

# Tenant Fees Bill: amendment 3 on default fees

Citizens Advice helps people find a way forward.  
We advocate for our clients and consumers on the issues that  
matter to them.

## Overview

- **Citizens Advice would like the House to support amendment 3, which would tighten the default fee clause with a clear definition of when default fees are legitimate.**
- As it stands, the default fee clause has the potential to fundamentally undermine the government's aim to end tenant fees and prevent unfair practices.
- The possibility for default fees to be abused has been acknowledged by a wide range of bodies, including enforcement agencies and some letting agent bodies.
- Amendment 3 would remove unspecified 'default fees' as a permitted payment, and allow landlords and agents to charge for explicit expenses - including the replacement cost for a lost key and late rent payment - where the tenant is at fault.
- **Crucially, this will provide landlords with greater clarity on what they can legally charge for. This would significantly reduce the potential harm to renters.**

## The problem with the default fees clause

Schedule 1, paragraph 4(1) of the Bill allows the landlord to recoup any costs caused by a 'default by the tenant', so long as 'the tenant is required by the tenancy agreement to make the payment'.

**However, the Bill does not provide a comprehensive definition of 'default fee'.** We understand that landlords can be left out of pocket due to having to pay for lost keys, or for costs associated with recouping late rent payments. But, as currently drafted, the clause leaves the Bill open to significant abuse, and could allow landlords or agents to legitimately charge fees the government intends to ban.

**For example, the following types of fees - seen by our Expert Advice Team - would still be allowed:**

- *"Late fees of £5 per day if your rent is delayed."*
- *"To pay £100 for professional cleaners of communal areas if found dirty."*

**Some tenancy agreements also contain a 'cover all clause' which means that all breaches could have a default fee attached. There is a risk that these will be enforced more often once the ban comes into effect.** For example:

- *"Pay the Landlord's reasonable legal and/or other costs reasonably incurred as a result of any breaches by the tenant of his obligation under this Agreement."*

**If parliament does not take action to tighten this clause, the Bill will be fundamentally flawed. As drafted, this clause undermines the government's aim to end tenant fees and prevent unfair practices.**

**The potential for default fees to be abused has been acknowledged by a wide range of bodies.** The Housing, Communities and Local Government Select Committee, landlord and letting agent bodies, enforcement agencies, housing lawyers, and tenant bodies have all raised concerns.

**The government plans to issue non-statutory guidance on default fees, but this is unlikely to adequately protect renters in the way the government intends.** We've already seen examples of where this doesn't work in other essential markets. For example, in the energy sector, the regulator originally issued guidance - rather than a licence - on '[back billing](#)'. After discovering that guidance alone was insufficient to ensure that all consumers were protected, Ofgem has now put a licence requirement in place.

## **The solution - specifying permitted payments**

**The House should support amendment 3, which would tighten the default fee clause with a clear definition of when default fees are legitimate.**

The amendment would allow for landlords and agents to charge expenses - including the replacement cost of a lost key and late rent payments - where the tenant is at fault. This would alleviate some of the concerns that landlords have raised during the pre-legislative process.

Crucially, this will provide landlords with greater clarity on what they can legally charge for, and would significantly reduce the potential harm to renters.

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## **Appendix - amendment 3**

Schedule 1, page 23, line 30, leave out paragraph 4 and insert—

### **“Payment of Landlord or Agent expenses**

4 (1) A payment that a tenant is required to make to cover a landlord's or agent's reasonable loss arising from a breach of a fair condition of the tenancy agreement by the tenant is a permitted payment.

(2) In this paragraph a “fair condition” is one that relates to—

- (a) the replacement cost of a lost key or security device, or
- (b) payment of the amount of late rent payments and interest relating to those payments arising under or in connection with the tenancy.

(3) Paragraph 4(2)(a) does not apply if the payment required—

- (a) pertains to rent that was paid within 14 days of the date due under the tenancy agreement, or
- (b) exceeds the interest at Bank of England base rate on the rent from the day the rent was due to the day it was paid.

(4) Paragraph 4(2)(b) does not apply if the condition in the tenancy agreement prescribes a fixed fee to be paid for each breach of this term.”

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