

Tenant Fees Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

[Amendments marked ★ are new or have been altered]

Amendment
No.

Clause 5

BARONESS GRENDER
BARONESS THORNHILL
LORD KENNEDY OF SOUTHWARK

1 Page 4, line 32, at end insert –

- “(2) The Secretary of State must by regulations made by statutory instrument make further provision as to the procedure to be followed by a landlord or letting agent when receiving a holding deposit, which shall include a requirement to provide notification to the relevant person in a prescribed form concerning the treatment of the holding deposit.
- (3) Regulations under paragraph (2) must also make provision as to the procedure to be followed by a landlord or letting agent in relation to a decision not to repay a holding deposit on one of the grounds specified in paragraphs 7 to 11 of Schedule 2, which shall include a requirement to give notice in a prescribed form within a specified period, accompanied by evidence of the relevant ground.
- (4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

After Clause 5

LORD KENNEDY OF SOUTHWARK

2 Insert the following new Clause –

“Transferable deposits

The Secretary of State may by regulations made by statutory instrument amend paragraph 2 of Schedule 1 to make provision which enables a relevant person, at the conclusion of a tenancy, to transfer all or part of a tenancy deposit from the landlord or agent with whom that tenancy was held to a second landlord or agent.”

After Clause 5 - continued

3 Insert the following new Clause –

“Duty to provide tenants and prospective tenants with information

- (1) Within one month of this Act being passed the Secretary of State must –
 - (a) prepare guidance to assist tenants and prospective tenants to understand the effect of this Act, and
 - (b) publish the information on a website maintained on their behalf.
- (2) The Secretary of State must take all reasonable steps to provide a copy of the information to any bodies appearing to the Secretary of State to represent the interests of –
 - (a) landlords and letting agents in England;
 - (b) tenants in England;
 - (c) local housing authorities;and other bodies the Secretary of State considers appropriate.
- (3) The information must, in particular, include the following –
 - (a) the date on which the provisions in this Act come into effect in England;
 - (b) information about prohibited payments under the Act;
 - (c) information about permitted payments under the Act;
 - (d) information about where tenants can access help and advice about the Act;and any other information that the Secretary of State deems would assist tenants and prospective tenants to understand the effect of this Act.
- (4) Every landlord and letting agent must –
 - (a) provide all tenants and prospective tenants with information about the provisions in the Act relevant to them (which must, in particular, include the information mentioned in subsection (3)(a) and (b)),
 - (b) publish such of the information as it considers to be relevant to its tenants and prospective tenants on its website (which must, in particular, include the information mentioned in subsection (3)(a) and (b)).
- (5) Subsection (4) applies from the day on which this Act comes into force.
- (6) In making arrangements for the purposes of providing information under subsection (4) a landlord or prospective landlord must –
 - (a) have regard to the likely needs and characteristics, in respect of the provision of information, of persons to whom the information in question is to be provided, and
 - (b) consider whether, having regard to those needs and characteristics, it is appropriate to provide any of the information to any of those persons otherwise than in the way in which it would normally be provided.”

After Clause 7

LORD KENNEDY OF SOUTHWARK

4 Insert the following new Clause –

“Enforcement costs

- (1) The Secretary of State shall reimburse –
 - (a) a lead enforcement authority, where this is not the Secretary of State, for any additional costs incurred by the authority in the exercise of its duties under section 23 or section 24 of this Act, and
 - (b) an enforcement authority for any additional costs incurred by that authority in the exercise of its duties under section 1 or section 2 of, and Schedule 2 to, this Act.
- (2) In this section “additional costs incurred” means costs incurred minus funding received by an enforcement authority from –
 - (a) fines; and
 - (b) the Secretary of State.”

5 Insert the following new Clause –

“Report on enforcement resources

- (1) Within 12 months of the provisions in this Act coming into force, the Secretary of State must make an assessment of the resources available to –
 - (a) enforcement authorities; and
 - (b) the lead enforcement authority.
- (2) The report must consider in particular –
 - (a) the resources allocated or planned to be allocated towards enforcing the provisions in the Act,
 - (b) the potential impact of any change in resources so allocated or planned to be allocated, and
 - (c) the impact on other enforcement activities of the resources so allocated or planned to be allocated.
- (3) The Secretary of State must lay a report of the assessment under this section before each House of Parliament as soon as practicable after its completion.”

Clause 8

BARONESS GRENDER
BARONESS THORNHILL

6★ Page 6, line 11, at end insert “, or

- “(d) the relevant person has made an application to the First-tier Tribunal under section 15 (recovery by relevant person of amount paid) and has recovered all or part of the amount or (as the case may be) the aggregate amount referred to in that section.”

Clause 15

LORD KENNEDY OF SOUTHWARK

- 7 Page 11, line 34, leave out “all or any part of” and insert “a sum of money not more than three times”

Clause 17

LORD KENNEDY OF SOUTHWARK

- 8 Page 12, line 38, at end insert –
- “() No section 21 notice may be given in relation to the tenancy until the end of a period six months from –
- (a) the day after the day on which the final notice in respect of the penalty for the breach was served; or
 - (b) the day after the day on which any appeal against the final notice is determined or withdrawn.”

Clause 21

BARONESS HAYTER OF KENTISH TOWN

Baroness Hayter of Kentish Town gives notice of her intention to oppose the Question that Clause 21 stand part of the Bill.

Clause 23

LORD SHIPLEY

- 9 Page 15, line 22, leave out subsection (2) and insert –
- “(2A) If the lead enforcement authority is the Secretary of State, it is the duty of the lead enforcement authority to issue guidance, in the form of regulations made by statutory instrument, to enforcement authorities about the exercise of their functions under this Act.
- (2B) If subsection (2A) does not apply, it is the duty of the lead enforcement authority to draft guidance to enforcement authorities about the exercise of their functions under this Act, which the Secretary of State must lay before Parliament in the form of regulations made by statutory instrument.
- (2C) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

LORD KENNEDY OF SOUTHWARK

- 10 Page 15, line 23, at end insert –
- “(2A) The guidance under subsection (2) must be contained within regulations made by statutory instrument.
- (2B) A statutory instrument containing regulations under subsection (2A) is subject to annulment in pursuance of a resolution of either House of Parliament.”

After Clause 24

LORD KENNEDY OF SOUTHWARK

11 Insert the following new Clause –**“Report on operation of Tenant Fees Act**

- (1) The Secretary of State shall within a period of 12 months from the date of commencement of this Act and annually for the four years thereafter lay before Parliament a report on the operation of this Act, setting out –
 - (a) the number of breaches of sections 1 and 2;
 - (b) the number and amounts of financial penalties levied by enforcement authorities; and
 - (c) the number of criminal prosecutions commenced and concluded in each 12-month period.
- (2) The report must also consider the impact of the provisions of this Act on the private rental sector including –
 - (a) market competitiveness,
 - (b) market transparency, and
 - (c) vulnerable tenants, in particular in relation to how local authorities are able to discharge their duties to prevent homelessness.”

Clause 25BARONESS BARRAN
LORD KENNEDY OF SOUTHWARK**12★** Page 17, line 12, at end insert –

- “(3A) A person is not a letting agent for the purposes of this Act if –
- (a) that person only accepts instructions from a landlord who occupies the housing as their only or principal home; and
 - (b) the tenant pays no rent or occupation charge to the landlord save that the tenant pays a contribution to the utility costs of the housing; and
 - (c) the landlord receives no rent or payment related to the letting from the letting agent or any other party; and
 - (d) the purpose of the letting is to promote the landlord’s well-being.
- (3B) In subsection (3A) –
- (a) “only or principal home” has the same meaning as in section 1 of the Housing Act 1988;
 - (b) “utility costs” includes the residential costs of gas, electricity, water, telecommunications and internet;
 - (c) “well-being” has the same meaning as in section 1(2) of the Care Act 2014.”

Clause 28

LORD KENNEDY OF SOUTHWARK

13 Page 20, line 33, leave out “one year” and insert “six months”

Clause 32

LORD KENNEDY OF SOUTHWARK

- 14 Page 22, line 17, leave out from “force” to end of line 31 and insert “on the day on which it is passed.”

Schedule 1

LORD SHIPLEY

BARONESS THORNHILL

LORD KENNEDY OF SOUTHWARK

- 15 Page 24, line 12, leave out “six” and insert “four”
- 16 Page 24, line 15, leave out paragraph (a) and insert –
“(a) “four weeks’ rent” means four times one week’s rent, and”

BARONESS GRENDER

BARONESS THORNHILL

- 17★ Page 24, line 24, at end insert –
“() But a payment in accordance with this paragraph, which relates to housing for which the landlord or letting agent already holds a holding deposit and for which the deadline for agreement as defined in Schedule 2 has not yet passed, is a prohibited payment.”

LORD SHIPLEY

BARONESS THORNHILL

- 18 Page 24, line 25, leave out sub-paragraphs (3) and (4) and insert –
“(3) But if the amount of the holding deposit exceeds three days’ rent, the amount of the excess is a prohibited payment.
(4) In this paragraph “three days’ rent” means the amount of the annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by 365, and then multiplied by three.”

LORD KENNEDY OF SOUTHWARK

- 19 Page 24, line 25, leave out “one week’s” and insert “three days”
- 20 Page 24, line 27, leave out sub-paragraph (4) and insert –
“(4) In this paragraph, “three days’ rent” means the amount of annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by 356 and multiplied by three.”
- 21 Page 24, line 29, at end insert –
“() Sub-paragraph (1) does not apply if the landlord or letting agent has not provided the relevant person with a draft tenancy agreement.”

Schedule 1 - continued

22 Page 24, line 29, at end insert—

“() Sub-paragraph (1) does not apply if a landlord or letting agent previously accepted a holding deposit in relation to a property and it has not been repaid to the relevant person in accordance with paragraph 4 of Schedule 2.”

BARONESS GRENDER
 BARONESS THORNHILL
 LORD KENNEDY OF SOUTHWARK

23 Page 24, line 30, leave out paragraph 4

BARONESS GRENDER
 BARONESS THORNHILL

24 Page 24, line 30, leave out paragraph 4 and insert—

“Certain default payments

- 4 (1) A payment that a tenant is required to make to cover a landlord’s or agent’s reasonable loss arising from a breach of a fair condition of the tenancy agreement by the tenant is a permitted payment.
- (2) In this paragraph a “fair condition” is one that relates to—
 - (a) the replacement cost of a lost key or security device, or
 - (b) payment of the amount of late rent payments arising under or in connection with the tenancy and interest relating to those payments.
- (3) Paragraph 4(2)(a) does not apply if the condition in the tenancy agreement prescribes a fixed fee to be paid for each breach of this term.
- (4) Paragraph 4(2)(b) does not apply if—
 - (a) the payment required pertains to rent that was paid within 14 days of the date due under the tenancy agreement, or
 - (b) the rate of interest on the rent from the day the rent was due to the day it was paid exceeds the Bank of England base rate.
- (5) This does not interfere with a landlord’s right to claim damages under common law.”

LORD KENNEDY OF SOUTHWARK

25 Page 24, line 30, leave out paragraph 4 and insert—

- “4 (1) Subject to sub-paragraphs (3), (4) and (5), 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
 - (b) discharge a liability,
- arising under or in connection with the tenancy.

Schedule 1 - continued

- (3) But if the amount of the payment exceeds the reasonable and proportionate value of the loss suffered by the landlord or letting agent as a result of the default, the amount of the excess is a prohibited payment.
- (4) The Secretary of State must by regulations made by statutory instrument specify the circumstances in which a payment is to be considered a permitted payment in the event of a default within the meaning of sub-paragraph (1).
- (5) Regulations under sub-paragraph (4) must also make provision as to the procedure to be followed by a landlord or letting agent in seeking to recover a payment under this paragraph, which may include a requirement to give notice of proposed recovery in a prescribed form accompanied by evidence of the loss sustained by reason of the relevant default.”

26 Page 25, line 1, at end insert –

- “() Payment under sub-paragraph (1) may not include payment for relating to the costs of communication with the tenant from the letting agent or the landlord in relation to a payment in the event of default.”

BARONESS GRENDER
BARONESS THORNHILL

27★ Page 25, line 8, leave out from “exceeds” to the end of line 13 and insert “£50, the amount of the excess is a prohibited payment.”

LORD KENNEDY OF SOUTHWARK

28★ Page 25, line 13, at end insert –

- “() Sub-paragraph (1) does not apply to a variation of a tenancy agreement in respect of a change of tenant.”

BARONESS GRENDER
BARONESS THORNHILL
LORD KENNEDY OF SOUTHWARK

29★ Page 25, line 20, at end insert –

- “() But if the landlord does not deal reasonably with any request for an early exit, including taking reasonable steps to re-let the property, then the payment shall be a prohibited payment.”

30★ Page 25, line 22, leave out “as a result of the termination of the tenancy” and insert “during the period that would reasonably be required to find a new tenant”

LORD KENNEDY OF SOUTHWARK

31 Page 26, line 3, at end insert –

- “() In the case of a payment to a landlord, such a payment is a permitted payment only if the landlord is required by the tenancy agreement to review the contract or contracts annually and make arrangements to switch tariffs or suppliers if this would be beneficial to the tenant.”

Schedule 1 - continued

- 32★** Page 26, line 3, at end insert—
 “() But, in the case of a payment 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.”

Schedule 2

LORD KENNEDY OF SOUTHWARK

- 33** Page 27, line 27, leave out paragraph 7
- 34★** Page 27, line 38, after “tenant” insert “knowingly”
- 35** Page 28, line 1, leave out paragraph 9
- 36** Page 28, line 19, at end insert—
 “ Where paragraph 3(b) or (c) does not apply, the landlord or agent must set out the specific reasons for the exception in written correspondence to the tenant which must include—
 (a) the relevant paragraph under which the requirement to repay the holding deposit does not apply;
 (b) any information provided by the tenant that the landlord or letting agent believe to be false or misleading;
 (c) information about where the tenant can obtain the Government’s guidance to check if the decision is fair; and
 (d) information about how the tenant can challenge the decision.”

BARONESS GRENDER
 BARONESS THORNHILL

- 37★** Page 28, line 19, at end insert—
 “ In Paragraphs 10(a), 10(b), 11(a) and 11(b) of this Schedule, “all reasonable steps” includes but is not limited to providing the tenant, upon receipt of the holding deposit, with a draft tenancy agreement that contains no unfair terms as defined in the Consumer Rights Act 2015.”

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1 November 2018
