



Department for  
Communities and  
Local Government

# Banning letting agent fees paid by tenants

A consultation paper



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# Contents

<b>Scope of the consultation</b>	<b>4</b>
<b>Introduction</b>	<b>5</b>
<b>Current legislative framework</b>	<b>6</b>
<b>Letting agent services</b>	<b>8</b>
<b>Fees charged by letting agents</b>	<b>11</b>
<b>Rationale for introducing a ban</b>	<b>16</b>
<b>Implementation of a ban</b>	<b>20</b>
<b>Questions</b>	<b>26</b>
<b>Annex A: letting agent fees in the Devolved Administrations</b>	<b>31</b>
<b>About this consultation</b>	<b>36</b>

# Scope of the consultation

Topic of this consultation:	This consultation seeks views on the implementation of a ban on letting fees paid by tenants.
Geographical scope:	These proposals relate to England only.
Impact Assessment:	An impact assessment will be completed following the consultation.

## Basic information

Duration:	This consultation will last for 8 weeks from 7 April 2017 until 2 June 2017.
Enquiries:	For any enquiries about the consultation please email <a href="mailto:lettingagentsteam@communities.gsi.gov.uk">lettingagentsteam@communities.gsi.gov.uk</a>
How to respond:	<p>You may respond by completing an online survey at: <a href="https://www.surveymonkey.co.uk/r/dclglet">https://www.surveymonkey.co.uk/r/dclglet</a></p> <p>This is the preferred method for responding to this consultation.</p> <p>Alternatively you can email your response to the questions in this consultation to <a href="mailto:lettingagentsteam@communities.gsi.gov.uk">lettingagentsteam@communities.gsi.gov.uk</a></p> <p>If you are responding in writing, please make it clear to which questions you are responding.</p> <p>Written responses should be sent to: Housing Standards Team, Better Rented and Leasehold Sector Division, 3<sup>rd</sup> Floor, Fry Building, 2 Marsham Street, London SW1P 4DF</p> <p>When you reply please indicate whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"> <li>- your name,</li> <li>- your position (if applicable),</li> <li>- the name of organisation (if applicable),</li> <li>- an address (including post-code),</li> <li>- an email address, and</li> <li>- a contact telephone number</li> </ul>

# Introduction

1. The Government is committed to building a strong private rented sector, which provides security and stability for both tenants and landlords. That means driving up standards and supporting good landlords and agents whilst striking the right balance on regulation.
2. The private rented sector is an important part of our housing market. It has almost doubled in size in the decade to 2014-15, housing 4.3 million households in England. The sector now represents 19% of all households, up from 11% in 2004-05<sup>1</sup>.
3. Letting agents are engaged by private landlords to let and manage rental accommodation on their behalf. Good agents provide a valuable service in ensuring that properties are safe, compliant and professionally managed; they help landlords comply with their legal responsibilities and help tenants secure safe and good quality homes.
4. The duties of letting agents might include finding tenants, collecting rent, and responding to queries from tenants (for example, in relation to repairs). Landlords pay fees to letting agents for carrying out these duties on their behalf. Letting agents also charge fees to tenants for a variety of reasons, including seeking references, inventory services and contract negotiations.
5. Letting agent fees to tenants vary considerably and can run into hundreds of pounds. Tenants have little control over these fees because the agent is appointed by the landlord. It is also not simple for tenants to understand and compare agent fees since there is significant variation in the way that agents charge for their services.
6. The Government announced at the 2016 Autumn Statement that it would consult on introducing a ban on letting agent fees paid by tenants in England, to improve competition in the private rental market and give renters greater clarity and control over what they will pay.<sup>2</sup>
7. The ban will recognise the stronger market position of landlords. Landlords will be able to shop around for an agent that provides the quality of service they are seeking at a price they are willing to pay. The ban will sharpen and increase letting agents' incentives to compete for landlords' business, resulting in a better and more transparent service.
8. Tenants will be able – at a glance – to see what a given property will cost them in the advertised rent level without any additional hidden costs; this should help to make entering and moving around in the private rented sector easier and less costly.
9. This consultation paper invites views and comments on how the ban on letting agent fees paid by tenants in England should be implemented and enforced.

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<sup>1</sup> English Housing Survey 2014/5

<sup>2</sup> <https://www.gov.uk/government/publications/autumn-statement-2016-documents/autumn-statement-2016>

# Current legislative framework

10. The Government intends to introduce primary legislation in due course to implement the ban on letting agent fees paid by tenants. This legislation will complement and strengthen existing regulation in the sector.
11. There is no overarching statutory regulation of private sector letting or managing agents in England and agents are not required to join a professional trade association, although many have done so voluntarily. However, the Government has taken legislative action to protect the consumers in the sector.
12. The Government regulated in October 2014 to require letting and managing agents to be members of a Government approved redress scheme. The three redress schemes are Ombudsman Services: Property; the Property Redress Scheme; and the Property Ombudsman. The redress schemes are independent bodies to which tenants and landlords in the private rented sector can complain about the service that they have received from a letting or managing agent and seek a resolution.
13. Transparency requirements were implemented by the Consumer Rights Act 2015. They require letting agents to publicise a full tariff of their fees, to make clear whether or not they are a member of a Client Money Protection scheme and of which redress scheme they are a member, prominently in their offices and on their website. A fine of up to £5,000 can be levied against agents who fail to comply.
14. Further action will be taken over the course of this Parliament, including using powers in the Housing and Planning Act 2016 to crack down on the minority of rogue landlords and agents by introducing civil penalties of up to £30,000, banning orders and a database of rogue landlords and property agents.
15. The Government also took powers in the Housing and Planning Act 2016 to allow for regulations to require letting and property management agents to have Client Money Protection. Client Money Protection, which involves client money being held in a separate, protected bank account, ensures that landlords and tenants are reimbursed in the event of a letting or managing agent going into administration or where the agent misappropriated their money whilst it was in the agent's custody or control.
16. Baroness Hayter and Lord Palmer of Childs Hill conducted a review of Client Money Protection for the Government and recommended that the Government use its powers taken in the Housing and Planning Act 2016 to make Client Money Protection mandatory for all letting and managing agents that handle client money. Mandatory membership of a Client Money Protection scheme will ensure that each and every agent is offering the same level of protection, giving tenants and landlords the financial protection that they want and deserve. The Government will consult in due course on how mandatory Client Money Protection should be implemented and enforced taking into account the recommendations of the working group. This will include ensuring that implementation is coherent with the introduction of the ban on letting agent fees paid by tenants.

17. There are a number of legislative requirements on landlords. Landlords are required by law to:

- keep their rented properties safe and free from health hazards
- make sure all gas and electrical equipment is safely installed and maintained
- provide an Energy Performance Certificate for the property
- protect their tenant's deposit in a government-approved tenancy deposit scheme, which ensures that tenants will get their deposit back if they meet the terms of their tenancy agreement
- check the tenant has the right to rent property
- give their tenants a copy of the 'How to Rent' checklist when they start renting
- fit and test smoke alarms and, where appropriate, carbon monoxide alarms
- follow fire safety regulations for property in a purpose-built block of flats or for houses and property adapted into flats

18. In general, landlords must keep their properties in good condition and meet specified safety standards. They have a legal right to enter their property to inspect it or carry out repairs but they must give tenants at least 24 hours' notice (although immediate access may be possible in emergencies). Private landlords may engage a letting agent to manage their rental accommodation on their behalf and ensure that their legal obligations are met. Landlords will pay a fee to agents for providing this service.

19. This consultation document discusses banning letting agent fees paid by tenants in England. In Scotland, letting agent fees paid by tenants were banned under the Rent (Scotland) Act 1984. This legislation was clarified by the Private Rented Housing (Scotland) Act 2011. The fees that letting agents charge are currently not regulated in either Wales or Northern Ireland but the situation is under review. More information on letting agent regulation within the Devolved Administrations is at Annex A.

# Letting agent services

20. Good letting agents provide a valuable service in ensuring that properties are safe, compliant and professionally managed; they help landlords comply with their legal responsibilities and help tenants secure safe and good quality homes.
21. For the purposes of this document, when reference is made to letting agent work, this means anything done by an agent in the course of business in response to instructions from:
- a private rented sector landlord who wants to find a tenant; or
  - a tenant who wants to find a property in the private rented sector.
22. In this document, when reference is made to property management, this means work done by a person in the course of business in response to instructions from another person who wants to arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of residential premises let in the private rented sector (including long leases).
23. Property management services are contracted by, and carried out on behalf of, landlords. Some landlords will appoint agents solely to help with the letting process whereas others will choose to use agents to both let and manage their properties.
24. The principal stages in letting a property in the private rental sector through an agent are:
- Tenant views a property and applies to the letting agent to rent a property. The application may be put to the landlord for approval.
  - Letting agent carries out reference checks. This includes:
    - i. Right to Rent Checks – in accordance with the Immigration Act 2014, all adult occupiers in England must prove, via original documentation, that they have a right to live in the UK and a right to rent property. Landlords can be fined up to £3,000 for renting their property to someone who does not have a Right to Rent. Agents carry out Right to Rent checks on behalf of a landlord. This agreement should be in writing and in these cases it would be the agent who would be responsible, and liable, for ensuring that all tenants have a Right to Rent.
    - ii. Credit checks – these are carried out to ensure that the tenant can afford to live in the property. This is in the interest of the landlord since it helps ensure that rent will be paid and it also ensures that the tenant is not at risk of falling into rent arrears.
    - iii. Guarantor checks – for tenants who do not have a regular and steady source of income it may be necessary to ask that the tenant provides a guarantor. This guarantor will be responsible for any rental payments owed by the tenant or any damage that is inflicted to the property by the



tenant. Relevant credit and reference checks on the appointed guarantor will be needed.

- iv. Reference checks – some agents may ask for references from previous landlords or agents with whom the tenant has rented previously. These references help to assure the landlord of the tenant's ability to carry out their rental obligations.
- Tenancy Agreement Negotiation - once reference checks have been satisfactorily completed, the letting agent will prepare the tenancy agreement, which sets out the terms and conditions of the tenancy, including how much rent will be paid, the deposit and any specific or individual arrangements such as pets or break clauses. The letting agent will negotiate between both the landlord and the tenant until a set of mutually agreed terms and conditions are confirmed.
  - Deposit Protection – under all Assured Shorthold Tenancies, the tenant's deposit must be protected in one of the three Government-backed Deposit Protection schemes. Deposits must be put in a scheme within 30 days of receipt and the tenant must be provided with the details of how the deposit has been protected, including the name and contact details of the scheme, how to get the deposit back and what to do if there is any dispute over the deposit. Ensuring that a deposit is in a protected scheme is the responsibility of a landlord or any agent acting on their behalf.
  - Safety Checks – it is a legal requirement that all properties are safe and free from hazards. This is a requirement on landlords that is often carried out on their behalf by letting agents. Letting agents may organise gas certification, electrical safety checks and fire safety checks and provide evidence of these to the tenant.
  - Moving in – letting agents will organise and coordinate a tenant's move in date to the property, providing keys and relevant information and potentially helping to arrange utilities and council tax. Agents will issue certain documents such as the Government's 'How to Rent Guide', a copy of the latest Energy Performance Certificate and proof that smoke alarms and, where appropriate, carbon monoxide detectors have been tested. These are requirements on a landlord, carried out by the agent on their behalf.
  - Inventory - An inventory and schedule of condition of the property may be undertaken either by the agent or via a third party upon moving into the property. A comprehensive inventory is needed for the benefit of both the landlord and the tenant; it helps resolve any issues around the return of deposits.
  - Amending the tenancy agreement - a variation of the tenancy agreement may be necessary, for example if there is a change of tenant in a shared tenancy property. This will require the letting agent to carry out the relevant reference checks on the new tenant, amend the tenancy agreement and update any deposit arrangements.
  - Renewal – at the end of the initial agreed tenancy period the tenant may choose to renew their tenancy. Subject to agreement from the landlord, the letting agent

will renegotiate the tenancy agreement, for example considering any rent increases or break clauses.

- Early termination of the tenancy – a tenant may choose to end their tenancy prior to the end of the initial agreed tenancy period. This will require an agent to find a replacement tenant and carry out the relevant exit processes for the existing tenant. A landlord may choose to evict a tenant from the property and may require the support of an agent with this process.
- Moving out - letting agents may coordinate a tenant's move out from the property, collecting keys, ensuring relevant meter checks have been done and that the property has been cleaned as required. A check out inventory will normally be undertaken before the deposit is returned with any deductions negotiated through the agent. Once any disputes have been resolved, the agent will return the deposit to the tenant. The agent may also be asked to provide a reference for the tenant for future rentals.

25. Property management services provided by agents during a tenancy may include repairs and maintenance, replacing lost keys and managing late rental payments. These services can be prompted by a request from either the tenant or the landlord.

# Fees charged by letting agents

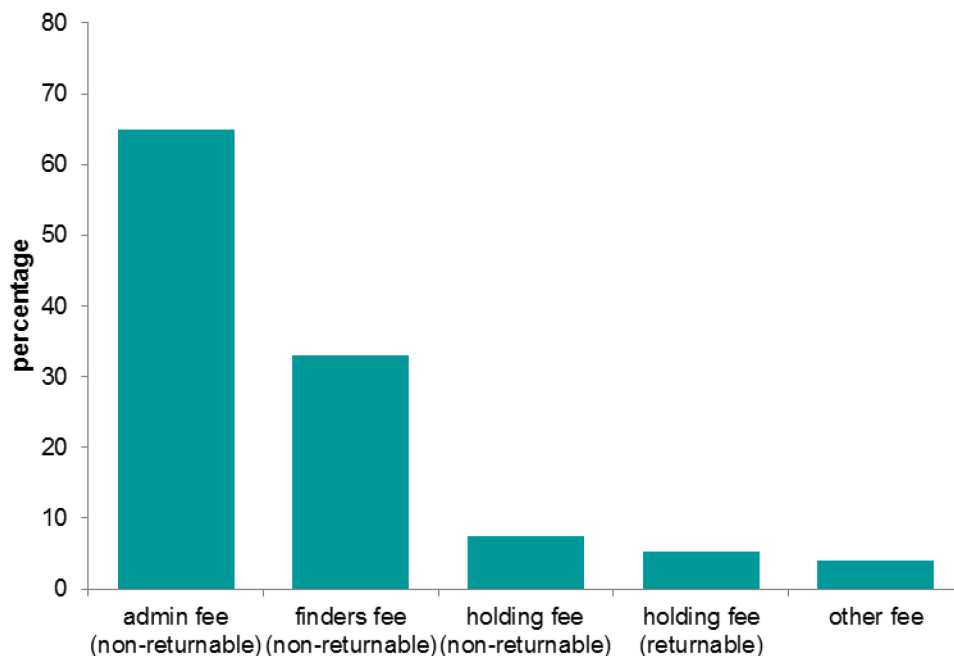
26. Fees are charged by agents to both landlords and tenants at a number of points during the tenancy. The services provided by letting agents and their charging arrangements vary considerably.

## Tenant fees

27. At the outset of a tenancy, tenants are generally requested to provide a month's rent in advance as well as a deposit. There is currently no limit on the amount of deposit that can be requested from a tenant but it is generally equivalent to between one and two months' rent. Letting fees are a separate charge levied for a variety of reasons, most commonly for seeking references, inventory services and contract negotiations.

28. In the English Housing Survey 2014/15, private renters were asked whether they were charged a fee (excluding any deposit) by a landlord or letting agency in their tenancy: 40% said that they were, up from 34% in 2009-10. When asked what type of fee(s) they had paid, 65% of private renters said they paid an administration fee, 33% paid a finders' fee, 7% paid a non-returnable holding fee, 5% paid a returnable holding fee and 4% paid an 'other fee'.

**Type of fee(s) paid to landlord or letting agency, 2014-15** (Source: English Housing Survey, full household sample)



29. Survey information collected by the National Approved Letting Scheme (NALS), the Association of Residential Letting Agents - Property Mark (ARLA), Citizens' Advice and Generation Rent demonstrates that the most commonly charged fees are those for carrying out reference checks, negotiating the tenancy agreement, check-in and check-

out (including inventory).<sup>3</sup> These costs may be charged to tenants as part of the general administration fee rather than individually itemised.

30. Renters are also generally requested to pay a holding fee to confirm their interest in a property. This fee will be taken by the letting agent and should lead to the property being taken off the market whilst reference checks are undertaken and the tenancy agreement is negotiated. The deposit should be refunded should the renter proceed with the tenancy or if the agent or landlord withdraws. The holding deposit is likely not to be refunded in instances where the renter decides to withdraw.
31. Renters pay an average of £200-£300 in letting fees per tenancy although many pay significantly more than this. The English Housing Survey 2014-15 found that the mean average fee paid by a household in 2014-15 was £223, while the median was £200. By contrast, the National Approved Letting Scheme found that the average fee charged is £172 with costs ranging from £30 to £500 (inclusive of VAT) and Generation Rent found that the average paid by two tenants is £400 with fees ranging from £40 to £780.<sup>4</sup> Shelter found that one in seven renters pay £500 or more in letting fees.<sup>5</sup>
32. DCLG officials undertook some market research of letting agent fees. We randomly chose 50 agents of differing sizes and models (i.e. franchises, independents and national branches) across the country and searched their website for a list of letting fees charged to tenants. This exercise reinforced how difficult it is for tenants to both find and compare agent fees since it was not always simple to either find the fees on the agent’s website or to understand exactly what was included in them.
33. The table below summarises the findings of DCLG’s market research exercise and outlines the fees charged by letting agents for the main services provided during the letting process:

Action	Lowest (£)	Highest (£)	Mean (£)	Median (£)
<b>Set up fee/Application Fee fee</b>	50.00	420.00	202.00	180.00
<b>Reference Checks</b>	25.00	240.00	86.00	75.00
<b>Tenancy Agreement</b>	36.00	300.00	179.00	185.00
<b>Guarantor Checks</b>	25.00	378.00	95.00	62.50
<b>Tenancy Renewal</b>	15.00	150.00	85.00	75.00
<b>Tenancy Amendment</b>	25.00	432.00	115.00	100.00
<b>Total Fees (includes set-up fee, referencing, tenancy agreement, check in/check out and inventory)</b>	120.00	747.00	318.00	300.00

<sup>3</sup> 2016 National Approved Letting Scheme online survey of 388 agents on letting agent fees and 2016 ARLA – Property Mark survey of 1,008 agents in December 2016, <http://www.arla.co.uk/media/1045377/tenant-fees-research-report.pdf>. Generation Rent’s findings are at <http://lettingfees.co.uk/stats/> and Citizen’s Advice at [https://www.citizensadvice.org.uk/Global/Migrated\\_Documents/corporate/still-let-down-final.pdf](https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/still-let-down-final.pdf)

<sup>4</sup>2016 National Approved Letting Scheme online survey on letting agent fees. Generation Rent’s findings are at <http://lettingfees.co.uk/stats/>

<sup>5</sup>[https://england.shelter.org.uk/data/assets/pdf\\_file/0010/834832/6636\\_Scottish\\_letting\\_fees\\_report\\_v9.pdf](https://england.shelter.org.uk/data/assets/pdf_file/0010/834832/6636_Scottish_letting_fees_report_v9.pdf)

34. The findings above demonstrate that the fees charged to tenants vary considerably amongst agents, even though the services provided are broadly similar, and that in some instances the fees charged can be significant. Generation Rent's findings also demonstrate the inconsistency in fees charged. They found that, for two tenants, reference check fees ranged from £20 to £570; charges for tenancy agreements ranged from £48 - £480; inventory costs ranged from £50-£216.<sup>6</sup>
35. The majority of tenancies are granted for between six and twelve months initially.<sup>7</sup> Many tenants therefore pay letting fees several times over in a relatively short period of time either because they move home and need to pay letting fees for a new tenancy or because of charges arising from renewal or extension of their existing contract.

## Landlord fees

36. Letting agent fees to landlords tend to be based on a percentage of the annual rent. Typical rates of commission are 10% for a 'let only' or introductory service and 13-15% for management services. Additionally, it is increasingly common for landlords to be charged further fees for referencing, inventories, negotiation of the tenancy agreement, deposit protection, check-in and check-out and arrangement of works (usually a percentage of the works value).
37. As with tenant fees, letting agent fees paid by landlords vary from agent to agent. The National Landlords Association Quarter 4 survey, December 2016, asked 360 landlords if they were charged any additional fees by their letting or managing agent, in addition to commission charged. The results are below:

Type of fee charged	Percentage of respondents charged fees	Average amount charged
Inventory	33%	£103
Tenancy agreements	29%	£202
Check-in	17%	£142
Referencing	16%	£97
Credit checks	13%	£81
Check out	9%	£87
Protection insurance	8%	£131
Guarantor agreements	5%	£48
Other	13%	£350

38. Over half of landlords (57%) do not use a letting agent, preferring to undertake the letting and management of their properties themselves.<sup>8</sup> Empirical evidence on the fees charged by self-managing landlords to tenants during a tenancy is limited but

<sup>6</sup> <http://lettingfees.co.uk/stats/>

<sup>7</sup> English Housing Survey 2014/15

<sup>8</sup> <https://www.gov.uk/government/statistics/private-landlords-survey-2010>

anecdotal evidence is that fees are significantly less than those charged by letting agents with a number of landlords charging no fees at all.

39. Citizens Advice found that 6 in 10 (60%) private renters paid fees to rent their current property but this figure rises to almost 9 in 10 (88%) where the property is managed by a letting agent.<sup>9</sup> This demonstrates that tenants are much more likely to be charged letting fees when the property is let through an agent than directly through the landlord.
40. Where landlords do charge their tenants letting fees, these tend to cover reference checks (including for guarantors if required), inventory services and a tenancy deposit fee dependent on the scheme used. These charges are generally to cover the cost of a specified, and usually outsourced, service. For example, landlords using the National Landlords Association credit checking service would pay between £8.95 (for a basic credit check) and £24.50 (for a full referencing report) per tenant.

## Fee transparency

41. Despite the transparency requirements of the Consumer Protection Act 2015, not all agents clearly display their fees either in their offices or on their website. Of the 912 agents surveyed by Generation Rent, 12% did not publically display their fees.<sup>10</sup> A fine of up to £5,000 can be levied against agents who fail to comply. The Government encourages trading standards to use their powers to take robust action against any letting agent breaching the current requirements on fee transparency.
42. Further, agents display their fees to tenants in different ways. Some provide an itemised list of the different services provided, such as referencing, inventory, etc. with a cost ascribed to each whereas others simply display the sum total of fees charged. Some agents also charge their fees on a per tenant basis whereas others charge per tenancy agreement.
43. NALS' survey found that 98% of the 388 agents surveyed charge tenant fees. Of those, 69% charge a flat or single fee and 31% charge an itemised bill.
44. Given the variation in practices with regards to displaying tenant fees, it is very difficult for a tenant to understand the total fees that they will be charged during a tenancy and even more difficult to compare agents.
45. There is also confusion in the sector between landlords and tenants around who is paying for which letting agent service, which diminishes their power to challenge letting agents if they think that the fees are not being charged correctly, or to the correct party. A quarter of the landlords surveyed by the NLA either did not know whether their letting agent charged fees to tenants or said that no fees were charged.<sup>11</sup>

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<sup>9</sup> [https://www.citizensadvice.org.uk/Global/Migrated\\_Documents/corporate/still-let-down-final.pdf](https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/still-let-down-final.pdf)

<sup>10</sup> <http://lettingfees.co.uk/stats/>

<sup>11</sup> The National Landlords Association Quarter 4 survey 2016

46. The transparency requirements introduced in the Consumer Rights Act 2015 include a requirement for letting agents to publicise a full tariff of their fees. This has demonstrated that tenants are sometimes charged for services that are also considered part of the landlord's fee to the agent, so the agent is effectively double charging.

# Rationale for introducing a ban

47. Whilst most letting and managing agents provide a reputable service, a minority of agents offer a poor service and engage in unacceptable practices. Some agents may be motivated to act in their own interests, which may be contrary to the interests of the tenant or landlord. Some letting agents exploit their role as an intermediary between the tenant and landlord by imposing unfair charges on the tenant or double charging tenants and landlords for the same service. Shelter's 2013 report found that nearly one in four people in England and Wales feel that they've been charged unfair fees by a letting agent.<sup>12</sup>

## Improving transparency and competition

48. Transparency requirements were introduced in the Consumer Rights Act 2015 to better enable tenants and landlords to compare letting agents and to shop around on the basis of their fees and services. The Government committed to reviewing the effectiveness of the transparency requirements. As part of the 2016 Client Money Protection call for evidence, stakeholders were asked whether the requirements have been effective in enabling tenants to shop around and choose registered agents.

49. The majority of responses welcomed the requirements but said that they are not sufficient to improve the lettings market. Many respondents said that they have seen no evidence that the transparency regulations have had a significant impact on driving up standards. A number also said that enforcement of the regulations has not been effective or consistent.

50. The variation in the way agents charge for their services, with some still not publically displaying their fees at all, further evidences that the transparency requirements have not had their intended impact.

51. However, even if all agents were fully compliant with the transparency requirements a tenant would still have little to no ability to negotiate or opt-out of letting fees since the decision to appoint a letting agent sits with the landlord. Landlords will be motivated to find the agents with the lowest landlord fees but they have little or no incentive to find agents with low fees for tenants. Indeed, some agents may keep their landlord fees down by charging increased fees to tenants.

52. Letting agents similarly have little incentive to minimise the extent of the fees to tenants. This means that competitive pressure for letting agents' fees charged to tenants is currently very weak. This helps to explain why fees to tenants have risen significantly in recent years and why there is such a variety in fees charged.

53. In theory, a tenant could opt not to rent a property on the basis that the fees charged by the letting agent are too high. However, it is not straightforward for tenants to understand and compare agent fees given the variation in the manner that agents

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<sup>12</sup>[https://england.shelter.org.uk/data/assets/pdf\\_file/0010/834832/6636\\_Scottish\\_letting\\_fees\\_report\\_v9.pdf](https://england.shelter.org.uk/data/assets/pdf_file/0010/834832/6636_Scottish_letting_fees_report_v9.pdf)



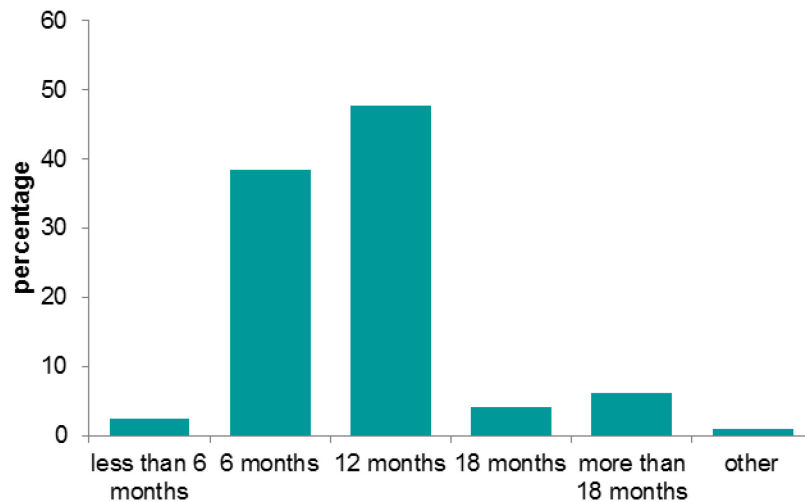
display their fees, with some still not publically displaying them at all. Further, as the Office of Fair Trading found in their 2013 market study, tenants focus on the headline advertised price (i.e. the rent), rather than the prices that come later in the process in the form of letting agent fees.

54. In highly competitive property markets, such as London and other metropolitan areas, renters have to prioritise the location of the property and the affordability of the rent. Competition for acceptable accommodation is such that renters cannot take time to shop around in the hope of finding a similar property with lower letting agents' fees or let directly by a landlord: in reality, once a tenant has chosen a property, they accept the fees that are charged and have to deal with any 'hidden' fees at a later stage.
55. By contrast, the landlord faces a market for letting agent services and is able to choose both whether to use a letting agent and to negotiate the fees charged for the services provided.
56. The ban will recognise the stronger market position of landlords and recognise that agent services are primarily provided on their behalf; landlords will choose the agent that provides the quality of service that they are seeking at a price that they are willing to pay. This will sharpen letting agents' incentives to compete for landlords' business resulting in lower overall fee levels and a good quality of service.
57. Agents will need to be upfront and clear with the costs that are being charged in order to secure landlords' business thus improving transparency. Letting agents that provide services that represent good value for money to landlords will continue to play an important role in the market due to the support they provide in the letting process.
58. On the tenant side, the ban will ensure that tenants can – at a glance – see what a given property will cost them in the advertised rent level and compare properties for their suitability and affordability on that basis. Tenants therefore will be better able to shop around for a property that fits their budget, improving competition and transparency on that side of the market as well.

## Encouraging longer term tenancies

59. The vast majority of renters in the private sector are offered short-term initial tenancy contracts of less than 12 months. The English Housing Survey 2014-15 found that the majority of tenancies are initially granted for between six and twelve months:

## Length of Initial Tenancy Agreement, 2014-15 (Source: English Housing Survey, full household sample)



60. Renters are therefore likely to have significant contact with letting agents either to extend their tenancy or start new tenancies and thus pay letting fees regularly.
61. Letting fees can be charged at the outset, renewal and conclusion of a tenancy, with little to no opportunity for a tenant to opt-out of payment. This arguably creates an incentive for short-term lets. The repeated churn in tenancies prompts business for an agent, and the opportunity to charge fees. The ban on tenant fees may help to promote longer term tenancies by reducing the financial incentive of short-term lets. However, this is also dependent on a longer term let being suitable to the landlord.

## Improving affordability

62. There is evidence that letting agent fees paid by tenants have increased significantly in recent years. The English Housing Survey 2014/15 reports that median fees charged by agents increased by 60% between 2009-10 and 2014-15 (14% increase in mean). The mean average fee amount paid in 2014-15 was £223, while the median was £200.
63. High up-front letting fees can significantly impact on ordinary working people's ability to move and secure the right home. When private renters were asked in the English Housing Survey 2014-15 whether fees would affect their decision to move, 35% said that it would be something they would have to think about and 34% said that it would stop them moving to a new home. Citizens' Advice found that 64% of tenants experienced problems paying letting agents' fees, and 42% had to borrow money.<sup>13</sup>
64. Tenants are often required to provide a month's rent in advance as well as a deposit equivalent to up to two months' rents in addition to paying letting fees at the outset of a tenancy.

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<sup>13</sup> [https://www.citizensadvice.org.uk/global/migrated\\_documents/corporate/still-let-down-final.pdf](https://www.citizensadvice.org.uk/global/migrated_documents/corporate/still-let-down-final.pdf)

65. Fees are not a one-off cost for tenants. Given that the majority of tenancies are granted for between six and twelve months initially, tenants can expect to pay letting fees regularly. This is either because they move home and need to pay letting fees for a new tenancy or because they need to pay fees to renew or extend their existing contract. These repeated and often significant charges can have a real and detrimental impact on individual finances, particularly for those tenants who are more vulnerable.
66. The worry about finding the money to pay for letting agent fees is an additional barrier to securing a home and could actively deter a tenant from leaving a poor quality rental property. Letting agent fees also make it harder for those tenants who are trying to save for a deposit.
67. Banning letting agent fees paid by tenants will help make entering and moving around in the private rented sector less costly and reduce the risk of homelessness for households struggling to cover their rental costs.
68. Banning fees will also make it easier to save for a deposit for those people who wish to buy their own home.

# Implementation of a ban

69. The Government is keen to see a ban that is clear and simple for all involved, but does not wish to unreasonably increase the risk or financial exposure of individual landlords or agents.
70. The Government proposes to introduce legislation which will mean that no agent will be able to charge tenants any fees, premiums or charges that meet the general definition of facilitating the granting, renewal or continuance of a tenancy.
71. The Government also proposes to ban any letting fees charged to tenants by landlords and any other third parties to ensure that letting agent fees are not paid by tenants through other routes. Tenants should only be required to pay their rent and a refundable deposit.
72. The Government recognises that a deposit can be a significant amount of money for a tenant to find at the outset of a tenancy and, in order to better support tenants to access and move around in the private rented sector, is keen to explore how this financial burden on tenants can be minimised. Deposit levels have been increasing and the Government is keen to examine the option of capping the amount of deposit that can be requested by the landlord.
73. However, even with a capped deposit level, affordability pressures will remain and in the longer term the Government is seeking to explore the potential and implications of wider options to minimise the financial burden on tenants. Not all landlords currently take deposits and we are keen to understand what alternative models there are to remove the need or reduce the scale of a deposit at the outset of a tenancy, and what role the Government might be able to play in supporting and facilitating the growth and development of such models to increase choice in the marketplace. For example, options could include enabling tenants to pay their deposit in instalments over the first few months of the tenancy or using a line of credit approach where an agreed deposit amount is blocked on a tenant's credit card. We are clear that any new options should not increase the risk of fraud or problem debt for tenants, and that deposits will continue to be properly protected.

## Exemptions

74. One of the advantages of a clear ban is that it is easy to communicate to tenants, landlords and agents and simple for all to understand. However, there are certain costs that arguably should continue to be met by the tenant. These are:
- Holding deposits to take the property off the market whilst reference checks are undertaken – the Government proposes to permit agents to continue to collect holding deposits in order to ensure that there is a commitment from a tenant to a given property and to mitigate the risk of tenants speculating on a number of properties, leading to potentially unnecessary and costly work by agents and landlords. Tenants who proceed with the letting will have their holding deposit refunded. Similarly, deposits will be refunded in the case of landlords or agents

failing to proceed. However, the deposits would be forfeited if the applicant has failed to uphold their side of the agreement to let, for example by providing false documentation or withdrawing from the tenancy. The Government does however suggest that holding deposits may need to be capped.

- In-tenancy property management service charges arising because of the action of the tenant – the Government also proposes that charges that directly relate to an action or service carried out at the request of the tenant or as a result of a tenant's actions should be chargeable to the tenant. Such charges could include arranging for replacement keys, repairs carried out as a result of deliberate damage or breach of the tenancy agreement, or late rent payment charges.

75. Agents may occasionally provide bespoke, non-standard services to tenants at the top end of the market, for example, when arranging a property for someone currently living abroad who is relocating to the UK. The Government is keen to understand whether there are premium parts of the market where a different approach to handling letting fees may be warranted.

76. Some tenants may choose to undertake their own reference checks and obtain a 'tenant passport' that enables them to demonstrate that they are financially and legally able to meet the terms of their tenancy. The Government does not intend to prevent tenants from doing so but intends to stipulate that no agent or landlord should require a tenant to carry out their own reference checks either via the agent or via a third party.

77. As is the case now, agents and landlords should not discriminate against individuals when considering potential tenants for their properties. We are aware of certain landlords rejecting households on the basis that they have children or receive benefits, which is not good practice and strongly discouraged. The Government is keen to mitigate the risk of the ban leading to any increase in discrimination against families and people who receive benefits and believes that the continued use of holding deposits will help to do this since it will ensure that no agent or landlord is left out of pocket as a result of a failed reference check.

78. It is worth noting that where discriminatory practices do occur this is often during the advertisement of a property, before any fees are charged, rather than at the point of taking references or negotiating a tenancy agreement.

79. The current law is clear that agents and landlords must not advertise or let a property in a way that unlawfully discriminates on the basis of a person's disability, sex, pregnancy/maternity, race, religion or belief, gender reassignment or sexual orientation.

## Increase in rents

80. Agents will need to consider their business models in light of the ban and consider how they should charge for their services. The time of, and services provided by, letting agents should be reimbursed but this should be by landlords rather than tenants. We would not expect the full level of tenant fees that are charged currently by letting agents to be passed on to landlords since there is evidence that a number of agents are charging excessive fees and that some agents are double charging landlords and

tenants. Under the ban, all agents will need to be efficient and fair with their fees in order to secure landlords' business and therefore the fees charged should be a fair reflection of the services provided.

81. Like any other supplier, landlords will need to set a rent that takes into account their costs whilst still being attractive to prospective tenants. Some landlords may absorb some or all of the increased fees charged, however others may choose to reflect the increase in the headline price for the property, i.e. the rent.
82. Tenants will be able to choose a property based on the rental level advertised. This is more transparent and makes it simpler for the tenant to understand and compare properties that they can afford. It is also easier for tenants to manage regular and expected costs rather than high upfront and often hidden charges.

## Enforcement

83. Robust and effective enforcement is central to the successful implementation of the ban on letting agent fees paid by tenants. The Government proposes that the ban should be enforced by local authorities, primarily Trading Standards. This builds on the existing work of Trading Standards in the sector, notably enforcing the requirement for letting and managing agents to belong to a redress scheme and the transparency requirements of the Consumer Rights Act 2015.
84. The Government will also look at how to ensure that tenants are aware of the ban so that they can raise issues with Trading Standards and feel confident to challenge agents that charge fees.
85. The Government recognises that Trading Standards may require additional support in order to ensure that enforcement of the ban is effective. The Government is therefore keen to explore the views of the sector on:
  - The introduction of a lead enforcement authority, similar to that in place in the Estate Agent sector;
  - Increased data sharing; and
  - Further regulation of the sector.
86. One or all of these additional enforcement approaches could be used separately or together, in conjunction with tenant challenge, to support local authorities in more robustly enforcing the ban on letting fees.

## Empowering and educating tenants

87. Educating tenants regarding their rights in the lettings process will be a useful tool to enforce the ban; it will empower tenants and reduce the burden on local authorities to proactively police agents. Tenants will be encouraged to challenge agents who charge fees, which in some cases would lead to resolution of the issue between the agent and tenant with no need to escalate further. We propose that tenants would be able to report an agent that charges fees either to their local authority or apply to the local county court.

88. Tenant empowerment and education has helped to improve compliance in other areas of the sector, for example, deposit protection. If a landlord has not protected a tenant's deposit via one of the three Government-backed tenancy deposit schemes, the tenant can apply to their local county court. If the court finds that the deposit has not been protected it can order the person holding the deposit to either repay it to the tenant or pay it into a custodial deposit scheme within 14 days. The court may also order the landlord to pay the tenant up to three times the deposit within 14 days of making the order.
89. There is a risk that tenants may feel that they are not able to challenge an agent who is charging unlawful fees, particularly if there is significant competition for a property. Effective communication of tenant rights and what can and cannot be charged will be needed. A clear ban that is easy to communicate will aid this process.
90. The Government intends to update its 'How to Rent' guide to explain the scope of the ban on fees and also to produce a 'How to Let' guide, to help clarify the responsibilities of agents and landlords in the letting process. We will also work with the sector to raise awareness through other routes, including using advertisement campaigns where possible.

## Increased data sharing

91. Better data and intelligence sharing across the sector will help assist enforcement. There is already some sharing of information between professional bodies, Trading Standards and the redress schemes but more could be done. For example, Trading Standards could notify the redress schemes, and where appropriate professional bodies, of any agents who continue to charge fees. The redress schemes and professional bodies could then take action to exclude any non-compliant agents unless remedial action is taken. The benefit of such an approach would be to better utilise the data on rogue agents held across the sector and make it harder for such agents to continue to operate.
92. The Government is keen to explore the appetite in the sector for increased data sharing amongst organisations whilst recognising that any such data sharing would need to comply with data protection legislation.

## A lead enforcement authority

93. A lead authority could be appointed to manage enforcement and have responsibility for developing advice, standards and guidance. The benefit of this approach is that it would provide a central point of referral for enforcement issues.
94. The lead authority approach is used in the Estate Agent sector. The National Trading Standards Estate Agency Team (NTSEAT), hosted by Powys County Council, is designated by the Secretary of State as the UK's lead enforcement authority for the purposes of the Estate Agent Act 1979. NTSEAT is responsible for issuing formal prohibition or warning orders to unfit individuals or businesses under the Act and for the approval of redress schemes in the property sales sector. NTSEAT is also designated

as a Competent Authority for the purposes of the Alternative Dispute Regulations and is responsible for issuing advice and guidance regarding the operations of the Estate Agent Act. NTSEAT engages productively with a number of enforcement partners as part of its regulatory role and also works with the estate agency professional bodies, the redress schemes and the Consumer's Association (Which?).

95. Designating a lead enforcement authority in the letting sector could make enforcement of regulations more consistent and effective by providing one central point of referral. The government is keen to explore views across the sector on whether a lead enforcement authority should be introduced to support local authorities to enforce the ban on letting fees and other requirements on letting agents.

## Wider regulation of the letting sector

96. The government recognises the appetite for wider regulation of the sector in order to combat the minority of rogue or incompetent agents and better protect consumers and is interested to explore the views of those across the sector on wider regulation measures that could be introduced to improve the letting market. Such measures could include a national register of agents, a statutory code of practice (building on previous work coordinated by RICS) and requiring agents to comply with training requirements and/or satisfy fit and proper person tests.
97. The benefits of additional regulation in the sector are that it would more consistently improve standards and help to tackle rogue practices by the small minority of rogue landlords. Additional regulatory requirements could play an important role in ensuring the compliance of agents with the ban on letting fees.
98. However, the Government does not want to unduly burden the sector and any additional regulation should have a clear role in tackling rogue practices whilst not making it more difficult for firms to enter and compete in the lettings market. Where possible, action should be taken through non-legislative routes with this supported by additional regulation only if necessary. The Government is keen to explore views as to whether further regulation of the sector is needed in addition to the ban on letting fees paid by tenants.

## Penalties for non-compliance

99. It is important to consider whether non-compliance with the ban on fees should be a civil or criminal offence. Non-compliance with the requirement to be a member of a redress scheme or the transparency requirements under the Consumer Rights' Act is enforced through a civil penalty, with a maximum fine of £5,000. The Government could introduce a similar civil penalty for agents that fail to comply with the ban on agent fees.
100. Enforcement should be a tool to deter agents from charging fees to tenants and as such it may be appropriate to consider a higher maximum fine than that currently in place for non-compliance with the redress and transparency requirements. Under the Housing and Planning Act 2016, the Government is introducing civil penalties of up to



£30,000 for breach of a banning order. A similar level of fine for agents who fail to comply with the ban on fees would arguably act as a considerable deterrent. Money that is generated through imposing civil penalties could be ring-fenced to support ongoing enforcement activity.

101. Another option is to consider whether a breach of the rules should be subject to criminal prosecution and become a banning order offence under the Housing and Planning Act 2016. This would mean that non-compliant agents could not only be subject to a fine but also banned from operating and placed on the database of rogue agents.
102. The National Trading Standards Estate Agency Team (NTSEAT) has the power to prohibit a person from undertaking estate agency work if they have committed specified offences, engaged in prohibited or undesirable conduct or failed to comply with specified obligations and if NTSEAT is satisfied that they are unfit for carrying out estate agent work. If a lead authority approach was adopted in the lettings sector, similar powers to prohibit a person from operating could be granted and used.

# Questions

Please indicate whether you are responding to this consultation as a:

1. Tenant
2. Landlord
3. Letting Agent
4. Other interested party

**All respondents should answer the questions in Part A, only those responding as tenants should respond to the additional questions in Part B, those responding as landlords should respond to the additional questions in Part C and finally letting agents should respond to the additional questions in Part D.**

## Part A – Questions for all respondents

### Question 1

Question	Yes/No + Answer
Do you think that the transparency measures introduced in the Consumer Rights Act 2015 have helped to drive up standards and improve competition? Please include reasons.	

### Question 2

Question	Yes/No + Answer
Do you agree that the ban on letting fees should also include a ban on letting fees charged to tenants by landlords and third parties? Please include reasons.	

### Question 3

Question	Yes/No + Answer
<p>Do you agree that all letting fees, premiums and charges to tenants that meet the general definition of facilitating the granting, renewal or continuance of a tenancy should be banned with the exception of:</p> <ul style="list-style-type: none"> <li>• The rent;</li> <li>• A refundable deposit;</li> <li>• A holding deposit to take the property off the market whilst reference checks are undertaken; and</li> <li>• In-tenancy property management service charges that directly relate to an action or service carried out at the request of the tenant or as a result of the tenant's actions?</li> </ul> <p>If no, please list any fees, charges or premiums aside from</p>	

those listed above that you think an agent, landlord or third party should be permitted to charge	
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#### Question 4

Question	Yes/No + Answer
Do you think that refundable deposits, payable at the outset of a tenancy, should be capped? If yes please indicate the level of the cap.	

#### Question 5

Question	Answer
How can Government best support the sector to expand or develop new approaches to minimise the financial burden on a tenant at the outset of a tenancy? For example, enabling tenants to pay their deposit in instalments over the first few months of the tenancy or using a line of credit approach where an agreed deposit amount is blocked on a tenant's credit card.	

#### Question 6

Question	Yes/No + Answer
Do you think holding deposits, to ensure that a property is taken off the market, should be capped? If yes please indicate the level of the cap.	

#### Question 7

Question	Yes/No + Answer
Agents may occasionally provide bespoke, non-standard services to tenants at the top end of the market, for example, when arranging a property for someone currently living abroad who is relocating to the UK. Do you think there are premium parts of the market where a different approach to handling letting fees may be warranted?	

#### Question 8

Question	Answer
What do you think will be the main impacts of the ban on letting fees paid by tenants? Please include any unintended consequences that you believe may arise.	

#### Question 9

Question	Yes/No + Answer
Do you agree that the ban on letting fees should be	

enforced by Trading Standards? If not, how do you believe the ban should be enforced?	
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### Question 10

Question	Yes/No
Would you support greater data sharing on rogue agents and landlords across organisations in the letting sector?	

### Question 11

Question	Yes/No + Answer
Would you support the introduction of a lead enforcement authority for letting agents to develop advice, standards and guidance and to share information? Please include reasons.	

### Question 12

Question	Answer a) b) c) and/or d)
<p>Do you think that the penalty for non-compliance with the ban on letting fees for tenants should be (please tick all that apply):</p> <ul style="list-style-type: none"> <li>a) a civil penalty of up to £5,000 in line with the penalty for non-compliance with the requirement to belong to a Government-approved redress scheme or non-compliance with the transparency requirements of the Consumer Rights Act 2015;</li> <li>b) a civil penalty of up to £30,000 in line with the civil penalty for committing a banning order offence;</li> <li>c) a banning order offence under the Housing and Planning Act; or</li> <li>d) Other (please list)?</li> </ul>	

### Question 13

Question	Yes/No + Answer
Do you think further action is needed to regulate the letting and management agent sector in addition to the ban on letting fees paid by tenants? What additional action do you think should be taken to regulate the sector?	

## Part B – Additional questions for tenants

### Question 14

Question	Yes/No
Do you consider that letting agent fees are clearly and	

transparently displayed?	
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### Question 15

Question	Yes/No
Were you aware of letting fees at the outset of your interest in a rental property either through your own research or through your landlord or agent?	

### Question 16

Question	Answer
What letting agent fees were you charged during your most recent rental? Where possible please include a breakdown of the fees charged.	

### Question 17

Question	Yes/No
Have letting agent fees ever affected (a) your ability to move to a new rented property or (b) your decision to use an agent?	

## Part C – Additional questions for landlords

### Question 18

Question	Yes/No
Do you consider that letting agent fees charged to landlords are clearly and transparently displayed?	

### Question 19

Question	Answer
What fees does your agent (if you use one) charge you for letting or management services, in addition to commission charged?	

### Question 20

Question	Yes/No
Do you know how much your agent (if you use one) charges to your tenants in letting fees?	

### Question 21

Question	Answer
If you are a self-managing landlord, what letting fees do you	

charge to your tenants? Where possible, please give a breakdown of the fees charged.	
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**Question 22**

<b>Question</b>	<b>Yes/No + Answer</b>
Would increased letting agent fees affect your decision to use an agent in the future? Please include reasons.	

**Part D – Additional questions for agents**

**Question 23**

<b>Question</b>	<b>Answer</b>
What letting fees do you charge to tenants? Where possible please give a breakdown of the services and fees charged.	

**Question 24**

<b>Question</b>	<b>Answer</b>
What letting fees do you charge to landlords? Where possible please give a breakdown of the services and fees charged.	

# Annex A: letting agent fees in the Devolved Administrations

## Scotland

103. The private rented sector in Scotland represents around 14%<sup>14</sup> of all households. It has grown considerably in the last 15 years (it represented c.5% of households in 1999) and there has been an increase in the number of families and those wanting to stay in the rental sector longer term. The majority of landlords own one or two properties and the average lease is one to two years. There are around 1,700 letting agents<sup>15</sup>.
104. Landlords in Scotland are required to register and this registration information is publically accessible. Landlords must meet all their legal requirements relating to the letting of houses, pass a fit and proper person test and be entered on the register in order to operate. It is a criminal offence, subject to a maximum £50,000 fine to operate as an unregistered landlord. Registration can be refused or revoked at any time if the landlord is not fit and proper. Local authorities can require landlords to use a letting agent or carry out training if that would help to secure registration.
105. Letting fees paid by tenants were banned in the Rent (Scotland) Act 1984. Clause 82(1) of the 1984 Act states: 'Any person who, as a condition of the grant, renewal or continuance of a protected tenancy, requires, in addition to the rent, the payment of any premium or the making of any loan (whether secured or unsecured) shall be guilty of an offence under this section'.
106. In addition, Clause 82(2) states: 'Any person who, in connection with the grant, renewal or continuance of a protected tenancy, receives any premium shall be guilty of an offence.' Where an illegal fee has been paid, the 1984 Act enables tenants to claim these back.
107. Although this legislation should have prevented any charge to tenants apart from rent and a refundable deposit (not exceeding two months' rent), there was confusion amongst letting agents about what charges the law allowed. To address this, the Private Rented Housing (Scotland) Act 2011 clarified that a premium 'means any fine, sum or pecuniary consideration, other than the rent, and includes any service or administration fee or charge'.
108. The requirements of the 1984 Act (as amended) don't only apply to letting agents. Under the Act 'any person' (e.g. landlords or third parties such as reference check companies), who as a condition of the grant, renewal or continuance of a protected tenancy requires the payment of a fee by, or receives a fee from, a tenant is guilty of an

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<sup>14</sup> Scottish Household Survey Annual Report 2015: <http://www.gov.scot/Publications/2016/09/7673>

<sup>15</sup> Business and Regulatory Impact Assessment – Letting Agent Regulation: Code of Practice: <http://www.gov.scot/Publications/2016/01/1805>

offence. Those found guilty are liable to a fine up to £1,000, and from 2018 a letting agent could be refused admittance to the mandatory register of letting agents for non compliance.

109. A research exercise on what effect the ban on letting fees has had on the Scottish market was conducted by Shelter and published in June 2013. Shelter commissioned two independent agencies, Rettie and BDRC Continental, and summarised their findings in the report 'End letting fees: Lessons from the Scottish lettings market'.<sup>16</sup>
110. Shelter's report argued that 'landlords in Scotland were no more likely to have increased rents since 2012 than landlords elsewhere in the UK. Rents do appear to have risen more in Scotland than in other comparable parts of the UK in 2013; however, most of this rise is explained by economic factors and not related to the clarification of the law on letting fees.'
111. The report continues 'while statistical modelling of rents in the letting agent sector indicates that between 1% and 2% of the rent rises in Scotland in 2013 could, in part, be caused by the law on fees, this is inconclusive.'
112. The report also found that 'any negative side-effects of clarifying the ban on fees to renters in Scotland have been minimal for letting agencies, landlords and renters, and the sector remains healthy'. Indeed, evidence from Companies House shows that the number of letting agents in Scotland has increased since the ban indicating that the sector has become more competitive.
113. The report by BDRC Continental (commissioned by Shelter) into the Scottish Lettings market showed that 17% of agencies claim to have increased fees to landlords as a result of law clarification; although, landlords appear more likely to be incurring the costs of tenant referencing. It was also showed that 56% of private tenants agreed (either tended to or strongly) that not being able to charge fees on top of rents or deposits improves the rental sector.
114. It is difficult to directly compare the English and Scottish markets given the differences between rents, standards and processes. However, early evidence from Scotland indicates that rents may increase as a result of the ban but that agents, in order to remain competitive, are unlikely to pass the full costs of the fees onto landlords.

### **Wider letting agent regulation**

115. Through the Housing (Scotland) Act 2014 the Scottish Government has introduced a robust regulatory framework for letting agents following broad support for further regulation across the sector. The framework's main features, which will be brought into force from 31 Jan 2018, are:

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<sup>16</sup>Shelter's report and the full reports by Rettie and BDRC can be found at:  
[http://england.shelter.org.uk/professional\\_resources/policy\\_and\\_research/policy\\_library/policy\\_library\\_folder/lessons\\_from\\_the\\_scottish\\_lettings\\_market](http://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/lessons_from_the_scottish_lettings_market)



- A new **Letting Agent Code of Practice**, which sets out the standards expected of letting agents in Scotland in how they manage their business and provide their services. Amongst other things, the code covers the handling of tenants' and landlords' money, mandating Client Money Protection schemes, and the professional indemnity arrangements that must be in place. It also specifically highlights the requirement to provide services without unlawful discrimination. The Letting Agent Code of Practice (Scotland) Regulations 2016 can be viewed at: <http://www.legislation.gov.uk/ssi/2016/133/contents/made>
- A **mandatory public register** of letting agents with an associated 'fit and proper' person test and minimum training requirements that key individuals within a letting agency must have met to be admitted. Only registered agents will be permitted to operate. Failure to register will be a criminal offence subject to a maximum £50,000 fine, up to 6 months imprisonment or both. Letting agents applying to join the register will need to pay a fee to join the register but these costs have yet to be confirmed.
- A free means of redress for landlords and tenants to the First-Tier Tribunal for Scotland (Housing and Property Chamber) where a letting agent fails to comply with the Letting Agent Code of Practice for landlords and tenants.
- Powers for Scottish Ministers to obtain information and powers of inspection to help them monitor compliance.

116. The broader regulatory framework in Scotland is intended to help strengthen the letting agent industry by raising standards and making it difficult for rogue agents to operate. The aim is to help build and maintain a more effective private rented sector that meets the needs of tenants, landlords and letting agents.

## Wales

117. Over the last decade, the private rented sector in Wales has grown both in absolute numbers and proportionately. If trends continue, the private rented sector will become the second most used accommodation type, after home ownership; it is anticipated to reach 20% of the total stock by 2020. The private rented sector is diverse, providing homes to a wide variety of households including students, families, single persons and those looking for short-term housing solutions. However, since the 2008 economic downturn the sector is increasingly being used as a longer-term housing option.<sup>17</sup>
118. Part One of the Housing (Wales) Act 2014, which came into force in November 2015, requires any landlord who has a rental property in Wales (and that is rented on an assured, assured shorthold or regulated tenancy) to register. All registrations are done with Rent Smart Wales meaning that there is a central landlord register.<sup>18</sup>

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<sup>17</sup> [http://www.cih.org/resources/PDF/Wales%20Policy/prs\\_factsheet\\_english\\_language.pdf](http://www.cih.org/resources/PDF/Wales%20Policy/prs_factsheet_english_language.pdf)

<sup>18</sup> [www.rentsmart.gov.wales](http://www.rentsmart.gov.wales)

119. The Housing (Wales) Act 2014 also requires landlords and agents who are involved in letting and managing rental properties to be licenced. Licences are granted by Rent Smart Wales and landlords and agents must demonstrate a relevant level of training. Rent Smart Wales must be satisfied the landlord/agent is 'fit and proper' (by ensuring they have no relevant convictions against them) and must confirm the training completed by the applicant and/or their staff as part of the application is suitable for licensing purposes. Licences can be refused if the applicant is not deemed 'fit and proper'.
120. If a licence is awarded the landlord/agent will receive notification of their unique licence number and the conditions attached to their licence. A licence lasts for 5 years and the 'Code of Practice' must be adhered to during the licence period.
121. Landlords who are not involved in lettings activities or property management activities do not need a licence; however, they must use a licensed agent and when registering as a landlord they must declare their agent as part of their registration.
122. Rent Smart Wales is a service hosted by Cardiff Council that ensures compliance with the Housing (Wales) Act 2014 in partnership with 22 Welsh local authorities. The Welsh Ministers designated Cardiff Council as the Licensing Authority for the whole of Wales in 2015. In its role as Licensing Authority, the Rent Smart Wales service must process landlord registrations and grant licences to landlords and agents who are required to comply with the Housing (Wales) Act 2014.
123. The Renting Homes (Wales) Act, which received Royal Assent on 18 January 2016, requires landlords to issue a written statement of the occupation contract, which clearly sets out the rights and responsibilities of landlords and tenants. To help landlords comply with this requirement, the Welsh Government provides free model contracts.
124. Rent Smart Wales also has information available to assist tenants living in, or looking at living in, the private rented sector. This includes a Tenant Guide.
125. Rent Smart Wales have imposed licence conditions requiring membership of a redress scheme, client money protection and professional indemnity insurance on commercial agents. While fees letting agents charge landlords and tenants for their services are not regulated, the Welsh Government is currently reviewing the situation but to date has made no commitment to any ban or cap on letting agent fees paid by tenants.

## Northern Ireland

126. Over the last 25 years, the private rented sector in Northern Ireland has grown significantly, from around 5% of housing stock in 1991 to over 16% today. It is now of comparable size to the social housing sector. There are increasing numbers of tenants who see renting as a long term choice and who are looking for greater security of tenure. The sector is characterised by a large number of landlords who own one or two properties. The sector is continuing to grow, with no sign of decrease in the number of landlords entering the market.

127. The Rent (Northern Ireland) Order 1978 and the Private Tenancies (Northern Ireland) Order 2006 set out the law on the current regulation of the private rented sector and provide councils with powers to enforce the legislation. In 2013 the requirement for landlords to protect their tenants' deposits in a Tenancy Deposit Scheme was added to the Private Tenancies (Northern Ireland) Order 2006. Further, in 2014, the Landlord Registration Scheme was added through the Landlord Registration Regulations 2014.
128. Since February 2014, all landlords have to register prior to letting a new tenancy. Registration lasts for three years at the end of which there is a requirement to re-register. Landlords pay a £70 fee for a three year registration and are required to provide details of themselves and their properties, thus creating a single database of landlords. Local councils use the data from the Landlord Registration Scheme to ensure that landlords comply with the law, raise standards and, where necessary, improve tenancy management in the sector.
129. Similarly to England, some letting agents in Northern Ireland are affiliated to an accredited body but there is currently no requirement on agents to be a member of a professional body. Aside from the individual codes of practice of the professional bodies, letting agents and the fees that they charge are neither controlled nor regulated. Recent tenant and landlord surveys carried out in Northern Ireland evidence concern around letting agent fees and transparency.
130. The Department for Communities (Northern Ireland) published a consultation document in January entitled 'Private Rented Sector in Northern Ireland – Proposals for Change'<sup>19</sup>. This document is the second stage in the Review of the Role and Regulation of the Private Rented Sector in Northern Ireland. The Review aims to consider the current and potential future role of the sector and assess the effectiveness of current regulation, identifying where improvements can be made to help make the private rented sector a more attractive housing option.
131. The consultation document proposes a number of changes which will impact on both landlords and tenants. One such change is the proposal to introduce a regulatory framework for all letting agents, including bringing forward legislation to ban letting agent fees.
132. The consultation period ends on 3 April 2017 and following this the Department for Communities Northern Ireland will set out how the agreed proposals will be implemented including any necessary legislation.

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<sup>19</sup> <https://www.communities-ni.gov.uk/consultations/private-rented-sector-northern-ireland-proposals-change>

# About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not, or you have any other observations about how we can improve the process, please contact us via the [complaints procedure](#).