

# Tenant Fees Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Housing, Communities and Local Government, are published separately as Bill 203-EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary James Brokenshire has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Tenant Fees Bill are compatible with the Convention rights.

# Tenant Fees Bill

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Make provision prohibiting landlords and letting agents from requiring certain payments to be made or certain other steps to be taken; to make provision about the payment of holding deposits; to make provision about enforcement and about the lead enforcement authority; to amend the provisions of the Consumer Rights Act 2015 about information to be provided by letting agents and the provisions of the Housing and Planning Act 2016 about client money protection schemes; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Prohibitions etc applying to landlords and letting agents*

**1 Prohibitions applying to landlords**

- (1) A landlord must not require a relevant person to make a prohibited payment to the landlord in connection with a tenancy of housing in England.
- (2) A landlord must not require a relevant person to make a prohibited payment to a third party in connection with a tenancy of housing in England. 5
- (3) A landlord must not require a relevant person to enter into a contract with a third party in connection with a tenancy of housing in England if that contract is—
  - (a) a contract for the provision of a service, or 10
  - (b) a contract of insurance.
- (4) Subsection (3) does not apply if the contract is for—
  - (a) the provision of a utility to the tenant, or
  - (b) the provision of a communication service to the tenant.
- (5) A landlord must not require a relevant person to make a loan to any person in connection with a tenancy of housing in England. 15

- (6) For the purposes of this section, a landlord requires a relevant person to make a payment, enter into a contract or make a loan in connection with a tenancy of housing in England if and only if the landlord –
- (a) requires the person to do any of those things in consideration of the grant, renewal, continuance, variation, assignment, novation or termination of such a tenancy, 5
  - (b) requires the person to do any of those things pursuant to a provision of a tenancy agreement relating to such a tenancy which requires or purports to require the person to do any of those things in the event of an act or default of the person, 10
  - (c) requires the person to do any of those things pursuant to a provision of a tenancy agreement relating to such a tenancy which requires or purports to require the person to do any of those things if the tenancy is varied, assigned, novated or terminated, 15
  - (d) enters into a tenancy agreement relating to such a tenancy which requires or purports to require the person to do any of those things other than in the circumstances mentioned in paragraph (b) or (c), or 15
  - (e) requires the person to do any of those things in consideration of providing a reference in relation to that person in connection with the person’s occupation of housing in England. 20
- (7) For the purposes of this section, a landlord does not require a relevant person to make a payment, enter into a contract or make a loan if the landlord gives the person the option of doing any of those things as an alternative to complying with another requirement imposed by the landlord or a letting agent. 25
- (8) Subsection (7) does not apply if –
- (a) the other requirement is prohibited by this section or section 2 (ignoring subsection (7) or section 2(6), or
  - (b) it would be unreasonable to expect a relevant person to comply with the other requirement. 30
- (9) In this Act “relevant person” means –
- (a) a tenant, or
  - (b) a person acting on behalf of, or who has guaranteed the payment of rent by, a tenant.
- 2 Prohibitions applying to letting agents 35**
- (1) A letting agent must not require a relevant person to make a prohibited payment to the letting agent in connection with a tenancy of housing in England.
- (2) A letting agent must not require a relevant person to make a prohibited payment to a third party in connection with a tenancy of housing in England. 40
- (3) A letting agent must not require a relevant person to enter into a contract with a third party in connection with a tenancy of housing in England if the contract is –
- (a) a contract for the provision of a service, or
  - (b) a contract of insurance. 45
- (4) A letting agent must not require a relevant person to make a loan to any person in connection with a tenancy of housing in England.

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- (5) For the purposes of this section, a letting agent requires a relevant person to make a payment, enter into a contract or make a loan in connection with a tenancy of housing in England if and only if the letting agent –
- (a) requires the person to do any of those things in consideration of arranging the grant, renewal, continuance, variation, assignment, novation or termination of such a tenancy, or 5
  - (b) requires the person to do any of those things in consideration of providing a reference in relation to that person in connection with the person’s occupation of housing in England.
- (6) For the purposes of this section, a letting agent does not require a relevant person to make a payment, enter into a contract or make a loan if the letting agent gives the person the option of doing any of those things as an alternative to complying with another requirement imposed by the letting agent or the landlord. 10
- (7) Subsection (6) does not apply if – 15
- (a) the other requirement is prohibited by this section or section 1 (ignoring subsection (6) or section 1(7)), or
  - (b) it would be unreasonable to expect a relevant person to comply with the other requirement.
- 3 Prohibited and permitted payments 20**
- (1) For the purposes of this Act a payment is a prohibited payment unless it is a permitted payment by virtue of Schedule 1.
- (2) The Secretary of State may by regulations made by statutory instrument amend Schedule 1 by adding, modifying or removing a reference to a permitted payment. 25
- (3) The power in subsection (2) does not extend to removing rent from the categories of payment which are permitted payments under this Act.
- (4) Regulations under this section –
- (a) may make different provision for different purposes;
  - (b) may make supplemental, incidental, consequential, transitional, transitory or saving provision. 30
- (5) Subject to subsection (6), a statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) Subsection (5) does not apply to a statutory instrument containing only regulations under this section which amend the amount for the time being set out in paragraph 5(2)(a) of Schedule 1 (maximum amount of permitted payment on variation, assignment or novation of a tenancy) for the purposes only of reflecting changes in the value of money. 35
- (7) A statutory instrument to which subsection (6) applies is subject to annulment in pursuance of a resolution of either House of Parliament. 40
- 4 Effect of a breach of section 1 or 2**
- (1) A term of a tenancy agreement which breaches section 1 is not binding on the tenant.

- (2) A term of an agreement between a letting agent and a tenant which breaches section 2 is not binding on the tenant.
- (3) Where a term of an agreement is not binding on a tenant as a result of this section, the agreement continues, so far as practicable, to have effect in every other respect. 5
- (4) If a relevant person makes a loan to a person pursuant to a requirement which breaches section 1(5) or 2(4), the loan is repayable by the borrower to the relevant person on demand.

## 5 Treatment of holding deposit

Schedule 2 makes provision about the treatment of holding deposits. 10

### *Enforcement*

## 6 Enforcement by local weights and measures authorities

- (1) It is the duty of every local weights and measures authority in England to enforce in its area – 15
- (a) section 1 (prohibitions applying to landlords),
  - (b) section 2 (prohibitions applying to letting agents), and
  - (c) Schedule 2 (treatment of holding deposit).
- (2) The duty in subsection (1) is subject to sections 14(5) (enforcement by another enforcement authority) and 24 (enforcement by the lead enforcement authority). 20
- (3) Where a breach of section 1 or 2 or Schedule 2 relates to housing which is located in the area of more than one local weights and measures authority, the breach is taken to have occurred in each of those areas.
- (4) A local weights and measures authority in England must have regard to any guidance issued by the Secretary of State or the lead enforcement authority (if not the Secretary of State) about the exercise of its functions under this Act. 25
- (5) For the investigatory powers available to a local weights and measures authority in England for the purposes of enforcing this Act, see Schedule 5 to the Consumer Rights Act 2015.
- (6) In paragraph 10 of Schedule 5 to the Consumer Rights Act 2015 (duties and powers to which Schedule 5 applies), at the appropriate place insert “section 6 of the Tenant Fees Act 2018.” 30

## 7 Enforcement by district councils

- (1) A district council which is not a local weights and measures authority may enforce sections 1 and 2 and Schedule 2. 35
- (2) A district council must have regard to any guidance issued by the Secretary of State or the lead enforcement authority (if not the Secretary of State) about the exercise of its functions under this Act.
- (3) For the investigatory powers available to a district council for the purposes of enforcing this Act, see Schedule 5 to the Consumer Rights Act 2015. 40

- (4) In paragraph 10 of Schedule 5 to the Consumer Rights Act 2015 (duties and powers to which Schedule 5 applies), at the appropriate place insert “section 7 of the Tenant Fees Act 2018.”
- (5) In this Act “enforcement authority” means –
- (a) a local weights and measures authority in England, or
  - (b) a district council which is not a local weights and measures authority.

## 8 Financial penalties

- (1) Where an enforcement authority is satisfied beyond reasonable doubt that a person has breached section 1 or 2 or Schedule 2, the authority may impose a financial penalty on the person in respect of the breach. 10
- (2) The financial penalty –
- (a) may be of such amount as the authority determines, but
  - (b) subject to subsection (3), must not exceed £5,000.
- (3) If the enforcement authority is satisfied beyond reasonable doubt that the person has committed an offence under section 12, the financial penalty – 15
- (a) may exceed £5,000, but
  - (b) must not exceed £30,000.
- (4) An enforcement authority may not impose a financial penalty under this section on a person in respect of any conduct amounting to an offence under section 12 if – 20
- (a) the person has been convicted of an offence under that section in respect of the conduct,
  - (b) criminal proceedings for an offence under that section in respect of the conduct have been instituted against the person and the proceedings have not been concluded, or
  - (c) criminal proceedings for an offence under that section in respect of the conduct have been concluded and the person has not been convicted of the offence. 25
- (5) An enforcement authority may not impose a financial penalty under this section on a person for a breach of Schedule 2 in relation to a holding deposit if – 30
- (a) the person failed to return the deposit in accordance with that Schedule because the person believed that the landlord was prohibited by section 22 of the Immigration Act 2014 from granting a tenancy of the housing to the tenant, and
  - (b) the person’s belief was based on incorrect information provided by the Secretary of State. 35
- (6) An enforcement authority may not impose more than one financial penalty under this section in respect of the same breach.
- (7) An enforcement authority may impose a financial penalty under this section in respect of a breach which occurs outside that authority’s area (as well as in respect of a breach which occurs within that area). 40
- (8) Schedule 3 makes further provision about financial penalties under this section and other payments required to be made under this Act.

## 9 Power to amend maximum financial penalties

- (1) The Secretary of State may by regulations made by statutory instrument amend the amount for the time being set out in section 8(2)(b) or (3)(a) or (b) (financial penalties).
- (2) The power in subsection (1) may be exercised only where the Secretary of State considers it is expedient to do so to reflect changes in the value of money. 5
- (3) Regulations under this section may make transitional, transitory or saving provision.
- (4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 10

## 10 Recovery by enforcement authority of amount paid

- (1) Subsection (2) applies where an enforcement authority –
  - (a) imposes a financial penalty under section 8 on a landlord or letting agent for breaching section 1 or 2,
  - (b) is satisfied on the balance of probabilities that the breach resulted in a relevant person making a prohibited payment to a landlord, letting agent or third party, and 15
  - (c) is satisfied on the balance of probabilities that all or part of the prohibited payment has not been repaid to the relevant person.
- (2) The enforcement authority may require the landlord or letting agent to pay to the relevant person – 20
  - (a) if none of the prohibited payment has been repaid to the relevant person, the amount of the prohibited payment;
  - (b) if part of the prohibited payment has been repaid to the relevant person, the remaining part of the prohibited payment. 25
- (3) But subsection (2) does not apply in relation to a prohibited payment if or to the extent that –
  - (a) the prohibited payment, or the remaining part of it, has been applied towards a payment of rent under the tenancy, or
  - (b) the prohibited payment, or the remaining part of it, has been applied towards the tenancy deposit in respect of the tenancy. 30
- (4) Subsection (5) applies where an enforcement authority –
  - (a) imposes a financial penalty under section 8 on a landlord or letting agent for breaching section 1 or 2,
  - (b) is satisfied on the balance of probabilities that the breach resulted in a relevant person entering into a contract with a third party, and 35
  - (c) is satisfied on the balance of probabilities that the relevant person has made a payment or payments under the contract.
- (5) The enforcement authority may require the landlord or letting agent to pay to the relevant person an amount which does not exceed the amount of the payment or (as the case may be) the aggregate amount of the payments that the relevant person has made. 40
- (6) Subsection (8) applies where an enforcement authority –
  - (a) imposes a financial penalty under section 8 on a landlord or letting agent for breaching Schedule 2 (treatment of holding deposit), and 45

- (b) is satisfied on the balance of probabilities that all or part of the holding deposit has not been repaid to the relevant person.
- (7) Subsection (8) also applies where an enforcement authority –
  - (a) could have imposed a financial penalty under section 8 on a landlord or letting agent for breaching Schedule 2 but for subsection (5) of that section (incorrect belief that immigration-related prohibition on granting tenancy applied), and 5
  - (b) is satisfied on the balance of probabilities that all or part of the holding deposit has not been repaid to the relevant person.
- (8) The enforcement authority may require the landlord or letting agent to pay to the relevant person – 10
  - (a) if none of the holding deposit has been repaid to the relevant person, the amount of the holding deposit;
  - (b) if part of the holding deposit has been repaid to the relevant person, the remaining part of the holding deposit. 15
- (9) But subsection (8) does not apply in relation to a holding deposit if or to the extent that –
  - (a) the holding deposit, or the remaining part of it, has been applied towards a payment of rent under the tenancy, or
  - (b) the holding deposit, or the remaining part of it, has been applied towards the tenancy deposit in respect of the tenancy. 20
- (10) Subsection (2), (5) or (8) does not apply if the relevant person has made an application under section 15 (application to the First-tier Tribunal) for recovery of all or part of the amount or (as the case may be) the aggregate amount referred to in that subsection. 25

**11 Interest on payments under section 10**

- (1) Where an enforcement authority requires a landlord or letting agent to pay an amount under section 10, the authority may require the landlord or letting agent to pay interest on that amount.
- (2) If an enforcement authority requires a landlord or letting agent to pay interest on an amount under subsection (1) – 30
  - (a) the amount carries interest from the date specified in subsection (3) until the date on which the amount is paid;
  - (b) the rate of interest is the rate for the time being specified in section 17 of the Judgments Act 1838. 35
- (3) That date is –
  - (a) where the amount is required to be paid under section 10(2), the date on which the prohibited payment was made;
  - (b) where the amount is required to be paid under section 10(5), the day on which the payment or (as the case may be) the first of the payments under the contract was made; 40
  - (c) where the amount is required to be paid under section 10(8), the day after the end of the period within which the holding deposit is required to be repaid in accordance with paragraph 4 of Schedule 2.
- (4) The total amount of interest imposed under subsection (1) must not exceed the amount required to be paid under section 10. 45

- 12 Offences** 5
- (1) A person commits an offence if –
    - (a) the person breaches section 1 or 2,
    - (b) a relevant penalty has been imposed on the person in respect of a different breach of the same section and the final notice imposing the penalty has not been withdrawn, or the person has been convicted of an offence in respect of such a breach, and 5
    - (c) the breach mentioned in paragraph (a) occurs within the period of five years beginning with the day on which the relevant penalty was imposed or the person was convicted. 10
  - (2) For the purposes of subsection (1)(c) a relevant penalty is imposed on the date specified in the final notice in respect of that penalty as the date on which it is served.
  - (3) A person guilty of an offence under this section is liable on summary conviction to a fine. 15
  - (4) A person may not be convicted of an offence under this section in respect of the breach mentioned in subsection (1)(a) if a financial penalty has been imposed under section 8 in respect of that breach.
  - (5) In this section, “relevant penalty” means a financial penalty which is imposed under section 8 where – 20
    - (a) the period for bringing an appeal against the penalty under paragraph 6 of Schedule 3 has expired without an appeal being brought,
    - (b) an appeal against the financial penalty under that paragraph has been withdrawn or abandoned, or
    - (c) the final notice imposing the penalty has been confirmed or varied on appeal. 25
  - (6) In section 14 of the Housing and Planning Act 2016, after subsection (4) insert –
 

“(5) An offence under section 12 of the Tenant Fees Act 2018 is also a banning order offence for the purposes of this Part.”
- 13 Offences by bodies corporate** 30
- (1) Where an offence under section 12 (offences) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of a body corporate, the officer as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly. 35
  - (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were an officer of the body corporate.
- 14 Duty to notify when taking enforcement action** 40
- (1) Where a local weights and measures authority in England (“LA1”) proposes to take enforcement action in respect of a breach which occurs (or which also occurs) in the area of a different local weights and measures authority in England (“LA2”), LA1 must notify LA2 that it proposes to do so.

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- (2) If LA1 notifies LA2 under subsection (1) but does not take the action referred to in that subsection, LA1 must notify LA2 of that fact.
- (3) Where a district council proposes to take enforcement action in respect of a breach, the district council must notify the local weights and measures authority for the area in which the breach occurs (or in which the breach also occurs) that it proposes to do so. 5
- (4) If a district council notifies a local weights and measures authority under subsection (3) but does not take the action referred to in that subsection, the district council must notify the local weights and measures authority of that fact. 10
- (5) Where a local weights and measures authority receives a notification under subsection (1) or (3), the authority is relieved of its duty to take enforcement action in relation to the breach unless the authority receives a notification under subsection (2) or (4).
- (6) An enforcement authority must notify the lead enforcement authority as soon as reasonably practicable if – 15
- (a) the enforcement authority imposes a financial penalty under section 8 (financial penalties),
  - (b) a financial penalty imposed under that section by the enforcement authority is withdrawn, or 20
  - (c) a financial penalty imposed under that section by the enforcement authority is quashed on appeal.
- (7) Subsection (8) applies where –
- (a) an enforcement authority has imposed a financial penalty under section 8(3), 25
  - (b) the breach to which the penalty relates occurred in the area of a local housing authority which is not the enforcement authority which imposed the penalty, and
  - (c) the final notice imposing the penalty has not been withdrawn.
- (8) The enforcement authority must notify the local housing authority as soon as reasonably practicable if – 30
- (a) the period for bringing an appeal against the penalty under paragraph 6 of Schedule 3 expires without an appeal being brought,
  - (b) an appeal against the penalty is withdrawn or abandoned, or
  - (c) the final notice imposing the penalty is confirmed or varied on appeal. 35
- (9) Subsection (10) applies where –
- (a) an enforcement authority has brought proceedings against a person for an offence under section 12, and
  - (b) the conduct to which the offence relates occurred in the area of a local housing authority which is not the enforcement authority which has brought the proceedings. 40
- (10) The enforcement authority must notify the local housing authority as soon as reasonably practicable if the person is convicted of the offence.
- (11) In this section –
- (a) “local housing authority” has the meaning given by section 1 of the Housing Act 1985, and 45

- (b) a reference to an enforcement authority taking enforcement action is a reference to that authority –
  - (i) imposing a financial penalty under section 8, or
  - (ii) bringing proceedings against a person for an offence under section 12.

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## 15 Recovery by relevant person of amount paid

- (1) Subsection (3) applies where –
  - (a) a landlord or a letting agent breaches section 1 or 2, as a result of which the landlord or letting agent, or a third party, receives a prohibited payment from a relevant person, and 10
  - (b) all or part of the prohibited payment has not been repaid to the relevant person.
- (2) Subsection (3) also applies where –
  - (a) a landlord or letting agent breaches Schedule 2 in relation to a holding deposit paid by a relevant person, and 15
  - (b) all or part of the holding deposit has not been repaid to the relevant person.
- (3) The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of –
  - (a) if none of the prohibited payment or holding deposit has been repaid to the relevant person, the amount of the prohibited payment or holding deposit; 20
  - (b) if part of the prohibited payment or holding deposit has been repaid to the relevant person, the remaining part of the prohibited payment or holding deposit. 25
- (4) Subsection (5) applies where –
  - (a) a landlord or letting agent breaches section 1 or 2, as a result of which a relevant person enters into a contract with a third party, and
  - (b) the relevant person has made a payment or payments under the contract. 30
- (5) The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of the amount of the payment or (as the case may be) the aggregate amount of the payments that the relevant person has made.
- (6) Subsection (3) does not apply in relation to a prohibited payment or holding deposit if or to the extent that – 35
  - (a) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards a payment of rent under the tenancy, or
  - (b) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards the tenancy deposit in respect of the tenancy. 40
- (7) Subsection (3) or (5) does not apply where an enforcement authority has commenced criminal proceedings against the landlord or the letting agent for the same breach.
- (8) Subsection (3) or (5) does not apply where an enforcement authority has required the landlord or letting agent to pay to the relevant person all or part 45

of the amount or (as the case may be) the aggregate amount referred to in that subsection.

- (9) On an application under subsection (3) or (5), the First-tier Tribunal may order the landlord or the letting agent to pay all or any part of the amount or (as the case may be) the aggregate amount referred to in that subsection to the relevant person within the period of 14 days beginning with the date of the making of the order. 5
- (10) An order of the First-tier Tribunal under this section is enforceable by order of the county court as if the amount payable under the order were payable under an order of that court. 10

## **16 Assistance to recover amount paid**

- (1) An enforcement authority may help a relevant person to make an application under section 15 (recovery by relevant person of amount paid).
- (2) An enforcement authority may, for example, help a relevant person to apply by conducting proceedings or by giving advice to the relevant person. 15

## **17 Restriction on terminating tenancy**

- (1) This section applies if –
- (a) a landlord breaches section 1(1) by requiring a relevant person to make a prohibited payment in connection with an assured shorthold tenancy, and
  - (b) the relevant person makes a prohibited payment to the landlord as a result of the requirement being made. 20
- (2) This section also applies if –
- (a) a landlord breaches Schedule 2 in relation to a holding deposit paid by a relevant person, and
  - (b) the deposit relates to an assured shorthold tenancy. 25
- (3) No section 21 notice may be given in relation to the tenancy so long as all or part of the prohibited payment or holding deposit has not been repaid to the relevant person.
- (4) Subsection (3) does not apply where none of the prohibited payment or holding deposit has been repaid to the relevant person if –
- (a) the payment or deposit has been applied towards a payment of rent under the tenancy,
  - (b) the payment or deposit has been applied towards the tenancy deposit in respect of the tenancy, or
  - (c) some of the payment or deposit has been applied as mentioned in paragraph (a) and the rest has been applied as mentioned in paragraph (b). 30
- (5) Subsection (3) does not apply where part of the prohibited payment or holding deposit has been repaid to the relevant person if –
- (a) the remaining part has been applied towards a payment of rent under the tenancy,
  - (b) the remaining part has been applied towards the tenancy deposit in respect of the tenancy, or 35
- 40

- (c) some of the remaining part has been applied as mentioned in paragraph (a) and the rest has been applied as mentioned in paragraph (b).
- (6) In this section “section 21 notice” means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (recovery of possession on expiry or termination of assured shorthold tenancy). 5

*Amendments to the Consumer Rights Act 2015*

**18 Duty to publicise fees on third party websites**

- (1) Section 83 of the Consumer Rights Act 2015 (duty of letting agents to publicise fees etc) is amended in accordance with subsections (2) to (6). 10
- (2) After subsection (3) insert –
- “(3A) Subsection (3C) applies to an agent who –
- (a) is carrying on letting agency work in relation to a dwelling-house in England, and
- (b) advertises the dwelling-house on a third party website as a dwelling-house which a landlord is seeking to let on a tenancy. 15
- (3B) Subsection (3C) also applies to an agent who, on a third party website, advertises letting agency work carried on by the agent in relation to dwelling houses in England.
- (3C) The agent must ensure that – 20
- (a) a list of the agent’s relevant fees is published on the third party website, or
- (b) there is a link on that website to a part of the agent’s website where a list of those fees is published.”
- (3) In subsection (4), in the opening words, for “or (3)” substitute “, (3) or (3C)”. 25
- (4) In subsection (6), for “or (3)” substitute “, (3) or (3C)”. 30
- (5) In subsection (7), for “or (3)” substitute “, (3) or (3C)”. 35
- (6) In subsection (9) at the end insert –
- ““third party website”, in relation to a letting agent, means a website other than the agent’s website.”
- (7) In section 87 of that Act (enforcement of duty of letting agents to publicise fees etc), after subsection (2) insert –
- “(2A) If a letting agent breaches the duty in section 83(3C) (duty to publish list of fees etc on third party website), that breach is taken to have occurred in each area of a local weights and measures authority in England in which a dwelling-house to which the fees relate is located.”

**19 Information about membership of client money protection scheme**

In section 83 of the Consumer Rights Act 2015, in subsection (6) (statement of whether agent is member of client money protection scheme) –

- (a) for the words from “holds money” to “as part of” substitute “is required to be a member of a client money protection scheme for the purposes of”, and
- (b) for the words from “of whether” to the end substitute “that—
  - (a) indicates that the agent is a member of a client money protection scheme, and
  - (b) gives the name of the scheme.”

## **20 Penalties for continuing breach of duty**

- (1) Section 87 of the Consumer Rights Act 2015 (enforcement of duty of letting agents to publicise fees etc) is amended as follows. 10
- (2) In subsection (6), at the end insert “, subject to subsection (6A)”.
- (3) After subsection (6) insert—
  - “(6A) More than one penalty may be imposed on the same letting agent by a local weights and measures authority in England in respect of a breach which occurs in England where— 15
    - (a) the breach continues after the end of 28 days beginning with the day after that on which the final notice in respect of the previous penalty for the breach was served, unless the letting agent appeals against that notice within that period, or
    - (b) if the letting agent appeals against that notice within that period, the breach continues after the end of 28 days beginning with the day after that on which the appeal is finally determined, withdrawn or abandoned. 20
  - (6B) Subsection (6A) does not enable a penalty to be imposed after the final notice in respect of the previous penalty has been withdrawn or quashed on appeal. 25
  - (6C) In subsections (6A) and (6B) “final notice” has the meaning given by paragraph 3(2) of Schedule 9.”

### *Amendments to the Housing and Planning Act 2016*

- ## **21 Enforcement of client money protection schemes for property agents** 30
- (1) Section 135 of the Housing and Planning Act 2016 (enforcement of client money protection scheme regulations) is amended as follows.
  - (2) In subsection (4)(e), after “for the purposes of any of its functions” insert “(whether or not the function is expressed to be a function of a local weights and measures authority)”. 35
  - (3) For subsection (5) substitute—
    - “(5) In this section “local authority in England” means a local weights and measures authority in England.”

*Lead enforcement authority*

## 22 Lead enforcement authority

- (1) In this Act “lead enforcement authority” means –
- (a) the Secretary of State, or
  - (b) a person whom the Secretary of State has arranged to be the lead enforcement authority in accordance with subsection (2). 5
- (2) The Secretary of State may make arrangements for a local weights and measures authority in England to be the lead enforcement authority for the purposes of the relevant letting agency legislation instead of the Secretary of State. 10
- (3) The arrangements –
- (a) may include provision for payments by the Secretary of State;
  - (b) may include provision about bringing the arrangements to an end.
- (4) The Secretary of State may by regulations made by statutory instrument make transitional or saving provision which applies when there is a change in the lead enforcement authority. 15
- (5) The regulations may relate to a specific change in the lead enforcement authority or to changes that might arise from time to time.
- (6) In this Act “the relevant letting agency legislation” means –
- (a) this Act, 20
  - (b) Chapter 3 of Part 3 of the Consumer Rights Act 2015 as it applies in relation to dwelling-houses in England,
  - (c) an order under section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013, and
  - (d) regulations under section 133, 134 or 135 of the Housing and Planning Act 2016. 25

## 23 General duties of the lead enforcement authority

- (1) It is the duty of the lead enforcement authority to oversee the operation of the relevant letting agency legislation.
- (2) It is the duty of the lead enforcement authority to issue guidance to enforcement authorities about the exercise of their functions under this Act. 30
- (3) It is the duty of the lead enforcement authority to provide information and advice to relevant authorities in England and to the public in England about the operation of the relevant letting agency legislation, in such form and manner as it considers appropriate. 35
- (4) The lead enforcement authority may, amongst other things, disclose information to a relevant authority for the purposes of enabling that authority to determine whether there has been a breach of, or an offence under, the relevant letting agency legislation.
- (5) Subsections (6) to (8) apply if the lead enforcement authority is not the Secretary of State. 40
- (6) The Secretary of State may direct the lead enforcement authority to issue guidance about the operation of the relevant letting agency legislation to

relevant authorities in England and may give directions as to the content of that guidance.

- (7) A direction may relate to all or particular kinds of relevant authorities and may make different provision for different kinds of authority.
- (8) It is the duty of the lead enforcement authority to keep under review and from time to time advise the Secretary of State about –
- (a) social and commercial developments in England and elsewhere relating to tenancies, the carrying on of letting agency work and related activities, and
  - (b) the operation of the relevant letting agency legislation.
- (9) In this section and section 24 “relevant authority” means –
- (a) in relation to this Act, an enforcement authority;
  - (b) in relation to Chapter 3 of Part 3 of the Consumer Rights Act 2015, a local weights and measures authority in England;
  - (c) in relation to an order under section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013, a person on whom functions in relation to enforcement of the order are conferred;
  - (d) in relation to regulations under section 133, 134 or 135 of the Housing and Planning Act 2016, a local authority in England (as defined in section 135 of that Act).

## **24 Enforcement by the lead enforcement authority**

- (1) The lead enforcement authority may take steps to enforce the relevant letting agency legislation where it considers it is necessary or expedient to do so.
- (2) The lead enforcement authority may, for that purpose, exercise any powers that a relevant authority may exercise for the purpose of the enforcement of the legislation in relation to which it is such an authority.
- (3) Where the lead enforcement authority proposes to take enforcement action in respect of a breach of the relevant letting agency legislation, it must notify the relevant authority in relation to the legislation in whose area the breach has occurred that it proposes to do so.
- (4) If the lead enforcement authority notifies a relevant authority under subsection (3) but does not take the action referred to in that subsection, the lead enforcement authority must notify the relevant authority of that fact.
- (5) Where a relevant authority receives a notification under subsection (3), the authority is relieved of any duty to take enforcement action in relation to the breach unless the authority receives a notification under subsection (4).
- (6) But the lead enforcement authority may require the relevant authority to assist the lead enforcement authority in taking the enforcement action.
- (7) Every relevant authority in England must report to the lead enforcement authority, whenever the lead enforcement authority requires and in such form and with such particulars as it requires, on the exercise of that relevant authority’s functions under the relevant letting agency legislation.
- (8) Section 14(7) to (10) (duty to notify the local housing authority) applies to the lead enforcement authority as it applies to a local weights and measures authority.

- (9) For the investigatory powers available to the lead enforcement authority for the purposes of enforcing the relevant letting agency legislation, see Schedule 5 to the Consumer Rights Act 2015.
- (10) In paragraph 10 of Schedule 5 to the Consumer Rights Act 2015 (duties and powers to which Schedule 5 applies), at the appropriate place insert “section 24 of the Tenant Fees Act 2018.” 5

### *General interpretation*

## **25 Meaning of “letting agent” and related expressions**

- (1) In this Act “letting agent” means a person who engages in letting agency work (whether or not that person engages in other work). 10
- (2) In this Act “letting agency work” means things done by a person in the course of a business in response to instructions received from—
- (a) a landlord who is seeking to find another person to whom to let housing, or
  - (b) a tenant who is seeking to find housing to rent. 15
- (3) A person is not a letting agent for the purposes of this Act if the person engages in letting agency work in the course of that person’s employment under a contract of employment.
- (4) A person who is an authorised person in relation to a reserved legal activity is not a letting agent when carrying on legal activity in response to instructions from a landlord or tenant who does not instruct that person to do other things within subsection (2). 20
- (5) In subsection (4) —
- (a) “legal activity” and “reserved legal activity” have the meanings given by section 12 of the Legal Services Act 2007; 25
  - (b) “authorised person” has the meaning given by section 18 of that Act.

## **26 Interpretation**

- (1) In this Act —
- “assured shorthold tenancy” has the same meaning as in Part 1 of the Housing Act 1988; 30
  - “communication service” has the meaning given by paragraph 10(3) of Schedule 1;
  - “enforcement authority” has the meaning given by section 7(5);
  - “holding deposit” has the meaning given by paragraph 3(2) of Schedule 1;
  - “housing” means a building, or part of a building, occupied or intended to be occupied as a dwelling; 35
  - “landlord” includes —
- (a) a person who proposes to be a landlord under a tenancy,
  - (b) a person who has ceased to be a landlord under a tenancy,
  - (c) a licensor under a licence to occupy housing, 40
  - (d) a person who proposes to be a licensor under a licence to occupy housing, and

- (e) a person who has ceased to be a licensor under a licence to occupy housing;
- “lead enforcement authority” has the meaning given by section 22(1);
- “licence to occupy housing” –
  - (a) includes a licence which is granted to a licensee by a licensor who resides in the housing; 5
  - (b) does not include a licence to occupy social housing;
  - (c) does not include a licence to occupy housing the purpose of which is to confer on the tenant the right to occupy housing for a holiday; 10
- “long lease” means a lease which –
  - (a) is a long lease for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993, or
  - (b) in the case of a shared ownership lease (within the meaning given by section 7(7) of that Act), would be a lease within paragraph (a) if the tenant’s total share (within the meaning given by that section) were 100%; 15
- “prohibited payment” has the meaning given by section 3 and Schedule 1;
- “the relevant letting agency legislation” has the meaning given by section 22(6); 20
- “relevant person” has the meaning given by section 1(9) (and see subsection (2) of this section);
- “social housing” has the same meaning as in Part 2 of the Housing and Regeneration Act 2008; 25
- “tenancy” means –
  - (a) an assured shorthold tenancy other than –
    - (i) a tenancy of social housing, or
    - (ii) a tenancy which is a long lease,
  - (b) a tenancy which meets the conditions set out in paragraph 8 (lettings to students) of Schedule 1 to the Housing Act 1988, or 30
  - (c) a licence to occupy housing;
- “tenancy agreement” means an agreement granting a tenancy of housing to a tenant;
- “tenancy deposit” has the meaning given by paragraph 2(2) of Schedule 1; 35
- “tenant” includes –
  - (a) a person who proposes to be a tenant under a tenancy,
  - (b) a person who has ceased to be a tenant under a tenancy,
  - (c) a licensee under a licence to occupy housing,
  - (d) a person who proposes to be a licensee under a licence to occupy housing, and 40
  - (e) a person who has ceased to be a licensee under a licence to occupy housing;
- “utility” has the meaning given by paragraph 8(3) of Schedule 1.
- (2) In the following provisions references to a relevant person include a person who has ceased to act on behalf of a tenant – 45
  - (a) section 4(4) (repayment of loan);
  - (b) section 10 (recovery by enforcement authority of amount paid);

- (c) sections 15 (recovery by relevant person of amount paid) to 17 (restriction on terminating tenancy);
- (d) Schedule 3 (financial penalties etc).

*Final provisions*

<b>27</b>	<b>Consequential amendments</b>	<b>5</b>
(1)	In section 87 (enforcement of duty of letting agents to publicise fees etc) of the Consumer Rights Act 2015—	
	(a) after subsection (1) insert—	
	“(1A) The duty in subsection (1) is subject to section 24 (enforcement by the lead enforcement authority) of the Tenant Fees Act 2018.”;	10
	(b) in subsection (9), after “guidance issued by the Secretary of State” insert “or the lead enforcement authority (if not the Secretary of State)”;	
	(c) after subsection (12) insert—	
	“(13) For provisions about enforcement of this Chapter by the lead enforcement authority, see sections 22 to 24 of the Tenant Fees Act 2018.	15
	(14) In this section “lead enforcement authority” has the meaning given by section 22(1) of the Tenant Fees Act 2018.”	
(2)	In section 85 (enforcement of requirements relating to redress orders) of the Enterprise and Regulatory Reform Act 2013—	20
	(a) after subsection (4) insert—	
	“(4A) A person on whom functions are conferred under subsection (4) must have regard to any guidance issued by the Secretary of State or the lead enforcement authority (if not the Secretary of State) relating to the enforcement of an order under section 83(1) or 84(1).”;	25
	(b) after subsection (5) insert—	
	“(6) For provisions about enforcement of an order under section 83(1) or 84(1) by the lead enforcement authority, see sections 22 to 24 of the Tenant Fees Act 2018.	30
	(7) In this section “lead enforcement authority” has the meaning given by section 22(1) of the Tenant Fees Act 2018.”	
(3)	In article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (S.I. 2014/2359), after paragraph (2) insert—	35
	“(3) The duty referred to in paragraph (1) is subject to section 24 (enforcement by the lead enforcement authority) of the Tenant Fees Act 2018.”	
(4)	The amendment made by subsection (3) is without prejudice to any power to make an order or regulations amending or revoking the order mentioned in that subsection.	40

- (5) In section 135 (enforcement of client money protection scheme regulations) of the Housing and Planning Act 2016 –
- (a) in subsection (3), after “the Secretary of State” insert “or the lead enforcement authority (if not the Secretary of State)”;
  - (b) after subsection (5) insert – 5
    - “(6) For provisions about enforcement of regulations under section 133 or 134 or under this section by the lead enforcement authority, see sections 22 to 24 of the Tenant Fees Act 2018.
  - (7) In this section “lead enforcement authority” has the meaning given by section 22(1) of the Tenant Fees Act 2018.” 10

## 28 Transitional provision

- (1) Subject as follows, section 1 (prohibitions applying to landlords) does not apply to –
- (a) a requirement imposed before the coming into force of that section, or
  - (b) a requirement imposed by or pursuant to a tenancy agreement entered into before the coming into force of that section. 15
- (2) Subject as follows, section 1 does not apply to a requirement imposed by or pursuant to an agreement relating to a periodic tenancy which arises –
- (a) under section 5(2) of the Housing Act 1988 after the coming into force of section 1, and
  - (b) on the coming to an end of a fixed term tenancy which was entered into before the coming into force of that section, (referred to in this section as a “relevant statutory tenancy”). 20
- (3) Subsections (5) and (6) apply in relation to a provision of a tenancy agreement entered into before the coming into force of section 1 if, had the agreement been entered into after that time, that section would have applied in relation to the provision or a requirement imposed pursuant to it. 25
- (4) Subsections (5) and (6) apply in relation to a provision of an agreement relating to a relevant statutory tenancy if, had the provision been included in a tenancy agreement entered into after the coming into force of section 1, that section would have applied in relation to that provision or a requirement imposed pursuant to it. 30
- (5) After the end of the period of one year beginning with the date on which section 1 comes into force, the provision ceases to be binding on the tenant (but the agreement continues, so far as practicable, to have effect in every other respect). 35
- (6) If, after the end of the period of one year beginning with the date on which section 1 comes into force –
- (a) the landlord accepts a payment from the tenant pursuant to the provision, and
  - (b) does not return the payment before the end of the period of 28 days beginning with the day on which it is accepted, 40
- the landlord is to be treated for the purposes of this Act as having required the tenant to make a prohibited payment of that amount at that time.
- (7) Subject as follows, section 2 (prohibitions applying to letting agents) does not apply to – 45

- (a) a requirement imposed before the coming into force of that section, or  
 (b) a requirement imposed by or pursuant to an agreement between a letting agent and a tenant entered into before the coming into force of that section.
- (8) Subsections (9) and (10) apply in relation to a provision of an agreement between a letting agent and a tenant entered into before the coming into force of section 2 if, had the agreement been entered into after that time, that section would have applied in relation to the provision or a requirement imposed pursuant to it. 5
- (9) After the end of the period of one year beginning with the date on which section 2 comes into force, the provision ceases to be binding on the tenant (but the agreement continues, so far as practicable, to have effect in every other respect). 10
- (10) If, after the end of the period of one year beginning with the date on which section 2 comes into force – 15
- (a) the letting agent accepts a payment from the tenant pursuant to the provision, and  
 (b) does not return the payment before the end of the period of 28 days beginning with the day on which it is accepted,  
 the letting agent is to be treated for the purposes of this Act as having required the tenant to make a prohibited payment of that amount at that time. 20
- (11) Schedule 2 (treatment of holding deposit) applies only in relation to a holding deposit paid after the coming into force of that Schedule.
- (12) The Secretary of State may by regulations made by statutory instrument make such other transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act. 25
- 29 Financial provisions**
- The following are to be paid out of money provided by Parliament –*
- (a) any expenditure incurred under or by virtue of this Act by the Secretary of State, and  
 (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided. 30
- 30 Crown application**
- (1) Sections 1 to 11, 15 to 17 and 28, Schedules 1 to 3 and any regulations made under section 3 or 9 bind the Crown in respect of a Crown tenancy. 35  
 This is subject to subsection (2).
- (2) In subsection (3) of section 8 as it applies by virtue of subsection (1), the reference to a person having committed an offence under section 12 is to be read as a reference to a person satisfying the conditions in subsection (1)(a) to (c) of that section. 40
- (3) In this section –
- (a) “Crown tenancy” means a tenancy of housing in England in which the interest of the landlord is a Crown interest;

- (b) “Crown interest” means a Crown interest within the meaning of section 44(3) of the Housing Act 1988 which is capable of granting an assured shorthold tenancy under that Act.

### 31 Extent

- (1) This Act extends to England and Wales only, subject to subsection (2). 5
- (2) The following provisions extend to England and Wales, Scotland and Northern Ireland –
- (a) section 6(6);
  - (b) section 7(4);
  - (c) section 24(10); 10
  - (d) section 28(12);
  - (e) section 29;
  - (f) this section;
  - (g) section 32;
  - (h) section 33. 15

### 32 Commencement

- (1) This Act comes into force on such day as the Secretary of State appoints by regulations made by statutory instrument, subject to subsection (3).
- (2) Regulations under subsection (1) may appoint different days for different purposes. 20
- (3) The following provisions come into force on the day on which this Act is passed –
- (a) section 3(2) to (7);
  - (b) section 9;
  - (c) section 22(4) and (5); 25
  - (d) section 26(1);
  - (e) section 28(12);
  - (f) section 29;
  - (g) section 31;
  - (h) this section; 30
  - (i) section 33.

### 33 Short title

This Act may be cited as the Tenant Fees Act 2018.

## SCHEDULES

## SCHEDULE 1

Section 3

## PERMITTED PAYMENTS

*Rent*

- |   |  |    |
|---|--|----|
| 1 | (1) A payment of rent under a tenancy is a permitted payment.  | 5  |
|   | (2) But, subject as follows, if the amount of rent payable in respect of any relevant period (“P1”) is more than the amount of rent payable in respect of any later relevant period (“P2”), the additional amount payable in respect of P1 is a prohibited payment.  |    |
|   | (3) Where there is more than one later relevant period in respect of which the amount of rent payable is lower than the amount of rent payable in respect of P1 –  | 10 |
|   | (a) if different amounts of rent are payable for different later relevant periods, P2 is the relevant period for which the lowest amount of rent is payable;   | 15 |
|   | (b) if the same amount of rent is payable for more than one later relevant periods, P2 is the first of those periods.  |    |
|   | (4) The following provisions apply for the purposes of determining –   |    |
|   | (a) whether the amount of rent payable in respect of a relevant period is more than the amount of rent payable in respect of a later relevant period, and  | 20 |
|   | (b) the difference between the amount of rent payable in respect of the earlier relevant period and that payable in respect of the later relevant period.  |    |
|   | (5) Where the later relevant period is a different length of time to the earlier relevant period, the amount of rent payable in respect of the later period is to be treated as the proportionate amount of rent that would be payable in respect of that period if it were the same length of time as the earlier period. | 25 |
|   | (6) There is to be left out of account any difference between the rent payable in respect of the earlier relevant period and the rent payable in respect of the later relevant period as a result of a variation of the rent payable in respect of the later period –  | 30 |
|   | (a) pursuant to a term in the tenancy agreement which enables the rent under the tenancy to be increased or reduced, according to the circumstances, or  | 35 |
|   | (b) by agreement between the landlord and the tenant after the tenancy agreement has been entered into.  |    |

- (7) In this paragraph “relevant period”, in relation to a tenancy, means any period of time in respect of which rent is payable under the tenancy.
- (8) But “relevant period” does not include a period of time which begins after the end of one year beginning with the first day of the tenancy.

*Tenancy deposit* 5

- 2 (1) A payment of a tenancy deposit is a permitted payment.
- (2) In this Act “tenancy deposit” means money intended to be held (by a landlord or otherwise) as security for –
- (a) the performance of any obligations of a tenant, or
  - (b) the discharge of any liability of a tenant, 10
- arising under or in connection with a tenancy.
- (3) But if the amount of the tenancy deposit exceeds the amount of six weeks’ rent, the amount of the excess is a prohibited payment.
- (4) In this paragraph –
- (a) “six weeks’ rent” means six times one week’s rent, and 15
  - (b) “one week’s rent” means the amount of the annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by 52.

*Holding deposit*

- 3 (1) A payment of a holding deposit is a permitted payment. 20
- (2) In this Act “holding deposit” means money which is paid by or on behalf of a tenant to a landlord or letting agent before the grant of a tenancy with the intention that it should be dealt with by the landlord or letting agent in accordance with Schedule 2 (treatment of holding deposit).
- (3) But if the amount of the holding deposit exceeds one week’s rent, the amount of the excess is a prohibited payment. 25
- (4) In this paragraph “one week’s rent” means the amount of the annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by 52.

*Payment in the event of a default* 30

- 4 (1) A payment that a tenant is required to make in the event of a default by the tenant is a permitted payment if the tenant is required by the tenancy agreement to make the payment in the event of such a default.
- (2) In this paragraph “default” means a failure by the tenant to –
- (a) perform an obligation, or 35
  - (b) discharge a liability,
- arising under or in connection with the tenancy.
- (3) But if the amount of the payment exceeds the loss suffered by the landlord as a result of the default, the amount of the excess is a prohibited payment.

*Payment on variation, assignment or novation of a tenancy*

- 5 (1) A payment is a permitted payment if it is a payment that a tenant is required to make –
- (a) to a landlord in consideration of the variation, assignment or novation of a tenancy at the tenant’s request, or 5
  - (b) to a letting agent in consideration of arranging the variation, assignment or novation of a tenancy at the tenant’s request.
- (2) But if the amount of the payment exceeds the greater of –
- (a) £50, or
  - (b) the reasonable costs of the person to whom the payment is to be made in respect of the variation, assignment or novation of the tenancy, 10
- the amount of the excess is a prohibited payment.

*Payment on termination of a tenancy*

- 6 (1) A payment is a permitted payment if it is a payment that a tenant is required to make to a landlord in consideration of the termination of a tenancy at the tenant’s request – 15
- (a) in the case of a fixed term tenancy, before the end of the term, or
  - (b) in the case of a periodic tenancy, without the tenant giving the period of notice required under the tenancy agreement or by virtue of any rule of law. 20
- (2) But if the amount of the payment exceeds the loss suffered by the landlord as a result of the termination of the tenancy, the amount of the excess is a prohibited payment.
- (3) A payment is a permitted payment if it is a payment that a tenant is required to make to a letting agent in consideration of arranging the termination of a tenancy at the tenant’s request – 25
- (a) in the case of a fixed term tenancy, before the end of the term, or
  - (b) in the case of a periodic tenancy, without the tenant giving the period of notice required under the tenancy agreement or by virtue of any rule of law. 30
- (4) But if the amount of the payment exceeds the reasonable costs of the letting agent in respect of the termination of the tenancy, the amount of the excess is a prohibited payment.
- (5) In this paragraph “fixed term tenancy” means any tenancy other than a periodic tenancy. 35

*Payment in respect of council tax*

- 7 (1) A payment that a tenant is required to make to a billing authority in respect of council tax is a permitted payment if the tenant is liable to make the payment by virtue of any of sections 6, 8 or 9 of the Local Government Finance Act 1992. 40
- (2) In this paragraph “billing authority” has the same meaning as in Part 1 of the Local Government Finance Act 1992 (see section 1(2) of that Act).

*Payment in respect of utilities etc*

- 8 (1) A payment that a tenant is required to make for or in connection with the provision of a utility is a permitted payment if the tenant is required by the tenancy agreement to make the payment.
- (2) A payment that a tenant is required to make towards energy efficiency improvements under a green deal plan (within the meaning of section 1 of the Energy Act 2011) is a permitted payment if the tenant is required by the tenancy agreement to make such a payment. 5
- (3) In this Act “utility” means –
- (a) electricity, gas or other fuel, or
  - (b) water or sewerage. 10

*Payment in respect of a television licence*

- 9 (1) A payment that a tenant is required to make to the British Broadcasting Corporation in respect of a television licence is a permitted payment if the tenant is required by the tenancy agreement to make the payment. 15
- (2) In this paragraph “television licence” means a licence for the purposes of section 363 of the Communications Act 2003.

*Payment in respect of communication services*

- 10 (1) A payment that a tenant is required to make for or in connection with the provision of a communication service is a permitted payment if the tenant is required by the tenancy agreement to make the payment. 20
- (2) But, in the case of a payment that a tenant is required to make to a landlord, if the amount of the payment exceeds the reasonable costs incurred by the landlord for or in connection with the provision of the service, the amount of the excess is a prohibited payment. 25
- (3) In this Act “communication service” means a service enabling any of the following to be used –
- (a) a telephone other than a mobile telephone;
  - (b) the internet;
  - (c) cable television;
  - (d) satellite television. 30

SCHEDULE 2

Section 5

TREATMENT OF HOLDING DEPOSIT

*Application*

- 1 This Schedule applies where a holding deposit is paid to a landlord or letting agent in respect of a proposed tenancy of housing in England. 35

### *Interpretation*

- 2 (1) In this Schedule, “the deadline for agreement” means the fifteenth day of the period beginning with the day on which the landlord or letting agent receives the holding deposit.
- (2) But the landlord or the letting agent may agree with the tenant in writing that a different day is to be the deadline for agreement for the purposes of this Schedule. 5

### *Requirement to repay holding deposit*

- 3 Subject as follows, the person who received the holding deposit must repay it if – 10
- (a) the landlord and the tenant enter into a tenancy agreement before the deadline for agreement,
  - (b) the landlord decides before the deadline for agreement not to enter into a tenancy agreement, or
  - (c) the landlord and the tenant fail to enter into a tenancy agreement before the deadline for agreement. 15
- 4 The deposit must be repaid within the period of 7 days beginning with –
- (a) where paragraph 3(a) applies, the date of the tenancy agreement,
  - (b) where paragraph 3(b) applies, the date on which the landlord decides not to enter into the tenancy agreement, or
  - (c) where paragraph 3(c) applies, the deadline for agreement. 20

### *Exceptions*

- 5 Paragraph 3(a) does not apply if or to the extent that the amount of the deposit is applied –
- (a) towards the first payment of rent under the tenancy, or
  - (b) towards the payment of the tenancy deposit in respect of the tenancy. 25
- 6 If all or part of the amount of the deposit is applied in accordance with paragraph 5(b), the amount applied is treated for the purposes of section 213 of the Housing Act 2004 (requirements in connection with deposits) as having been received by the landlord on the date of the tenancy agreement. 30
- 7 Paragraph 3(b) or (c) does not apply if –
- (a) the landlord is prohibited by section 22 of the Immigration Act 2014 (persons disqualified by immigration status) from granting a tenancy of the housing to the tenant,
  - (b) the landlord did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted, and
  - (c) if the landlord has instructed a letting agent in relation to the proposed tenancy, the letting agent did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted. 35
- 8 Paragraph 3(b) or (c) does not apply if the tenant provides false or misleading information to the landlord or letting agent and – 40

- (a) the landlord is reasonably entitled to take into account the difference between the information provided by the tenant and the correct information in deciding whether to grant a tenancy to the tenant, or
  - (b) the landlord is reasonably entitled to take the tenant’s action in providing incorrect or misleading information into account in deciding whether to grant such a tenancy. 5
- 9 Paragraph 3(c) does not apply if the tenant notifies the landlord or letting agent before the deadline for agreement that the tenant has decided not to enter into a tenancy agreement.
- 10 Paragraph 3(c) does not apply where the deposit is paid to the landlord if— 10
  - (a) the landlord takes all reasonable steps to enter into a tenancy agreement before the deadline for agreement, and
  - (b) if the landlord has instructed a letting agent in relation to the proposed tenancy, the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before that date, but 15
  - (c) the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.
- 11 Paragraph 3(c) does not apply where the deposit is paid to the letting agent if—
  - (a) the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before the deadline for agreement, and 20
  - (b) the landlord takes all reasonable steps to enter into a tenancy agreement before that date, but
  - (c) the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date. 25

SCHEDULE 3

Section 8

FINANCIAL PENALTIES ETC

*Interpretation*

- 1 (1) In this Schedule, references to a “financial penalty” include a reference to an amount which is required to be paid under section 10(2), (5) or (8) or 11(1). 30
- (2) In this Schedule, references to “imposing a financial penalty” include reference to requiring the payment of such an amount.
- (3) This paragraph does not apply to paragraph 6(6) or (7) (appeals), 7 (recovery of financial penalty), 10 or 11 (proceeds of financial penalties).

*Notice of intent*

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- 2 (1) This paragraph applies where an enforcement authority proposes to impose a financial penalty for a breach of section 1 (prohibitions applying to landlords) or 2 (prohibitions applying to letting agents) or Schedule 2 (treatment of holding deposit).
- (2) Before imposing the financial penalty, the enforcement authority must serve a notice on the landlord or letting agent of its proposal to do so (a “notice of intent”). 40

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- (3) The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the enforcement authority has sufficient evidence of the breach, subject to sub-paragraph (4).
- (4) If the breach is committed on that day, and the breach continues beyond the end of that day, the notice of intent may be served – 5
- (a) at any time when the breach is continuing, or
  - (b) within the period of 6 months beginning with the last day on which the breach occurs.
- (5) The notice of intent must set out – 10
- (a) the date on which the notice of intent is served,
  - (b) the amount of the proposed financial penalty,
  - (c) the reasons for proposing to impose the penalty, and
  - (d) information about the right to make representations under paragraph 3.
- Right to make representations* 15
- 3 A person who receives a notice of intent may, within the period of 28 days beginning with the day after the day on which the notice of intent was served, make written representations to the authority about the proposal to impose a financial penalty on that person.
- Final notice* 20
- 4 (1) After the end of the period mentioned in paragraph 3 the enforcement authority must –
- (a) decide whether to impose a financial penalty on the person, and
  - (b) if it decides to do so, decide the amount of the penalty.
- (2) If the enforcement authority decides to impose a financial penalty, it must serve a notice on the person (a “final notice”) imposing that penalty. 25
- (3) The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was served.
- (4) The final notice must set out – 30
- (a) the date on which the final notice is served,
  - (b) the amount of the financial penalty,
  - (c) the reasons for imposing the penalty,
  - (d) information about how to pay the penalty,
  - (e) the period for payment of the penalty,
  - (f) information about rights of appeal, and 35
  - (g) the consequences of failure to comply with the notice.
- Withdrawal or amendment of notice*
- 5 (1) The enforcement authority may at any time –
- (a) withdraw a notice of intent or final notice,
  - (b) reduce an amount specified in a notice of intent or final notice, or 40
  - (c) amend a notice of intent or final notice to remove the requirement to pay an amount which the authority required to be paid under section 10(2), (5) or (8) or 11(1).

- (2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person on whom the notice was served.

### *Appeals*

- 6 (1) A person on whom a final notice is served may appeal to the First-tier Tribunal against – 5
- (a) the decision to impose the penalty, or
  - (b) the amount of the penalty.
- (2) An appeal under this paragraph must be brought within the period of 28 days beginning with the day after that on which the final notice was served.
- (3) If an appeal is brought under this paragraph, the final notice is suspended until the appeal is finally determined, withdrawn or abandoned. 10
- (4) An appeal under this paragraph –
- (a) is to be a re-hearing of the authority’s decision, but
  - (b) may be determined having regard to matters of which the authority was unaware. 15
- (5) On an appeal under this paragraph the First-tier Tribunal may quash, confirm or vary the final notice.
- (6) The final notice may not be varied so as to make it impose a financial penalty of more than £5,000 unless section 8(3) applies.
- (7) If section 8(3) applies, the final notice may not be varied so as to make it impose a financial penalty of more than £30,000. 20

### *Recovery of financial penalty*

- 7 (1) This paragraph applies if a person who is liable to pay a financial penalty under section 8 does not pay the whole or any part of that financial penalty in accordance with the final notice imposing that penalty. 25
- (2) The enforcement authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.
- (3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is – 30
- (a) signed by the chief finance officer of the authority which imposed the penalty, and
  - (b) states that the amount due has not been received by a date specified in the certificate,
- is evidence of that fact. 35
- (4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.
- (5) In this paragraph, “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

*Recovery of prohibited payment etc*

- 8 (1) This paragraph applies if a person who is liable to pay an amount under section 10(2), (5) or (8) or section 11(1) does not pay the whole or any part of that amount in accordance with the final notice requiring payment of that amount. 5
- (2) The relevant person may recover that amount or part on the order of the county court as if it were payable under an order of that court.

*Assistance to recover prohibited payment etc*

- 9 (1) An enforcement authority may help a relevant person to make an application under paragraph 8(2). 10
- (2) An enforcement authority may, for example, help the relevant person to apply by conducting proceedings or by giving advice to the relevant person.

*Proceeds of financial penalties*

- 10 Where an enforcement authority imposes a financial penalty under this Act, it may apply the proceeds towards meeting the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions under this Act or otherwise in relation to the private rented sector. 15
- 11 Any proceeds of a financial penalty imposed under this Act which are not applied in accordance with paragraph 10 must be paid to the Secretary of State. 20
- 12 (1) In paragraph 10, “enforcement functions in relation to the private rented sector” means enforcement functions relating to—
- (a) residential premises in England that are let, or intended to be let, under a tenancy, 25
  - (b) the common parts of such premises,
  - (c) the activities of a landlord under a tenancy of residential premises in England,
  - (d) the activities of a person carrying on English letting agency work within the meaning of section 54 of the Housing and Planning Act 2016 in relation to such premises, or 30
  - (e) the activities of a person carrying on English property management work within the meaning of section 55 of the Housing and Planning Act 2016 in relation to such premises.
- (2) For the purposes of this paragraph “residential premises” has the meaning given by section 1 of the Housing Act 2004 except that it does not include social housing. 35
- (3) For the purposes of this paragraph, “tenancy” means—
- (a) a tenancy, whether or not the tenancy is an assured shorthold tenancy, or
  - (b) a licence to occupy. 40

# Tenant Fees Bill

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## B I L L

*Presented by Secretary James Brokenshire  
supported by the Prime Minister,  
Mr David Lidington, Secretary Sajid Javid,  
Secretary David Gauke, Secretary Greg Clark  
and Mrs Heather Wheeler.*

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