

TENANT FEES BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Tenant Fees Bill as brought from the House of Lords on 15 January 2019.
- 2 These Explanatory Notes have been prepared by the Ministry of Housing, Communities and Local Government in order to assist the reader of the Bill and the Lords Amendments, and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords Amendments themselves, refer to Bill 203, the Bill as first printed for the Commons.
- 4 These Explanatory Notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords Amendments.
- 5 In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.
- 6 Lords Amendments 1 to 60 were tabled in the name of the Minister. Lords Amendment 48 includes an amendment that was tabled by Lord Kennedy of Southwark and was supported by the Government. For this reason, an asterisk appears in the heading of the paragraph that deals with that amendment.

Commentary on Lords amendments

Lords Amendments to Clause 1: Prohibitions applying to landlords

Lords Amendment 1 and 2

- 7 Lords Amendments 1 and 2 would make it clear that where a person is acting on behalf of a tenant or guaranteeing a payment of rent, that person cannot be charged a payment in the event of a default by a landlord unless permitted by the Bill.

Lords Amendments 3 and 4

- 8 Lords Amendments 3 and 4 would exclude local housing authorities, the Greater London Authority or organisations acting on their behalf from the definition of relevant person under the Act. These Amendments would ensure that local housing authorities and the Greater London Authority can make payments in connection with a tenancy when acting on behalf of a tenant or guaranteeing their rent.

Lords Amendments to Clause 2: Prohibitions applying to letting agents

Lords Amendment 5

- 9 Lords Amendment 5 would clarify that letting agents are prohibited from requiring a tenant or other relevant person from entering into a contract with themselves connected with a tenancy of housing in England.

Lords Amendments 6 to 8

- 10 Lords Amendments 6 to 8 would make it clear that, where a person is acting on behalf of a tenant or guaranteeing a payment of rent, that person cannot be charged a payment in the event of a default by an agent unless permitted by the Bill.

Lords Amendments to Clause 4: Effect of a breach of section 1 or 2

Lords Amendments 9 to 12

- 11 Lords Amendments 9 to 12 would provide that a term of an agreement that breaches clause 1 or 2 would not bind a person who is acting on behalf of a tenant or guaranteeing a payment of rent.

Lords Amendments to Clause 8: Financial penalties

Lords Amendment 13

- 12 Lords Amendment 13 would clarify that an enforcement authority may not impose a financial penalty on an individual for a breach of paragraph 3 of Schedule 2 (Requirement to repay a holding deposit), rather than Schedule 2 more broadly, if the person failed to return the deposit because of an incorrect belief based on incorrect information provided by the Secretary of State that an immigration related prohibition under section 22 of the Immigration Act 2014 on granting the tenancy applied.

Lords Amendments to Clause 10: Recovery by enforcement authority of amount paid

Lords Amendment 14

- 13 Lords Amendment 14 would clarify that an enforcement authority may order a holding deposit to be repaid if a landlord or agent has breached paragraph 3 of Schedule 2 (Requirement to repay a holding deposit), rather than Schedule 2 more broadly, with regards to a landlord or agent failing to return the deposit because of an incorrect belief based on incorrect information provided by the Secretary of State that an immigration related prohibition under section 22 of the Immigration Act 2014 on granting the tenancy applied.

Lords Amendments to Clause 11: Interest on payments under section 10

Lords Amendments 15 to 18

- 14 Lords Amendment 15 to 18 would ensure that the language in clause 11 is consistent and that all references to the date from which interest is paid refer instead to the day from which interest is paid.

These Explanatory Notes relate to the Lords Amendments to the Tenant Fees Bill as brought from the House of Lords on 15 January 2019 [Bill 316]

Lords Amendments 19 and 20

- 15 Lords Amendment 19 and 20 would be consequential amendments to Lords Amendment 54, which would require the person who received a holding deposit, if they are retaining it, to provide reasons in writing within the relevant period in the meaning of Lords Amendment 54. Lords Amendments 19 and 20 would specify the day on which interest is to be payable where reasons have not been provided within the relevant period and the holding deposit needs to be repaid. This date would be specified as the day after the end of the relevant period within the meaning of Lords Amendment 54.

Lords Amendments to Clause 21: Enforcement of client money protection schemes for property agents

Lords Amendment 21

- 16 Lords Amendment 21 would amend section 134 of the Housing and Planning Act 2016 to provide that regulations under this clause may confer a discretion on the Secretary of State in connection with the approval or designation of a client money protection scheme, the conditions which must be complied with by the administrator of such a scheme, the amendment of such a scheme or the withdrawal of approval or revocation of designation of such a scheme. This amendment would not give the Secretary of State any additional powers but would provide clarification on those already in the Housing and Planning Act 2016.
- 17 Lords Amendment 21 might entail a slight increase in expenditure on the Secretary of State's functions in relation to client money protection given it confers additional functions on the Secretary of State. However, such costs are unlikely to be significant and are difficult to quantify.

Lords Amendment 22

- 18 Lords Amendment 22 would amend the Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018 (the Approval Regulations). Subsection 2 would clarify that the definition of client money does not include any money that has already been protected through a Government approved tenancy deposit scheme.
- 19 Subsection 3 would amend Regulation 4 (amendments to an approved scheme) to clarify that the consent of the Secretary of State would not be required if the amendment had been made by the scheme administrator in accordance with a notice served on the scheme administrator by the Secretary of State pursuant to Regulation 8.
- 20 Subsection 4 (a) to (c) would amend Regulation 5 (Conditions which must be satisfied before approval may be given) of the Approval Regulations to provide that client money protection schemes can allow limits per individual claimant and scheme aggregate limits up to such an amount as the Secretary of State considers appropriate, which would be intended to be no less than the scheme's maximum probable loss. It would also provide that client money protection schemes are not required to provide cover for risks that the Secretary of State consider it inappropriate for the scheme to insure against.
- 21 Subsection 4(d) would provide that for a transitional period of 12 months until 1 April 2020 property agents are permitted to join a scheme if they are making all efforts to apply for a client account with a bank or building society authorised by the Financial Conduct Authority but have not yet obtained one.
- 22 Subsection 5 would amend Regulation 8 of the Approval Regulations (conditions with which

scheme administrators must comply) to clarify that a certificate confirming a property agent's membership of the scheme must be provided as soon as reasonably practicable after that agent joins a scheme or after the scheme rules are amended. This certificate would include information on the individual claimant and scheme aggregate limits and details of where to find information on excluded risks.

- 23 Subsection 5 also provides that the Secretary of State may serve a notice on the scheme administrator requiring that person to amend the scheme rules to replace the limits per individual claimant or scheme aggregate limits with such an amount as the Secretary of State considers appropriate, or to amend the risks covered. Any such notice would need to be complied with within 30 days or such a longer period as the Secretary of State may specify.
- 24 Subsection 5(c) would provide that the scheme administrator must maintain insurance that covers any foreseeable liability and that is appropriate with regard to the size and number of scheme members and the amount of client money held by these members. It also clarifies that the Secretary of State must approve the renewal of the scheme's insurance to ensure continued compliance with the obligation to maintain cover which is appropriate.
- 25 Lords Amendment 22 might entail a slight increase in expenditure on the Secretary of State's functions in relation to client money protection given it confers additional functions on the Secretary of State. However, such costs are unlikely to be significant and are difficult to quantify.

Lords Amendments: New Clause 2: Client money protection schemes: requirement to belong to a scheme etc.

Lords Amendment 23

- 26 Lords Amendment 23 would amend the Client Money Protection Schemes for Property Agents (Requirement to belong to a Scheme) Regulations 2018. Subsection 2 would clarify that the definition of client money does not include any money that has already been protected through a Government approved tenancy deposit scheme.
- 27 Subsection 3 would provide that property agents will not be required to ensure that the membership of a client money protection scheme obtained results in a level of compensation being available which is no less than the maximum amount of client money that the agent may from time to time hold. Instead, property agents would be required to belong to an approved client money protection scheme, which under Lords Amendment 22, would need to hold a level of insurance that is proportionate to the risk of client money being lost.
- 28 Subsection 4 would clarify that the requirement on property agents to display a certificate with information about their client money protection scheme membership would only apply if the scheme administrator had provided such a certificate.

Lords Amendments to Clause 26: Interpretation

Lords Amendments 24 to 26

- 29 Lords Amendment 24 would exclude certain licences to occupy housing from the Bill. This amendment would define an excluded licence as one that is granted to the licensee by a licensor, who resides in the housing, where particular conditions surrounding the grant, renewal and continuation of that licence are met. These conditions would include a

requirement for a charity or a community interest company to give advice or assistance to the licensee or licensor in connection with the grant, renewal, or continuation of the license and where the only consideration provided by the licensee is companionship or companionship and care or assistance, together with one or more payments in respect of council tax or utilities for example.

30 Lords Amendments 25 and 26 would be consequential amendments to Lords Amendment 24.

Lords Amendments to Clause 27: Consequential amendments

Lords Amendment 27

31 Lords Amendment 27 would clarify that regulation 5(1) of the Client Money Protection Schemes for Property Agents (Requirement to belong to a Scheme etc.) Regulations 2018 and the transparency requirements under Regulation 4 of those regulations are subject to clause 24: Enforcement by the lead enforcement authority. It would also provide that enforcement authorities must have regard to any guidance given by the lead enforcement authority or the Secretary of State.

Lords Amendments to Clause 28: Transitional Provision

Lords Amendments 28 to 35

32 Lords Amendments 28 to 35 would replace the references to a tenant with references to a relevant person. This is to ensure that agreements between landlords or agents and a person acting on behalf of a tenant, or guaranteeing a payment of rent by a tenant, who has entered an agreement before the commencement of clauses 1 and 2 are also caught by clause 28.

Lords Amendments to Schedule 1: Permitted Payments

Lords Amendments 36 and 37

33 Lords Amendments 36 and 37 would provide that the maximum amount of tenancy deposit that could be requested for properties with an annual rent of less than £50,000 would be the equivalent of five weeks' rent. Where the annual rent in respect of the property is £50,000 or greater, the maximum amount of tenancy deposit that could be requested is the equivalent of six weeks' rent.

Lords Amendments 38 to 41

- 34 Lords Amendment 41 would provide that a payment of a holding deposit is not a permitted payment if -
- a. the landlord or agent has previously received a holding deposit for the same housing,
 - b. the landlord or agent has not repaid all or part of that earlier deposit, and
 - c. none of the exceptions in Schedule 2 have applied to permit the landlord or agent not to repay that earlier deposit.
- 35 Amendment 41 would also provide that it would not apply to a landlord or agent receiving a holding deposit before Schedule 2 comes into force.
- 36 Lords Amendments 38 to 40 are consequential amendments resulting from Lords Amendment 41.

Lords Amendments 42 to 47

- 37 Lords Amendment 45 would specify that a landlord or agent can only charge a tenant a payment in the event of a default in the circumstances of the loss of a key, a lost security device to give access to housing or for late payment of rent where that payment has been outstanding for 14 days or more. Lords Amendments 42 to 44 are consequential amendments to Lords Amendment 45.
- 38 Lords Amendment 46 would clarify that with respect to the charging of a payment in the event of a default to cover the costs associated with replacing a lost key or other security device to give access to housing, any such charge must not exceed the landlord or agent's reasonable costs and must be evidenced in writing to the person who is liable for the payment.
- 39 Lords Amendment 47 would specify that in the case of a payment in the event of a default for late payment of rent, landlords and agents would be able to charge interest at no more than an annual percentage rate of 3% above the Bank of England's base rate for each day that the payment is outstanding. Lords Amendment 47 would also specify that a landlord and agent cannot both require a tenant to pay a payment in the event of a default for late payment of rent.

Lords Amendment 48*

- 40 Lords Amendment 48 would clarify that the Bill does not impact on a landlord or agent's right to recover damages for breach of contract of a tenancy agreement or agreement with the agent. This amendment includes an amendment tabled by Lord Kennedy of Southwark to remove the subheading of 'Payment of damages'.

Lords Amendment 49

- 41 Lords Amendment 49 would clarify that the definition of a television licence in paragraph 9(2) of Schedule 1 applies to the entire Bill.

Lords Amendments to Schedule 2: Permitted Payments

Lords Amendments 50 to 53

- 42 Lords Amendment 50 would ensure that a tenant always receives their holding deposit back when a tenancy agreement is entered into.
- 43 Lords Amendments 51 to 53 are consequential amendments to Lords Amendment 50.

Lords Amendments 54

- 44 Lords Amendment 54 would require the person who received a holding deposit to refund it if they do not provide reasons in writing to the person who paid the deposit within the relevant period as to why the deposit is being retained.
- 45 The relevant period to provide reasons within would be:
 - a. where the landlord decides not to enter into a tenancy agreement 7 days beginning with the date on which the landlord decides not to do so; or
 - b. if the landlord and tenant fail to enter into a tenancy agreement 7 days beginning with the deadline for agreement.

Lords Amendment 55

- 46 Lords Amendment 55 would correct a reference to 'incorrect and misleading' to 'false and misleading' to align with other references in Schedule 2.

Lords Amendments 56 to 59

- 47 Lords Amendment 59 would clarify that a holding deposit must be refunded if the landlord or agent imposes a requirement on the tenant or relevant person that breaches the ban on letting fees as set out under clauses 1 and 2. Lords Amendment 59 would also clarify that a holding deposit must be refunded if the landlord or agent behaves in an unreasonable way such that it would be unreasonable to expect the tenant to enter the tenancy.
- 48 Lords Amendments 56 to 58 are consequential amendments to Lords Amendment 59.

Lords Amendment to the Title

Lords Amendment 60

- 49 Lords Amendment 60 would amend the title. This would reflect that the Bill not only amends the provisions of the Housing and Planning Act 2016 about client money protection schemes but makes further provisions about client money protection schemes.

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