



Department for
Communities and
Local Government

Banning letting fees paid by tenants

Government response



© Crown copyright, 2017

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This document/publication is also available on our website at www.gov.uk/dclg

If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

Department for Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: <https://twitter.com/CommunitiesUK>

November 2017

ISBN: 978-1-4098-5128-8

Contents

Introduction	4
Summary of draft legislative proposals	5
Summary of consultation findings and Government response	6
Part A – Existing regulation	7
Part B – Banning letting fees	10
Part C – Capping deposits	16
Part D – Enforcement	18
Part E – Wider regulation	22
Next Steps	25
List of organisational responses	26

Introduction

The Government is committed to ensuring a private rented sector that provides security and stability for both tenants and landlords. The private rented sector is a substantial part of our housing market. It houses 4.5 million households in England and an increasing number of families. The sector now represents 20% of all households, and houses a quarter of London's population.¹

Letting agents are engaged by many 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 ensure that tenants have safe, secure and good quality homes.

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.

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 not simple for tenants to understand and compare agent fees (despite the increased focus on transparency) since there is significant variation in the way that agents charge for their services. Further, agents charging fees to both landlords and tenants increases the risk of unfair practices in the form of double charging.

The Government committed in its manifesto to banning letting agent fees paid by tenants following an announcement at the 2016 Autumn Statement. The ban will enable tenants 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.

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.

On 7 April 2017, the Government launched an eight week consultation seeking views on the detail of how a ban should be introduced. The consultation closed on 2 June and 4,724 responses were received from a range of individuals and representative bodies. 50% of responses were from tenants, 32% were from letting agents, 10% were from landlords and 8% were from other interested stakeholders. We are very grateful to everyone who took the time to respond. This document summarises the comments received and sets out the Government's approach and next steps.

¹ English Housing Survey 2014/5

Summary of draft legislative proposals

The Government intends to bring forward proposals to implement a ban on tenant fees in a draft Bill. This was announced on 21 June 2017 in the Queen's Speech at the state opening of Parliament. The responses to the consultation have informed the Government's approach and publishing the Bill in draft will ensure that there is scrutiny of the Government's proposals by parliamentarians and stakeholders before introducing legislation.

The Government proposes to introduce provisions to ban landlords and their agents in England from (as a condition of, or of making arrangements for, the grant, renewal or continuance of a tenancy):

1. requiring tenants and licensees in the private rented sector to pay fees or other charges on top of the rent, with the exception of a capped refundable security deposit, a capped refundable holding deposit and tenant default fees (such as replacing a lost key);
2. requiring tenants and licensees in the private rented sector to secure and pay for services from any third party or to make a loan.

We propose extending the commitment to ban letting agent fees to tenants to include fees charged by landlords and any required payments to third parties. This is to mitigate the risk of tenants being charged fees through other routes. This will also avoid creating a situation where landlords are encouraged to self-manage their properties purely on financial grounds and where some tenants can be subject to letting fees whilst others are not.

The Government proposes that tenancy deposits are capped at no more than six weeks' rent and that holding deposits are capped at no more than one week's rent to improve affordability at the outset of a tenancy whilst retaining financial security for landlords. The draft Bill will also set out the proposed requirements on landlords and agents to return a holding deposit to a tenant.

It is proposed that the enforcement of the ban would be carried out by local authorities (Trading Standards). The penalty for an initial breach of the ban is envisioned to be a civil penalty of £5,000. It is proposed that subsequent breach of the ban within 5 years (where a civil penalty is issued or conviction secured in respect of the earlier breach) would be a criminal offence but with a civil penalty of up to £30,000 as an alternative to prosecution.

The Government proposes to bring forward legislation that will enable local authorities to retain the money raised through civil penalties with this money reserved for future local housing enforcement. Tenants would be able to recover unlawfully charged fees and holding deposits that have been unlawfully retained via the County Court.

The Tenant Fees Bill will propose a lead enforcement authority to provide oversight, guidance and support with the enforcement of requirements on letting agents. This includes the ban on letting fees and related provisions, the requirement to be a member of a redress scheme, the transparency requirements of the Consumer Rights Act 2015 as

they apply to letting agents in England, and the forthcoming requirements to be a member of a client money protection scheme under the Housing and Planning Act 2016.

The Government proposes to make some amendments to the Consumer Rights Act 2015 to state that the requirements on letting agents to display any letting fees, which redress scheme they are a member of, and whether they have client money protection should apply to property portals (e.g. Rightmove, Zoopla). This is to ensure that property portals, which are used by a large number of tenants to find properties in the private rented sector, are subject to the same transparency requirements as agent websites and offices.

The Bill also proposes a new provision regarding fines in the event of a continuing breach of the requirements in England and will also require letting agents in England to display the name of the client money protection scheme to which they belong (if they are required to belong to such a scheme).

The Government intends that the ban on tenant fees will apply only in relation to tenancy agreements and licenses entered into after any legislation has come into force.

Finally, to support the implementation and enforcement of the ban on letting fees paid by tenants and to better protect consumers in the lettings sector, the Government intends to require all letting agents to be regulated in order to practice. Currently, anyone can operate as a letting agent without any qualifications or professional oversight. We intend to change the law so that all letting agents must register with an appropriate organisation. This will mean that letting agents would be required to satisfy minimum training requirements, abide by with an industry code of conduct and demonstrate compliance with existing legal requirements. Further work with the sector will be carried out to shape the regulatory framework.

Summary of consultation findings and Government response

Part A – Existing regulation

Q1. Do you think that the transparency measures introduced in the Consumer Rights Act 2015 have helped to drive up standards and improve competition?

Q1. Consultation findings

	Yes	No
Tenants	23%	77%
Landlords	53%	47%
Agents	60%	40%
Other	37%	63%
Total	39%	61%

The most frequent comment from both agents and landlords was that “tenants are better informed” as a result of the transparency requirements.

A significant proportion of both tenants and letting agents commented that “not all agents comply with the regulations” either because fees listed are unclear, incomplete or not displayed at all.

The findings show that more than three-quarters of tenants do not believe that the regulations have led to an improvement in standards and competition. The most recurrent point raised by tenants was that transparency alone is not sufficient, and that “tenants have no choice” regardless of whether fees are more transparent or not.

A number of responses across all groups mentioned that letting agents are not displaying their fees on online portals such as Rightmove and Zoopla and that there is no requirement for them to do so, which is unhelpful since these websites are often used by tenants to search for properties in the private rented sector.

Transparency

Question 14 asked tenants “Do you consider that letting agent fees are clearly and transparently displayed?” To which 15% of tenants responded ‘yes’ and 85% responded ‘no’.

Question 18 asked landlords “Do you consider that letting agent fees charged to landlords are clearly and transparently displayed?” To which 69% of landlords responded ‘yes’ and 31% responded ‘no’.

The disparity between landlords’ and tenants’ views on the transparency of their respective fees suggests that the fees charged to landlords are clearer and easier to understand.

Fees charged by agents

Question 15 asked tenants “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?” 51% of tenants answered ‘yes’ and 49% answered ‘no’.

In response to Question 17, 69% of tenants reported that “letting agent fees have affected my ability to move to a new rented property” and 85% reported that letting agent fees have affected a decision in the past to use an agent.

In response to Question 22, 60% of landlords reported that letting fees had affected their decision in the past to use an agent and 76% said that increased fees would affect their decision to use an agent in the future.

Question 23 asked agents what fees they charge tenants. Based on the responses by agents, the average fee at the start of a tenancy is £238 per tenant. In addition to this, some agents charge a renewal fee (average of £70), an inventory fee (average of £117) and a check out fee (average of £91). 1% of the agents that responded to this question stated that they charge no fees to tenants.

Question 16 asked tenants what fees they are charged by a letting agent. The responses demonstrate the average fee charged at the start of a tenancy is £327.

Fees charged by landlords

Question 21 asked self-managing landlords what fees they charge tenants. 30% of landlords that responded to this question stated that they charge no fees to tenants. Of the remaining respondents that do charge fees, the average charge at the start of a tenancy is £107.

As part of their response to the consultation, the Deposit Protection Service (DPS) conducted their own survey and received more than 1,900 responses from landlords. The DPS survey found that 78% of landlords said that they either don't charge any fees or simply just pass on the costs of the referencing/credit checks.

The Residential Landlords Association (RLA) stated that most of its members either charge no fees to tenants or charge in the region of £25 per person.

Q1. Government response

The transparency requirements introduced in the Consumer Rights Act 2015 were intended to better enable tenants and landlords to compare letting agents and to shop around on the basis of their fees and services.

Responses from all groups acknowledge that there is significant variation in the way that agents charge for their services, with some agents still not displaying their fees clearly. The Government will work with councils to consider how to enforce the existing legislation more effectively.

The responses from tenants indicate that the transparency measures are not sufficient to enable tenants to compare the fees and services of letting agents and landlords. The most frequent complaint from tenants was that even if all agents were fully compliant with the transparency requirements a tenant would still be unable to negotiate or opt-out of letting fees since the decision to appoint a letting agent sits with the landlord.

The landlord is able to choose both whether to use a letting agent and to negotiate the fees charged for the services provided. Landlords can also off-set fees charged by letting agents against tax liabilities whereas tenants do not have the option to do so. The landlord is therefore in a much stronger position relative to the tenant. This is also reflected in the lower levels of dissatisfaction with fee transparency among landlords compared with tenants. The Government believes that transparency alone will not drive sufficient competition and affordability in the market and that a ban on letting fees paid by tenants is needed.

We recognise that it can be confusing for consumers not to be able to see clearly whether an agent is a member of a client money protection scheme, the redress scheme of which it is a member and the level of any relevant fees when using property portals such as Rightmove and Zoopla. Given that a large number of tenants use these portals to find properties in the private rented sector, we intend to bring forward proposals to amend the Consumer Rights Act 2015 to specify that the letting agent transparency requirements should apply to property portals.

Part B – Banning letting fees

Q2. 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?

Q2. Consultation findings

	Yes	No
Tenants	96%	4%
Landlords	25%	75%
Agents	27%	73%
Other	76%	24%
Total	65%	35%

The findings indicate opposition from agents and landlords to the proposal to include letting fees charged by landlords and third parties in the ban. The reason given by many of those landlords and agents that responded 'no' was that they were opposed to any form of ban on letting fees. The most frequent comment from those voting 'no' was that some fees should remain chargeable.

Of the 22% of agents that responded 'yes', the most common reason was that it would be unfair to allow landlords to charge tenants fees for services that letting agents are not permitted to charge tenants for. This point was strongly made by many of the leading industry groups.

The most frequent remark from landlords was that they should be permitted to charge tenants to undertake reference checks. Both the National Landlords Association (NLA) and the RLA emphasised that fees charged by landlords are purely for cost-recovery, not profit.

Tenants were strongly in favour of extending the ban on letting agent fees to include letting fees charged to tenants by landlords and third parties. The main reason given was to minimise the possibility of loopholes.

A number of responses, particularly from agents and industry suppliers to the sector, raised a concern about a blanket ban on third parties charging fees related to lettings, for example reference and inventory services. Many industry groups proposed that these services remain available to tenants. This point was also made by organisations that provide these services.

Q2. Government response

The Government agrees with the majority of leading industry groups and tenants that the ban on letting fees charged to tenants should also apply to landlords. This would ensure that letting fees are not charged to tenants via other routes and avoids creating a situation where landlords are encouraged to self-manage their properties purely on financial grounds.

The Government agrees that tenants should be able to choose to procure services from third party providers but proposes that agents and landlords would not be able to require that a tenant pays a third party any fees. This will allow tenants to procure services that are outside the ordinary scope of a letting arrangement if they so wish.

The Government intends to bring forward proposals to ban letting fees paid by tenants of Assured Shorthold Tenancies (ASTs) and holders of licenses to occupy. ASTs cover the vast majority of tenancies in the private rented sector. The proposal for the ban to also cover licensees would ensure that lodgers or tenants of houses in multiple occupation cannot be charged fees. We propose that the ban would apply to housing associations where they are letting an AST in the private rented sector to ensure that all tenants are treated the same.

Q3. 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: The rent; A refundable deposit; A holding deposit to take the property off the market whilst reference checks are undertaken; and 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?

Q3. Consultation findings

	Yes	No
Tenants	93%	7%
Landlords	26%	74%
Agents	7%	93%
Other	72%	28%
Total	58%	42%

There is strong agreement from tenants on the proposed measures for the ban. Of the 7% of tenants that disagreed with the approach outlined in the question, the reason given by roughly one third was that they did not believe the approach was sufficiently strong (for example, they did not believe that holding deposits should be permitted).

More than one third of agents who commented, as well as industry groups and redress schemes, argued that credit/reference checks should be met (or partially met) by the tenant, echoing the point made by landlords responding to question 2.

It was suggested that, unlike other fees, reference checks are carried out for the benefit of both the tenant and the landlord.

A key reason given by landlords that disagreed with the proposal was that reference checks should be (at least partially) paid for by tenants. A concern raised by many landlords was that they may have to pay for multiple reference checks before finding a suitable tenant. A number of responses also identified reference checks as a fee that should be chargeable to tenants in order to prevent landlords/agents from cherry picking those tenants that are more likely to pass the reference checks.

More than a quarter of agents stated that other administrative fees should be chargeable. Approximately 15% of comments from agents proposed that fees be capped instead of an outright ban.

Q3. Government response

Banning or Capping

The Government recognises the opposition from letting agents to the proposal to ban all letting fees except the rent, a security deposit, a holding deposit and tenant default fees. It is noted that many letting agents and landlords acknowledge that fees charged to tenants are currently not at a level that is justifiable and agree that intervention is necessary.

The Government believes that only a ban, not a cap, on letting fees charged to tenants would achieve the desired outcome of delivering a fairer, more competitive, more affordable and more transparent lettings market where tenants have greater clarity and control over what they will pay and where the landlord is the primary customer of the letting agent.

Banning fees to tenants will help to improve competition in the lettings sector because the stronger market position of landlords allows them to negotiate the letting fees charged.

A ban on fees will be clearer and easier to understand than a series of caps on certain types of fees, which may be complex to understand and risk transparency. This will help to ensure that tenants are only committing to a property that they know that they can afford.

Reference checks

The Government does not agree that reference fees should be exempted from the ban on fees. It is the landlord, either directly or through an agent, who contracts the services of a referencing agency to provide assurance that the tenant is capable of meeting the terms of the tenancy. The tenant is not in a position to decide this and the consultation responses reveal that a wide variety of charges are currently levied for such services. The landlord is better placed to negotiate and pay these fees. The Government does not therefore propose to exempt reference check fees from the ban on tenant fees.

To address the concern that agents and landlords could be unfairly penalised if a tenant withdraws from a property despite reference checks having been undertaken, we are

proposing that refundable holding deposits would be exempt from the ban. This would also act as a deterrent to tenants from registering in multiple or unsuitable properties.

The Government's proposal

The Government intends to bring forward legislation to:

1. Ban landlords and their agents from charging private sector tenants and licensees fees as a condition of, or of making arrangements for, the grant, renewal or continuance of a tenancy, with the exception of:
 - a. Rent;
 - b. A capped refundable security deposit;
 - c. A capped refundable holding deposit; and
 - d. Default fees (where the tenant is at fault, for example replacing a lost key).
2. Ban landlords and their agents from requiring tenants and licensees in the private rented sector, as a condition of granting, renewing or continuing a tenancy or license, to secure and pay for services from any third party or to make a loan.

Q7. 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?

Q7. Consultation findings

	Yes	No
Tenants	42%	58%
Landlords	67%	33%
Agents	62%	38%
Other	56%	44%
Total	52%	48%

Supporting comments from landlords and letting agents indicated no strong views as to why certain parts of the market should be exempted from the fee ban.

Nearly two-fifths of tenants who commented expressed concern about an exemption for services at the top end of the market opening up loopholes.

A point made by respondents from all groups was that any additional services can be negotiated separately from the tenancy agreement. Industry groups also stressed that charges for services such as relocation are not fees related to the letting of a specific property, and that such services can, and should, be treated separately.

Q7. Government response

The Government is keen to ensure that a ban on letting fees paid by tenants can be clearly understood by all. As such, the Government proposes that the tenant fee ban will apply to all parts of the market.

Additional high-end rental services and third party services procured by tenants would be outside the intended scope of the ban as long as they are not a condition of making arrangements for, the grant, renewal or continuance of a tenancy.

Q8. 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.

Q8. Consultation findings

In general, tenants believed that the impact of the ban would be positive resulting in better affordability and flexibility for tenants as well as improved transparency and competition in the sector. Conversely, the majority of agents and landlords believed the impact would be negative owing to increased financial pressures on agents and landlords, which could result in redundancies, agents going out of business and decreasing standards of service.

The most common response from all groups was that agent fees would be charged to landlords who in turn would increase their rents. One of the key points made by tenants was that higher rent would be preferable to the current upfront fees, as their overall living costs would be more affordable and transparent.

A number of responses, particularly from tenants, pointed out that banning fees may improve the image of the letting industry, and thus relationships between tenants and agents, by removing some of the concerns that tenants currently have over the costs charged for services provided.

Approximately 20% of landlords and agents said that the fee ban would lead to a reduction in supply of rented homes as landlords leave the market. A number of letting agents and landlords also raised concern over the number of recent changes to the sector.

More than one in ten agents expressed concern that landlords would choose to self-manage, rather than using a letting agent; letting agents and landlords thought that this could lead to deterioration in standards across the sector. The DPS in their response found that tenants may be more likely to use a professional agent owing to the ban improving the image of the lettings sector. This point was also made by a number of tenants.

Agents and landlords also pointed out that if reference fees are banned they might be incentivised not to let to potential tenants who seem less likely to pass reference checks. Tenant representative groups reported that discrimination already exists, with landlords requesting higher deposits and fees from tenants seen as high risk.

A number of agents and landlords suggested that a complete ban would lead to an increase in the number of tenants speculating on different properties resulting in potentially costly and unnecessary work being undertaken by landlords and agents.

Q8. Government response

The impact on rents will be kept under review but the Government does not expect letting agents to pass on to landlords the full amount of their current tenant fees since there is evidence that a number of agents are charging excessive fees. Under the ban, all agents will need to be upfront and clear with their landlord fees in order to secure business. As a result, the fees charged should be a fairer and more transparent reflection of the services provided.

The Government believes that tenants will see a net saving. In a case where an agent increases its fees charged to landlords, landlords will subsequently need to set a rent that takes into account their costs whilst still being attractive to prospective tenants. Tenants will be able to compare properties on the advertised rent level and there will be no hidden charges. It is also easier for tenants to manage regular and expected costs rather than high upfront charges.

The Government recognises that some letting agents may have to adjust their business models in order to remain profitable. However, good and innovative letting agents that provide value for money to landlords will be on a stronger footing to compete for landlords' business, since the opportunity for rogue agents to exploit their position as an intermediary between landlords and tenants will be greatly reduced.

The Government is keen to work with the sector to mitigate as far as possible any negative consequences of the ban. Publishing the Bill in draft prior to implementation will enable greater scrutiny of the proposals to implement the ban and further stakeholder engagement to mitigate any risks.

The proposal to permit refundable holding deposits to be charged under the ban should reduce the risk of agents or landlords being unfairly penalised if a tenant withdraws from a prospective tenancy. The holding deposit would enable a tenant to demonstrate a financial commitment to renting a certain property subject to passing the reference checks. A holding deposit would be refunded to the tenant in instances where the tenancy proceeds or the landlord/agent withdraws from the agreement.

The use of refundable holding deposits should also reduce the risk of landlords or agents choosing not to let to certain tenants that they perceive to be 'higher risk' with regards to referencing. The law is clear that agents and landlords must not advertise or let a property in a way that unlawfully discriminates against individuals.

We will continue to ensure that landlords, agents and tenants are aware of their responsibilities in the lettings process through communications and, in particular, by creating a 'How to Let' guide and updating the 'How to Rent' guide.

Part C – Capping deposits

Q4. 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?

Q4. Consultation findings

	Yes	No
Tenants	91%	9%
Landlords	40%	60%
Agents	36%	64%
Other	80%	20%
Total	68%	32%

There was broad support for capping tenancy deposits. Landlords' preferred cap was 2 months' rent but there was also support for a cap of 6 weeks' or one month's rent.

The National Landlords Association and the Residential Landlords Association both argued against a cap. The latter warned that capping the deposit "will leave landlords with no ability to mitigate the risks associated with higher risk tenant groups".

Agents' preferred level of cap was 6 weeks' rent but there was also support for a cap of one month's or two months' rent.

Of those tenants that indicated a cap level, around two thirds suggested a cap of one month's rent or less; Citizens Advice, Shelter and Crisis all recommended a cap of 3 weeks' rent, while Generation Rent recommended a cap of one month's rent and highlighted the strain that large up-front deposits can put on people's finances. Concern was also raised that deposits had crept up in recent years. Data from The Dispute Service shows that in the last 3 years deposits have increased on average by 7.9%.

A further reason offered by tenant representative groups for capping deposits at a lower level was that deposits have become larger than is necessary to provide sufficient security for landlords. Data from Deposit Protection Schemes shows that on average tenants receive back the majority of their deposit value.

The Property Ombudsman recommended that the cap should be 6 weeks' rent, so as to dissuade tenants from "choosing to not pay the last month's rent of a tenancy and avoiding addressing issues relating to their occupancy found during check-out". This view was also raised by landlords.

Q4. Government response

The Government welcomes the broad support for a cap on tenancy deposits. Taking into consideration the range of views put forward, the Government proposes to introduce

legislation to cap the tenancy deposit at six weeks' rent. This would ease the financial burden that tenants can face at the start of a tenancy, while ensuring a reasonable level of security for landlords.

Q6. 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.

Q6. Consultation findings

	Yes	No
Tenants	95%	5%
Landlords	57%	43%
Agents	61%	39%
Other	87%	13%
Total	80%	20%

There was a broad consensus for a cap, with 4 out of 5 respondents agreeing that holding deposits should be capped.

Agents were evenly split between those preferring a flat level cap and those preferring a cap based on rent. Larger agents that have a wide range of properties with very different rental values made the case that the holding deposit should be based on rent in order to adequately reflect the financial loss should a proposed tenancy fail to be agreed.

Many large agents disagreed with the proposal to cap holding deposits, but stated that if a cap were to be introduced it should be at the level of 2 weeks' rent.

A minority of tenants believed that holding deposits should be banned, but most tenants understood the justification for paying a refundable fee to take a property off the market. The most popular response from tenants was that the holding deposit cap should be set at one week's rent.

Citizens Advice reported that the average level of holding deposit is £250 and recommended that the cap be set "much lower". Crisis and Shelter both proposed a cap set at 2 days' rent. Generation Rent stated that one week's rent is a "typical" holding deposit and that it should be mandatory for agents to fold this fee into the first month's rent.

Q6. Government response

The Government welcomes the general consensus on capping holding deposits and proposes to bring forward legislation to cap the holding deposit at one week's rent. This level reflects the likely cost of missed rent should a tenancy agreement fail to be agreed owing to the actions of the tenant.

Part D – Enforcement

Q9. Do you agree that the ban on letting fees should be enforced by Trading Standards?

Q9. Consultation findings

	Yes	No
Tenants	93%	7%
Landlords	42%	58%
Agents	37%	63%
Other	76%	24%
Total	69%	31%

A majority of both landlords and letting agents expressed opposition to Trading Standards enforcing the ban. However, a significant proportion of both agents and landlords stated that they responded 'no' because they do not agree with the ban in principle.

No alternative to Trading Standards was proposed; many letting agents acknowledged that there is no realistic alternative. There was unanimous agreement among leading industry bodies that Trading Standards are the logical enforcement body and best placed to enforce the ban.

A key point made by all groups, and in particular letting agents, was concern over the resources available to Trading Standards. The National Association of Letting Agents (NALS) and ARLA Propertymark both argued that Trading Standards are not sufficiently resourced to effectively enforce current regulations and that failure to increase resources would further punish compliant agents while rogue agents would enjoy a competitive advantage.

The Chartered Trading Standards Institute concurred that Trading Standards services are "well placed" to enforce the ban thanks to their local knowledge of landlords and letting agents. It however went on to warn that the absence of additional resource would jeopardise the "consistency" of enforcement across the country.

Q9. Government response

The Government intends that the ban will be enforced by Trading Standards. The Government recognises the concern over the resources available to Trading Standards and proposes to support local authorities in their responsibilities by enabling any monies recovered by Trading Standards through civil penalties to be used for future enforcement of the ban. The Government also proposes to appoint a lead enforcement authority in the lettings sector and require that letting agents are regulated in order to improve standards and ensure compliance with existing legislation. This will support Trading Standards to carry out their enforcement responsibilities.

Q11. *Would you support the introduction of a lead enforcement authority for letting agents to develop advice, standards and guidance and to share information?*

Q11. Consultation findings

	Yes	No
Tenants	92%	8%
Landlords	71%	29%
Agents	81%	19%
Other	83%	17%
Total	86%	14%

There was strong agreement across all groups for the introduction of a lead enforcement authority.

The Royal Institution of Chartered Surveyors (RICS) made a strong case for a lead enforcement authority, drawing on the example of Powys County Council being the national lead for Trading Standards' enforcement of Estate Agents, stating that it would lead to more consistent regulatory operation.

Although agents and landlords expressed concern over bureaucracy and value for money, a significant number believed it would raise standards and consistency across the sector.

Q11. Government response

The Government welcomes the consensus that a lead enforcement authority in the lettings sector would be valuable and worthwhile.

As a result, the Government proposes to establish a lead enforcement authority to provide oversight, guidance and support with the enforcement of requirements on letting agents. This includes the ban on letting fees and related provisions, the requirement to be a member of a redress scheme, the transparency requirements of the Consumer Rights Act 2015 as they apply to letting agents in England, and the forthcoming requirements to be a member of a client money protection scheme under the Housing and Planning Act 2016.

It is envisaged that a Lead Enforcement Authority would:

- Provide guidance and advice to enforcement authorities regarding the operation and enforcement of relevant letting agent legislation;
- Disseminate information about letting agent legislation to members of the public, landlords and letting agents;
- Advise the Secretary of State on the working and enforcement of letting agent legislation and related matters (i.e. market developments); and
- Where necessary/expedient, take steps to enforce letting agent legislation.

Q12. Do you think that the penalty for non-compliance with the ban on letting fees for tenants should be:

- 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
- B. a civil penalty of up to £30,000 in line with the civil penalty for committing a banning order offence
- C. a banning order offence under the Housing and Planning Act
- D. Other

Q12. Consultation findings

	A	B	C	D
Tenants	37%	50%	40%	12%
Landlords	35%	12%	18%	38%
Agents	44%	5%	8%	33%
Other	40%	38%	33%	14%
Total	30%	31%	27%	21%

Of those that selected 'D – Other', the most common suggestion from tenants was to make it a criminal offence, while landlords and agents suggested that there should be no penalty or a minimal penalty.

The majority of large agents and industry leaders remarked that option A was not a strong enough deterrent for the fee ban to be effective. ARLA PropertyMark suggested that £30,000 is "the right level". The Residential Landlords Association also agreed with option B as well as the "potential to ban offending agents".

Q12. Government response

The Government proposes to bring forward legislation where an initial breach of the ban on charging letting fees to tenants would be a civil breach with a fine of up to £5,000. The Government proposes that in the event a further breach is committed within 5 years this would be a criminal offence with the provision to issue a civil penalty of up to £30,000 as an alternative to prosecution. The criminal offence would be a banning order offence under section 14 of the Housing and Planning Act 2016.

The Government intends that the ban will be enforced by Trading Standards who would be able to retain the money raised through civil penalties. This would help provide Trading Standards departments with the additional resources they need to ensure that this new regulation is enforced consistently across the country.

The Government also proposes that tenants who have been charged banned fees would be able to recover the fees charged via the County Court. Tenant enforcement of the ban will be encouraged through communication of tenant rights.

Part E – Wider regulation

Q5. 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 installments 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.

Q5. Consultation findings

There was strong support from tenants for an approach that enables the deposit to be paid in instalments. A large number of tenants also suggested that deposits should be transferred from one property to the next.

Agents and their industry bodies were generally sympathetic to the affordability issues presented by finding a deposit at the outset of a tenancy, and so were supportive of innovative ways to ease the financial burden. The 'passporting' of deposits from one tenancy to the next was often seen as the most promising solution. Agents and landlords gave a mixed response to the 'deposit by instalments' approach, with many saying it would be unworkable and leave landlords more at risk since tenants would commence the occupation of a property without having paid the full agreed security deposit. Tenants' ability to pay upfront was seen as an important indicator of their financial responsibility.

Q5. Government response

The Government is aware that many tenants struggle to afford the fees and deposits required at the outset of a tenancy. Proposals to cap the holding deposit and tenancy deposit should help to improve affordability in the private rented sector. The Government does not intend to introduce any additional measures at this stage but is keen to work with the private rented sector to explore more innovative approaches to paying deposits to improve affordability for renters.

Q10. Would you support greater data sharing on rogue agents and landlords across organisations in the letting sector?

Q10. Consultation findings

	Yes	No
Tenants	98%	2%
Landlords	91%	9%
Agents	89%	11%
Other	98%	2%
Total	94%	6%

There was overwhelming support for greater data sharing from all groups responding to the consultation.

Q10. Government response

The Government notes the strong support for greater data sharing across the letting sector and is keen to work with stakeholders to explore what can be achieved.

Q13. 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?

Q13. Consultation findings

	Yes	No
Tenants	87%	13%
Landlords	47%	53%
Agents	54%	46%
Other	76%	24%
Total	72%	28%

The response from agents and landlords shows that there is mixed support for wider regulation in the sector. However, there were strong calls from industry groups and professional associations across the sector as well as tenants for greater regulation.

Many landlords and letting agents support the mandatory membership of an accreditation or licensing body, or membership of a professional association; many agents also proposed a training or qualification programme like Rent Smart Wales. The predominant suggestion from tenants was for rent controls or caps.

Q13. Government response

The Government recognises the appetite from the professional associations in the sector for wider regulation of letting agents and welcomes the commitment to improving standards across the lettings sector.

The Government intends to require all letting agents to be regulated in order to practice. This will give tenants and landlords the confidence that their agent is legally compliant and operating to a good standard. We will consult on the detail ahead of bringing forward legislation to require letting agents to register with an appropriate organisation, satisfy minimum training requirements and comply with an industry code of conduct.

The Government does not believe that capping or seeking to control rent is an effective way to improve affordability for tenants. Evidence shows that rent control can restrict

investment, leading to fewer properties in the private rented market and higher rent as a result.

The Government is also committed to continuing to work with the sector to promote good practice, to improve standards and to tackle rogue practices through non-legislative routes, including through an updated 'How to Rent' guide and a new 'How to Let' guide.

Next Steps

Based on the responses to the consultation and wider engagement with stakeholders across the private rented sector, the Government is publishing a draft Tenant Fees Bill to set out the detailed approach for implementing a ban on letting fees paid by tenants. Publishing the Bill in draft will ensure that there is scrutiny of the Government's proposals by parliamentarians and stakeholders before introducing legislation.

The Department for Communities and Local Government will work with the sector to shape the wider regulatory framework and provide more detail on this in due course.

List of organisational responses

Please note that this is a list of larger national or regional organisations that submitted organisational responses. Submissions from individual branches or directors of companies have not been included here, though they were fully considered as part of the consultation.

As well as the 4,724 responses to the consultation, we received 64 responses that did not directly answer the questions set out in the consultation but provided feedback on the proposal to ban letting fees paid by tenants; these responses were also fully considered.

ARLA Propertymark	London Borough of Waltham Forest
Association of Housing Advice Services (AHAS)	London Councils
Association of Independent Inventory Clerks	London Trading Standards
Association of Tenancy Relations Officers	Ludlow Thompson
Belvoir	Milton Keynes Council
Birmingham City Council	National Approved Letting Scheme (NALS)
Bristol City Council	National Landlords Association
British Property Federation	National Trading Standards Estate Agency Team
Camden Federation of Private Tenants	Nationwide Building Society
Central Association of Agricultural Valuers	Nationwide Foundation
Chartered Trading Standards Institute	Nikon Precision
Chestertons Global Ltd	Norfolk County Council Trading Standards
Citizens Advice	Oxfordshire County Council (Trading Standards)
City of Wolverhampton Council Trading Standards	Places for People
Cornwall Residential Landlord Association	Portsmouth and District Private Landlords Association
Council of Mortgage Lenders	Private Housing Officers' Group
Country Properties	Property Redress Scheme
Countrywide	Renters' Rights London
Crawley Borough council	Residential Landlords Association
Crisis	RICS (Royal Institution of Chartered Surveyors)
Durham County Council Housing Solutions Service	Romans Letting and Estate Agents
Ethical Landlords Association	Royal Borough of Greenwich
Generation Rent	Savills
Global Property Ventures Limited	Scottfraser Ltd
good2rent tenant referencing	Sheffield Student Landlords Association
Guild of Residential Landlords	Shelter
Hackney Renters	Southampton City Council
home for you	Southwark Council Trading Standards
Homeless Link	Stafford Borough Council Health and Housing Service
HomeLet	Students' Union Bournemouth University
Housing Hand Ltd	The Chartered Institute of Environmental Health
Housing Justice	The Deposit Protection Service
Housing Law Practitioners Association	The Dispute Service/Tenancy Deposit Scheme
Hunters	the Experts in Property

InLet Management	The Frost Partnership
Jubilee Lets	The Lettings Hub
Kent County Council Trading Standards Service	The Property Ombudsman
Kinleigh Folkard & Hayward	Tower Hamlets Trading Standards
Knight Frank	Trading Standards North West Fair Trading Group
Lambeth Borough Council	Trust for London
Lancaster University Students' Union	UK Apartments Association
Leaders Letting and Estate Agents	UK Association of Letting Agents
Lewes District Churches HOMELINK	University of Bath Students' Union
Linley and Simpson	University of Surrey
Local Government Association	Virgin Money
London Borough of Camden	Wells Fargo
London Borough of Hackney	Welwyn Hatfield Borough Council
London Borough of Harrow	Westminster Trading Standards
London Borough of Havering Trading Standards	Your Move
London Borough of Newham	ZPG
London Borough of Sutton	