

Tenant Fees Bill

AMENDMENTS
TO BE MOVED
ON REPORT

Clause 21

LORD BOURNE OF ABERYSTWYTH

Page 14, line 24, leave out from beginning to “subsection” in line 26 and insert –

“The Housing and Planning Act 2016 is amended as follows.

- () In section 134 (client money protection schemes: approval or designation), after subsection (2) insert –
 - “(3) Regulations under this section may confer a discretion on the Secretary of State in connection with –
 - (a) the approval or designation of a client money protection scheme,
 - (b) conditions which must be complied with by the administrator of such a scheme,
 - (c) the amendment of such a scheme, or
 - (d) the withdrawal of approval or revocation of designation of such a scheme.”
- () In section 135 (enforcement of client money protection scheme regulations) –
 - (a) in”

After Clause 21

LORD BOURNE OF ABERYSTWYTH

Insert the following new Clause –

“Client money protection schemes: approval and designation

- (1) The Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018 (S.I. 2018/751) are amended as follows.
- (2) In regulation 2 (interpretation), in the definition of “client money” –
 - (a) in paragraph (a), for “agency”, in the second place it occurs, substitute “management”, and
 - (b) at the end of paragraph (b) insert “,

After Clause 21 - continued

but does not include money held in accordance with an authorised tenancy deposit scheme within the meaning of Chapter 4 of Part 6 of the Housing Act 2004 (see section 212 of that Act);”.

- (3) In regulation 4 (amendments to an approved scheme), after paragraph (3), insert—
- “(4) This regulation does not apply to an amendment made in accordance with a notice served under regulation 8(1D)(b).”
- (4) In regulation 5 (conditions which must be satisfied before approval may be given)—
- (a) in paragraph (1)(a)(iii), for “and without any deduction” substitute “, subject to paragraph (1A)”,
- (b) in paragraph (1)(c)(i), for “administration of the scheme” substitute “failure of scheme members to account for client money to persons entitled to that money”,
- (c) after paragraph (1) insert—
- “(1A) The Secretary of State may determine that the condition in paragraph (1)(a)(iii) is satisfied where the rules of the scheme have the effect that the scheme administrator is required to make good M’s liability—
- (a) only up to such amount as the Secretary of State considers appropriate,
- (b) only if or to the extent that M’s liability can be made good without exceeding such aggregate limit on the liability of the scheme as a whole as the Secretary of State considers appropriate, or
- (c) only if M’s liability arises in relation to a risk that the Secretary of State considers it is appropriate for the scheme to insure against.”, and
- (d) after paragraph (2) insert—
- “(2A) The rules of the scheme are to be treated as complying with paragraph (2)(f) if they provide that, until 1 April 2020, they have effect as if they required scheme members to make all reasonable efforts to hold client money in a client money account with a bank or building society authorised by the Financial Conduct Authority.”
- (5) In regulation 8 (conditions with which scheme administrators must comply)—
- (a) in paragraph (1), after “practicable” insert “—
- (a) after that member joins the scheme, and
- (b) after the scheme rules are amended under paragraph (1D)(a) or in accordance with a notice served under paragraph (1D)(b).”,
- (b) after paragraph (1) insert—
- “(1A) Paragraphs (1B) to (1E) apply if the rules of the scheme have the effect of requiring the scheme administrator to make good the liability of a scheme member—
- (a) only up to a certain amount,

After Clause 21 - continued

- (b) only within an aggregate limit on the liability of the scheme as a whole, or
 - (c) only in relation to certain risks.
- (1B) The certificate provided under paragraph (1) must include—
- (a) information about the amount referred to in paragraph (1A)(a),
 - (b) information about the limit referred to in paragraph (1A)(b), or
 - (c) details of where to find information about the risks referred to in paragraph (1A)(c),
- as the case may be.
- (1C) Paragraphs (1D) and (1E) apply if the Secretary of State considers that—
- (a) the amount referred to in paragraph (1A)(a) is no longer appropriate,
 - (b) the limit referred to in paragraph (1A)(b) is no longer appropriate,
 - (c) it is no longer appropriate for the rules of the scheme to exclude liability in relation to one or more of the risks referred to in paragraph (1A)(c), or
 - (d) it is appropriate for the rules of the scheme to exclude liability in relation to one or more risks that are not among the risks referred to in paragraph (1A)(c).
- (1D) The Secretary of State may—
- (a) where the Secretary of State is the scheme administrator, amend the scheme rules with the effect that the amount, the limit or the risks are replaced with such different amount, limit or risks (as the case may be) as the Secretary of State considers appropriate;
 - (b) in any other case, serve a notice on the scheme administrator requiring that person to amend the scheme rules with the effect that the amount, the limit or the risks are replaced with such different amount, limit or risks (as the case may be) as the Secretary of State considers appropriate.
- (1E) The scheme administrator must comply with a notice served under paragraph (1D)(b)—
- (a) within the period of 30 days beginning with the day on which the notice is served, or
 - (b) within such longer period beginning with that day as the Secretary of State may specify in the notice.”,
- (c) after paragraph (3) insert—
- “(3A) The scheme administrator must maintain insurance that—
- (a) covers any foreseeable liability which may arise in connection with the failure of scheme members to account for client money to persons entitled to that money, and
 - (b) is appropriate with regard to the size and number of scheme members and the amount of client money held by scheme members.

After Clause 21 - continued

- (3B) Before renewing the scheme’s insurance, the scheme administrator must obtain the approval of the Secretary of State to the type and amount of insurance.
- (3C) The Secretary of State may approve the renewal of the scheme’s insurance only if the Secretary of State is satisfied that, if the insurance is renewed as proposed, the scheme administrator will continue to comply with paragraph (3A).”,
- (d) in paragraph (5), at the end of sub-paragraph (a) for “; and” substitute “,
 - (aa) where paragraph (1B) applies –
 - (i) information about the amount referred to in paragraph (1A)(a),
 - (ii) information about the limit referred to in paragraph (1A)(b), or
 - (iii) information about the risks referred to in paragraph (1A)(c),
 as the case may be, and”, and
- (e) after paragraph (6) insert –
 - “(7) In this regulation, references to renewing a scheme’s insurance (however expressed) include obtaining new insurance.
 - (8) Paragraphs (2), (3B), (3C) and (4) do not apply where the Secretary of State is the scheme administrator.”
- (6) The amendments made by this section are without prejudice to any power to make an order or regulations amending or revoking the regulations mentioned in subsection (1).”

Insert the following new Clause –

“Client money protection schemes: requirement to belong to a scheme etc

- (1) The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 are amended as follows.
- (2) In regulation 2 (interpretation) –
 - (a) in the definition of “client money” –
 - (i) in paragraph (a), for “agency”, in the second place it occurs, substitute “management”, and
 - (ii) at the end of paragraph (b), for “; and” substitute “, but does not include money held in accordance with an authorised tenancy deposit scheme within the meaning of Chapter 4 of Part 6 of the Housing Act 2004 (see section 212 of that Act);”, and
 - (b) at the end of the definition of “regulated property agent”, insert “; “scheme administrator” has the same meaning as in the scheme approval regulations (see regulation 2 of those regulations); and “scheme approval regulations” means the Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018.”
- (3) In regulation 3 (requirement to belong to a client money protection scheme), omit paragraph (2).

After Clause 21 - continued

- (4) In regulation 4 (transparency requirements) –
- (a) before paragraph (1) insert –
 - “(A1) Paragraph (1) applies if the scheme administrator of an approved or designated client money protection scheme provides a certificate under regulation 8(1) of the scheme approval regulations to a regulated property agent.”, and
 - (b) in paragraph (1) –
 - (i) in the words before sub-paragraph (a), for “A” substitute “The”, and
 - (ii) omit sub-paragraph (a).
- (5) The amendments made by this section are without prejudice to any power to make an order or regulations amending or revoking the regulations mentioned in subsection (1).”

Clause 27

LORD BOURNE OF ABERYSTWYTH

Page 20, line 6, at end insert –

- “(6) In regulation 5 of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 (enforcement) –
- (a) in paragraph (1) omit “, subject to regulation 8(3)”,
 - (b) after that paragraph insert –
 - “(1A) Paragraph (1) is subject to –
 - (a) regulation 8(3), and
 - (b) section 24 of the Tenant Fees Act 2018.”, and
 - (c) in paragraph (3), after “the Secretary of State” insert “or the lead enforcement authority (if not the Secretary of State)”.
- (7) The amendments made by subsection (6) are without prejudice to any power to make an order or regulations amending or revoking the regulations mentioned in that subsection.”

Schedule 2

LORD BOURNE OF ABERYSTWYTH

Page 28, line 1, at beginning insert “Subject to paragraph 12,”

Page 28, line 4, at beginning insert “Subject to paragraph 12,”

Page 28, line 12, at beginning insert “Subject to paragraph 12,”

Page 28, line 19, at end insert –

- “12 Paragraph 9, 10 or 11 does not apply (so that paragraph 3(c) does apply) if, before the deadline for agreement –

Schedule 2 - *continued*

- (a) the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy breaches section 1 or 2 by imposing a requirement under that section on the tenant or a person who is a relevant person in relation to the tenant, or
- (b) the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy behaves towards the tenant, or a person who is a relevant person in relation to the tenant, in such a way that it would be unreasonable to expect the tenant to enter into a tenancy agreement with the landlord.”

In the Title

LORD BOURNE OF ABERYSTWYTH

Line 6, leave out from “agents” to end of line 6 and insert “; to make provision”

Tenant Fees Bill

AMENDMENTS
TO BE MOVED
ON REPORT

5 December 2018
