

Tenant Fees Bill

RUNNING LIST OF ALL AMENDMENTS ON REPORT

Tabled up to and including

6 December 2018

[Sheets HL Bill 129 – R(a) to (e)]

Clause 1

LORD BOURNE OF ABERYSTWYTH

Page 2, line 10, leave out “the person” and insert “a relevant person”

Page 2, line 19, leave out “the person” and insert “a relevant person”

Page 2, line 38, at beginning insert “subject to subsection (10),”

Page 2, line 39, at end insert –

“(10) The reference in subsection (9)(b) to a person does not include –

- (a) a local housing authority within the meaning of the Housing Act 1985 (see section 1 of that Act),
- (b) the Greater London Authority, or
- (c) a person acting on behalf of an authority within paragraph (a) or the Greater London Authority.”

Clause 2

LORD BOURNE OF ABERYSTWYTH

Page 2, line 46, at end insert “the agent or”

Page 3, line 14, leave out “the person” and insert “a relevant person”

Page 3, line 20, leave out “the person” and insert “a relevant person”

Page 3, line 23, leave out “person’s”

Clause 4

LORD BOURNE OF ABERYSTWYTH

Page 4, line 21, leave out “the tenant” and insert “a relevant person”

Page 4, line 23, leave out “tenant” and insert “relevant person”

Page 4, line 24, leave out “the tenant” and insert “a relevant person”

Page 4, line 25, leave out “tenant” and insert “relevant person”

After Clause 5

LORD KENNEDY OF SOUTHWARK

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.”

Clause 8

LORD BOURNE OF ABERYSTWYTH

Page 6, line 13, after “of” insert “paragraph 3 of”

Clause 10

LORD BOURNE OF ABERYSTWYTH

Page 7, line 33, after “breaching” insert “paragraph 3 of”

Clause 11

LORD BOURNE OF ABERYSTWYTH

Page 8, line 13, leave out “date” and insert “day”

Page 8, line 14, leave out “date” and insert “day”

Page 8, line 17, leave out “date” and insert “day”

Page 8, line 18, leave out “date” and insert “day”

Clause 17

LORD KENNEDY OF SOUTHWARK

Re-tabled version of the amendment printed on sheet HL Bill 129 – R(a)

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 of 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 was rejected or withdrawn.”

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 “, 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 –

After Clause 21 - continued

- “(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,
 - (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),

After Clause 21 - continued

- (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.
- (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).”

After Clause 21 - continued

- (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).
- (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) –

After Clause 21 - continued

- (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 23

LORD KENNEDY OF SOUTHWARK

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.”

Clause 26

LORD BOURNE OF ABERYSTWYTH

Page 17, line 27, at end insert –

““excluded licence” means a licence which is granted to a licensee by a licensor who resides in the housing where –

- (a) a charity or community interest company gives advice or assistance to the licensee or the licensor in connection with the grant, renewal or continuation of the licence, and
- (b) the only consideration for the grant, renewal or continuation of the licence is –
 - (i) the provision by the licensee of companionship to the licensor, or such provision together with the provision by the licensee of care or assistance (other than financial assistance) to the licensor, or
 - (ii) provision of the kind referred to in sub-paragraph (i) together with one or more payments in respect of council tax, a utility, a communication service or a television licence;”

Page 17, line 42, at end insert “unless it is an excluded licence”

Page 18, line 18, at end insert –

““television licence” has the meaning given by paragraph 9(2) of Schedule 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.”

Clause 28

LORD BOURNE OF ABERYSTWYTH

Page 20, line 30, after “tenant” insert “or a relevant person in relation to the tenant”

LORD KENNEDY OF SOUTHWARK

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

LORD BOURNE OF ABERYSTWYTH

Page 20, line 35, leave out “the tenant” and insert “a relevant person”

Page 20, line 41, leave out “tenant” and insert “relevant person”

Page 21, line 2, leave out “tenant” and insert “relevant person”

Page 21, line 5, leave out “tenant” and insert “relevant person”

Page 21, line 10, leave out “tenant” and insert “relevant person”

Page 21, line 15, leave out “tenant” and insert “relevant person”

Page 21, line 20, leave out “tenant” and insert “relevant person”

Schedule 1

LORD BOURNE OF ABERYSTWYTH
LORD SHIPLEY

- Page 24, line 12, leave out “the amount of six weeks’ rent,” and insert “—
- (a) the amount of five weeks’ rent, where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is less than £50,000, or
 - (b) the amount of six weeks’ rent, where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is £50,000 or more,”

LORD KENNEDY OF SOUTHWARK

- Page 24, line 12, leave out “the amount of six weeks’ rent,” and insert “—
- “(a) the amount of five weeks’ rent where—
 - (i) the annual rent in respect of the tenancy immediately after its grant, renewal, or continuance is less than £50,000, or
 - (ii) the tenancy relates to a house in multiple occupation where at least five tenants live, or
 - (b) the amount of six weeks’ rent in any other case,”

Page 24, line 12, leave out “six” and insert “five”

LORD BOURNE OF ABERYSTWYTH
LORD SHIPLEY

- Page 24, line 14, at end insert—
- “() “five weeks’ rent” means five times one week’s rent,”

LORD KENNEDY OF SOUTHWARK

- Page 24, line 15, leave out paragraph (a) and insert—
- “(a) “five weeks’ rent” means five times one week’s rent, and”

LORD BOURNE OF ABERYSTWYTH

Page 24, line 20, leave out “A” and insert “Subject to sub-paragraphs (3) to (6), a”

LORD KENNEDY OF SOUTHWARK

- 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 BOURNE OF ABERYSTWYTH

Page 24, line 25, leave out “But if” and insert “If”

Page 24, line 27, leave out “this paragraph” and insert “sub-paragraph (3)”

Schedule 1 - continuedLORD BOURNE OF ABERYSTWYTH
BARONESS THORNHILL

Page 24, line 29, at end insert –

- “(5) A payment of a holding deposit is not a permitted payment if –
- (a) the landlord or letting agent to whom the deposit was paid has previously received a holding deposit (“the earlier deposit”) in relation to the same housing,
 - (b) the landlord or letting agent has not repaid all or part of the earlier deposit, and
 - (c) none of paragraphs 5 to 11 of Schedule 2 have applied so as to permit the landlord or letting agent not to repay the earlier deposit or the part that has not been repaid.
- (6) The reference in sub-paragraph (5)(a) to a landlord or letting agent receiving a holding deposit does not include the landlord or letting agent doing so before the coming into force of Schedule 2 .”

LORD KENNEDY OF SOUTHWARK

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.”

Page 24, line 31, 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.
- (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.”

Schedule 1 - continued

LORD BOURNE OF ABERYSTWYTH

Page 24, line 31, leave out “A” and insert “Subject to sub-paragraphs (3) to (8), a”

Page 24, line 31, after second “a” insert “relevant”

LORD KENNEDY OF SOUTHWARK

Page 24, line 32, at end insert –

“() Sub-paragraph (1) does not apply to payments in respect of an act or default perpetrated by another tenant who is party to a joint tenancy agreement.”

LORD BOURNE OF ABERYSTWYTH

Page 24, line 33, after “paragraph” insert ““relevant”

LORD BOURNE OF ABERYSTWYTH
BARONESS GRENDER

Page 24, line 33, leave out from “means” to end of line 36 and insert “–

- (a) the loss of a key to, or other security device giving access to, the housing to which the tenancy relates, or
- (b) a failure to make a payment of rent in full before the end of the period of 14 days beginning with the date (“the due date”) on which the payment is required to be made in accordance with the tenancy agreement.”

LORD BOURNE OF ABERYSTWYTH

Page 24, line 37, leave out “But if” and insert “If, in the case of a payment required to be made to a landlord or letting agent in respect of a relevant default within sub-paragraph (2)(a),”

Page 25, line 1, at end insert –

- “(4) If, in the case of a payment required to be made to a landlord or a letting agent in respect of a relevant default within sub-paragraph (2)(b), the amount of the payment exceeds the amount determined in accordance with sub-paragraph (5), the amount of the excess is a prohibited payment.
- (5) The amount referred to in sub-paragraph (4) is the aggregate of the amounts found by applying, in relation to each day after the due date for which the rent remains unpaid, an annual percentage rate of 3% above the Bank of England base rate to the amount of rent that remains unpaid at the end of that day.
- (6) In sub-paragraph (5) “Bank of England base rate” means –

Schedule 1 - continued

- (a) the percentage rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, or
 - (b) where an order under section 19 of the Bank of England Act 1998 is in force, any equivalent percentage rate determined by the Treasury under that section.
- (7) If—
- (a) a landlord requires a relevant person to make a payment to the landlord in respect of a relevant default within sub-paragraph (2)(b), and
 - (b) a letting agent subsequently requires a payment to be made to the letting agent in respect of the same default,
- the payment referred to in paragraph (b) is a prohibited payment.
- (8) If—
- (a) a letting agent requires a relevant person to make a payment to the letting agent in respect of a relevant default within sub-paragraph (2)(b), and
 - (b) a landlord subsequently requires a payment to be made to the landlord in respect of the same default,
- the payment referred to in paragraph (b) is a prohibited payment.”

Page 25, line 1, at end insert —

“Payment of damages

A payment of damages for breach of a tenancy agreement or an agreement between a letting agent and a relevant person is a permitted payment.”

LORD KENNEDY OF SOUTHWARK

As an amendment to the 42nd amendment tabled by Lord Bourne of Aberystwyth on sheet HL Bill 129 – R(c) (second amendment to Schedule 1, page 25, line 1)

In the heading, leave out *“Payment of damages”*

LORD BOURNE OF ABERYSTWYTH

Page 26, line 14, leave out “paragraph” and insert “Act”

Schedule 2

LORD BOURNE OF ABERYSTWYTH

Page 27, line 7, leave out “before the deadline for agreement” and insert “relating to the housing”

Page 27, line 10, after “agreement” insert “relating to the housing”

Page 27, line 11, at end insert “relating to the housing”

Schedule 2 - continued

Page 27, line 13, leave out “The” and insert “If paragraph 3 applies, the”

Page 27, line 17, at end insert –

- “ (1) The person who received the holding deposit must repay it if –
- (a) that person believes that any of paragraphs 7 to 11 applies in relation to the deposit, but
 - (b) that person does not give the person who paid the deposit a notice in writing within the relevant period explaining why the person who received it intends not to repay it.
- (2) In sub-paragraph (1), “the relevant period” means –
- (a) where the landlord decides not to enter into a tenancy agreement before the deadline for agreement, the period of 7 days beginning with the date on which the landlord decides not to do so;
 - (b) where the landlord and tenant fail to enter into a tenancy agreement before the deadline for agreement, the period of 7 days beginning with the deadline for agreement.”

Page 27, line 44, leave out “incorrect” and insert “false”

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 –
- (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.”

LORD KENNEDY OF SOUTHWARK

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 –

Schedule 2 - continued

- (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 believes 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."

In the Title

LORD BOURNE OF ABERYSTWYTH

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