019

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Housing matters
Housing matters is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

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National Homelessness Advice Service
The National Homelessness Advice Service (NHAS) is funded by the Ministry for Housing, Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing public access to high-quality housing advice in England, including online information on the NHAS website at www.nhas.org.uk

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What's new?

EU Settlement Scheme

(1) With effect from 7 May 2019, the **Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (EU Exit) Regulations 2019** SI 2019/861 amend the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 SI 2006/1294 to specify that the limited leave to remain ('pre-settled status') granted under the **EU Settlement Scheme** is to be disregarded when assessing if an applicant is eligible for homelessness assistance/social housing.

(2) With effect from 7 May 2019, the **Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019** SI 2019/872 amend regulations in respect of: UC, SPC, HB, ESA, JSA and IS, to specify that the limited leave to remain ('pre-settled status') granted under the EU Settlement Scheme is not a relevant right to reside when establishing whether a claimant is habitually resident in the UK. **HB Circular A7/2019**, **DMG Memo 06/19** and **DMG Memo 09/19** give guidance.

Section 21: new form 6A

From 1 June 2019, the **Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) Regulations 2019** SI 2019/915 amend **form 6A** (the prescribed form for section 21 notices). The principal change reflects the restriction on the use of the section 21 procedure to evict an assured shorthold tenant where the landlord has not repaid a prohibited payment (or a holding deposit), under the Tenant Fees Act 2019.

Allocations and discrimination

In *R (Gullu) v Hillingdon LBC and R (Teresa Ward and others) v Hillingdon LBC* [2019] EWCA Civ 692, the Court of Appeal found that as the local authority was unable to justify a 10-year residence requirement indirectly discriminating against Irish Travellers and non-British nationals, the requirement amounted to unlawful discrimination on the grounds of race.

'Benefit cap' in the Supreme Court

In *R (DA and others) v Secretary of State for Work and Pensions* [2019] UKSC 21, the Supreme Court has held that although restrictions on benefits for single parents of young children are discriminatory, they are not 'manifestly without reasonable foundation'. Therefore, they are lawful.

Benefits for mixed age couples

With effect from 15 May 2019, new claimants who are mixed age couples (where only one person has reached pension age) must claim help with their housing costs through universal credit. The **HB Circular A3/2019** provides guidance on this change.

Rogue landlords

On 9 April 2019 the Ministry of Housing, Communities & Local Government published **Rogue landlord enforcement: guidance for local authorities**, aimed at enforcement officers with detailed information on tackling rogue landlords in the private rented sector.

Right to rent: Windrush generation

On 9 April 2019 the Home Office published a guide **Landlords: right to rent checks on long-resident non-EEA nationals and Windrush generation** that advises landlords wishing to rent to long-resident Commonwealth citizens and other non-EEA nationals who have a legal right to live in the UK but do not have the document to prove it.

Energy efficiency

On 10 April 2019 the government updated its **guidance for private landlords** on complying with the 2018 minimum level of energy efficiency standard (EPC band E).

Supporting survivors of domestic abuse

The government is **consulting** on a new approach to accommodation-based support for survivors of domestic abuse. The deadline for responses is 2 August 2019.

No DSS

On 16 April 2019 the House of Commons Library published a **briefing paper** that examines private landlords' attitudes towards prospective tenants in receipt of housing benefit or universal credit, and ways of challenging 'no DSS' policies.

Rent standard from 2020

The Regulator of Social Housing is **consulting** on plans to introduce a new rent standard for all social landlords from 1 April 2020, allowing annual increases up to 1 per cent above the consumer price index for five years. The deadline for responses is 30 July 2019.

Tenant Fees Act 2019

In this feature Tony Benjamin provides an overview of the Tenant Fees Act 2019.

Tony Benjamin is a legal writer at Shelter and a co-editor of Housing matters.

The Tenant Fees Act 2019 (the 'Act') bans private landlords and letting agents from charging a 'relevant person' any fee or charge unless it is one of the permitted payments set out in the Act. A 'relevant person' is a tenant, licensee, guarantor or person acting on the tenant/licensee's behalf.

Unless specifically stated, all references in this article to a landlord will include letting agents, and to a tenant (or tenancy) will include licensees (or licence).

Who is covered

The Act applies to: [1]

- assured shorthold tenancies (ASTs)
- licences, including lodgers
- student lettings provided by universities or colleges

Who is not covered

The Act does not apply to tenancies in social housing and to tenancies other than ASTs in the private rented sector.

When it takes effect

The Act comes into force on 1 June 2019.[2] It does not apply to all tenancies immediately.

From 1 June 2019, a landlord is prohibited from charging a fee, other than a permitted payment, to a tenant whose agreement was entered into on or after that date.[3] Tenants whose agreements started before that date can be lawfully charged fees until 31 May 2020.

From 1 June 2020, the ban on fees will apply to all private rented sector ASTs, licensees and student lettings.[4]

A term in an agreement requiring the payment of a prohibited fee will not be binding on a tenant.

Banned fees

Charging a tenant any fee other than a permitted payment will be prohibited. The myriad of fees tenants have been charged, such as those for reference checks and professional cleaning will be unlawful.

Permitted payments

A landlord cannot charge a tenant a fee unless it is expressly permitted by the Act.

The permitted payments are:[5]

- rent
- tenancy deposit (up to maximum of 5 or 6 weeks' rent)
- holding deposit (up to maximum of 1 week's rent)
- a fee in the event of tenant's default
- sums paid in connection with tenant's request to vary, assign or surrender the tenancy
- sums paid in respect of council tax, utilities, communication services, and TV licence

Most of permitted payments are capped. Any part of a fee that exceeds the permitted amount is a prohibited payment.

Rent

The payment of rent is a permitted payment. To compensate for the loss of income through fees a landlord may want to charge a higher rent at the start of, or during the tenancy than later. The Act outlaws the practice of 'front loading' by setting out that during the first year of a tenancy:[6]

'if the amount of rent payable in respect of any relevant period ('P1') is more than the amount of rent payable in respect of any later relevant period ('P2'), the additional amount payable in respect of P1 is a prohibited payment.'

Tenancy deposit

The payment of a tenancy deposit is a permitted payment, but it is capped at:

- 5 weeks' rent, where the total annual rent is less than £50,000
- 6 weeks' rent, where the total annual rent is £50,000 or more

Any excess over and above the capped amount is a prohibited payment.

The cap relates to the total weekly rent for a joint tenancy, so the landlord cannot ask for a tenancy deposit equivalent to 5 or 6 weeks' rent from each of the joint tenants.

Holding deposit

A holding deposit can be taken to reserve a property, for example to allow the landlord to carry out credit checks. It is capped at the equivalent of one week's rent.

Landlords can only accept one holding deposit for a property at any one time. If a holding deposit is returned to the tenant or the landlord is entitled to retain it without proceeding with a tenancy, the landlord can then take another holding deposit from another prospective tenant.

There is a 'deadline for agreement'. This means that a landlord should enter into the tenancy agreement within 15 days of receiving the holding deposit. A landlord and prospective tenant can agree a shorter or longer deadline in writing. There are circumstances when either the tenant or landlord may decide not to proceed with the tenancy. For more information about this and when a holding deposit can lawfully be retained, see the article on page 4.

Default fees
A default fee is only permitted where it is allowed for in the tenancy agreement and either:

- a key, or other security device giving access to the property, has to be replaced
- the rent is paid late

A fee must not exceed the reasonable cost of replacing a key (or other security device). The landlord must provide written evidence to the tenant of the cost of replacement.

Rent must be at least 14 days late before a default fee can be charged. The fee cannot be more than 3 per cent above the Bank of England's base rate to the amount of rent that remains unpaid at the end of that day. Page 65 of the guidance for tenants gives a helpful example of how to work this out.

Damages
A payment for damages for breach of the tenancy (or of an agreement between a letting agent and a relevant person) is permitted. This allows for damages, for example for disrepair caused by the tenant's action, to be deducted from a tenancy deposit or claimed via court action.

Changes to tenancy and early termination
Where a tenant asks to alter a tenancy agreement, the landlord can charge a fee for each change. This could include agreeing to a tenant's request to keep a pet.

Charging more than £50 for each change requested is not permitted, unless the landlord's reasonable costs are greater.

A landlord can charge a fee if a tenant asks to surrender their tenancy early. The amount charged must not exceed the loss incurred by the landlord, for example any loss in rental income, or the reasonable costs of the agent (such as marketing costs).

Other permitted payments
A landlord can charge a tenant for utilities, TV licence, council tax and communication services, where payment is to be made to the landlord under the tenancy agreement. 'Communication services' means telephone landlines, broadband and cable/satellite TV. It should also be noted that other legislation prohibits landlords overcharging tenants for the provision of utilities.[7]

A landlord cannot require a tenant to make payments to a third party, unless the payment is for utilities, TV licence, council tax or communication services.

Enforcement and sanctions

Where a tenant has paid a prohibited fee that was demanded by the landlord, they can take action to recover that money in the First-tier Tribunal.[8]

A landlord cannot serve a section 21 notice to end an AST until any prohibited payment or fee has been repaid, or with the tenant's agreement, credited towards their rent or tenancy deposit.[9] There is no similar sanction restricting the service of a notice to quit on licensees or student lettings.

Local trading standards are responsible for enforcing the Act. District councils (that are not trading standards authorities) also have the power to take enforcement action.[10]

An enforcement authority can impose a civil penalty on the landlord of up to £5,000 for an initial breach and £30,000 for a subsequent breach within five years.

A subsequent breach is a criminal offence and a banning order offence.
The enforcement authority may elect to prosecute the landlord as opposed to imposing a civil penalty.

Before the enforcement authority imposes a civil penalty, it must serve a 'notice of intent' on the landlord.

Guidance

The government has published guidance on the Act for tenants, landlords and letting agents, and enforcement authorities.

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Tenant fees

Footnotes

[1] s.28 Tenant Fees Act 2019.

[2] Tenant Fees Act 2019 (Commencement No. 3) Regulations 2019 SI 2019/857.

[3] ss.1 and 2 Tenant Fees Act 2019.

[4] s.30 Tenant Fees Act 2019.

[5] sch.1 Tenant Fees Act 2019.

[6] para.1(2), Sch.1 Tenant Fees Act 2019.

[7] s.44 Electricity Act 1989, s.37 Gas Act 1986, s.150 Water Industry Act 1991.

[8] s.15 Tenant Fees Act 2019.

[9] s.17 Tenant Fees Act 2019.

[10] ss.6 to 14 Tenant Fees Act 2019.

Cancelling a holding deposit agreement

In this article Samuel Beswick considers when a landlord or letting agent can refuse to proceed with a tenancy after taking a holding deposit.

Samuel Beswick is a Private Law Fellow at Harvard Law School.

The Tenant Fees Act 2019 (the 'Act') aims to stop landlords and letting agents from taking advantage of applicants (ie prospective tenants or licensees) who pay holding deposits.[1] It caps a holding deposit at one week's rent.

A holding deposit creates:[2]

'a binding conditional contract between landlord and tenant where both parties agree to enter into the tenancy, subject to the satisfactory fulfilment of all pre-tenancy checks.'

This article outlines when a landlord or an applicant can and cannot cancel a holding deposit agreement ('HDA').[3] It also clarifies when a landlord or agent may retain a holding deposit, when they must refund it, and when they may be liable for damages for contract repudiation. See the article on page 2 of this issue for more information about who the Act protects.

References in this article to a landlord include letting agents and to a tenant (or tenancy) include a licensee (or licence).

When landlord may cancel HDA

Normally, a landlord who accepts an applicant's holding deposit cannot refuse to proceed with granting the tenancy.[4] There are four exceptions to this general rule.

1) No right to rent
Under the right to rent scheme landlords are prohibited from renting to people who are in the country unlawfully.[5] Those who fail a right to rent check are not eligible to sign a tenancy agreement. However, a landlord must still refund holding deposits in full unless they 'could not reasonably have been expected to know' that the applicant had no right to rent before they accepted the deposit.[6]

The onus is on the landlord to make proper inquiries. A landlord who does not ask about an applicant's immigration status before payment cannot refuse to refund their holding deposit.

2) Applicant lies or misleads
A landlord may refuse to proceed with a tenancy if the applicant 'provides false or misleading information' that is 'material' to their decision to let out the property.[7] Minor discrepancies are not a sufficient basis for cancelation. It is permissible only where the applicant lies or misleads in a significant way (for example by exaggerating their income). The onus is on the landlord to make proper inquiries before taking a holding deposit.

3) Applicant backs out
A landlord may cancel if the applicant:[8]

- decides not to enter into the tenancy agreement, or
- fails to take all reasonable steps to enter into the tenancy agreement when the landlord has taken all reasonable steps.

4) Applicant fails to meet HDA conditions
A HDA is a contract. The landlord and applicant can agree conditions to the contract, such as that the applicant's information must be confirmed by an external reference checking service, or that they must secure a guarantor. Unless otherwise prohibited, failure by an applicant to meet the conditions of a HDA is grounds for cancellation.

What must landlord refund

The above circumstances are the only lawful grounds for a landlord to refuse to grant a tenancy after taking a holding deposit. The first three can also be grounds for refusing to refund a cancelled holding deposit in full. As to ground 4, a full deposit refund may still be owed where, for example, an applicant fails to secure an agreed guarantor despite having taken reasonable steps to do so.

Within 7 days of deciding to cancel a HDA, the landlord must give the applicant written notice explaining why a full refund is being withheld, otherwise a full refund is due regardless.[9]

Moreover, though the Act does not compel a refund when a landlord validly cancels, UK consumer law may. The government's guidance seems too hasty in suggesting that a landlord is 'entitled to retain a tenant's holding deposit'.[10] CMA Guidance on unfair

terms states that when deciding how much of a deposit to keep, a business 'must take into account what [it] is actually losing as a result' of cancellation.[11] A landlord should retain so much of the holding deposit as represents their losses that the applicant caused. Since the Act caps holding deposits at one week's rent, in many cases this may well represent the full loss incurred. But where, say, a landlord quickly finds a new tenant without further cost, they should refund the difference to avoid getting 'compensated for the same loss twice'.[12]

When landlord cannot cancel HDA:

Numerous reasons commonly given for refusing to rent to an applicant are not valid. These include:

Applicant 'fails' reference checks
Landlords often engage a reference-checking service as a condition for granting a tenancy. Such companies typically produce a report on the applicant that aims to verify their income, past employment, tenancy references, and credit score.

These reports may include a pass/fail score based on whether the company considers that the tenancy is prudent. Unless agreed in a HDA, such scores are not a valid reason for refusing to proceed with the tenancy. Such reports are relevant only to confirm that the applicant has not lied or misled.

Applicant claims benefits
Shelter has exposed widespread unlawful discrimination against applicants who claim benefits to help pay their rent. Landlords and agents who say 'No DSS' may be breaking equality law.[13] Provided an applicant has not misrepresented their financial position, the fact that they receive benefits is not in itself a sufficient reason to refuse a tenancy.

Landlord gets a better offer
The Act prohibits landlords from retaining multiple holding deposits for the same property.[14] Since a HDA is a 'binding conditional contract', taking multiple deposits or cancelling for a better offer will also be a breach of contract.[15]

Landlord changes mind
For the reasons set out above, a landlord will be in breach of contract if they seek to back out of a HDA or change its terms against the applicant's interests. The key terms of the tenancy should be agreed before any money changes hands.

If landlord wrongly tries to cancel HDA

Insist on enforcing the agreement
Wrongful cancellation of a HDA by the landlord is repudiation of contract.
An applicant who is not at fault could refuse to accept the landlord's repudiation and insist on entering the tenancy as agreed.
In practice this may be difficult if the landlord is not amenable.

Full refund
The Act requires landlords who breach HDAs to repay the holding deposit within 7 days.[16] Where the applicant is not at fault, the deposit should be refunded in full.

Damages
In addition to a refund, applicants can bring a claim for damages against the landlord for repudiation of contract.[17]

Report the landlord or agent
As outlined in the article on page 2, an applicant who faces wrongful cancellation can complain to an enforcement authority. Letting agents can also be reported to their statutory redress scheme.

When applicant may cancel HDA

An applicant will be in breach of contract if they withdraw from a HDA with no good reason. The Act provides two grounds for an applicant to decide not to proceed with a tenancy and receive a refund of their holding deposit:[18]

Landlord charges prohibited payment
An applicant can back out if the landlord tries to charge them a prohibited payment, such as a fee for an inventory check. All charges to tenants are unlawful unless they are permitted payments, as set out in schedule 1 of the Act.

Landlord behaves unreasonably
An applicant may back out if the landlord behaves towards them or their representative 'in such a way that it would be unreasonable to expect the tenant to enter into a tenancy with the landlord'. This allows applicants to walk away with a refund when, for instance, a landlord refuses to remove an unfair contract term from the proposed tenancy agreement.[19]

The Consumer Rights Act 2015 also protects tenants from unfair contract terms.[20]

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Tenant fees: permitted payments

Footnotes

[1] S. Beswick, Tenant Fees Bill: Good Intentions – Weak Protections (2018) 22 L. & T. Rev 203; Tenant Fees Act 2019: A Welcome Reform (2019) 23 L. & T. Rev 79.

[2] House of Lords Hansard vol 794, col 1258,11 Dec 2018.

[3] S. Beswick, Holding Deposit Agreements: Pre-tenancy Obligations and Rights (2015) 19 L. & T. Rev. 143.

[4] see S. Beswick, 'Letting Agents: Servants of Two Masters?' *Housing matters issue 128.*

[5] s.22 Immigration Act 2014.

[6] para.8, Sch.2 Tenant Fees Act 2019.

[7] para.9, Sch.2 Tenant Fees Act 2019.

[8] paras.10-12, Sch.2 Tenant Fees Act 2019.

[9] para.5, Sch.2 Tenant Fees Act 2019.

[10] p.35, Tenant Fees Act 2019: Guidance for Landlords and Agents , MHCLG, April 2019.

[11] Unfair Terms Explained for Businesses: Deposits, Advance Payments and Cancellation Charges, CMA, March 2016.

[12] CMA, as above.

[13] Stop DSS Discrimination, Shelter, August 2018.

[14] para.3(5), Sch.1 Tenant Fees Act 2019.

[15] House of Lords Hansard, vol 793, cols 170 and 177, 5 Nov 2018.

[16] para.3, Sch.2 Tenant Fees Act 2019.

[17] para.5, Sch.1 Tenant Fees Act 2019; S. Beswick, Enforcing a Holding Deposit Agreement (2018) 22 L. & T. Rev 88.

[18] para.13, Sch.2 Tenant Fees Act 2019.

[19] House of Lords Hansard, vol 794, col 1259, 11 Dec 2018.

[20] Part 2, Consumer Rights Act 2015.

How a law is made

In this feature Angel Strachan explains how the law is made by the UK Parliament.

Angel Strachan is a Public Affairs Assistant at Shelter.

Translating ideas into legislation is one of the key elements of a modern democratic system. This feature sets out an overview of the everyday reality of law-making, which can be very different to the spectacular exchanges featured in the media.

Primary and secondary legislation

There are two main types of legislation: primary and secondary.

Primary legislation, also known as statute, are laws passed by the Parliament during the legislative process. All Acts belong to the primary legislation category. Before an Act becomes law, it is called a bill.

Secondary legislation expands on the provisions of primary legislation, amends it and provides practical measures that enable statutes to be enforced, for example by setting out a commencement date. It is also known as subordinate legislation.

From a bill to an Act

Bills are proposed legislation. There are four main types of bills: public, Private Members', private and hybrid. Not all bills become law.

The most common is the public bill, the majority of which are proposed by the government. The Tenant Fees Act 2019, for example, was initially introduced as a bill by the Ministry of Housing, Communities & Local Government (MHCLG).

Private Members' bills (PMBs) are charities' favourite. A sub-type of public bills, they are introduced by backbench MPs or peers (members of the Lords). Most never become law, however they can generate publicity and influence policy. Sometimes a PMB will become law, a recent example is the Homes (Fitness for Human Habitation) Act 2018, which was introduced by Karen Buck MP.

Private bills are promoted by private companies and local authorities to give them power beyond that allowed by general law. For example, the Leeds City Council Act 2013 gave the council additional powers in respect of street trading in its area.

Hybrid bills are a combination of public and private bills. They affect the public as well as impact on the interests of specific groups, such as the High Speed Rail (West Midlands - Crewe) Bill 2017-19, which is currently passing through Parliament.

The process

A bill can start in the House of Commons or in the House of Lords.

House of Commons

Before a bill is introduced, the government may publish a green and/or white paper.

A green paper is a consultation document. It is published by the relevant government department when a new law or updating existing provisions is being considered. An example is the **Social housing green paper**, published last autumn. A green paper contains no commitment to action. In contrast, a white paper will set out the government's policy and proposals for legislative change.

If a bill is given a slot in the legislative programme for the forthcoming **Parliamentary session**, the government department creates a team to co-ordinate its passage and prepare instructions for departmental lawyers, which form the basis of further instructions to the Office of Parliamentary Counsel to draft the bill.

Some bills receive pre-legislative scrutiny. The government department can issue a draft of the proposed bill to MPs and interested parties.

A committee can then hear evidence from a wide range of organisations, especially those representing groups potentially affected by the changes. Shelter has been invited to participate in the legislative process at this stage – the Homelessness Reduction Act 2017 and the Tenant Fees Act 2019 being two recent examples.

The first reading of a bill is a formality. It is the second reading that gives MPs the opportunity to give their views and vote on whether the bill should progress to committee stage. Most bills are dealt with in a Public Bill Committee which can take oral and written evidence. The committee chair selects amendments and members of the committee vote on them. Every clause in the bill is discussed and either agreed to,

amended or rejected. Then at the report stage, MPs consider the committee's amendments. MPs can suggest amendments and vote. At the third reading, MPs have their final chance to debate and vote on whether to send the bill to the Lords.

House of Lords
The bill is initially read twice, and the second reading gives peers an opportunity to debate its key principles and flag up concerns.

Before the Lords committee stage, the amendments have been gathered together, ordered and published. Now, every clause of the bill must be agreed to, and all amendments are considered. However, the government can restrict what is discussed and limit the session. The report stage in the Lords involves more detailed examination of the bill, but now any peer can take part, and votes on amendments can take place. The third reading is the last chance for peers to make sure the bill is effective and workable. Unlike in the Commons, new amendments can still be made.

Parliamentary ping pong
If the Lords makes amendments to the bill, it goes back to the Commons. If the Commons makes more amendments, it goes back to the Lords, and so on. The bill 'ping pongs' until both Houses reach an agreement on the exact wording.

Even at this stage, interested parties are still working to influence politicians. In the case of the Tenant Fees Act, both Shelter and the Residential Landlords Association pressed for differing caps on tenants' deposits.

Royal Assent

After the bill passes both Houses, the Queen gives it 'Royal Assent'. An announcement is then usually made by Speakers in both Houses and the bill becomes an Act. It is a formality that adds a traditional touch to law-making.

The law-making process can be complicated but is logical and effective.

Secondary legislation

Once a bill becomes an Act, it is accompanied by secondary legislation that expands on its provisions and identifies the implementation date(s).

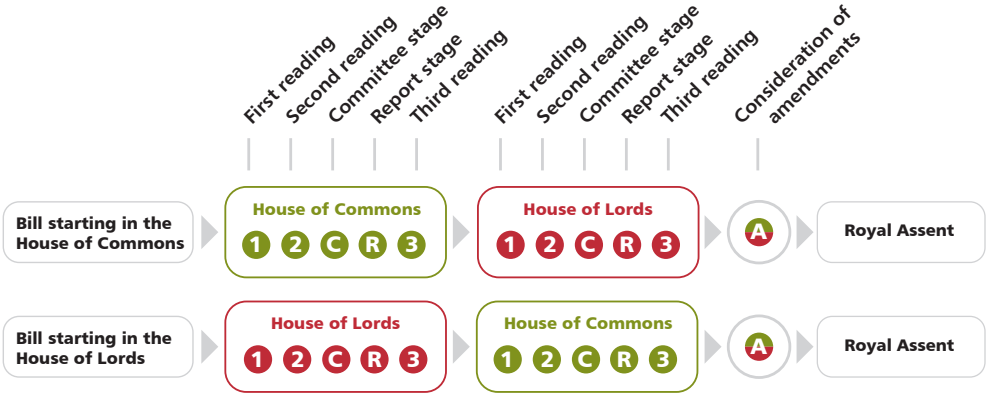
Secondary legislation is also used to give legal effect to European Union directives and to make law during national emergencies.

Statutory instruments (SIs), including rules, regulations and orders, are the most common type of secondary legislation. Byelaws, a rarer type of secondary legislation, are introduced by local authorities, charities performing public functions and some private companies to cover matters within their own area (under enabling powers already granted by Parliament).

The procedure for introducing SIs is determined by the parent Act. The majority of SIs have a negative procedure, meaning they will automatically become law unless objected to by MPs. If MPs wish to reject the provision, they can put forward a 'prayer motion' which, if passed by the Commons, revokes the SI. SIs with an affirmative procedure are laid before the Parliament in the form of a draft before they become law. They are scrutinised by the Joint Committee on Statutory Instruments (JCSI). An SI can be approved or rejected by the Parliament but cannot be amended.

Guidance

Guidance sets out how the relevant government department interprets the law and recommends how it is to be used. It is not unusual for guidance to utilise examples from binding case law, thus reducing any discretion whether to follow it – para 17.49 of the Homelessness Code of Guidance for Local Authorities being an example.



Source: https://www.parliament.uk/about/how/laws/passage-bill/

Factsheet

How to get your deposit back

This factsheet looks at how to get your tenancy deposit back from your landlord or letting agent.

A tenancy deposit is your money. It should be returned to you when your tenancy ends.

Ask your landlord

The first step is to ask for your deposit back. If you paid your deposit to a letting agent, write to them as well. If you email, text or call them, follow up with a letter.

Your landlord has a reasonable time after you move out to return the deposit. For many renters this is not defined in law. Check your tenancy agreement, it may tell you when you should get it back.

Give your landlord/agent your forwarding address and up-to-date bank details.

Deductions

Your landlord can make reasonable deductions from your deposit if you owe rent, or you (a household member or a guest) have caused damage to the property. Other reasons might be set out in your tenancy agreement.

Your landlord should explain the reasons for any deductions they intend to make. If you agree, get everything in writing and ask your landlord/agent to sign your copy.

If you can't agree, you can challenge the deductions your landlord has made from your deposit.

Court action

Taking court action should be a last resort. You can apply to the county court if you can't reach an agreement or your landlord has not got back to you.

Before you start, you must write a formal letter to your landlord (and the agent if there is one) telling them that unless the deposit is returned to you within 14 days, you will go to court. This is called a letter before action. Send it by recorded delivery.

Your landlord may be willing to settle rather than go to court.

Find out more about making a court claim for money on gov.uk.

Special rules for ASTs

This is for assured shorthold tenancies (ASTs) only. Most tenants with private landlords have ASTs. If you are unsure, you can check your tenancy type.

If you have an AST, your landlord must register your deposit with a government-approved tenancy deposit protection (TDP) scheme. You can check if your deposit is protected.

Your landlord can choose to pay your money into a custodial scheme or hold on to your deposit and pay an insurance scheme to protect it.

Custodial scheme
You or your landlord can ask the scheme to refund your deposit. If you do this, use the scheme's on-line refund request.

If there's a dispute, the scheme holds the money until it's resolved - by its dispute resolution service or by the court.

Insurance-based scheme
Contact the scheme if your landlord doesn't return your deposit within 10 days of your request or if there is a dispute about deductions.

Dispute resolution service
Every scheme has a dispute resolution service which will decide how much of your deposit should be returned to you. This service is free.

Going to court
If your landlord won't agree to use a dispute resolution service, you can take court action. If your landlord didn't protect your deposit or protected it late, you can claim compensation.

Further advice

You can get further advice from Shelter's free* housing advice helpline (**0808 800 4444**), a local Shelter advice service or local Citizens Advice office, or by visiting england.shelter.org.uk/housing_advice

*Calls are free from UK landlines and main mobile networks.

Note
Information contained in this factsheet is correct at the time of publication. Please check details before use.