

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT CLIENT MONEY PROTECTION SCHEMES FOR PROPERTY AGENTS (APPROVAL AND DESIGNATION OF SCHEMES) (AMENDMENT) REGULATIONS 2020

Monday 2 March 2020

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Friday 6 March 2020

© Parliamentary Copyright House of Commons 2020

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: PHILIP DAVIES

- | | |
|---|--|
| † Cunningham, Alex (<i>Stockton North</i>) (Lab) | † McGinn, Conor (<i>St Helens North</i>) (Lab) |
| Elliott, Julie (<i>Sunderland Central</i>) (Lab) | † Mangnall, Anthony (<i>Totnes</i>) (Con) |
| Evans, Chris (<i>Islwyn</i>) (Lab/Co-op) | † Mills, Nigel (<i>Amber Valley</i>) (Con) |
| † Hughes, Eddie (<i>Walsall North</i>) (Con) | † Murray, James (<i>Ealing North</i>) (Lab/Co-op) |
| † Jenkyns, Mrs Andrea (<i>Morley and Outwood</i>) (Con) | † Offord, Dr Matthew (<i>Hendon</i>) (Con) |
| Jones, Darren (<i>Bristol North West</i>) (Lab) | † Pincher, Christopher (<i>Minister for Housing</i>) |
| † Jones, Mr Kevan (<i>North Durham</i>) (Lab) | † Simmonds, David (<i>Ruislip, Northwood and Pinner</i>) |
| † Largan, Robert (<i>High Peak</i>) (Con) | (Con) |
| † Loughton, Tim (<i>East Worthing and Shoreham</i>) | Sarah Rees, <i>Committee Clerk</i> |
| (Con) | |
| † McCartney, Jason (<i>Colne Valley</i>) (Con) | † attended the Committee |

Fourth Delegated Legislation Committee

Monday 2 March 2020

[PHILIP DAVIES *in the Chair*]

Draft Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) (Amendment) Regulations 2020

6 pm

The Minister for Housing (Christopher Pincher): I beg to move,

That the Committee has considered the draft Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) (Amendment) Regulations 2020.

It is a pleasure to serve under your chairmanship, Mr Davies. The draft regulations were laid before the House on Monday 3 February 2020. Client money protection gives landlords and tenants confidence that their money is safe when being handled by an agent. The Government made it mandatory for all property agents in England holding private rented sector-related client money to obtain membership of the approved client money protection scheme on 1 April 2019.

The client money held by agents primarily includes rent paid directly to the agent and funds provided by landlords to the agent for the purposes of making property repairs. The Government have approved six client money protection schemes, protecting £3.4 billion of client money across the schemes. Nearly 10,000 letting agents are now members of a scheme.

Increasing the financial protections for landlords and tenants through mandatory client money protection is a positive step towards driving up standards in the private rented sector. Furthermore, that brings the letting agents sector into line with other sectors where client money is held, such as the legal profession and travel operators.

Before setting out the detail of the draft regulations, Mr Davies, I wish to establish the legislative context, so I hope that you and the Committee will bear with me. The Housing and Planning Act 2016 provides powers for the introduction of mandatory client money protection. Following the passage of that Act, the Government invited Baroness Hayter of Kentish Town and Lord Palmer of Childs Hill to chair a client money protection working group, which reported in March 2017. Its recommendation to make client money protection mandatory was accepted by the Government. In November 2017 the Government consulted on implementing mandatory client money protection. There was broad support for our proposal.

In June 2018 the Government introduced two sets of regulations: first, the Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018, or the approval regulations, established the procedure for the Government to approve privately run client money protection schemes; and secondly, the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, or the requirement regulations,

required agents in the private rented sector to belong to one of the approved schemes if they handled client money. The two sets of regulations together provide the framework for client money protection.

In late 2018 we reviewed the regulations, considering new concerns that had come to our attention. Those included difficulties that agents in Scotland were facing in obtaining pooled client accounts following the introduction of client money protection there in January 2018. Addressing those concerns, the Government used the Tenant Fees Act 2019 to amend the client money protection regulations. To address the issues highlighted in Scotland, we permitted client money protection schemes to accept as members agents who are making all reasonable efforts to obtain a client account but are unable to do so for reasons beyond their control. We applied that grace period for 12 months, to 31 March this year.

The amendments to the approval regulations were made and commenced on 14 February 2019, which allowed schemes and letting agents to comply with our regulations ahead of 1 April 2019, when the requirement for agents to be members of a client money protection scheme came into force.

I will now introduce the draft regulations, which simply extend the initial grace period for letting agents struggling to obtain a pooled client account for a further 12 months, to 1 April 2021. I note that an error was made in the explanatory note when this statutory instrument was laid before Parliament on 3 February. The note referred to a “full impact assessment” but, as the measure falls within the *de minimis* exemption, we have not produced an impact assessment. With the agreement of the statutory instrument registrar, we have issued a correction to the explanatory note, stating that “no, or no significant” impact is foreseen.

Now that mandatory client money protection has been in place for several months, there is some evidence that UK banks are reluctant to offer pooled client accounts to agents. That requires attention because one of the key requirements of the 2019 regulations is for letting agents to hold their clients’ money in a client account. For the majority of letting agents, the only workable model is to hold the money in a pooled client account, avoiding the need for thousands of individual client accounts. That presents money laundering risks, however, because funds from multiple sources can be co-mingled and moved rapidly through a pooled client account, which presents challenges in identifying the true owners of the funds.

To address those risks, money laundering regulations place specific requirements on non-regulated firms, including the large majority of letting agents. Those requirements include banks conducting due diligence on both the customer that holds the pooled account—the letting agent—and that customer’s clients. That enhanced consumer due diligence has made it difficult for some letting agents to obtain a pooled client account because banks, driven by a concern to ensure compliance with anti-money laundering regulations as well as other commercial factors, may be reluctant to offer them.

We continue to monitor quarterly the number of agents affected. I am happy to report to the Committee that the number of agents reporting such difficulties to client money protection schemes remains low. In the period between October and December 2019, which is the last quarter for which we have data, 251 letting

agents reported difficulties in obtaining a client account—that amounts to around 2.5% of agents that currently belong to a client money protection scheme.

The joint money laundering steering group's forthcoming guidance for banks on their obligations under money laundering regulations will help to address the need for proportionality when assessing the risk of non-regulated firms such as letting agents. We had expected that final guidance to be published before the end of the grace period—before 31 March—but its unexpected complexity means that a draft for consultation is not expected until spring.

We have considered the case for ending or extending the grace period, in consultation with client money protection schemes, and concluded that there is a strong case for offering a further 12-month extension. That extension will guard against the risk that some agents will be unable to comply with the regulations through no fault of their own, with attendant sanctions of up to £30,000 for non-compliance. The extension allows the time needed for the joint money laundering steering group's guidance to be published and to inform the commercial decisions that the banks then make.

We will also encourage client money protection schemes to urge agents who struggle to secure a client money account to make exhaustive efforts to do so. The fact remains that most agents do hold such accounts with banks. Agents should not assume that the grace period will be extended again beyond 2021.

Mandatory client money protection is an important part of the Government's suite of existing and proposed policies to enhance standards in the private rented sector and give to landlords and tenants the confidence that they need when using an agent. I am grateful to you and the Committee for your forbearance, Mr Davies, and commend the regulations to the Committee.

6.9 pm

Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve under your chairmanship, Mr Davies. You will be pleased to learn that I do not intend to detain the Committee for long. The Labour party does not intend to vote against the measures, but the Minister has some questions to answer.

We are told by the Government that a private trade body, the joint money laundering steering group, is updating its guidance to help banks understand better the low risk that letting agents actually present. The Department told us, as the Minister said, that it had expected the final guidance to be published before 1 April 2020, but, due to unforeseen complexity, it will not be, so the Government are having to extend the grace period for another year, to 2021. Why is it taking so long? How on earth can people handing over thousands of pounds, if not hundreds of thousands of pounds, have confidence that their money is safe while the Government allow agents a grace period when they can, in effect, do what they like with their tenants' cash?

According to data given to the Secondary Legislation Scrutiny Committee, as of 31 December 2019 some 9,978 letting agents holding just under £3.4 billion in funds had obtained membership of an approved client money protection scheme, of which all had an appropriate client account or were making every reasonable attempt to obtain one. Does the Minister know how many such

memberships there are and how many letting agents are still making a supposedly reasonable attempt to get one?

Some 251 letting agents reported difficulties in obtaining an account during the period of October to December 2019. If nearly 10,000 letting agents have managed to obtain the necessary account, why have those others failed? Are they simply not getting their finger out because no one is cracking the whip? Is it not their responsibility in any shape or form? If everyone else managed to do it, why did they not? What estimate has the Minister made of the total number of letting agents who handle client money but do not have a separate client account, including those not part of a client money protection scheme? What estimate has his Department made of the amount of landlords' and tenants' money held by letting agents not in a separate client account? Does he have the answers to those questions? If not, will he find out and publish that information?

Let us not forget that mandatory client money protection is crucial to give landlords and tenants confidence that their money is safe when it is being handled by an agent, and they do not currently have that. A failure by Ministers at the Department to get a grip of the process means that there will be a further delay in many landlords and tenants getting that protection and reassurance. What chance do Ministers have of fixing the broken market for private renters if they cannot get even a simple money protection scheme in place?

Why did Ministers outsource the job of providing reassurance to banks that providing client money accounts would not fall foul of money laundering regulations to the private joint money laundering steering group? What is the unforeseen complexity we are told has been experienced in producing the guidance, according to the Department's guidance to the Secondary Legislation Scrutiny Committee? How long has the group had to produce the guidance? What deadline has the Minister set for that guidance to be provided? That failure lets down tenants and landlords. I hope that the Minister may be able to publish some guidance for the protection of landlords and tenants who end up having to hand over their hard-earned cash to agents who have yet to provide the protection that their money needs. Will he do that?

6.13 pm

Mr Kevan Jones (North Durham) (Lab): It is a pleasure to serve under your chairmanship, Mr Davies. I do not object to the regulations, but are we setting up here a system for wholesale fraud and money laundering by unscrupulous individuals? I do not suggest for a minute that most letting agents are unscrupulous; most are legitimate businesses providing a service, and anything that protects clients' money is important. However, I am concerned about these pooled accounts. As the Minister said, they are not like ordinary bank accounts, because they contain not the business's money but someone else's money. Some large letting agents could hold money from several hundred thousand people in one account. Who is going to ensure that these pooled accounts will not be used as a way of money laundering?

Surely an easy way around it would be to have fictitious tenancies. Say for example that I invented you as an individual, Mr Davies, and said that you had

[Mr Kevan Jones]

rented a property and given me £2,000, and I put it into an account, and several months later I say that the tenancy has finished and I have to pay you the money back. Are we not possibly creating a problem for the banks in how they monitor these accounts?

Likewise, if we have individuals who legitimately give a letting agent £100, but what is put into the account is another £900, or £1,000 altogether, there is no way of linking individuals. Will the bank have any oversight of how many individuals the money covers? Otherwise, it does not take a genius to work out how someone could quite clearly manipulate these accounts to launder quite large sums of money, especially if we are talking about large numbers of individuals.

I do not object to the regulation, but I wonder about the way it has been set up, who will be looking at these accounts and whether there will be a random audit, for example, of individual pooled accounts. Otherwise, it could be open to a lot of fraud. I am not suggesting for one minute that the majority of letting agents would do this, but it is interesting to note that whenever the Government or the state invent a new tax or a new system, there are always people looking for ways to exploit it. This would be an obvious one for them to be able to do so.

6.16 pm

Christopher Pincher: I am grateful to the spokesman for the official Opposition for agreeing to support this statutory instrument, and to the right hon. Member for North Durham for his questions.

The hon. Member for Stockton North asked a number of questions. He began by asking how letting agents and their clients can have confidence that their money is not being in any way misappropriated or misused. I point him to the statistics, which show that since 1 April 2019, there have been only 37 valid client money protection schemes, totalling less than £14,000, against the scheme, which manages £3.4 billion of client money. Therefore, the confidence levels of those people, whether they be landlords or tenants, should be high. That also goes some way to addressing the questions asked by the right hon. Member for North Durham.

Mr Kevan Jones: I am talking about how bank accounts will be operated in practice and who will look at them. I should think that the majority are perfectly fine, but who will be looking at whether those pooled accounts are proper pooled accounts or are being used for fraudulent activity? Who will actually do it?

Christopher Pincher: The right hon. Gentleman is perfectly entitled and right to ask those questions. We have robust anti-money laundering legislation, as he knows—he has probably debated it in the Chamber of the House of Commons. We believe that the counter-terrorist financing supervisory regime is comprehensive. The banks have to look at the money passing through their accounts, and that is one reason we are here today, because they are taking care, as they properly should, to ensure that the money passing through the accounts they manage is clean. That is placing a burden on a small number of letting agents, who we do not believe

are engaged in any money laundering and whose funds we do not believe are significant, but who none the less want to conclude their business.

Tim Loughton (East Worthing and Shoreham) (Con): Perhaps I can aid the Minister on the line of inquiry of the right hon. Member for North Durham. Is it not the case that there are already quite stringent requirements on letting agents and other property agents to ensure that the money that goes through their hands is clean, in terms of the legitimacy of a tenant to be in this country and rent a property? An agent found guilty of letting to somebody who is not legitimately in this country can be fired. There are also unexplained wealth orders, which put legal requirements on agents to ensure that the sources of funds are legitimate. In answer to the right hon. Member, the requirement is on those agents working for landlords to ensure that the moneys that they accept to go into such deposit and other protection schemes are legitimate.

Christopher Pincher: My hon. Friend makes the point even more eloquently than I can. Fundamentally, we have robust systems in place to protect against money laundering. I do not think that the extension of the statutory instrument will undermine them in any way.

Mr Kevan Jones: I am not suggesting that; all I am saying is that we are opening up a potential route for money laundering. There is clear evidence, in my constituency and others, where property prices are very low, that a good way of laundering illicit gains is to buy a property and, in some cases, to rent them out through individuals whom the hon. Member for East Worthing and Shoreham might want to say are legitimate. In some cases they are not. All I am trying to get to is the money laundering mechanism, and what we will do to ensure that banks, or anybody administering those pooled accounts, are scrutinised. I ask the question to put it on the record.

Christopher Pincher: The right hon. Gentleman makes his point. Pooled accounts exist already, and are managed by regulated organisations and groups. We are trying to ensure that the unregulated bodies—the smaller organisations that we do not believe present a significant risk—can do their business as well. That is why the joint committee is doing its work.

The hon. Member for Stockton North asked why the joint committee is doing that work, rather than some other body. It is because the joint committee combines the United Kingdom trade organisations and representatives of the financial services industry. We believe that it is best placed to ensure that the right level of regulation can be put in place—the right method of ensuring that banks can feel that the systems that they operate are sensible, compliant and deliver safeguards against money laundering.

Alex Cunningham: I am interested to understand—I have lost my point. I beg the Minister's pardon. I will come back to it.

Christopher Pincher: I am grateful. In the course of his remarks, the hon. Gentleman asked how many agents are in difficulty. The figures that I have suggest that the number of agents who reported difficulties in

obtaining a client account as of 30 June 2019 were 488. More recently, as of 31 December 2019, that number had fallen to 251—about 2.5% of the total membership.

The hon. Gentleman also asked why that small number of agents are unable to get an account, and why they are not, as he put it, “pulling their finger out”. The regulation states that letting agents must make all reasonable efforts to secure a client money account. We would therefore expect them to demonstrate that they have gone to a bank to open a relevant account, but were refused and have the documentation to demonstrate it. We would then expect them to work with the approved scheme of which they are a part to find an alternative bank offering pooled client accounts to letting agents, and open an account with them. Mechanisms are in place to ensure that those people who are as yet unable to open an account are doing the right thing and “pulling their finger out”.

Alex Cunningham: The shadow Minister has now managed to get his finger out as well. I asked how long the relevant body has had to produce the guidance so

far, and whether he had placed any deadline on it—or could we be back here in 12 months’ time because of further complexities?

Christopher Pincher: We expect the committee to conclude its work this spring—so in short order. As I have made clear to the hon. Gentleman and to you, Mr Davies—and as our words are recorded in *Hansard* the industry will hear this too—we shall not be extending the statutory instrument beyond April 2021. We expect it to report shortly, but clearly it has to do so, and conclude its business, within the year.

I think that I have answered most of the questions. If I have not, I am happy to write to Members with further particulars. However, I hope we can now give this fairly straightforward SI a smooth and quick passage.

Question put and agreed to.

6.26 pm

Committee rose.

