



## Note on Changes to Ministry of Housing, Communities & Local Government Guidance for Landlords and Agents: Tenants Fees Act 2019

1. Tenants Fees Act 2019: Guidance for landlords and agents was published by the Ministry of Housing, Communities and Local Government (MHCLG) on 1 April 2019. Changes to this guidance were issued in July 2019.
2. It is fair to say that this guidance is not binding law, but clearly presents the MHCLG's interpretation of the new legislation and how it is best complied with and is a useful starting point for best practice.
3. The changes introduced in July 2019 do not in any material way effect the way that landlords or agents should respond to the Tenant Fees Act 2019 or in any meaningful way alter the original guidance issued in April 2019. Most of the changes simply expand on some of the points being made in the Guidance or correct mistakes.
4. For example, on page 6, a clarification has been added to the prohibition on taking more than one holding deposit, adding that an additional holding deposit cannot be taken "unless you have been permitted to retain an earlier holding deposit". In other words, there should not be more than one "live" holding deposit being held at any one time (this is again repeated at page 33).
5. Further on page 33, an addition has been made to clarify that the copy of the tenancy agreement provided to a prospective tenant should be marked as "draft" – this is obviously a matter of best practice rather than statutory obligation.
6. At page 45, the addition of "+3%" simply clarifies what was already known, that the interest chargeable on rent overdue by more than 14 days in 3% above Bank of England base rate.
7. In one case, entirely new material has been added, on page 49 with the additional of a new Q and A relating to charging a tenant for a missed contractor appointment. This clarifies the MHCLGs view that charging a tenant in these circumstances would be prohibited fee. It should be understood that a prohibited fee is different from a breach of a contractual term which is then sought as damages from the deposit via the adjudication under a Deposit Protection Scheme.

8. An additional example of an unfair contract term has been added at page 49, of imposing a penalty of three months rent upon a tenant for not keeping a property tidy. Again, this presents no surprises.
9. Some changes are simply corrections, such as at page 51 where the calculation of the example of a calculation for interest charges has been corrected.
10. A new paragraph has been added at page 55 to clarify that the statutory limit of £50 for changes to tenancy agreement applies per request, so three changes to a tenancy agreement made at the same time would not permit three charges of £50 and any charge over the statutory limit would constitute a prohibited charge. Again, this is largely common sense which will likely not come as any surprise.
11. It is not anticipated that any of the July 2019 changes to the Guidance will materially change the approach landlords or agents should take to the Tenant Fees Act 2019, although some of the additional material may offer clarification which may assist them in interpreting the Act.

July 2019



Henriques Griffiths property lawyers have decades of experience helping landlords to successfully invest in rental property. Established in 1973, we have built a reputation for tailored legal advice designed to help you achieve your goals while keeping problems and your legal costs to a minimum.

Henriques Griffiths has been awarded the Law Society's Lexcel accreditation for our excellent practice management and client care. We are regulated by the Solicitors Regulation Authority (SRA) meaning you can be confident we continuously meet the highest legal and professional standards.