



Tenant Fees Bill HL Bill 129 of 2017–19

Summary

In England, there is currently no cap on the level of fees that lettings agents or landlords can charge to tenants. The Tenant Fees Bill would ban letting fees and the majority of other upfront fees payable by tenants to rent a property. It would also cap the amount of refundable security deposit a tenant would be required to pay to the value of six weeks' rent and cap the amount of holding deposit a tenant could be required to put down to secure a property to the value of one week's rent.

The Bill would place a duty on trading standards authorities to enforce these measures (and enable district councils which are not trading standards authorities to do so) and would impose new penalties on any landlord or letting agent found to be in contravention of them. These include a fine of £5,000 for a first breach, which would typically be viewed as a civil offence. A further breach within five years, however, would be viewed as a criminal offence, and subject to an unlimited fine and a banning order offence under the Housing and Planning Act 2016. Ministers have stated the Government will provide £500,000 in additional funding during the first year after the provisions come into force to support enforcement activities in recognition of the additional costs they will generate but expects the regime to be self-financing over the long-term.

A number of consumer groups and charities such as Citizens Advice and Shelter have declared their support for the Bill. However, organisations representing landlords and letting agencies have raised concerns that the abolition of fees will result in rising rent levels. The Bill secured cross-party support during its passage through the House of Commons, with Labour and the Liberal Democrats speaking in favour of the legislation. However, concerns were also raised, including about: whether the cap on security deposit was too high; the treatment of holding deposits; would trading enforcement bodies lack sufficient resource to police the ban effectively; and whether the Bill was overly reliant on guidance and created loopholes which unscrupulous landlords and letting agents might be able to exploit.

The Bill was not amended during committee stage in the House of Commons, but the Government tabled a series of amendments at report stage in response to these concerns. All were added to the Bill without division, and though opposition amendments were tabled at committee and report stage, none were successful. Third reading was given to the Bill in the House of Commons on 5 September, and it is due to have its second reading in the House of Lords on 10 October 2018.

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I. Background

The Tenant Fees Bill is a government bill, which completed its passage through the House of Commons on 5 September and is due to have its second reading in the House of Lords on 10 October 2018. The Government contends that the Bill will make renting properties in England fairer and more affordable for tenants by reducing the costs at the outset of a tenancy, at the same time as improving transparency and competition in the private rental market.¹ The Bill implements manifesto commitments made by the Government to ban letting fees and most other upfront fees paid by tenants in England, and includes additional measures to improve “fairness, competition and affordability”, such as capping security deposits at the equivalent of six weeks’ rent.²

A government consultation on banning letting agent fees ran between April and June 2017, and the Government committed to abolishing such fees in its 2017 general election manifesto.³ In the subsequent Queen’s Speech on 21 June 2017, the Government announced plans for a draft bill, followed in November 2017 by the Government’s response to the consultation and the publication of the Draft Tenant Fees Bill and explanatory notes.⁴

The draft Bill was subject to pre-legislative scrutiny by the Housing, Communities and Local Government Committee, which published its findings in March 2018.⁵ The Committee was supportive of the Bill and stated it had “the potential to save tenants in the private rented sector hundreds of pounds as well as making the market more transparent”.⁶ However, it also made recommendations on elements in the Bill, including on the circumstances in which landlords should be able to retain holding deposits, clarification on what constitutes a ‘reasonable’ fee in the event of default by a tenant, enabling tenants to recover fees through first-tier tribunals and additional funding for enforcement activities. Many of these were accepted by the Government in its response to the Committee and incorporated into the Tenants Fees Bill published in May 2018. Other areas where the Committee made recommendations—notably on the amount of security deposit a tenant should be required to pay—were returned to several times during the Bill’s passage through the House of Commons, as detailed below.

¹ [Explanatory Notes](#), p 3.

² *ibid.*

³ Ministry of Housing, Communities and Local Government, ‘[Banning Letting Agent Fees Paid by Tenants](#)’, 7 April 2017; and the Conservative Party, [Conservative Party Manifesto 2017](#), 2017.

⁴ Ministry of Housing, Communities and Local Government, [Draft Tenant Fees Bill](#), 1 November 2017, Cm 9529.

⁵ House of Commons Housing, Communities and Local Government Committee, [Pre-Legislative Scrutiny of the Draft Tenant Fees Bill](#), 26 March 2018, HC 583 of session 2017–19.

⁶ *ibid.*, p 3.

The Bill has been welcomed by several consumer and charitable groups, such as Which?, Shelter and Citizens Advice. The latter suggested that measures to increase transparency in the market, including that since May 2015 agents have been required to display a tariff of their fees, have “been insufficient for improving outcomes for renters”.⁷ Citizens Advice added:

While this is partly to do with compliance, more fundamentally the relationship between tenant and letting agent is inherently uncompetitive. Transparency is unable to build in this competitive feature and thus unable to drive up standards.⁸

However, bodies representing letting agents and landlords, such as the National Landlords Association (NLA), Residential Landlords Association (RLA) and the Association of Residential Letting Agents (ARLA), have criticised the legislation, raising concerns that such costs will instead be passed on to tenants via rent increases. For example, ARLA said:

An outright ban will mean these costs get buried as part of the rent and become entirely opaque. Further, if rent increases as a result, tenants will effectively end up paying the fees again, through the rent, every time they renew their tenancy.⁹

The RLA has also pointed to the Government’s impact assessment, which it contends would mean the legislation will cost landlords £82 million.¹⁰

2. Summary of Bill Provisions

Banning Tenancy Fees

The Bill seeks to ban letting fees and most other upfront fees paid by tenants. Specifically, as set out in schedule 1, the legislation would prohibit landlords and their agents from requiring tenants and licensees of privately rented housing in England (and other relevant persons) to make payments in connection with a tenancy with the exception of:

- the rent;
- a refundable tenancy deposit (reserved for any damages or defaults on the part of the tenant) capped at no more than six weeks’ rent;

⁷ Citizens Advice, [Response to DCLG Consultation: Banning Letting Agents Paid by Tenants](#), June 2017, p 3.

⁸ *ibid.*

⁹ Association of Residential Letting Agents, [Proposals for a Ban on Letting Fees to Tenants](#), January 2017, p 14.

¹⁰ Residential Landlords Association, [‘Tenant Fees Bill Will Cost Landlords £82m’](#), 3 May 2018.

- a refundable holding deposit (to reserve a property) capped at no more than one week's rent;
- certain payments on assignment, novation or variation of a tenancy when requested by the tenant capped at £50, or reasonable costs incurred if higher;
- payments associated with early termination of the tenancy, when requested by the tenant;
- payments in respect of utilities, communication services and council tax; and
- payments in the event of a default of the tenant (such as replacing a lost key or late rent payment fine) limited to the landlord's or agent's reasonable incurred costs, which must also be evidenced in writing.¹¹

The ban on fees would apply in relation to shorthold tenancies, tenancies of student accommodation and licenses to occupy, and would ban landlords and their agents from requiring tenants (and other relevant persons) to secure and pay for services from any third party (other than landlords in relation to utilities and communication services) or to make a loan.¹²

Holding Deposits

Clause 5 and schedule 2 of the Bill would require agents and landlords to refund a holding deposit except in circumstances where the tenant withdraws, fails a right-to-rent check or provides false or misleading information, which the landlord is reasonably entitled to consider in deciding whether to grant the tenancy.¹³

Enforcement and Redress

Clauses 6 and 7 would place a duty would be placed on trading standards authorities to enforce the Bill, though district councils that are not trading standards authorities would have the power to enforce if they chose. The Bill would also make provision for tenants to recover unlawfully charged fees through a first-tier tribunal and would prevent landlords from recovering possession of their property until they have repaid any unlawfully charged fees.¹⁴

The Government intends a breach of the ban on imposing fees will usually be a civil offence and subject to a financial penalty of £5,000. However, if a breach is committed within five years of the imposition of a financial penalty

¹¹ [Explanatory Notes](#), p 3. Those actions and responsibilities defined as falling “in connection with a tenancy” are also defined in the Bill.

¹² [Explanatory Notes](#), p 3.

¹³ *ibid*, p 4.

¹⁴ *ibid*.

or conviction for a previous breach, this would be a criminal offence. The penalty for such would be an unlimited fine, and it would constitute a banning order offence under the Housing and Planning Act 2016.¹⁵

Clause 8 of the Bill would further stipulate that, where such an offence is committed, local authorities may impose a financial penalty of up to £30,000 as an alternative to prosecution. The Government has stated it intends for local authorities to have discretion as to whether to prosecute or impose a financial penalty, but intends to publish guidance on this matter.¹⁶ A breach of the requirement to repay a holding deposit would be a civil offence and subject to a financial penalty of £5,000.

The Government intends that local authorities will be able to retain the money raised through financial penalties, with this money reserved for future local housing enforcement. Further, ministers have stated the Government will provide £500,000 in additional funding during the first year after the Bill is enacted to support enforcement activities, in recognition of the additional costs arising from the new duties.¹⁷ After this time, the Government anticipates the reform costs to be fiscally neutral to local authorities, as set out in its impact assessment on the Bill:

There will [...] be additional costs, such as for cases where landlords or letting agents have not complied with the requirements of the Bill. This may involve cases where a letting agent or landlord continues to charge fees that are banned or where landlords or letting agents have taken deposits greater than permitted. The extent of these costs is not certain. They largely depend on the extent to which there is non-compliance with the requirements of the Bill. It is proposed that local authorities will be able to retain the money raised through civil penalties for future local housing enforcement. Therefore, if levels of non-compliance are higher, the money generated for enforcement would be greater. We thus expect the costs to be fiscally neutral to local authorities.

[...]

We assume additional enforcement costs of £300,000 to local authorities in Year 1, plus £200,000 in setup costs for the court system. These setup costs for local authorities may include training to local authority employees, and producing guidance for tenants, letting agents and landlords. From Year 2 onwards, we expect the cost to local authorities to be fiscally neutral as they can retain revenues from

¹⁵ [Explanatory Notes](#).

¹⁶ *ibid.* Further, where a financial penalty is imposed instead of a prosecution, this would not amount to a criminal conviction.

¹⁷ [HC Hansard, 5 September 2018, col 205](#).

civil penalties issued. We vary all these estimates by 50 percent in the upper and lower scenarios.

The potential costs to local authorities need to be considered in the context of existing enforcement responsibilities held by local authorities. In addition, the enforcement costs of future overlapping requirements such as those on letting agents to belong to a client money protection scheme when handling client money, need to be considered in parallel with this Bill to inform the total cost that will result to local authorities from a range of new measures.¹⁸

Through clauses 18 and 19, the Bill would also make amendments to the transparency requirements in the Consumer Rights Act 2015 on displaying relevant fees, in order to apply those requirements to property portals such as Zoopla and Rightmove, and make new provision regarding fines in the event of a continuing breach of the requirements in England, and to require letting agents to display the name of their client money protection scheme. The Bill would also amend the Housing and Planning Act 2016 to move enforcement responsibility for mandatory client money protection scheme membership from district councils to county councils (in non-unitary authorities).

Finally, clause 22 would make provision for the Secretary of State, or a trading standards authority designated by them, to be a lead enforcement agency to provide oversight, guidance and support with the enforcement of requirements on letting agents.¹⁹

Territorial Extent

The territorial extent would be England and Wales only, apart from certain clauses—principally those which would amend the Consumer Rights Act 2015—which would apply to the whole United Kingdom. The full territorial extent of individual clauses is set out in the explanatory notes.²⁰

In Scotland, all tenant charges, other than rent and a refundable deposit, have been illegal since 2012.²¹ The Welsh Government has recently introduced legislation to ban letting fees, similar to the provisions in the Tenant Fees Bill, which is currently before the Welsh Assembly.²²

¹⁸ Ministry of Housing, Communities and Local Government, [Tenant Fees Bill Impact Assessment](#), 1 May 2018, pp 39–40.

¹⁹ [Explanatory Notes](#), p 4.

²⁰ [Explanatory Notes](#), pp 6–7.

²¹ House of Commons Library, [Tenant Fees Bill 2017–19: Analysis for Report Stage](#), 19 June 2018, p 8.

²² Welsh Government, [‘Letting Fees Bill to Make Renting Simpler and Fairer’](#), 12 June 2018.

3. Second Reading and Committee Stage

3.1 Second Reading

Introducing the Bill at second reading in the House of Commons, the Secretary of State for Housing, Communities and Local Government, James Brokenshire, said it would save tenants money and help to make the rental market fairer and more transparent:

[The Bill will] promote fairness in the private lettings market by banning unfair fees charged to tenants, as promised in the Government’s manifesto. [...] The Bill will make the market more transparent, yes, but it also has the potential to save tenants—especially young people and families—hundreds of pounds. It caps tenancy deposits, further protecting tenants from high up-front costs when renting a home. It also introduces a lead enforcement authority for the lettings sector to support local authorities in their enforcement activities.²³

Responding for the Opposition, Shadow Housing Minister, Melanie Onn, described the legislation as “very welcome”, noting that the purpose of the Bill was “to help to shift the balance of power from unscrupulous agents and landlords towards decent tenants” and to give tenants greater clarity and control over what they pay.²⁴ However, she also indicated her party had concerns with some aspects of the legislation, notably with regard to default fees and other ways in which she argued landlords could seek money from tenants as a result of losses incurred, and what would constitute a “reasonable loss” in such circumstances. Melanie Onn also raised concerns about the amount of security deposits tenants would be asked to pay, as well as the enforcement of the new regime, indicating these would be areas where further changes would be sought as the Bill progressed.²⁵

Speaking for the Scottish National Party, Angela Crawley (MP for Lanark and Hamilton East) recognised the main elements of the Bill would not apply to Scotland, but drawing upon the experience of the abolition of fees there, she contended “the evidence suggests that those renting property have more money as a result”.²⁶ Indeed, she argued renters were no more likely to report a rent increase in Scotland than in other parts of the UK.²⁷ However, Angela Crawley also raised what she described as loopholes in the Bill, including the definition of “reasonable costs” to landlords with regard to default fees and the circumstances in which landlords or agents could retain a holding deposit.

²³ [HC Hansard, 21 May 2018, col 641.](#)

²⁴ *ibid*, col 645.

²⁵ *ibid*, cols 647–9.

²⁶ *ibid*, col 651.

²⁷ *ibid*.

Wera Hobhouse (Liberal Democrat MP for Bath), also welcomed the Bill but raised concerns regarding the issue of local government lacking powers of enforcement, noting the Bill proposed a self-financing system which she argued “often does not work in practice”.²⁸ She also raised the issue of default fees, contending that “we cannot permit letting agencies to attempt to bring in fees under an alias or to exploit the default fees loophole”, adding “[w]e need more information from Government to understand how this issue is being addressed”.²⁹

3.2 Committee Stage

No amendments were made to the Bill at public bill committee in the House of Commons. A number of opposition amendments were tabled, but were either withdrawn or defeated on division. Those moved to a vote are detailed below in the order they were considered.³⁰

Amendment 7: Maximum Security Deposits

Sarah Jones (Labour MP for Croydon Central) moved amendment 7, the effect of which would have been to reduce the maximum deposit payable by tenants from six to three weeks’ rent. She argued that a six-week cap would exacerbate the difficulties faced by those tenants who already struggle to find sufficient funds for a four-week deposit.³¹

In response, the Parliamentary Under Secretary for Housing, Communities and Local Government, Rishi Sunak, argued a three-week cap would risk deposits being insufficient to cover any damage to the property or unpaid rent, and thus landlords would be likely to offset that risk by asking for more rent up front, or not investing in the sector in the first place. Further, the Minister argued that putting the cap at six weeks would provide the “flexibility that landlords need to rent to higher-risk tenants”.³²

The amendment was defeated on division by nine votes to eight.³³

Amendment 5: Holding Deposits

Melanie Onn, Shadow Minister for Shadow Minister for Housing, Communities and Local Government, moved amendment 5 which would have removed holding deposits from the list of permitted payments allowed by the Bill. Speaking to her amendment, she suggested that tenants could

²⁸ [HC Hansard, 21 May 2018, col 644.](#)

²⁹ *ibid.*

³⁰ A full description of the issues discussed at committee stage can be found in House of Commons Library, [Tenant Fees Bill 2017–19: Analysis for Report Stage](#), 19 June 2018.

³¹ [Public Bill Committee, Tenant Fees Bill, 7 June 2018, session 2017–19, 3rd sitting, col 80.](#)

³² *ibid.*

³³ *ibid.*, col 84.

struggle to reclaim holding deposits if it was not clear when a failure to withhold it was unlawful.³⁴ Further, she suggested the requirement for such a deposit was another financial burden some tenants might struggle to meet.

In his response, Rishi Sunak said neither the Housing, Communities and Local Government Committee nor consumer groups had advocated the abolition of holding deposits, and suggested guidance would support landlords, agents and tenants in dealing with such deposits.³⁵

The amendment was defeated on division by nine votes to eight.³⁶

Amendment 10: Default Fees

Shadow Minister, Melanie Onn, also moved amendment 10, which would have required the Secretary of State to make regulations to further control the payment of default fees by tenants, arguing that the Bill left such matters open to selective interpretation and created “loopholes through which those who would seek to maximise profits can do so at the expense of tenants”.³⁷

In response, Rishi Sunak rejected the idea that default fees represented a loophole, observing they are permitted only if the tenant is made aware they can be charged such amounts at the outset of the tenancy, and that the amount charged is capped at the landlord’s loss.³⁸

The amendment was defeated on division by nine votes to eight.³⁹

Amendment 1: Early End of Fixed-Term Tenancies

Dr Paul Williams (Labour MP for Stockton South) moved amendment 1, which would have allowed tenants to terminate a fixed-term tenancy early where they are suffering a physical or mental health crisis, or when they are subject to domestic violence, without being liable for rent or charges. Moving the amendment, Dr Williams contended the measure represented an opportunity to protect a small number of “exceptionally vulnerable” people who find themselves in a “crisis not of their own making”.⁴⁰

In response, the Minister, Rishi Sunak, said he had “enormous sympathy” with those who found themselves in these situations, and that the Government would encourage landlords to be understanding and flexible—

³⁴ [Public Bill Committee, *Tenant Fees Bill*, 7 June 2018, session 2017–19, 3rd sitting, col 85.](#)

³⁵ *ibid*, col 87.

³⁶ *ibid*, col 97.

³⁷ *ibid*, col 80.

³⁸ *ibid*, col 103.

³⁹ *ibid*, col 104.

⁴⁰ *ibid*, col 106.

something which would be emphasised in the guidance provided to them—but but could not support the amendment.⁴¹

The amendment was defeated on division by nine votes to eight.⁴²

Clause 5: Treatment of Holding Deposits

The Committee divided over the inclusion of clause 5, which (along with schedule 2) would have stipulated how holding deposits should be treated, including the circumstances under which they should be refunded. The clause was ordered to stand part of the Bill by nine votes to seven.⁴³

Amendment 14: Recovery of Prohibited Payments

Shadow Minister, Melanie Onn, moved amendment 14, which would have enabled tenants seeking to recover prohibited payments from landlords/agents without assistance from the local authority to claim compensation of up to three times the fee paid. Speaking to her amendment, Melanie Onn said to improve the enforcement of the Bill it was necessary to provide further encouragement to tenants to self-report and to call out the use of prohibited fees by their landlords, which she argued this amendment would achieve.⁴⁴

The Minister, Rishi Sunak, responded that tenants should get any prohibited payments back in full, but the Government did not feel it appropriate for the tenant to receive further compensation, “given that the landlord or agent is liable for a significant financial penalty in addition to reimbursing the tenant”.⁴⁵

The amendment was defeated on division by nine votes to six.⁴⁶

Amendment 16: Reduction of Transitional Period

Sarah Jones (Labour MP for Croydon Central) moved amendment 16, which would have reduced from one year to six months the transitional period before the prohibitions in the Bill would apply to agreements between landlords/agents and tenants entered into before the commencement of those provisions. In moving the amendment, Sarah Jones recognised the

⁴¹ [Public Bill Committee, *Tenant Fees Bill*, 7 June 2018, session 2017–19, 3rd sitting, col 107.](#)

⁴² *ibid.*, col 108.

⁴³ [Public Bill Committee, *Tenant Fees Bill*, 12 June 2018, session 2017–19, 4th sitting, col 117.](#)

⁴⁴ *ibid.*, col 142.

⁴⁵ *ibid.*

⁴⁶ *ibid.*, col 143.

need for a transition period, but argued a year was too long and would be disadvantageous to those in pre-existing contracts.⁴⁷

In response, Rishi Sunak contended that reducing the period would not be fair to landlords or agents, arguing they would need time to renegotiate pre-commencement contracts to ensure they are not unfairly penalised.⁴⁸

The amendment was defeated on division by nine votes to eight.⁴⁹

4. Report Stage

4.1 Government Amendments

The Government moved several amendments at report stage, all of which were added to the Bill without division.

Fees, Default Charges and Permitted Payments

The first government amendments, amendments 5 and 6 sought to ensure that landlords and agents could not charge any fees to tenants in the event of default, except under those circumstances set out in paragraph 4 of schedule 1. Under the terms of the amendments, the Bill would specifically prohibit default fees which may have been set out in a separate agreement between the agent and the tenant, rather than in the tenancy agreement. In moving the amendments, the Minister, Rishi Sunak, said the Government had listened to concerns that the provisions on default fees may be open to abuse, and had responded with these new measures.⁵⁰

Further, Mr Sunak moved amendment 27 which would extend the limitation on what could be charged to incorporate the agent's costs. He said the Government wanted to ensure an agent could not bill a landlord a significant amount only for such charges to be passed on to the tenant as the landlord's incurred costs.⁵¹ In addition, he said the Government was introducing provision to specify that any fees charged must be reasonable in respect of the works undertaken, rather than simply tied to actual loss or costs incurred. This, he argued, would ensure landlords and agents could not claim for charges which exceeded the reasonable commercial value of goods or services.⁵²

⁴⁷ [Public Bill Committee, *Tenant Fees Bill*, 12 June 2018, session 2017–19, 5th sitting, col 160.](#)

⁴⁸ *ibid.*

⁴⁹ *ibid.*, col 162.

⁵⁰ [HC Hansard, 5 September 2018, col 203.](#)

⁵¹ *ibid.*

⁵² *ibid.*, col 204.

Noting concerns which had been raised about default fees (also the subject of opposition amendment 3, as discussed below), and specifically that tenants could find it difficult to challenge the reasonableness of such fees, the Minister said the Government agreed it would be easier for them to do so if they were offered up-front evidence of default charges.⁵³ Consequently, he spoke to government amendment 28, which sought to introduce a requirement for landlords and agents to demonstrate their loss proactively by providing written evidence—in the form of receipts or invoices, for example—of the costs incurred before charging tenants. Mr Sunak argued this would put the onus on landlords and agents to be clear about the charges they intended to levy, and would provide tenants additional assurance they were paying a “fair and reasonable” amount.⁵⁴

However, Rishi Sunak also said the Government maintained it would not be appropriate to list default charges in the Bill, given the risk that such a list would be incomplete or insufficient. Mr Sunak argued it was for the tenant and the landlord to determine what it was necessary and fair to include as default charges, on a case-by-case basis. He contended the Government’s amendments would increase transparency and fairness by ensuring that landlords and agents could recover their costs, while providing greater protection to tenants over the level of fees they could be charged and further minimising the risk of abuse.⁵⁵

On the issue of permitted payments, the Minister said the Government wanted to deliver on its intention that whatever party contracts a service should pay for that service. He noted the Bill would already allow for tenants to be responsible for the cost when they procure their own third-party services—for example, a reference check or an inventory. Mr Sunak argued that, similarly, tenants should be able to make payments to agents whose services they contract for finding accommodation, provided the agent does not work on behalf of the landlord. Thus, he said government amendment 7 was designed to ensure tenants would be free to contract the services of a relocation agent (or similar) should they wish to do so, provided that agent does not also act on behalf of the landlord with whom the tenancy is being agreed.⁵⁶

The Minister also moved amendments 20 to 23 which sought to make minor amendments to clause 28 of the Bill on default charges. Specifically, the amendments sought to ensure if a payment, such as a default charge, was required under a tenancy agreement entered into before the ban came into force, that payment would be prohibited where it was paid to an agent after a period of 12 months after the provisions came into force. Mr Sunak noted the Bill already sought to prohibit this in relation to landlords, and said the

⁵³ [HC Hansard, 5 September 2018, col 208.](#)

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ *ibid.*

Government wanted to ensure there was consistency with respect to agreements with agents.⁵⁷

Mr Sunak added that government amendments 24, 25 and 29 to 42 sought to make some minor drafting changes to clarify that a person acting on behalf of the tenant, or someone who has guaranteed the payment of rent—a relevant person, as defined by the Bill—could also make a permitted payment. The Minister argued this would ensure that, if somebody guaranteed a tenant’s rent, they could make payments on the tenant’s behalf to a landlord or agent if required.⁵⁸

Enforcement

The Minister also spoke to amendments the Government had tabled about enforcement, following concerns which had been expressed at previous stages of the Bill. Specifically, he said the Government was acting in three areas to clarify the enforcement and repayment provisions in the Bill to ensure “the legislation can be effectively and fairly enforced, and that tenants have proper access to redress when things go wrong”.⁵⁹

Firstly, Mr Sunak spoke to government amendments 13, 14 and 44 to 48 which he argued would ensure that, if a landlord or agent charged the tenant an unlawful payment, that landlord or agent would have to repay it as soon as practically possible. He noted that under the current arrangements when a tenant seeks repayment through the local authority or first-tier tribunal, a landlord or agent has 14 or 28 days, respectively, to return the unlawfully charged payment once an enforcement order has been made. In contrast, the government amendments would require that a landlord or agent must repay unlawful fees within 7 to 14 days of the making of an order by the enforcement authority or the first-tier tribunal. Mr Sunak added that the Government expected most repayments would be made within seven days, but had provided for a range because in certain circumstances this might not be possible. He added the measure was designed to address concerns on speed of repayment when a landlord or agent was at fault, and to reassure tenants about the recovery of their money.⁶⁰

Secondly, the Minister said it had always been the Government’s intent that a landlord or agent should not receive more than one financial penalty for each breach of the ban, and thus said government amendment 8 intended to make this clear by preventing a landlord or agent from being penalised more than once for the same offence by different enforcement authorities.

⁵⁷ [HC Hansard, 5 September 2018, col 208.](#)

⁵⁸ *ibid.*

⁵⁹ *ibid.*, col 209.

⁶⁰ *ibid.*

Mr Sunak said there should only be one fine per breach, regardless of which enforcement authority charged it.⁶¹

Thirdly, Rishi Sunak said the Government wanted to ensure that, when financial penalties and convictions were secured, there was a clear record of this enforcement action and the relevant authorities were made aware of it. Thus, he said the Government had tabled amendment 11, which sought to extend the obligation on enforcement authorities to provide notice when they secured a conviction under clause 12 of the Bill. He noted enforcement authorities would be required to notify the relevant local housing authority when they secured a conviction, but said the Government wanted to ensure enforcement authorities were also required to notify the lead enforcement authority in such circumstances.⁶²

Responding to a further question on enforcement, Mr Sunak said if a tenant was not able to resolve issues in direct conversation with their landlord or letting agent, the next step would be go to the first-tier tribunal. He noted this had been recommended by the Housing, Communities and Local Government Committee, and said the Government had been “happy to introduce it into the Bill as an accessible place for our constituents to go and seek redress”.⁶³ Mr Sunak stated if the tenant was not happy at that level they could go the county courts where further redress could be sought, noting the enforcement body at a local level would be the local trading standards authority, which in most cases is the upper-tier authority. He further noted the provision in the Bill for the Government to nominate a lead enforcement authority, which will also be able to act in such circumstances.⁶⁴

As part of the discussion on enforcement, Mr Sunak reaffirmed the Government’s commitment to fund the first year’s cost for trading standards and enforcement authorities of the Bill of “about £500,000”.⁶⁵ Thereafter, he said the fines under the legislation will enable enforcement authorities to recoup some of the costs, and to further invest some of that money in enforcement.

Repayment of Fees

Turning to repayment of unlawful fees, the Minister said it was “only fair” tenants should be given a say on how that should occur, noting this was also the subject of an opposition amendment at committee stage.⁶⁶ Mr Sunak said he had considered this issue, as he had undertaken to do at the time, and

⁶¹ [HC Hansard, 5 September 2018, col 210](#)

⁶² *ibid.*

⁶³ *ibid.*, col 205.

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ *ibid.*, col 212.

thus government amendments 9, 10, 12, 18, 19 and 43 sought to place a requirement on landlords and agents to seek consent if they wished to offset such a fee against a tenancy deposit or rent payment.

He contended these provisions would go further than those proposed by the opposition front bench by also requiring agents and landlords to seek the tenant's consent if they wished to offset the holding deposit against the tenancy deposit or a future rent payment. Rishi Sunak noted that, should a landlord or agent not seek consent from the tenant or relevant person regarding how the prohibited payment or holding deposit should be refunded, they would be judged not to have fulfilled their obligation to repay the fee under the terms of the amendments. He argued this would leave the landlord or agent liable for a financial penalty and give the tenant the right to recover their fee through the relevant enforcement authority. He added these measures would also restrict the landlord's ability to serve a section 21 eviction notice.⁶⁷

4.2 Opposition Amendments/Concerns

Speaking for the Opposition, Shadow Minister for Housing, Communities and Local Government, Melanie Onn, said her party welcomed the Government's amendments tabled at report stage and would support them. However, she added she was "disappointed at the lack of movement on the requirement for deposits", which would stay at up to six weeks.⁶⁸ Melanie Onn argued that this remained a "significant financial barrier" into the private rented sector for many people. Noting that deposits were currently in the region of four weeks at a national level, she argued allowing deposits of up to six weeks was likely to encourage more landlords or agents to increase their size, thus making it even harder for people to access the private rented sector.⁶⁹

Length of deposits was raised by Bob Blackman (Conservative MP for Harrow East), who chaired the pre-legislative scrutiny of the Bill by the Housing, Communities and Local Government Committee (in the absence of the usual chair, Clive Betts). Mr Blackman drew attention to the Committee's recommendation that the length of deposits be set at five weeks, to avoid the risk that a tenant may refuse to pay the last month's rent if the limit was set at four weeks, but avoid some of the financial hardship to tenants which could result from a six-week limit.⁷⁰

No amendments were tabled on this issue, however.

⁶⁷ [HC Hansard, 5 September 2018, col 212.](#)

⁶⁸ *ibid*, col 213.

⁶⁹ *ibid*.

⁷⁰ *ibid*, col 226.

Acceptable Payments

Turning to the amendments tabled in her name, Melanie Onn spoke first to amendment 3, which she argued would rectify a loophole in the Bill allowing for unscrupulous landlords and agents to place unfair terms in their tenancy agreements. Specifically, she argued not providing a list of what payments were acceptable on the face of the Bill, and relying instead on guidance, would leave this model open to exploitation. In contrast, she argued her party's amendment would provide a "clear list of acceptable payments that cover a loss to the landlord".⁷¹ This would allow fees to be charged only when there was a "clear and indisputable" cost, preventing the use of tenancy agreements as a device through which to include additional charges.⁷² She added that, although the amendment set out a limited set of terms for permitted payments, this would not stop landlords claiming damages or taking money out of a deposit where needed. She further clarified the amendment would relate only to situations where there was no dispute and there was a "real, additional or exceptional cost to the landlord that falls outside usual expected business costs", such as sending a letter or email to a tenant.⁷³

However, Melanie Onn also made clear the amendment was drafted to serve as an example of what payments could be designated as acceptable, rather than a definitive list. She argued that, should MPs accept the principle of the amendment, the issue could be taken further in the House of Lords.⁷⁴ She argued putting in place a "simple paragraph" such as that in amendment 3 would make it clearer to tenants when they had been charged an unfair fee, and thus they would be better able to self-enforce their rights.⁷⁵

The House divided on amendment 1, where it was defeated by 302 votes to 241.⁷⁶

Enforcement Powers

Further on the issue of enforcement, Melanie Onn spoke to amendments 1 and 2, the primary purpose of which would have allowed trading councils the freedom to apply higher fines to those who break the rules. She argued this would improve the enforcement of the Bill twofold. Firstly, it would deter landlords and letting agents from "taking the chance" of applying prohibited levels of fines towards tenants.⁷⁷ Secondly, she argued her party was

⁷¹ [HC Hansard, 5 September 2018, col 215.](#)

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ *ibid.*, cols 241–44.

⁷⁷ *ibid.*, col 216.

concerned unscrupulous landlords and letting agents would still be tempted to charge prohibited fees in the belief they would not be challenged until they had taken well over £5,000 in prohibited fees, and that as a result they would see those fines as an “acceptable business cost”.⁷⁸ In contrast, amendment 2 would allow for fines of up to £30,000 for a breach of the ban on unpermitted fees. In response to concerns raised in the debate on the level of such a fine, Melanie Onn said the amendment was clear only that it should not exceed £30,000, and the amount imposed would be for the enforcement agency to determine based on the circumstances and understanding of a given situation. She argued enabling such a charge would “provide a full deterrent” and increase the odds against landlords and letting agents charging prohibited fees.⁷⁹ She added such additional revenue would go to councils and trading bodies, thus assisting with the enforcement of the regime.

The Minister spoke to amendment 1 during his remarks at the start of the debate. Rishi Sunak argued the Government wanted the fine structure in the Bill to be a serious deterrent to non-compliance, and following feedback from across the sector “firmly believe[d] that financial penalties provided in the Bill are the right ones”.⁸⁰ He argued a £30,000 fine for an initial breach of the ban would be excessive, and could unfairly penalise landlords and agents who may inadvertently contravene the prohibitions.⁸¹ He also said the Government had listened to concerns that some agents and landlords would view the £5,000 initial fine as a business cost and repeatedly refuse to comply. He argued this was why the Bill would make landlords and agents liable for a new financial penalty for each breach of the ban they commit, arguing a financial penalty of up to £30,000 for such further breaches would act as a serious deterrent for prolific offenders. He added further breaches would also leave the landlord or agent liable to prosecution and an unlimited fine depending on the severity of the offence and qualify as a banning-order offence.⁸²

The House divided on amendment 1, where it was defeated by 299 votes to 240.⁸³

4.3 Backbench Amendments

Daniel Kawczynski (Conservative MP for Shrewsbury and Atcham) moved amendment 4 which, rather than abolishing most fees landlords and letting agents could charge tenants, sought instead to cap the level of such fees to

⁷⁸ [HC Hansard, 5 September 2018, col 216.](#)

⁷⁹ *ibid.*

⁸⁰ *ibid.*, col 212.

⁸¹ *ibid.*

⁸² *ibid.*

⁸³ *ibid.*, cols 235–38.

£300.⁸⁴ Mr Kawczynski argued this would prevent the abolition of fees leading to an increase in rents and recognised the need to support small-scale landlords.

The amendment was withdrawn without division.

4.3 Other Issues Discussed at Report Stage

Some other issues were discussed at report stage not directly related to the Bill or the amendments moved, but pertinent to the wider debate, including:

- Deposit passporting: On the issue of whether a tenant's deposit could be switched from one property to another when they move, thus removing the need for the tenant to find extra funds if repayment of the original deposit was delayed, Rishi Sunak said the Government had convened a working group to examine this issue which would report in spring 2019.⁸⁵
- Redress schemes: the Minister, Rishi Sunak, said the Government was also consulting on whether it should be mandatory that landlords join a redress scheme, noting this is already a requirement for letting agents.⁸⁶

5. Third Reading

Opening debate at third reading, the Secretary of State for Housing, Communities and Local Government, James Brokenshire, highlighted that the Bill was a key part of the Government's housing agenda and argued it would form part of rebalancing the relationship between tenants, landlords and agents:

We all agree that the Bill's aim of making renting fairer, more transparent and more affordable for tenants is important. As such, it is a key part of the Government's housing agenda. More people are renting, and they deserve help now, which is what the Bill is all about. We want to ensure that everyone, regardless of whether they own their home or rent, or whether they are in the social or private sector, has the security and dignity they need to build a better life.

The feedback and evidence we received recognised the challenges that tenants in the private sector face, especially regarding unfair fees and the need to rebalance the relationship between tenants, landlords and agents. Having listened, we introduced amendments on Report to

⁸⁴ [HC Hansard, 5 September 2018, col 223.](#)

⁸⁵ *ibid*, col 203.

⁸⁶ *ibid*, col 205.

ensure that the Bill better delivers on our commitment to create a system that works for everyone.⁸⁷

Responding for Labour, Shadow Minister, Melanie Onn, said the Bill was “leaving the House in a better state than when it was introduced”, but there still more changes were required to “stop this being a missed opportunity for 4.7 million tenants in England”.⁸⁸ In particular, she added more needed to be done on the issue of default fees and voiced concern over what she described as the reliance of the Bill on guidance:

The Government need to consider further the impact of their policy, which allows default fees to continue to be open to abuse. More than half of tenants do not see their tenancy agreement before putting money down for a tenancy. Much emphasis is still placed on the ability of a tenancy agreement to signify a mutually understood and fair relationship, but that is very often not the reality for tenants. The Bill continues to place reliance on guidance, so much so that the chair of the [House of Lords] Delegated Powers and Regulatory Reform Committee, Lord Blencathra, has said that, since the guidance will play such an important part in the functioning of this Bill, it should be subject to parliamentary scrutiny, but we are yet to see even a hint of a first draft.⁸⁹

The letter referred to was sent by Lord Blencathra, as chair of the House of Lords Delegated Powers and Regulatory Reform Committee, to Clive Betts, chair of the Housing, Communities and Local Government Committee’s pre-legislative scrutiny. It said on the issue of guidance:

The Department acknowledges in its memorandum that the guidance will play an important role in ensuring consistency in the way in which different local weights and measures authorities exercise their enforcement functions, including deciding whether to impose a financial penalty or to prosecute. Since the guidance is likely to be highly influential as to how enforcement functions are exercised, we consider it should be made subject to parliamentary scrutiny, with the draft negative procedure offering an appropriate level of scrutiny.⁹⁰

Despite her concerns, however, Melanie Onn said Labour remained supportive of the legislation:

Labour fundamentally supports the Bill because it will tackle many of

⁸⁷ [HC Hansard, 5 September 2018, col 247.](#)

⁸⁸ *ibid*, col 248.

⁸⁹ *ibid*.

⁹⁰ [Letter from Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee, to Clive Betts MP, Chair of the Housing, Communities and Local Government Committee, ‘Draft Tenant Fees Bill’, 23 February 2018.](#)

the unfair fees that tenants face when they rent a property, and will help to build a more professional, transparent and fairer private rented sector across England.⁹¹

Speaking for the Liberal Democrats, Wera Hobhouse reaffirmed her party's support for the Bill, but also raised concerns particularly regarding the issues of default fees and enforcement funding:

We must ensure that the Bill fully ends the practice of tenants' fees. However, as the Bill is currently drafted, there are still loopholes around default fees. The Secretary of State's amendments go some way towards closing the gap, and ensuring that letting agents and landlords do not introduce new fees under a different name. However, the text of the Bill is still too ambiguous, leaving what constitutes a reasonable cost to the discretion of landlords or letting agents. We must also provide local authorities with appropriate funding to enforce the ban. If local authorities have no resources to enforce it, landlords and letting agents will just continue with this unreasonable practice.⁹²

The Bill was given a third reading without division.

⁹¹ [HC Hansard, 5 September 2018, col 248.](#)

⁹² *ibid*, col 250.