

Local Government Association briefing

Tenant Fees Bill

Second Reading, House of Lords
10 October 2018



KEY MESSAGES

- We welcome the Tenant Fees Bill and we are pleased that the Bill received cross-party support in the House of Commons. The Government's intention to make private rented accommodation more accessible is positive. Excessive letting agent fees are a concern for many tenants and councils.ⁱ
- Councils will have responsibility for enforcing the ban in their areas, and require additional resources to do so. We are pleased that the Government has listened to our calls and recognised the need for up-front funding, by committing £500,000 for the first year.ⁱⁱ
- The Government intends councils' enforcement work to be funded through fines recouped after the first year. Allowing councils to keep money from fines is helpful, but may not address the cost of the necessary proactive work.
- We welcome the pre-legislative report of the Housing, Communities and Local Government Committee. The report describes the current funding model as a 'perverse disincentive' for councils to engage proactively and cooperatively with landlords and tenants.ⁱⁱⁱ
- Councils will require clear and timely guidance from the Government in order to enforce the ban effectively. Local authorities want to bring about consistency in enforcement across the country. There should also be a national information campaign to make tenants and landlords aware of the new rules.
- We support the designation of a lead enforcement authority for the ban. National Trading Standards (NTS) already provides lead authority expertise on a range of issues, and we would support NTS providing the lead enforcement role.

Briefing

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ADDITIONAL INFORMATION

The Bill

The Tenant Fees Bill will abolish most upfront fees for tenants in England and cap security deposits at the equivalent of six weeks' rent.^{iv} We welcome the Bill and the Government's intention to make private rented accommodation more accessible.

Letting fees and high deposits are seen as adding to the affordability challenge for the 4.7 million households in the private rented sector.^v There is currently no cap on the level of fees that letting agents can charge in England, although consumer protection legislation might apply in certain circumstances.

Councils' role in enforcing the ban

In order for councils to enforce the ban, it is vital that the Government provides adequate up-front funding. Councils will want to take a proactive approach to compliance work, but local trading standards teams are under severe financial pressure. Since 2009, the number of trading standards officers has reduced by 56 per cent.^{vi}

It is positive the Government has recognised the need for up-front funding of enforcement action by councils, in the first year of the legislation. We are therefore pleased that the Government has listened to our calls and recognised the need for up-front funding, by committing £500,000 for the first year.

The Government intends councils' enforcement work to be funded through fines recouped after the first year. Allowing councils to keep money from fines is helpful, but may not address the cost of the necessary proactive work. For example, it would not fund any up-front or proactive work that does not lead to any civil penalties being issued.

The pre-legislative scrutiny report of the Housing, Communities and Local Government (HCLG) Committee recognised our concerns with the current funding of local enforcement action. The Committee described the current funding model as offering a 'perverse disincentive' for councils to engage proactively and cooperatively with landlords and tenants. This has resulted in varying levels of enforcement, depending on available resources and local priorities.

The use of lead enforcement authorities is a helpful way of ensuring that funding is appropriately targeted at the organisations enforcing specific areas of activity. National Trading Standards (NTS) already provides lead authority expertise on a range of issues, including estate agents, and we would therefore support NTS providing the lead enforcement role.

Councils will require clear and timely guidance from the Government in order to enforce the ban. This will help local authorities to bring about a consistency in enforcement across the country, ensuring that there is a level playing field for tenants and letting agents throughout different areas.

Any penalties issued for infringement of the ban should be commensurate with the level of offence, and heavy fines should not be used as income generators by councils. A commitment to greater funding for local trading standards across England – rather than relying on the proceeds of penalties - would also help to bring about a more consistent level of enforcement across different local authority areas.

Raising awareness of the ban

Enforcement must be supported by a national, Government-led information campaign to make tenants and landlords aware of the new rules. Ensuring that tenants and landlords are aware of the ban will reduce the potential for non-compliance, so it is important that central government undertakes a national awareness-raising campaign, backed with both funding and non-financial resources.

Reforming the private rented sector

Excessive letting agent fees are a concern for many tenants and councils, hampering access to the market, which in turn places pressure on housing of other tenants, including social housing. The proposed ban on letting agent fees for tenants will bring welcome clarity to a sector that has a powerful influence on the cost of renting.

The sheer volume and complexity of regulations governing the sector can be confusing for landlords, tenants and councils. The Government needs to consider reviewing and modernising the framework to support councils' ability to meet the expectations of their residents. The HCLG Committee has agreed that a review is necessary.^{vii}

Landlord licensing schemes can have significant benefits for landlords and tenants in setting clear expectations and standards of management. While discretionary licensing schemes will not be appropriate in every area, councils should have local control over implementation, and greater flexibility to set up licensing schemes.

Our proposals to improve the private rented sector have been supported by the HCLG Committee. In its recent report on the private rented sector, the committee recommended that the Government remove the 20 percent cap above which local authorities must seek permission from the Secretary of State to implement selective licensing schemes.^{viii}

Council officers were able to attend a series of private housing roadshow events during summer 2018, attended by Government officials. It was helpful for the LGA and councils to be engaged in these events at an early stage and we look forward to further opportunities to work together on reform of the private housing market.

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- ⁱ LGA, Queen's Speech 2017: On the day briefing, June 2017
(https://www.local.gov.uk/sites/default/files/documents/Queen%27s%20Speech%20On%20the%20Day%20Briefing%20-%2021%20June%202017_0.pdf)
- ⁱⁱ House of Commons Hansard, Tenant Fees Bill (consideration of the Budget), 5 September 2018
(<https://hansard.parliament.uk/commons/2018-09-05/debates/92853076-D53D-4EB7-A525-0C5141FA0726/TenantFeesBill#contribution-03EFCAF4-832C-43E6-A305-F96C1DB5C10B>)
- ⁱⁱⁱ Housing, Communities and Local Government Committee, Pre-legislative scrutiny of the draft Tenant Fees Bill, March 2018 (<https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/583/583.pdf>)
- ^{iv} Tenant Fees Bill (HC Bill 203), May 2018 (https://publications.parliament.uk/pa/bills/cbill/2017-2019/0203/cbill_2017-20190203_en_1.htm)
- ^v House of Commons Briefing Paper, Tenant Fees Bill 2017-19, May 2018
(<http://researchbriefings.files.parliament.uk/documents/CBP-7955/CBP-7955.pdf>)
- ^{vi} National Audit Office, Protecting consumers from scams, unfair trading and unsafe goods, December 2016
(<https://www.nao.org.uk/report/protecting-consumers-from-scams-unfair-trading-and-unsafe-goods/>)
- ^{vii} Housing, Communities and Local Government Committee, Pre-legislative scrutiny of the draft Tenant Fees Bill, March 2018 (<https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/583/583.pdf>)
- ^{viii} Housing, Communities and Local Government Committee, Private Rented Sector, April 2018
(<https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/44002.htm>)