



HOUSE OF LORDS

**Delegated Powers and Regulatory Reform Committee**

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Mr Clive Betts MP  
Chair of the Housing, Communities and Local Government Committee  
House of Commons

**Draft Tenant Fees Bill**

The House of Lords Delegated Powers and Regulatory Reform Committee welcomes the opportunity to comment on this draft Bill. I am delighted therefore to enclose a submission on behalf of the Committee.

**The Rt Hon. Lord Blencathra**

*Chairman of the Delegated Powers and Regulatory Reform Committee*

**Submission from the Delegated Powers and Regulatory Reform Committee to the House of Commons Housing, Communities and Local Government Committee**

**THE DRAFT TENANT FEES BILL**

1. We have been asked by the House of Commons' Communities and Local Government Committee for our views on the delegated powers in this Bill which makes provision for restricting the fees which may be imposed on tenants by landlords and letting agents of housing in England. The Department for Communities and Local Government has provided a delegated powers memorandum to assist us.<sup>1</sup>

**Clause 3(2) – Power to modify list of permitted payments**

2. Clause 3(2) confers a Henry VIII power on the Secretary of State to use regulations to modify the list of permitted payments in Schedule 1 to the Bill. This is a significant power because the list of permitted payments in Schedule 1 is central to the Bill's purpose of restricting the fees which may be imposed on tenants by landlords and letting agents of housing in England. The power is also a wide one because there are no limits on the types of payment which may be added to or removed from the list, or on the nature of the modifications which may be made. The only limit is in clause 3(3) which prevents the power being exercised to remove rent from the categories of payment which are permitted payments. Regulations under clause 3(2) are subject to the affirmative resolution procedure.
3. The powers conferred by clause 3(2) are explained in paragraphs 9 to 22 of the delegated powers memorandum:
  - The Department does not currently have any intention to make changes to the list of permitted payments in Schedule 1. The list has been the subject of extensive stakeholder engagement, and accordingly the Government believe the list is the correct one.
  - However, the circumstances which affect the private rented sector are liable to change. This is reflected in the fact that the sector is expanding and is subject to a changing demographic. There have also been recent changes in the tax legislation affecting the sector.
  - The changing nature of the sector has led the Government to conclude that circumstances may arise in the future which require changes to be made to the list of permitted payments, particularly if technological innovation or economic or market changes lead to unintended consequences arising from the legislation. The Government also considers it is necessary to have the power to make changes to the

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<sup>1</sup> During the Committee's deliberations on this draft Bill, the following interests were declared: Lord Flight, Lord Thomas of Gresford and Lord Thurlow are landlords; and Lord Blencathra, Lord Jones, Lord Moynihan, Lord Rowlands and Lord Tyler are tenants.

legislation in order to be able to combat changes to business practices which are aimed at avoiding the effects of the legislation.

4. We consider the Department has made a convincing case for having a power to amend the list of permitted payments in Schedule 1. We also consider that the broad scope of the power is justified. The Government have set out in Schedule 1 what they currently consider to be the appropriate list of permitted payments. The power to alter the list has been taken so that the Government can respond to changes which might occur in the future. Although the Department has provided examples in the delegated powers memorandum of the kinds of changes that may be necessary, to a large extent the power is there to deal with changes in circumstances which cannot at the moment be anticipated or predicted. The fact that the power is intended to deal with unknown and unknowable future changes, in our view makes it justifiable for the power to be drawn very broadly. The width of the power is balanced by the fact that the affirmative resolution procedure will apply to any regulations made under clause 3(2).

### **Clause 6(4) – Guidance**

5. Provision is made for local authorities acting in their capacity as local weights and measures authorities to enforce provisions of the Bill. The Bill also allows for the establishment of a lead enforcement authority (which may be either the Secretary of State or a local weights and measures authority).
6. Clause 6(4) confers power on the Secretary of State or, if different, the lead enforcement authority to issue guidance about the exercise by a local weights and measures authority of its functions under the Bill. A local weights and measures authority is under a duty to have regard to any guidance issued under clause 6(4). The functions of local weights and measures authorities include imposing civil penalties for breaches of provisions of the Bill, with the maximum penalty being £5000 or £30,000 depending on the circumstances. Their functions also include a power to prosecute offences under clause 9.<sup>2</sup>
7. The Department explains in paragraph 33 of the delegated powers memorandum that it expects the guidance to be used to promote best practice and to promote consistency in how the legislation is applied by different local weights and measures authorities. The particular example given in the memorandum is of the circumstances in which it would be more appropriate to issue a financial penalty rather than to prosecute, and the appropriate levels of financial penalty in particular circumstances.
8. Guidance issued under clause 6(4) is not subject to parliamentary scrutiny. The approach of not requiring the guidance to be subject to parliamentary scrutiny is consistent with that adopted in other areas of housing legislation where enforcement powers are given.
9. In the 2015-16 Session, we reported<sup>3</sup> on a provision in the Housing and Planning Bill which also concerned guidance covering the imposition of financial penalties and the

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<sup>2</sup> Clause 9 makes it an offence for a person to breach clauses 1 and 2 of and Schedule 2 to the Bill, if that person has committed a previous breach of the same provision for which a civil penalty was imposed, and the second breach is committed within a period of 5 years from date on which the penalty for the first breach was imposed.

<sup>3</sup> 21st Report of Session 2015–16, HL Paper 98.

circumstances in which it would be more appropriate to issue a financial penalty rather than to prosecute. In that case, we concluded that the guidance should be subject to parliamentary scrutiny because it was likely to be highly influential when an authority determines whether to impose a financial penalty instead of bringing a prosecution, and when it decides the level of that penalty.

10. **We take the view that similar considerations apply here. 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.**

23 February 2018

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