



Draft Tenant Fees Bill

Presented to Parliament
by the Secretary of State for Communities and Local Government
by Command of Her Majesty

November 2017



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Tel: 0303 444 0000

ISBN 978-1-5286-0099-6

CCS1017289606 11/17

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

FOREWORD

One side-effect of our broken housing market has been an explosion in the size of the private rented sector. With soaring prices making home ownership an increasingly distant dream for many, millions of people have been left with no choice but to rent, often for many years. Others actively choose rental over ownership, valuing the flexibility it can bring.

But whether you've been forced into life as a tenant or simply decided that it's the best option for you, you deserve to know that you will be treated fairly and not ripped off by the people you rely on for finding and renting your home.

Yet in too many cases that's not happening, and that's because the lettings market is simply not designed in the interests of the people it is supposed to serve.

Tenants rely on agents to find properties, yet they are selected and appointed by landlords. That disparity can lead to tenants paying hundreds of pounds in fees that are far from transparent, substantially raising the costs involved in renting, and causing nasty surprises for new tenants who think they've found a home that suits their needs and budget.

Nor is it easy for prospective tenants to understand and compare fees, thanks to significant variation in the way agents charge for their services. This kind of opacity is not accepted in other markets, and the lettings sector – on which millions of people rely – should be no different.

That's why this Government is introducing a ban on unfair lettings fees paid by tenants. Under the new rules, landlords will choose the agent that provides the quality of service that they are seeking at a price that they are willing to pay.

The ban will make renting fairer and easier for tenants by allowing them to see upfront what a given property will cost them – the rent that is advertised will be what you are expected to pay, nothing more.

It will also sharpen and increase letting agents' incentives to compete for landlords' business, resulting in a better and more transparent service for everyone.

The draft Bill sets out the Government's detailed approach to the ban. We believe it will deliver a fairer, more competitive, and more affordable lettings market, and I welcome views on how to make sure that is the case.

A handwritten signature in black ink, appearing to read 'S. Javid', with a small comma at the end.

Rt. Hon. Sajid Javid MP

Secretary of State for Communities and Local Government

Tenant Fees Bill

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TO

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; to amend the provisions of the Consumer Rights Act 2015 about information to be provided by letting agents; and for connected purposes.

BE 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 as a condition of the grant, renewal or continuance of a tenancy of housing in England. 5
- (2) A landlord must not require a relevant person to make a prohibited payment to a third party as a condition of the grant, renewal or continuance of such a tenancy.
- (3) A landlord must not require a relevant person to enter into a contract for services with a third party as a condition of the grant, renewal or continuance of such a tenancy. 10
- (4) A landlord must not require a relevant person to grant a loan to any person as a condition of the grant, renewal or continuance of such a tenancy.
- (5) In this Act “relevant person” means a tenant or any person acting on behalf of a tenant. 15

2 Prohibitions applying to letting agents

- (1) A letting agent must not require a relevant person to make a prohibited payment to the letting agent as a condition of arranging the grant, renewal or continuance of 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 as a condition of arranging the grant, renewal or continuance of such a tenancy.
- (3) A letting agent must not require a relevant person to enter into a contract for services with a third party as a condition of arranging the grant, renewal or continuance of such a tenancy. 5
- (4) A letting agent must not require a relevant person to grant a loan to any person as a condition of arranging the grant, renewal or continuance of such a tenancy.
- 3 Prohibited and permitted payments**
- (1) For the purposes of this Act a payment is a prohibited payment unless it is a permitted payment by virtue of Schedule 1 (permitted payments). 10
- (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.
- (3) The power in subsection (2) does not extend to removing rent from the categories of payment which are permitted payments under this Act. 15
- (4) Regulations under this section –
- (a) may make different provision for different purposes;
 - (b) may make supplemental, incidental, consequential, transitional, transitory or saving provision. 20
- (5) 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.
- 4 Effect of a breach on a tenancy agreement**
- (1) A term of a tenancy agreement which breaches section 1 or 2 is not binding on the tenant. 25
- (2) Where a term of a tenancy agreement is not binding on the tenant as a result of this section, the agreement continues, so far as practicable, to have effect in every other respect.
- 5 Treatment of holding deposit** 30
- Schedule 2 makes provision about the treatment of holding deposits.
- 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 – 35
- (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 7(6) (enforcement by a local weights and measures authority outside its area) and 18 (enforcement by the lead enforcement authority).
- (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. 5
- (4) A local weights and measures authority 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.
- (5) For the investigatory powers available to a local weights and measures authority for the purposes of enforcing this Act, see Schedule 5 to the Consumer Rights Act 2015. 10
- (6) In paragraph 10 of Schedule 5 to the Consumer Rights Act 2015 (duties to which Schedule 5 applies), at the appropriate place insert “section 6 of the Tenant Fees Act 2017.” 15

7 Financial penalties

- (1) Where a local weights and measures authority in England 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. 20
- (2) The financial penalty –
- (a) may be such as the authority determines, but
 - (b) subject to subsection (3), must not exceed £5,000.
- (3) If the local weights and measures authority is satisfied beyond reasonable doubt that the person has committed an offence under section 9 (offences), the financial penalty – 25
- (a) may exceed £5,000, but
 - (b) must not exceed £30,000.
- (4) The local weights and measures authority may not impose a financial penalty on a person in respect of any conduct amounting to an offence under section 9 if – 30
- (a) the person has been convicted of an offence under that section in respect of the conduct,
 - (b) criminal proceedings for such an offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded, or 35
 - (c) criminal proceedings for such an offence have been concluded and the person has not been convicted of an offence in respect of the conduct.
- (5) Only one financial penalty under this section may be imposed in respect of the same breach. 40
- (6) Subject to subsection (7), a local weights and measures 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).

- (7) Where a local weights and measures authority (“LA1”) proposes to impose a financial penalty under this section in respect of a breach which occurs (or which also occurs) in the area of a different local weights and measures authority (“LA2”), LA1 must notify LA2 that it proposes to do so.
- (8) Upon receipt of a notification under subsection (7), LA2 is relieved of its duty to enforce the breach. 5
- (9) A local weights and measures authority must notify the lead enforcement authority as soon as reasonably practicable if –
- (a) the local weights and measures authority imposes a financial penalty under this section, 10
 - (b) a financial penalty imposed under this section by the local weights and measures authority is withdrawn, or
 - (c) a financial penalty imposed under this section by the local weights and measures authority is quashed on appeal.
- (10) Schedule 3 (financial penalties etc) has effect. 15

8 Repayment of a prohibited payment or holding deposit

- (1) Subsection (2) applies where a local weights and measures authority –
- (a) imposes a financial penalty under section 7 (financial penalties) 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 20
 - (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 local weights and measures authority may require the landlord or letting agent to pay to the relevant person – 25
- (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. 30
- (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 agreement, or
 - (b) the prohibited payment, or the remaining part of it, has been applied towards the tenancy deposit under the tenancy agreement. 35
- (4) Subsection (5) applies where a local weights and measures authority –
- (a) imposes a financial penalty under section 7 on a landlord for breaching Schedule 2 (treatment of holding deposit), and
 - (b) is satisfied on the balance of probabilities that all or part of the holding deposit has not been repaid to the relevant person. 40
- (5) The local weights and measures authority may require the landlord to pay to the relevant person –
- (a) if none of the holding deposit has been repaid to the relevant person, the amount of the holding deposit; 45

- (b) if part of the holding deposit has been repaid to the relevant person, the remaining part of the holding deposit.
- (6) But subsection (5) 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 agreement, or
 - (b) the holding deposit, or the remaining part of it, has been applied towards the tenancy deposit under the tenancy agreement.
- (7) Subsection (2) or (5) does not apply if the relevant person has made an application under section 11(3) (application to the county court) for recovery of all or part of the amount of the prohibited payment or holding deposit.
- (8) Where a local weights and measures authority requires a landlord or letting agent to pay an amount under subsection (2) or (5), the authority may require the landlord or letting agent to pay interest on that amount.
- (9) If a local weights and measures authority requires a landlord or letting agent to pay interest on an amount under subsection (8) –
- (a) the amount carries interest from the date specified in subsection (10) 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.
- (10) That date is –
- (a) where the amount is required to be paid under subsection (2), the date on which the prohibited payment was made;
 - (b) where the amount is required to be paid under subsection (5), 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.
- (11) The total amount of interest imposed under subsection (8) must not exceed the amount required to be repaid under subsection (2) or (5).

9 Offences

- (1) A person commits an offence if –
- (a) the person breaches section 1 or 2 or Schedule 2,
 - (b) a relevant penalty has been imposed on the person in respect of a different breach of the same section or Schedule and has not been withdrawn or quashed on appeal, or the person has been convicted of an offence in respect of such a breach, and
 - (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.
- (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 given.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine.

- (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 7 (financial penalties) in respect of that breach.
- (5) In this section, “relevant penalty” means a financial penalty which is imposed under section 7 (financial penalties) where – 5
- (a) the period for appeal against the financial penalty under paragraph 6 of Schedule 3 (financial penalties etc) has expired without an appeal being brought,
 - (b) an appeal against the financial penalty under that paragraph has been withdrawn or abandoned, or 10
 - (c) the final notice in respect of the penalty has been confirmed or varied on appeal.
- (6) In section 14 of the Housing and Planning Act 2016, after subsection (4) insert –
- “(5) An offence under section 9 of the Tenant Fees Act 2017 is also a banning order offence for the purposes of this Part.” 15

10 Offences by bodies corporate

- (1) Where an offence under section 9 (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. 20
- (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. 25

11 Recovery of a prohibited payment or holding deposit

- (1) This section 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 30
 - (b) all or part of the prohibited payment has not been repaid to the relevant person.
- (2) This section also applies where –
- (a) a landlord breaches Schedule 2 in relation to a holding deposit paid by a relevant person, and 35
 - (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 county court 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; 40
 - (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. 45

- (4) Subsection (3) does not apply where a local weights and measures authority has commenced criminal proceedings against the landlord or the letting agent for the same breach.
- (5) Subsection (3) does not apply where a local weights and measures authority has required – 5
- (a) the landlord to pay to the relevant person all or part of the amount of the prohibited payment or holding deposit, or
 - (b) the letting agent to pay to the relevant person all or part of the amount of the prohibited payment.
- (6) Subsection (3) does not apply in relation to a prohibited payment or holding deposit if or to the extent that – 10
- (a) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards a payment of rent under the tenancy agreement, or
 - (b) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards the tenancy deposit under the tenancy agreement. 15
- (7) On an application under this section, the court may order the landlord or the letting agent to pay all or any part of the amount of the prohibited payment or the holding deposit to the relevant person within the period of 14 days beginning with the date of the making of the order. 20
- 12 Assistance to recover a prohibited payment or holding deposit**
- (1) A local weights and measures authority in England may help a relevant person to make an application under section 11 (recovery of a prohibited payment or holding deposit). 25
- (2) A local weights and measures authority may, for example, help a relevant person to apply by conducting proceedings or by giving advice to the relevant person.

Amendments to the Consumer Rights Act 2015

- 13 Duty to publicise fees on third party websites** 30
- (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).
- (2) After subsection (3) insert –
- “(3A) Subsection (3C) applies to an agent who – 35
- (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.
- (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. 40
- (3C) The agent must ensure that –

- (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)”. 5
- (4) In subsection (6), for “or (3)” substitute “, (3) or (3C)”.
- (5) In subsection (7), for “or (3)” substitute “, (3) or (3C)”.
- (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.” 10
- (7) In section 87 of that Act, 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.” 15
- 14 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 20
- (b) for the words from “of whether” to the end substitute “ –
 (a) that indicates that the agent is a member of a client money protection scheme, and
 (b) that gives the name of the scheme.” 25
- 15 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.
- (2) In subsection (6), at the end insert “, subject to subsection (6A)”.
- (3) After subsection (6) insert – 30
 “(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 –
 (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 sent, unless the letting agent appeals against that notice within that period, or 35
 (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. 40

(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.

(6C) In subsections (6A) and (6B) “final notice” has the meaning given by paragraph 3(2) of Schedule 9.”

5

Lead enforcement authority

16 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). 10
- (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. 15
- (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. 20
- (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, 25
 - (b) Chapter 3 of Part 3 of the Consumer Rights Act 2015 as it applies in relation to 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. 30

17 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 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
- (3) 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. 40

- (4) Subsections (5) to (7) apply if the lead enforcement authority is not the Secretary of State.
- (5) 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. 5
- (6) A direction may relate to all or particular kinds of relevant authorities and may make different provision for different kinds of authority.
- (7) It is the duty of the lead enforcement authority to keep under review and from time to time advise the Secretary of State about – 10
- (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.
- (8) In this section and in section 18, “relevant authority” means – 15
- (a) in respect of this Act or Chapter 3 of Part 3 of the Consumer Rights Act 2015, a local weights and measures authority in England;
 - (b) in respect of 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; 20
 - (c) in respect of regulations under section 133, 134 or 135 of the Housing and Planning Act 2016, a local authority (as defined in section 135 of that Act).

18 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. 25
- (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) If the lead enforcement authority considers it is necessary or expedient to enforce 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. 30
- (4) Upon receipt of a notification under subsection (3), the relevant authority is relieved of any duty to enforce the breach. 35
- (5) The lead enforcement authority may require the relevant authority to assist the lead enforcement authority in enforcing the breach.
- (6) 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. 40
- (7) 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.

- (8) In paragraph 10 of Schedule 5 to the Consumer Rights Act 2015, at the appropriate place insert “section 18 of the Tenant Fees Act 2017.”

General interpretation

19 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). 5
- (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 10
- (b) a tenant who is seeking to find housing to rent.
- (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). 15
- (5) In subsection (4)—
- (a) “legal activity” and “reserved legal activity” have the meanings given by section 12 of the Legal Services Act 2007; 20
- (b) “authorised person” has the meaning given by section 18 of that Act.

20 Interpretation

- (1) In this Act—
- “assured shorthold tenancy” has the same meaning as in Part 1 of the Housing Act 1988; 25
- “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;
- “landlord” includes— 30
- (a) a person who proposes to be a landlord under a tenancy,
- (b) a licensor under a licence to occupy housing, and
- (c) a person who proposes to be a licensor under a licence to occupy housing;
- “lead enforcement authority” has the meaning given by section 16(1); 35
- “licence to occupy housing”—
- (a) includes a licence which is granted to a licensee by a licensor who resides in the housing;
- (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; 40
- “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%;
- “prohibited payment” has the meaning given by section 3 and Schedule 1;
- “the relevant letting agency legislation” has the meaning given by section 16(6);
- “relevant person” has the meaning given by section 1(5) (and see subsection (2)(b) of this section);
- “social housing” has the same meaning as in Part 2 of the Housing and Regeneration Act 2008;
- “tenancy” means –
- (a) an assured shorthold tenancy other than –
- (i) a tenancy of social housing, or
- (ii) a tenancy which is a long lease, or
- (b) 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;
- “tenant” includes –
- (a) a person who proposes to be a tenant under a tenancy,
- (b) a licensee under a licence to occupy housing, and
- (c) a person who proposes to be a licensee under a licence to occupy housing.
- (2) In sections 8 (repayment of a prohibited payment or holding deposit) to 12 (assistance to recover prohibited payment or holding deposit) and Schedule 3 (financial penalties) –
- (a) references to a landlord include a person who has ceased to be a landlord under a tenancy, and
- (b) references to a relevant person include a person who has ceased to be a tenant under a tenancy and a person who has ceased to act for a tenant.

Final provisions

21 Consequential amendments

- (1) In section 87 (enforcement of the duty) of the Consumer Rights Act 2015 –
- (a) after subsection (1) insert –
- “(1A) The duty in subsection (1) is subject to section 18 (enforcement by the lead enforcement authority) of the Tenant Fees Act 2017.”;
- (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 16 to 18 of the Tenant Fees Act 2017.
- (14) In this section, “lead enforcement authority” has the meaning given by section 16(1) of the Tenant Fees Act 2017.” 5
- (2) In section 85 (orders under section 83 or 84: enforcement) of the Enterprise and Regulatory Reform Act 2013 –
- (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).”; 10
- (b) after subsection (5), insert – 15
- “(6) For provisions about enforcement of an order under section 83(1) or 84(1) by the lead enforcement authority, see sections 16 to 18 of the Tenant Fees Act 2017.
- (7) In this section, “lead enforcement authority” has the meaning given by section 16(1) of the Tenant Fees Act 2017.” 20
- (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 –
- “(3) The duty referred to in paragraph (1) is subject to section 18 (enforcement by the lead enforcement authority) of the Tenant Fees Act 2017.” 25
- (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.
- (5) In section 135 (enforcement of client money protection scheme regulations) of the Housing and Planning Act 2016 – 30
- (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 –
- “(6) For provisions about enforcement of regulations under section 133 or 134 or under this section by the lead enforcement authority, see sections 16 to 18 of the Tenant Fees Act 2017. 35
- (7) In this section, “lead enforcement authority” has the meaning given by section 16(1) of the Tenant Fees Act 2017.”
- 22 Transitional provision** 40
- (1) Section 1 (prohibitions applying to landlords) does not apply to a requirement which was imposed, or which forms part of a tenancy agreement which was entered into, before the coming into force of that section.

- (2) Section 2 (prohibitions applying to letting agents) does not apply to a requirement which was imposed, or which forms part of an agreement between the letting agent and the tenant which was entered into, before the coming into force of that section.
- (3) Schedule 2 (treatment of holding deposit) applies only in relation to a holding deposit paid after the coming into force of that Schedule. 5
- (4) 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. 10

23 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. 15

24 Crown application

- (1) Sections 1 to 8, 11 and 12, and any regulations made under section 3, bind the Crown in respect of a Crown tenancy.
This is subject to subsection (2). 20
- (2) In section 7 as it applies by virtue of subsection (1), the reference in subsection (3) to a person having committed an offence under section 9 is to be read as a reference to a person satisfying the conditions in subsection (1)(a) to (c) of that section.
- (3) In this section— 25
- (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. 30

25 Extent

- (1) This Act extends to England and Wales only, subject to subsection (2).
- (2) The following provisions extend to England and Wales, Scotland and Northern Ireland— 35
- (a) section 6(6),
- (b) section 18(8),
- (c) section 22(4),
- (d) section 23,
- (e) this section,
- (f) section 26, and 40
- (g) section 27.

26 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. 5
- (3) The following provisions come into force on the day on which this Act is passed –
 - (a) subsections (2) to (5) of section 3,
 - (b) section 16(4),
 - (c) section 20(1), 10
 - (d) section 22(4),
 - (e) section 23,
 - (f) section 25,
 - (g) this section, and
 - (h) section 27. 15

27 Short title

This Act may be cited as the Tenant Fees Act 2017.

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) by agreement between the landlord and the tenant, or | |
| | (b) pursuant to a term in the tenancy agreement which provides for variation of the rent under the tenancy. | 35 |
| | (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

- 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 – 5
- (a) the performance of any obligations of a tenant, or
 - (b) the discharge of any liability of a tenant, 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. 10
- (4) In this paragraph –
- (a) “six weeks’ rent” means six times one week’s rent, and
 - (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 fifty-two. 15

Holding deposit

- 3 (1) A payment of a holding deposit is a permitted payment.
- (2) In this Act “holding deposit” means money which is paid by or on behalf of a tenant to a landlord before the grant of a tenancy with the intention that it should be dealt with by the landlord in accordance with Schedule 2 (treatment of holding deposit). 20
- (3) But if the amount of the holding deposit exceeds one week’s rent, the amount of the excess is a prohibited payment.
- (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 fifty-two. 25

Payment in the event of a default

- 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. 30
- (2) In sub-paragraph (1), “default” means –
- (a) a failure by the tenant to make a payment by the due date to the landlord, or
 - (b) a breach by the tenant of a covenant or condition of the tenancy. 35

SCHEDULE 2

Section 5

TREATMENT OF HOLDING DEPOSIT

Application

- 1 This Schedule applies where a holding deposit is paid to a landlord in respect of a proposed tenancy of housing in England. 5

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 receives the holding deposit.
- (2) But the landlord and the tenant may agree in writing that a different day is to be the deadline for agreement for the purposes of the application of this Schedule to them. 10

Requirement to repay holding deposit

- 3 Subject as follows, the landlord must repay the holding deposit if—
- (a) the landlord and the tenant enter into a tenancy agreement before the deadline for agreement, 15
 - (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. 20
- 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. 25

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 agreement, or
 - (b) towards the payment of the tenancy deposit under the tenancy agreement. 30
- 6 If the landlord applies all or part of the amount of the deposit 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. 35
- 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, and 40

- (b) the landlord did not know, and could not reasonably have been expected to know, that was the case before the landlord accepted the deposit.
- 8 Paragraph 3(b) or (c) does not apply if the tenant provides false or misleading information to the landlord and – 5
- (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. 10
- 9 Paragraph 3(c) does not apply if the tenant notifies the landlord before the deadline for agreement that the tenant has decided not to enter into a tenancy agreement.
- 10 Paragraph 3(c) does not apply if – 15
- (a) the landlord takes all reasonable steps to enter into a tenancy agreement before the deadline for agreement, but
- (b) the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.

SCHEDULE 3

Section 7 20

FINANCIAL PENALTIES ETC

Interpretation

- 1 (1) In this Schedule, references to a “financial penalty” include references to an amount of money which is required to be paid under section 8(2), (5) or (8).
- (2) In this Schedule, references to “imposing a financial penalty” include reference to requiring the payment of such an amount. 25
- (3) This paragraph does not apply to paragraph 6(5) or (6) (appeals), 7 (recovery of financial penalty), 8 (recovery of prohibited payment or holding deposit), 9 (assistance to recover prohibited payment or holding deposit) or 10 (proceeds of financial penalties). 30

Notice of intent

- 2 (1) Before imposing 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), a local weights and measures authority must serve a notice on the landlord or letting agent of its proposal to do so (a “notice of intent”). 35
- (2) The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the breach, subject to sub-paragraph (3).
- (3) 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 – 40
- (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.
- (4) The notice of intent must set out –
 - (a) the amount of the proposed financial penalty,
 - (b) the reasons for proposing to impose the penalty, and 5
 - (c) information about the right to make representations under paragraph 3.

Right to make representations

- 3 A person who receives a notice of intent may, within the period of 28 days beginning with the day after that on which the notice of intent was sent, make written representations to the local weights and measures authority about the proposal to impose a financial penalty on that person. 10

Final notice

- 4 (1) After the end of the period mentioned in paragraph 3 the local weights and measures authority must – 15
 - (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 authority decides to impose a financial penalty, it must serve a notice on the person (a “final notice”) imposing that penalty.
- (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 sent. 20
- (4) The final notice must set out –
 - (a) the amount of the financial penalty,
 - (b) the reasons for imposing the penalty,
 - (c) information about how to pay the penalty, 25
 - (d) the period for payment of the penalty,
 - (e) information about rights of appeal, and
 - (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

- 5 (1) A local weights and measures authority may at any time – 30
 - (a) withdraw a notice of intent or final notice,
 - (b) reduce an amount specified in a notice of intent or final notice, or
 - (c) amend a notice of intent or final notice to remove the requirement to pay an amount of a prohibited payment or holding deposit.
- (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. 35

Appeals

- 6 (1) A person on whom a final notice is served may appeal against that notice to the First-tier Tribunal.
- (2) The grounds for an appeal under this paragraph are that – 40

- (a) the decision to impose a financial penalty was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the amount of the financial penalty is unreasonable, or
 - (d) the decision was unreasonable for any other reason. 5
- (3) If an appeal is brought under this paragraph, the final notice is suspended until the appeal is finally determined, withdrawn or abandoned.
- (4) On an appeal under this paragraph the First-tier Tribunal may quash, confirm or vary the final notice.
- (5) The final notice may not be varied so as to make it impose a financial penalty of more than £5,000 unless section 7(3) applies. 10
- (6) If section 7(3) applies, the final notice may not be varied so as to make it impose a financial penalty of more than £30,000.

Recovery of financial penalty

- 7 (1) This paragraph applies if a person who is liable to pay a financial penalty under section 7(1) or (3) does not pay the whole or any part of that financial penalty in accordance with the final notice imposing that penalty. 15
- (2) The local weights and measures 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. 20
- (3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is –
- (a) signed by the chief finance officer of the local weights and measure authority which imposed the penalty, and
 - (b) states that the amount due has not been received by a date specified in the certificate, 25
- is conclusive evidence of that fact.
- (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. 30

Recovery of prohibited payment or holding deposit

- 8 (1) This paragraph applies if a person who is liable to pay an amount to which this sub-paragraph applies does not pay the whole or any part of that amount in accordance with the final notice requiring payment of that amount. 35
- (2) Sub-paragraph (1) applies to –
- (a) an amount of a prohibited payment which is required to be paid to a relevant person under section 8(2) (repayment of prohibited payment), 40
 - (b) an amount of a holding deposit which is required to be paid to a relevant person under section 8(5) (repayment of holding deposit), or
 - (c) an amount of interest which is required to be paid to a relevant person under section 8(8) (payment of interest).

- (3) 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 or holding deposit

- 9 (1) A local weights and measures authority in England may help a relevant person to make an application under paragraph 8(3). 5
- (2) A local weights and measures 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 a local weights and measures authority in England 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. 10
- 11 Any amount recovered by a local weights and measures authority under this Act which is not applied in accordance with paragraph 10 must be paid to the Secretary of State. 15
- 12 (1) In paragraph 10, “enforcement functions in relation to the private rented sector” means enforcement functions relating to— 20
- (a) residential premises in England that are let, or intended to be let, under a tenancy,
 - (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 25
 - (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. 30
- (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.
- (3) For the purposes of this paragraph, “tenancy” means— 35
- (a) a tenancy, whether or not the tenancy is an assured shorthold tenancy, or
 - (b) a licence to occupy.

TENANT FEES BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Tenant Fees Bill as published in Draft on 1 November 2017. (Tenant Fees Bill (Draft)).

- These Explanatory Notes have been prepared by the Department for Communities and Local Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 Through this Bill, the Government aims to make renting fairer and more affordable for tenants by reducing the costs at the outset of a tenancy. This Bill also aims to improve transparency and competition in the private rental market. The Bill delivers the manifesto commitment to ban letting agent fees paid by tenants in England and other measures to improve fairness, competition and affordability in the lettings sector.
- 2 This Bill seeks to achieve this by banning landlords and their agents from requiring tenants and licensees in the private rented sector to make any payments, as a condition of granting, renewing or continuing a tenancy (or as a condition of making the arrangements for those things), with the exception of:
 - a. the rent;
 - b. a refundable tenancy deposit capped at no more than six weeks' rent;
 - c. a refundable holding deposit capped at no more than one week's rent; and
 - d. tenant default fees (such as replacing a lost key or late rent payment fine).
- 3 The Bill also bans landlords and their agents from requiring such tenants to secure and pay for services from any third party or to make a loan.
- 4 The Bill caps tenancy deposits at no more than six weeks' rent, and caps holding deposits at no more than one week's rent and requires holding deposits to be returned to tenants.
- 5 The Bill provides that enforcement of the ban will be carried out by local authorities (Trading Standards) and makes provision for tenants to be able to recover unlawfully charged fees.
- 6 The Bill makes some amendments to the fees transparency requirements in the Consumer Rights Act 2015, which require an agent in England to display any relevant fees, the redress scheme of which they are a member and whether they have client money protection prominently in their office and on their website. This Bill will amend the Consumer Rights Act 2015 as it applies in relation to housing in England to require letting agents to display the name of the Client Money Protection scheme to which they belong and also to apply the letting agent transparency requirements to property portals (e.g. Rightmove, Zoopla). It also makes new provision regarding fines in the event of a continuing breach.
- 7 Finally, the Bill makes provision for the Secretary of State or a Trading Standards authority designated by the Secretary of State to be a Lead Enforcement Authority to provide oversight, guidance and support with the enforcement of requirements on letting agents. This includes the ban on letting fees and related provisions, the requirement to be a member of a redress scheme under the Enterprise and Regulatory Reform Act 2013, the fees transparency requirements of the Consumer Rights Act 2015 as they apply to letting agents in England, and the requirements to be a member of a client money protection scheme under the Housing and Planning Act 2016.
- 8 The Bill proposals were subject to a public consultation, which ran for 8 weeks from 7 April until 2 June 2017. The consultation received 4,724 responses from stakeholders across the private rented sector. These responses and additional stakeholder engagement have informed the implementation approach.
- 9 Note: In the following sections of these explanatory notes 'tenancy' refers to both assured shorthold tenancies and licences to occupy but excludes long leaseholds, tenancies of social housing and holiday lets and 'landlord' and 'tenant' have the corresponding meanings.

Policy background

- 10 The private rented sector is an important part of our housing market. It houses 4.5 million households in England and now represents 20% of all households.¹
- 11 Letting agents are engaged by many private landlords to let and manage rental accommodation on their behalf. Good agents provide a valuable service in ensuring that properties are safe, compliant and professionally managed; they help landlords comply with their legal responsibilities and help tenants secure safe and good quality homes.
- 12 The duties of letting agents might include finding tenants, collecting rent, and responding to queries from tenants (for example, in relation to repairs). Landlords pay fees to letting agents for carrying out these duties on their behalf. Letting agents also charge fees to tenants for a variety of reasons, including seeking references, inventory services and contract negotiations.
- 13 Letting agent fees are not always clearly or consistently explained with the result that many tenants are unaware of the true costs of renting a property. The competitive pressure on tenant fees is weak as agents are chosen by landlords. Letting agents can therefore impose unfair or excessive fees because tenants have a very limited ability to negotiate or opt-out. This is not fair and restricts movement in the private rented sector and reduces affordability.
- 14 Renters pay an average of £200-£300 in letting fees per tenancy although many pay significantly more than this. The English Housing Survey 2014-15 found that the mean average fee paid by a household in 2014-15 was £223, while the median was £200.
- 15 There is also evidence that letting agent fees paid by tenants have increased significantly in recent years and that many tenants have experienced problems paying letting agents' fees. The English Housing Survey 2014-15 reports that median fees charged by agents increased by 60% between 2009-10 and 2014-15 (14% increase in mean) and that a third (34%) of private renters said that fees would stop them moving into a new home.
- 16 It is not simple for tenants to understand and compare agent fees since there is significant variation in the way that agents charge for their services. Further, agents charging fees to both landlords and tenants increases the risk of unfair practices in the form of double charging.
- 17 The Government announced at the 2016 Autumn Statement that it would introduce a ban on letting agent fees paid by tenants in England to improve competition in the private rental market and give renters greater clarity and control over what they will pay. The commitment to make renting fairer for tenants was reaffirmed in the Conservative Party Manifesto.
- 18 The Bill will ban agents from charging letting fees to tenants, which will sharpen and increase letting agents' incentives to compete for landlords' business, resulting in a more transparent and competitive private rented market with a higher quality of service.
- 19 The Bill will also ban landlords from charging tenants letting fees and ban agents and landlords from requiring tenants to make payments to third parties. This mitigates the risk of tenants being charged agent fees through other routes, avoids creating a situation where landlords are encouraged to self-manage their properties purely on financial grounds and avoids some tenants being charged fees whilst others are not.

¹ English Housing Survey 2014/5

- 20 Tenants will be able to see what a given property will cost them in the advertised rent level without any additional hidden costs.
- 21 The Bill will cap the amount of money that can be required as a deposit at the outset of a tenancy. These measures will improve affordability and facilitate movement into and around the private rented sector.
- 22 The Bill enables agents and landlords to charge a holding deposit to a tenant to ensure that there is a financial commitment from a tenant to a given property. The Bill requires agents and landlords to refund the holding deposit to tenants except in circumstances where the tenant withdraws or does not take all reasonable steps to enter into the tenancy agreement, fails a right to rent check or provides false or misleading information, which materially affects their suitability to rent the property.
- 23 The holding deposit provisions are intended to respond to stakeholder concerns raised during the consultation period that tenants are speculating on a number of properties, which could result in potentially unnecessary and costly work by agents and landlords. Similarly, enabling a landlord to charge fees related to a default by the tenant (such as a late payment or lost key) means that a landlord is not unfairly penalised by costs incurred owing to an action of the tenant.
- 24 The Bill will amend the Consumer Rights Act 2015 as it applies in relation to housing in England to clarify that the requirements on letting agents to display any letting fees, which redress scheme they are a member of, and whether they have client money protection should apply to property portals (e.g. Rightmove, Zoopla). This is to ensure that property portals, which are used by a large number of tenants to find properties in the private rented sector, are subject to the same transparency requirements as agent websites and offices.
- 25 The Bill also makes new provision regarding fines in the event of a continuing breach of the requirements in England and will also require letting agents in England to display the name of the client money protection scheme to which they belong (if they are required to belong to such a scheme).
- 26 Finally, the Bill will establish a lead enforcement authority to provide oversight, guidance and support with the enforcement of requirements on letting agents. This includes the ban on letting fees and related provisions, the requirement to be a member of a redress scheme under the Enterprise and Regulatory Reform Act 2013, the fees transparency requirements of the Consumer Rights Act 2015 as they apply to letting agents in England, and the requirements to be a member of a client money protection scheme under the Housing and Planning Act 2016.

Legal background

Letting Fees and Letting Agent Transparency requirements

- 27 The existing legislation relevant to letting fees is Chapter 3 of Part 3 of the Consumer Rights Act 2015 which in England and Wales requires a letting agent to display prominently at its client facing premises and, if it has a website, to publish on its website a list of its relevant fees.
- 28 The same provisions also require a letting agent engaging in letting agency or property management work in relation to housing in England to publish, in the same manner:
 - a. a statement of whether the agent is a member of a client money protection scheme (if it holds money on behalf of landlords); and

These Explanatory Notes relate to the Tenant Fees Bill as published in Draft on 1 November 2017 (Bill Draft)

- b. a statement that indicates that the agent is a member of a redress scheme and gives the name of the scheme (if the agent is required to be a member of a redress scheme for dealing with complaints in respect of its lettings work).

Holding deposits

- 29 There is no legislation on holding deposits.

Tenancy deposits

- 30 Chapter 4 of Part 6 of the Housing Act 2004 makes provision relating to tenancy deposits for assured shorthold tenancies. Section 213(1) provides that any tenancy deposit paid to a person in connection with a shorthold tenancy must, as from the time when it is received, be dealt with in accordance with an authorised scheme.

Territorial extent and application

- 31 Clause 25 sets out the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The territorial extent of this Bill is England and Wales only apart from clauses 6(6), 18(8) and 22 to 27 which extend to the whole of the United Kingdom. Clauses 6(6) and 18(8) amend Schedule 5 to the Consumer Rights Act 2015 which extends to the whole of the United Kingdom and the supplementary provisions in clauses 22 to 27 require the same extent as a result. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. The Bill will apply in relation to housing in England only.
- 32 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The subject matter of this Bill is housing – a devolved matter in Scotland, Wales and Northern Ireland.
- 33 Clauses 13 to 15 make amendments to the provisions of the Consumer Rights Act 2015 which concern the duty of letting agents to publicise information about their fees and certain other matters. Although the provisions of the Consumer Rights Act 2015 apply to England and Wales, the amendments in clauses 13 to 15 will apply in relation to housing in England only.
- 34 The matters to which the other provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly and no legislative consent motion is being sought. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 35 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Prohibitions applying to landlords

- 36 This clause provides that a landlord of housing in England must not require a tenant to make a payment or a loan as a condition of the grant, renewal or continuance of that tenancy.
- 37 This clause also provides that such a landlord must not require a tenant to secure and pay for services from any third party, for example a reference provider or inventory service, as a condition of the grant, renewal or continuance of a tenancy. This clause and clause 2 also apply to a person acting on behalf of a tenant, and tenants and such persons are referred to collectively in the Bill as “relevant persons”.

Clause 2: Prohibitions applying to letting agents

- 38 This clause provides that a letting agent of housing in England must not require a tenant to make a payment or a loan as a condition of arranging the grant, renewal or continuance of that tenancy.
- 39 This clause also provides that such a letting agent must not require a tenant to secure and pay for services from any third party, for example a reference or inventory service, as a condition of arranging the grant, renewal or continuance of a tenancy.

Clause 3: Prohibited and permitted payments

- 40 This clause defines prohibited and permitted payments. Permitted payments are the payments that landlords and letting agents are permitted to charge a tenant as a condition of the granting, renewing or continuing of a tenancy. The list of permitted payments is set out in Schedule 1.
- 41 This clause provides that the Secretary of State may amend the list of permitted payments described in Schedule 1 by regulations. Such regulations are subject to the affirmative procedure, meaning that they must be approved by a resolution of each House of Parliament.

Schedule 1: Permitted Payments

- 42 The list of permitted payments set out in this Schedule is intended to be exhaustive. Any other payment required as a condition of, or of arranging for, the grant, renewal or continuance of a tenancy not described in this clause is prohibited.
- 43 The permitted payments are:
- a. The rent;
 - b. A refundable tenancy deposit of no more than six weeks’ rent;
 - c. A refundable holding deposit of no more than one week’s rent; and
 - d. A payment that is required in the event of a default by the tenant, such as a late payment or breach of the tenancy agreement by the tenant.
- 44 This Schedule sets out that where any payment of rent is greater than the amount of rent payable in a later period during the tenancy, the difference is a prohibited payment. This applies unless the rent has been varied by agreement between the landlord and the tenant or in accordance with a term in the tenancy agreement.
- 45 A tenancy deposit is money held by the landlord (or agent acting on the landlord’s behalf) as security during the period of the tenancy and reserved for any damages or defaults on the part of the tenant.

- 46 A holding deposit is a payment made by a tenant to a landlord (or to an agent acting on the landlord's behalf) to 'reserve' that property. The holding deposit demonstrates a tenant's financial commitment to renting a certain property and the acceptance of the holding deposit confirms the landlord or letting agent's intention to accept an individual as a tenant (subject to the satisfactory completion of reference checks etc.).
- 47 This Schedule permits landlords and letting agents to require a tenant to make a payment in the event of a default, for example requesting a replacement for a lost key. However, a payment in the event of a default by the tenant is only a permitted payment if the payment is required under the tenancy agreement.

Clause 4: Effect of a breach on a tenancy agreement

- 48 This clause provides that any term of a tenancy agreement which requires a tenant to make a prohibited payment is not binding on the tenant. The rest of the tenancy agreement will continue to apply (so far as practicable).

Clause 5: Treatment of holding deposit

- 49 Schedule 2 makes provision about the treatment of holding deposits.

Schedule 2: Treatment of holding deposit

- 50 This Schedule imposes requirements on a landlord who receives a holding deposit from a tenant.
- 51 Paragraph 3 requires the landlord to refund the holding deposit to the tenant within 7 days of the parties entering into the tenancy agreement.
- 52 Paragraph 3 also requires the holding deposit to be refunded if the parties do not enter into the tenancy agreement for reasons, broadly, under the landlord's control.
- 53 If the landlord decides not to rent the property to the tenant or fails to take reasonable steps to enter into the tenancy agreement by the deadline for agreement then the holding deposit must be refunded within 7 days of the date of that decision or the deadline, as applicable. "Deadline for agreement" is defined in paragraph 2 and in conjunction with paragraph 3(c) imposes a default deadline of 15 days following the receipt of the holding deposit for the landlord to enter into an agreement with the tenant to grant the tenancy (unless otherwise agreed with the tenant).
- 54 Paragraph 5 provides that the landlord may 'repay' the holding deposit by allowing the tenant to deduct the equivalent sum from the first payment of rent or the tenancy deposit, and if the holding deposit is applied to the tenancy deposit paragraph 6 provides that for the purposes of the deposit protection requirements of s.213 of the Housing Act 2004 that money is received on the date of the tenancy agreement.
- 55 Paragraph 7 provides that the landlord or letting agent does not have to refund a holding deposit if a tenant does not have the right to rent property under the Immigration Act 2014 provided that the landlord or agent did not know, and could not have been expected to know, that prior to accepting the deposit.
- 56 Paragraph 8 provides that the landlord or letting agent does not have to refund a holding deposit if the tenant provides false or misleading information that materially affects his/her suitability to rent the property.
- 57 Paragraphs 9 and 10 provide that the landlord or letting agent does not have to refund a holding deposit if the tenant decides not to enter into a tenancy agreement or the tenant fails to take all reasonable steps to enter into a tenancy agreement.

Clause 6: Enforcement by weights and measures authorities

- 58 This clause provides that enforcement of the ban on prohibited payments and requirements relating to holding deposits will be the duty of local weights and measures authorities (Trading Standards) in England.
- 59 Each local weights and measures authority is responsible for enforcing the ban in its area, and subsection (3) makes provision for the circumstance where a breach relates to housing located in more than one authority's area.
- 60 Subsection (4) requires a local weights and measures authority in England to have regard to any guidance issued by the Secretary of State or the lead enforcement authority (if that is not the Secretary of State) about it should carry out its enforcement duties.
- 61 The investigatory powers available to a local weights and measures authority for the purposes of enforcing the Tenant Fees Bill are set out in Schedule 5 of the Consumer Rights Act 2015 which this clause amends.

Clause 7: Financial Penalties

- 62 This clause provides that a local weights and measures authority may impose a financial penalty of up to £5,000 on a landlord or letting agent if the local weights and measures authority is satisfied beyond reasonable doubt that a tenant has been required to make a prohibited payment. Similarly, a local weights and measures authority may impose a financial penalty of up to £5,000 if satisfied beyond reasonable doubt that a landlord or letting agent has failed to return a holding deposit.
- 63 This clause also provides that a local weights and measures authority may impose a financial penalty of up to £30,000 on a landlord or letting agent as an alternative to prosecution if it is satisfied beyond reasonable doubt that an offence under clause 9 has been committed.
- 64 However, a local weights and measures authority may not impose a financial penalty if the landlord or letting agent has already been convicted or acquitted of an offence in relation to the conduct, or criminal proceedings for the offence have been commenced.
- 65 Where a financial penalty is imposed, only one such penalty may be imposed in respect of the same breach.
- 66 This clause provides that a local weights and measures authority can impose a penalty in respect of a breach that occurs outside of its local area. In such a case the enforcing local weights and measures authority must notify the local weights and measures authority where the breach occurs of its intention to enforce and the latter is relieved of its duty to do so.
- 67 This clause provides that a local weights and measures authority must notify the lead enforcement authority as soon as practicable whenever it imposes a financial penalty. This is to ensure that when a local weights and measures authority becomes aware of a breach it is able to check to see if a financial penalty has been issued previously by another authority. This will inform whether the breach is dealt with as an offence under clause 9.
- 68 A local weights and measures authority must also notify the lead enforcement authority as soon as practicable whenever it withdraws a previously imposed financial penalty or whenever a financial penalty is quashed on appeal.
- 69 Schedule 3 sets out the procedure to be followed by a local weights and measures authority where it imposes a financial penalty.

Schedule 3: Financial Penalties

- 70 This Schedule sets out the procedure to be followed by a local weights and measures where it

imposes a financial penalty on a landlord or agent. The same procedure applies if the authority also requires the landlord or agent to repay any amount to a tenant (or other relevant person).

- 71 Before imposing a financial penalty, the local authority must give the landlord or agent notice of their intention to do so. This notice must be given within a period of 6 months, beginning with the first day on which the authority has evidence of the person's breach of the ban or if the breach is a continuing breach, while the breach is continuing or within 6 months of the last day on which the breach occurred. The notice of intent must set out the amount of the penalty, the reasons for imposing the penalty and information about the right to make representations.
- 72 A person who is given a notice of intent has 28 days to make representations to the local authority. After the end of the period for representations, the local weights and measures authority must decide whether or not impose a financial penalty and if so, the amount of the penalty.
- 73 If the local weights and measures authority decides to impose a penalty, it must give the person a final notice imposing the penalty. The final notice must require payment of the penalty within 28 days and must set out certain information, including the amount of penalty, the reasons for imposing it, how and when to pay, the rights of appeal and consequences of failing to comply with the notice.
- 74 A local weights and measures authority may at any time withdraw a notice of intent or a final notice. The authority may also reduce the amount specified in a notice of intent or a final notice or amend a notice to remove a requirement to repay a prohibited payment or holding deposit. The person who has received the notice must be notified in writing of any such withdrawal, reduction or amendment.
- 75 There is a right to appeal to the First-tier Tribunal against a final notice. The grounds for appeal are given in paragraph 6(2).
- 76 If a landlord or agent makes an appeal, the final notice is suspended until the appeal is determined or withdrawn. On appeal, the First-tier Tribunal may confirm, vary or cancel the final notice. The maximum penalty that the First-tier Tribunal can impose is the same as the maximum amount that the local weights and authority could have imposed.
- 77 If a landlord or agent fails to pay all or part of a financial penalty, the local weights and measures authority may recover the penalty or part of it on the order of the county court, as if it were payable under an order of that court.
- 78 Where a local weights and measures authority in England imposes a financial penalty it may retain the proceeds of the penalty and use this money for the purposes of any of its enforcement functions in relation to the private rented sector.

Clause 8: Repayment of a prohibited payment or holding deposit

- 79 This clause provides that a local weights and measures authority may require the person who has committed a breach to repay any prohibited payment or holding deposit, plus any interest, to the tenant or another person who made a payment on behalf of the tenant.
- 80 A local weights and measures authority may not require a person who has committed a breach to repay any prohibited payment or holding deposit if this money has already been applied towards a rent payment or tenancy deposit or if the tenant has made an application to the county court to recover the payment.

Clause 9: Offences

- 81 This clause provides that a landlord or letting agent who breaches the ban, and who has been fined or convicted for a different breach within the last five years, commits an offence and is

liable on summary conviction to an unlimited fine.

- 82 Likewise, a landlord or letting agent who has been fined for or convicted of failing to return a holding deposit in the last five years, commits an offence if they again fail to do so and is liable on summary conviction to an unlimited fine.
- 83 A local weights and measures authority has discretion to decide whether to impose a financial penalty or to pursue a prosecution in individual cases. However, a person cannot be convicted of an offence if a financial penalty has already been imposed in respect of the same breach.
- 84 Subsection (6) amends the Housing and Planning Act 2016 to provide that an offence under this clause is a banning order offence for the purposes of Part 2 of that Act. This means that if a landlord or agent is convicted of such an offence a local housing authority may apply to the court to ban them from letting housing and/or acting as a letting agent and/or property manager in England for at least a year. If the court makes a banning order on that application the local housing authority must make an entry in the database of rogue landlords and property agents under that Act.

Clause 10: Offences by bodies corporate

- 85 This clause provides that if a breach of a banning order is committed by a body corporate and it is proved that the breach was committed with the approval or connivance of an officer of the body corporate or where the body corporate is managed by its members, a member, or is attributable to that person's negligence, then that officer or member as well as the body corporate commits the offence and is liable to punishment for the offence.

Clause 11: Recovery of a prohibited payment or holding deposit

- 86 This clause provides for a tenant that has been charged a prohibited payment to apply to the county court to recover their money (if it has not been repaid or applied to rent or the deposit). It also provides for a tenant to apply to the county court to recover any holding deposit that has been unlawfully withheld by a landlord and not repaid or applied to rent or the deposit.
- 87 A tenant cannot apply to the county court to recover a prohibited payment if a local weights and measures authority has commenced criminal proceedings against the landlord or letting agent for the same breach.
- 88 A tenant cannot apply to the county court to recover a prohibited payment if the local weights and measures authority has already required the landlord or letting agent in question to repay the tenant.
- 89 The court may order the landlord or letting agent to repay the tenant or other relevant person the prohibited payment or holding deposit within 14 days. Relevant person is any person acting on behalf of the tenant.

Clause 12: Helping tenants recover prohibited payments

- 90 This clause provides that a local weights and measures authority may help a tenant or other relevant person to recover a prohibited payment or unlawfully retained holding deposit, such as by providing advice or by conducting proceedings.

Clause 13: Duty to publicise fees on third party websites

- 91 This clause amends section 83 of the Consumer Rights Act to require a letting agent of housing in England that advertises on a third party website (such as a property portal) to, on that website, publish details of any relevant fees and client money and redress scheme memberships or a link to those details as well as on its own website and in its offices.

Clause 14: Information about membership of client money protection scheme

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- 92 This clause amends section 83 of the Consumer Rights Act to specify that where a letting agent is required to be a member of a Client Money Protection Scheme it must give the name of the scheme of which it is a member.

Clause 15: Penalties for continuing breach of duty

- 93 This clause amends section 87 of the Consumer Rights Act to make new provision enabling a local weights and measures authority in England to impose more than one financial penalty in respect of a continuing breach of the requirement to publicise fees etc. in England. An additional penalty may be imposed if 28 days has passed since the date that the final notice was sent regarding the earlier breach or, if an appeal is lodged, after that appeal is determined or withdrawn. However a further financial penalty may not be imposed if the previous penalty was withdrawn or quashed on appeal.

Clause 16: Lead enforcement authority

- 94 This clause establishes a lead enforcement authority for the purposes of the relevant letting agency legislation.
- 95 The lead enforcement authority is the Secretary of State, or, a local weights and measures authority with which the Secretary of State makes arrangements to be the lead enforcement authority.
- 96 This clause provides that the lead enforcement authority has enforcement functions in relation to:
- a. this Bill;
 - b. Chapter 3 of Part 3 of the Consumer Rights Act 2015 as it applies in relation to England;
 - c. The requirements on letting agents to be a member of a redress scheme under an order under section 83 or 84 of the Enterprise and Regulatory Reform Act 2013; and
 - d. The requirements to be a member of a client money protection scheme under regulations under sections 133-135 of the Housing and Planning Act 2016.
- 97 This clause also gives the Secretary of State the power, by regulations, to make transitional provisions when there is a change in lead enforcement authority.

Clause 17: General Duties of the lead enforcement authority

- 98 This clause sets out the duties of the lead enforcement authority, which are to:
- Provide guidance to relevant authorities (defined in subsection (8) and oversee the operation of relevant letting agent legislation (as set out in clause 16(6));
 - As necessary, advise the Secretary of State on the working and enforcement of the ban and related matters (i.e. market developments);
 - As necessary and appropriate, disseminate information about the ban to members of the public, landlords and letting agents
- 99 Subsection (5) gives the Secretary of State power to direct the lead enforcement authority (if that is not the Secretary of State) to issue guidance to relevant authorities, and as to the content of that guidance.

Clause 18: Enforcement by the lead enforcement authority

- 100 This clause gives the lead enforcement authority the power to take steps to enforce the relevant letting agent legislation where necessary or expedient and, if it does, provides that the lead

enforcement authority may exercise the same powers as the relevant local authority with enforcement responsibility may exercise. In that case the lead enforcement authority must notify the relevant local authority which is relieved of the duty to enforce the breach, but must assist the lead enforcement authority if it so requires.

101 This clause also provides that local authorities with enforcement responsibilities for letting agent legislation in England must report to the lead enforcement authority when requested to do so.

102 The investigatory powers available to the lead enforcement authority are set out in Schedule 5 of the Consumer Rights Act 2015, which is amended by this clause.

Clause 19: Meaning of “letting agent” and related expressions

103 This clause provides the definition of a “letting agent” and “letting agency work”. The definition of “letting agent” excludes a person who carries out letting agency work as part of their employment contract and an authorised person under the Legal Services Act 2007 in relation to legal activity, if that person is not instructed in relation to other letting agency work by that client.

Clause 20: Interpretation

104 This clause explains key terms for the purposes of this Bill. Importantly it defines tenancy for the purposes of the Bill as an assured shorthold tenancy or licence to occupy other than a long lease, a tenancy of social housing, or a license to occupy holiday accommodation.

Clause 21: Consequential Amendments

105 This clause makes amendments to section 87 of the Consumer Rights Act 2015, section 85 of the Enterprise and Regulatory Reform Act 2013 and section 135 of the Housing and Planning Act 2016 consequential on the lead enforcement authority’s enforcement functions in respect of that legislation.

Clause 22: Transitional Provisions

106 Subsections (1) and (2) provide that the prohibitions in clauses 1 and 2 do not apply to a requirement imposed or which forms part of an agreement between the landlord and tenant, or, as the case may be the agent and tenant, before those clauses are brought into force.

107 Subsection (3) provides that the requirements of the Bill relating to holding deposits only apply to holding deposits paid after the coming into force of Schedule 2.

Clause 23: Financial Provisions

108 This clause is self-explanatory.

Clause 24: Crown Application

109 This clause provides that the Tenant Fees Bill will apply in relation to the tenancies of those Crown interests that are capable of granting an assured shorthold tenancy but that the Crown will not be criminally liable for any breach.

Clause 25: Extent

Clause 26: Commencement

Clause 27: Short title

110 Clauses 25-27 are self-explanatory.

Commencement

111 Clause 23 (financial provisions) and the provisions about interpretation, extent, commencement and short title of this Bill, together with the powers conferred by the Bill to make secondary legislation come into force on the day the Bill is passed. Other provisions of this Bill come into force on such day as the Secretary of State may by regulations appoint.

Financial implications of the Bill

112 An Assessment of Impact is being prepared for the Bill and will cover the implications on private sector bodies, landlords and local authorities, which derive from this Bill.

113 The enforcement of the provisions contained in this Bill by local weights and measures authorities is intended to be fiscally neutral since local weights and measures authorities may retain the proceeds of any financial penalties for the purposes of any of its enforcement functions relating to the private rented sector under this Bill or any other legislation.

114 The designation of a lead enforcement authority, if this is not the Secretary of State, will have a financial implication, which is intended to be no more than £300,000 per annum.

Parliamentary approval for financial costs or for charges imposed

115 A money resolution is required for the Bill. Such a resolution is required where the Bill authorises new charges on the public revenue - broadly speaking new expenditure.

116 A resolution is needed because of the enforcement functions which are conferred or, in the case of the lead enforcement authority functions, may be conferred on weights and means authorities by or under clauses 6 to 12 and 16 to 18 of the Bill. These authorities are county and metropolitan district councils, the Common Council of the City of London and the Council of the Isles of Scilly. As the functions of local authorities are taken into account by the Secretary of State in determining the amount of revenue support grant paid to them under Part 5 of the Local Government Finance Act 1988, the conferral of new functions on such authorities usually gives rise to the need for a money resolution.

117 Clauses 16 to 18 also envisage that the lead enforcement authority may be the Secretary of State. The possibility of the Secretary of State incurring expenditure under these clauses also creates a need for a money resolution.

118 By paragraph 10 of Schedule 3 to the Bill a weights and measures authority may use the proceeds from the financial penalties it imposes towards its enforcement functions (under the Bill or otherwise) relating to the private rented sector. Paragraph 11 of Schedule 3 requires any excess proceeds to be paid to the Secretary of State who will pay them into the Consolidated Fund. Any penalties received by the Secretary of State as lead enforcement authority will also be paid into the Consolidated Fund. The money resolution for the Bill will therefore also need to authorise the making of these payments into the Consolidated Fund.

Compatibility with the European Convention on Human Rights

119 Sajid Javid, Secretary of State for the Department for Communities and Local Government,

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proposes to make a statement before introduction that in his view the provisions of the Tenant Fees Bill are compatible with the Convention rights.

Annex A - Territorial extent and application in the United Kingdom

- 1 The territorial extent of this Bill is England and Wales only. The Bill will apply to England only.
- 2 The subject matter of this Bill is housing – a devolved matter in relation to Scotland, Wales and Northern Ireland. In the UK Government’s view all of the provisions of the Bill would be within the legislative competence of the National Assembly for Wales, the Scottish Parliament or the Northern Ireland Assembly.²

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	No	No	No	Yes	Yes	Yes	No
Clause 2	Yes	No	No	No	Yes	Yes	Yes	No
Clause 3	Yes	No	No	No	Yes	Yes	Yes	No
Clause 4	Yes	No	No	No	Yes	Yes	Yes	No
Clause 5	Yes	No	No	No	Yes	Yes	Yes	No
Clause 6	Yes	No	No	No	Yes	Yes	Yes	No
Clause 7	Yes	No	No	No	Yes	Yes	Yes	No
Clause 8	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 1	Yes	No	No	No	Yes	Yes	Yes	No
Clause 9	Yes	No	No	No	Yes	Yes	Yes	No
Clause 10	Yes	No	No	No	Yes	Yes	Yes	No
Clause 11	Yes	No	No	No	Yes	Yes	Yes	No
Clause 12	Yes	No	No	No	Yes	Yes	Yes	No
Clause 13	Yes	No	No	No	Yes	Yes	Yes	No
Clause 14	Yes	No	No	No	Yes	Yes	Yes	No
Clause 15	Yes	No	No	No	Yes	Yes	Yes	No
Clause 16	Yes	No	No	No	Yes	Yes	Yes	No

² References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 17	Yes	No	No	No	Yes	Yes	Yes	No
Clause 18	Yes	No	No	No	Yes	Yes	Yes	No
Clause 19	Yes	No	No	No	Yes	Yes	Yes	No
Clause 20	Yes	No	No	No	Yes	Yes	Yes	No
Clause 21	Yes	No	No	No	Yes	Yes	Yes	No
Clause 22	Yes	No	No	No	Yes	Yes	Yes	No
Clause 23	Yes	No	No	No	Yes	Yes	Yes	No
Clause 24	Yes	No	No	No	Yes	Yes	Yes	No
Clause 25	Yes	No	No	No	Yes	Yes	Yes	No
Clause 26	Yes	No	No	No	Yes	Yes	Yes	No
Clause 27	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 1	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 2	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 3	Yes	No	No	No	Yes	Yes	Yes	No

Subject matter and legislative competence of devolved legislatures

- 3 The subject matter of this Bill is housing – a devolved matter in Scotland, Wales and Northern Ireland.
- 4 Housing is not a reserved matter under Schedule 5 of the Scotland Act 1998. The Scottish Parliament has competence over housing in Scotland. For example, the Private Rented Housing (Scotland) Act 2011 bans letting fees in Scotland (see s.32) and regulates letting agents (see Part 4).
- 5 Housing is within the legislative competence of the National Assembly for Wales as it is listed under Part 1 of Schedule 7 to the Government of Wales Act 2006. Part One of the Housing (Wales) Act 2014, which came into force in November 2015, requires amongst other things letting agents in Wales to be licensed. Chapter 3 of Part 3 of the Consumer Rights Act 2015 concerns the regulation of letting agents (fees transparency). It extends to and applies in England and Wales but required a legislative competence motion to be passed by the National Assembly for Wales.
- 6 Housing is within the legislative competence of the Northern Ireland Assembly as it is neither reserved under Schedule 3 to the Northern Ireland Act 1998 or excepted under Schedule 2 to that Act. The Rent (Northern Ireland) Order 1978 and the Private Tenancies (Northern Ireland)

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- 7 Order 2006 set out the law on the current regulation of the private rented sector and provide councils with powers to enforce the legislation. In 2013 the requirement for landlords to protect their tenants' deposits in a Tenancy Deposit Scheme was added to the Private Tenancies (Northern Ireland) Order 2006. Further, in 2014, the Landlord Registration Scheme was added through the Landlord Registration Regulations 2014.

TENANT FEES BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Tenant Fees Bill as published in Draft on 1 November 2017 (Bill Draft).

Ordered by the Department to be printed, 1 November 2017

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PUBLISHED BY AUTHORITY OF THE DEPARTMENT

CCS1017289606
978-1-5286-0099-6