PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TENANT FEES BILL

Fifth Sitting

Tuesday 12 June 2018

(Afternoon)

CONTENTS

Clauses 22 to 33 agreed to.
New Clauses considered.
Bill to be reported, without amendment.

PBC (Bill 203) 2017 - 2019

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Saturday 16 June 2018

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The Committee consisted of the following Members:

Chairs: Mr Peter Bone, †Mr Virendra Sharma

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Caulfield, Maria *(Lewes)* (Con)
† Elmore, Chris *(Ogmore)* (Lab)
† Frith, James *(Bury North)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Graham, Richard *(Gloucester)* (Con)
† Green, Chris *(Bolton West)* (Con)
† Hayes, Helen *(Dulwich and West Norwood)* (Lab)
† Jones, Sarah *(Croydon Central)* (Lab)
† O'Brien, Neil *(Harborough)* (Con)
† Onn, Melanie *(Great Grimsby)* (Lab)
† Philp, Chris *(Croydon South)* (Con)
† Stevens, Jo *(Cardiff Central)* (Lab)
† Sunak, Rishi *(Parliamentary Under-Secretary of State for Housing, Communities and Local Government)*
† Tolhurst, Kelly *(Rochester and Strood)* (Con)
† Williams, Dr Paul *(Stockton South)* (Lab)
† Zeichner, Daniel *(Cambridge)* (Lab)

Mike Everett, David Weir, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 12 June 2018

(Afternoon)

[Mr Virendra Sharma *in the Chair*]

Tenant Fees Bill

Clause 22

Lead enforcement authority

2 pm

Question (this day) again proposed, That the clause stand part of the Bill.

The Chair: I remind the Committee that with this we are discussing the following:

Clause 23 and 24 stand part.

New clause 1—*Enforcement: costs*—

"The Secretary of State shall reimburse—

(a) a lead enforcement authority, where this is not the Secretary of State, for any costs incurred by the authority in the exercise of its duties under section 23 or section 24 of this Act, and

(b) an enforcement authority for any additional costs incurred by that authority in the exercise of its duties under section 1 or section 2 of this Act."

Sarah Jones (Croydon Central) (Lab): It is a relief to come back and see that the Minister has not resigned and followed the advice of his colleagues. I am reassured that he is still here.

As I was saying this morning, new clause 1 sets out that both the lead enforcement agency and local enforcement agencies will be reimbursed by the Government for costs incurred in enforcing the Bill. That is necessary because the Bill as it stands does not, in our view, provide adequate resource for enforcement.

We talked this morning about the scale of the challenge, with 56% of enforcement officers lost since 2009. In our evidence session, the Chartered Trading Standards Institute emphasised the scale of the problem that exists with enforcement, pointing out that more than 50% of the landlords and letting agents that it works with in London are still non-compliant with the rules. Shelter has highlighted the extreme difficulty in assessing the true number of rogue landlords, saying that the number is still underestimated. Another challenge for enforcement is collecting sufficient evidence to secure convictions. This morning, my hon. Friend the Member for Great Grimsby cited the Chartered Trading Standards Institute among others, which has worries about the burden of proof and said that it will scare people off, including trading standards.

The Minister might point to the provisions to stop retaliatory measures that were included in the Deregulation Act 2015, but the lack of progress on enforcing those provisions serves only to reinforce the point. Following scrutiny by the Housing, Communities and Local Government Committee, the Government were forced to admit that overstretched local authorities were not even collecting the data that would allow them to see whether the retaliatory eviction provisions in the 2015 Act have been used. The Government wrote:

> "We are currently unable to provide this data as local authorities are not specifically obliged to provide it and the Department does not routinely collect it. However, we recognise that this is an area of concern and we are writing to request this information from local authorities to inform our understanding about the effectiveness of the provisions."

On that topic, Shelter's most recent survey of tenants found that a quarter of renters who had a problem serious enough to report failed to report it because they were worried about retaliatory measures from their landlord or letting agent. That clearly demonstrates a failure to give tenants confidence in the policy, and backs up the point that tenants may be too scared to engage properly with the enforcement process to build a strong enough case.

The challenges to enforcing the Bill will come from all directions. We know from evidence that was provided that local trading standards authorities may not have the capabilities or expertise. For example, Shelter has raised concerns about how effectively trading standards will be able to police the use of default payments. Shelter has asked the Committee to explore whether local authorities will have sufficient powers and resources to evaluate whether a default fee genuinely represents a landlord loss, and the kind of guidance that the Government propose to provide to assist authorities in making such determinations. The Residential Landlords Association has argued that trading standards should not enforce the Bill at all, and that the responsibility should rest with environmental health departments.

Three concerns have caused us to table the new clause. The first is about getting the numbers right. We have serious concerns about the numbers being thrown around by the Government about how much it will cost to enforce this at a local and national level, as well as the confusion over how financial penalties will be calculated by enforcement authorities.

We have significant doubts about the Government's argument that the cost of enforcement will be fiscally neutral for local authorities by year 2. The Government have been forced to admit that that will not be the case for year one. The £500,000 allocated by the Government for enforcement in the first year feels as if it was plucked from the air, with similarly little thought. It is unclear whether that figure will change if authorities' costs are higher than estimated.

The very thin detail on enforcement costs first provided to the Select Committee in November as part of an impact assessment argued that the cost to local enforcement authorities would be £150,000 per annum. The Government's assumption that the enforcement would be self-funded from year one was rightly questioned by the Select Committee, and the Government duly committed to providing additional funding to local authorities. In the full impact assessment published last month, the Government amended their assessment of expected costs to local authorities in the first year to £300,000. That is a significant jump from their assessment in December. The impact assessment also states that the Government assume £200,000 in set-up costs for the

court system, thus reaching the £500,000 figure. However, they appear to contradict themselves in the explanatory notes to the Bill:

"We estimate that local authorities will incur a new burden in respect of enforcement costs in year one of the policy only and we estimate this to be no more than £500,000."

Assuming that the £200,000 earmarked for the courts in the impact assessment actually goes to the courts, will the Minister confirm whether local enforcement authorities will be getting £300,000 as indicated in the impact assessment, or £500,000, as indicated in the explanatory notes? There is also confusion over whether that money is the maximum authorities will receive or whether the Government will fund the actual costs, and we note the use of the word "estimate" in the explanatory notes.

We had concerns about how the Government arrived at the year one figure before the Committee sittings began. They increased during the evidence sessions last week, when the Minister asked outright for any analysis that the Local Government Association had done on how much funding should be allocated for year one. It then emerged that the LGA had been asked for that information, but had been given just one week to provide the figure. I have a great deal of respect for the ability of the LGA, so if it cannot turn that request around in a week, I doubt that many others could.

It seems astonishing that the Government could still be unclear as to how much this crucial part of the Bill is likely to cost, and I worry that they are pulling numbers out of the air. If the Minister will not accept our new clause, will he explain how the Government arrived at this figure—and, indeed, what the correct figure is? If he cannot share the evidence now, will he write to the Committee? The key point is that, whether it is £300,000 or £500,000, it is simply not enough. As the LGA has rightly pointed out, that amount split over 340 local authorities is a laughable sum of money when we consider that the average budget for one council trading standards team is more than £650,000.

The confusion over costs extends to what enforcement authorities can charge as penalties. As we discussed earlier, the Government have so far left that open, suggesting that local authorities can take into account the need to cover the costs of their enforcement functions when setting the level of the financial penalty. As the Select Committee pointed out, that is a departure from the usual principle that penalties should relate principally to the gravity of the wrongdoing. The decision to fund enforcement from year two solely by fines risks creating a bizarre situation where enforcement areas with a lower level of offences require higher fines to cover their authority's costs. The same logic goes for areas where the most successful preventive enforcement is happening.

Our second concern is about the pressures on local trading standards authorities. The Chartered Trading Standards Institute rightly pointed out:

"Resource is, without question, the pervasive issue which will determine the efficacy of the Tenant Fees Bill."

However, as we have already emphasised, the pressures on local enforcement authorities are increasing at a time when budgets are stretched to an unprecedented degree. Some of the new burdens taken on by trading standards include enforcement around, as my hon. Friend the Member for Great Grimsby mentioned, the sale of knives, as well as the use of wood burners, which is related to the Government's clean air strategy. The effect of that pressure is being seen in the private rented sector. It was pointed out on Second Reading and since then by many organisations that there is already legislation that requires letting agents to advertise their fees, but it is simply not enforced.

The fact of the matter is that after the first year, and probably during that year too, the money recouped by fines will be completely insufficient to pay for any semblance of an effective enforcement system for the Bill. Trading standards authorities will be in a vicious circle, with an inability to enforce due to inadequate resources that then leads to the funding stream getting even worse that then leads to the enforcement getting thinner, and so on and so forth until nobody is bothering to enforce the measures at all.

There is much evidence from across the sector that that will be the case, and the Government are simply ignoring it. The London Borough of Newham says that it does not consider that moneys recovered through the civil penalties will adequately cover local authorities' enforcement costs. The Chartered Institute of Housing points out the danger of a funding gap, as well as the risk that councils will need to invest in additional resources without being able to guarantee a particular level of financial return. The Association of Residential Letting Agents argues:

"Unless specific funding is set aside for the sole purpose of enforcing these new laws, we will see the same lack of effective enforcement of the ban on tenant fees as has been demonstrated on the transparency rules under the Consumer Rights Act 2015."

Citizens Advice says:

"The legislation in its current form is reliant on Trading Standards, which we believe risks rogue agents continuing to charge fees. The lack of capacity facing local Trading Standards means many will struggle to take on additional enforcement duties without support."

We ask the Minister the same thing on fiscal neutrality as we did on the figure for first-year costs: he must provide evidence, either today or in writing, on how the Government arrived at that assumption, or accept our new clause for the Government to reimburse the costs. To force local authorities to pick up the bill for something his Department has not costed properly would be unacceptable.

Thirdly, we are concerned about lead enforcement authority and the pressures around information. The Bill rightly allocates a lead enforcement authority to help streamline and co-ordinate enforcement work—something that has been pretty much universally supported. However, the same questions remain about the resourcing of that body. The Select Committee recommended that the lead enforcement authority should be tasked—and, importantly, given funding—to launch a nationwide awareness-raising campaign, to promote the legislation to tenants. In its oral evidence last week, the Local Government Association again pointed out the need for a high-profile, national campaign to remind tenants of their rights and remind the sector that fees are outlawed. The need for that is made much more pertinent by the fact that Shelter's tenant survey, which I discussed earlier, found that more than 20% of renters who had a problem that was serious enough to report failed to do so because they were not aware that they could raise it with their local council.

Unlike their other financial estimates, the Government have at least been consistent in expecting the costs of the lead enforcement authority, in line with similar lead

[Sarah Jones]

bodies, to be between £200,000 and £300,000 a year. It is unlikely, however, that that will be enough to ensure that any significant awareness campaign is run. There is a big question mark over the ability of the lead enforcement agency to do sufficient work to spread awareness of the changes made by the Bill—and awareness is crucial to its success. As with my previous points, I ask the Minister either to support our new clause or provide details about how such an awareness campaign would be funded, perhaps through his Department.

My final point is about the pervasive disincentive that the Bill as currently proposed would create. As I have set out in detail, experts from the Chartered Trading Standards Institute, the LGA and various local authorities agreed that funding through fines will not cover the cost of enforcement if it is done properly. One of the most frustrating aspects of the Bill is that that will ruin any chances of good preventive work being done. Initial fines of up to £5,000 will not give authorities the resources or incentive to do proper work to prevent breaches. As authorities themselves point out, if trading standards enforcement activities are effective, civil penalties will rarely be charged. That is because most intensive activities of council officers concern monitoring practices and working with letting agents to comply with the law. That creates what the Select Committee called a

"pervasive disincentive for authorities to engage proactively".

I hope that the Minister can offer us something constructive on that point. He will admit that nobody wants this important piece of legislation not to deliver what we want it to deliver. If he will not support the new clause, will he agree to look at ways to finance activity where authorities can demonstrate that good preventive work is keeping convictions down, and come back to us with a proposal to that effect on Report?

I re-emphasise the scale of criticism about the provisions in the Bill for enforcement. The Chartered Trading Standards Institute said:

> "The central concept that enforcement of the ban will be self-funded from the proceeds of civil penalties recovered by trading standards is completely erroneous."

I urge the Minister to look again at this core part of the Bill and, if he will not support new clause 1, will he agree, at the very least, to provide the information we request and consider what else he could introduce on Report to improve the situation?

The Parliamentary Under-Secretary of State for Housing, Communities and Local Government (Rishi Sunak): We believe that the new clause, which essentially provides a blank cheque to local authorities, is not the right approach. Given that my day job is Local Government Minister, of course I am minded to ensure that local authorities have the resources that they need to carry out their various functions adequately. That is what I spend most of my time doing. The provisions in the Bill are intended to be self-financing. Local authorities will be able to retain any moneys recovered through financial penalties for future housing enforcement. That ensures that they are better incentivised to undertake enforcement activity. We believe that that incentive impact and behavioural change is important and helpful.

I draw Committee members' attention to the consultation, where it was generally agreed that ongoing costs would be met from enforcement. We heard from landlord and agent representatives last Tuesday that they, too, thought that would be sufficient, but that some initial funding as seed money is needed in year one for familiarisation and adjustment with the new regime. Indeed, the Government agree about that, which is why we intend to provide additional funding of up to £500,000 in year one of the policy, to support implementation and education. That figure has been arrived at through consultation and analysis together with several local authorities and officials in the Department to arrive at a bottom-up estimate of what overall costs might be. We are also committed to providing funding for the lead enforcement authority of up to £300,000 a year to support its important role of providing guidance and support to local enforcement authorities.

2.15 pm

More broadly, since April 2017, local authorities have been able to retain money from financial penalties for offences under the Housing and Planning Act 2016 and the Housing Act 2004 for future housing enforcement. That has been welcomed. It is too early to say whether or not the approach has been effective. We have discussed the example of Torbay as one council that has used such proceeds to invest in new enforcement personnel. We are working with local authorities to understand any additional resource needs across the breadth of their responsibilities in the private rented sector, including offering a series of roadshows in the summer. I look forward to engaging with local authorities on those.

Finally, I point out the comments of the panellist from OpenRent last week, who made it clear that as a result of the Bill and the simplicity of the ban that we propose self-enforcement will be considerably easier, which will lower the burden on all enforcement agencies and is a welcome approach. I also point out that there are other avenues for tenants to receive redress, namely their client redress schemes. As we have touched on, the Government are expanding the remit of those schemes and, more broadly, looking at redress in the round. In totality, we feel that we are in a good place, so I urge hon. Members not to press the new clause.

Sarah Jones: I have listened to the arguments and we will not press the new clause, although we reserve the right to return to this matter on Report.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clauses 23 and 24 ordered to stand part of the Bill.

Clause 25

Meaning of "letting agent" and related expressions

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 26 stand part.

Rishi Sunak: Clauses 25 and 26 are reasonably straightforward definitional clauses. Clause 25 defines "letting agent" as

"a person who engages in letting agency work"

and goes on to define such work as

"things done by a person in the course of a business in response to instructions received from…a landlord…or…a tenant…seeking"

to let or rent a property. The definition of a letting agent excludes a person who carries out letting agency work under their employment contract, as we would not want to capture such people under the Bill. It also excludes legal professionals who are under instruction in a similar capacity.

Clause 26 defines various expressions used in the Bill. For example, as we discussed in our first sitting, it defines "tenancy" as

"an assured shorthold tenancy…a tenancy which meets the conditions"

regarding letting to students, or "a licence to occupy". I commend the clauses to the Committee.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

Clause 26 ordered to stand part of the Bill.

Clause 27

Consequential amendments

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: The clause makes consequential amendments to the lead enforcement authority's enforcement functions in respect of relevant letting agency legislation: section 87 of the Consumer Rights Act 2015; section 85 of the Enterprise and Regulatory Reform Act 2013; article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014; and section 135 of the Housing and Planning Act 2016. That legislation relates to transparency requirements, membership of a redress scheme and membership of client money protection schemes respectively. Its effect is to require the relevant enforcement authorities to have regard to any guidance issued by the lead enforcement authority. The duties of those authorities under the relevant letting agency legislation is to be subject to the provisions of clause 24, which provides for enforcement of the legislation by the lead enforcement authority.

Question put and agreed to.

Clause 27 accordingly ordered to stand part of the Bill.

Clause 28

Transitional provision

Sarah Jones: I beg to move amendment 16, in clause 28, page 19, line 33, leave out "one year" and insert "six months".

This amendment would reduce the period of transitional provision from a year to six months.

The Chair: With this it will be convenient to discuss the following:

Amendment 17, in clause 28, page 19, line 37, leave out "one year" and insert "six months".

This amendment would reduce the period of transitional provision from a year to six months.

Amendment 18, in clause 28, page 20, line 10, leave out "one year" and insert "six months".

This amendment would reduce the period of transitional provision from a year to six months.

Amendment 19, in clause 28, page 20, line 14, leave out "one year" and insert "six months".

This amendment would reduce the period of transitional provision from a year to six months.

Sarah Jones: Amendment 16 would deliver an important and achievable result for more than 4 million households currently in a private rental contract. Along with its consequential amendments 17 to 19, the amendment seeks simply to speed up the pace of the changes that the Bill will deliver. As we draw towards the end of this Committee sitting and prepare to discuss the European Union (Withdrawal) Bill, it is fitting perhaps that that we set about talking about the transitional period.

We believe that the transitional period set out in clause 28 is correct. Landlords and agents will need time to come up to speed with new rules and to review the elements in their agreements with tenants that will subsequently cease to have effect. Labour Members, however, argue that a year is an unnecessarily lengthy period. Among other issues, a lengthy transition period may see unscrupulous landlords and agents charging excessive fees through loopholes, such as default fees, in a rush to extract money as quickly as possible before the law changes.

In opposing the amendment, the Government might cite concerns about the capacity of enforcement authorities to develop the requisite skills and learning properly to enforce the Bill. If they truly do have those concerns, they should look again at our proposals on enforcement. When the underlying issues with an overstretched trading standards system are so serious that the National Audit Office is warning of a direct threat to the consumer protection system's viability, a six-month difference will not change much. I fully expect the Government to highlight the need for proper consultation with landlords and tenants to ensure that they are properly briefed, which is absolutely right, but there is no reason that work cannot start before clauses 1 and 2 come into force. The Government have been clear that a strong deterrent effect will be provided by the penalties and convictions described in the Bill. We have already set out in detail our concerns about enforcement, but we agree in principle that, if enforced effectively, the penalties will be a clear deterrent. If the Government are confident about their deterrent, surely the Minister will agree that landlords and agents will be motivated quickly to come to terms with the changes they will need to make. If not, will he tell us which specific measures he expects to take up to a year to put in place?

As we have previously pointed out, a Labour Government would have introduced the Bill years ago. The cumulative total of the money lost to tenants through the Government's reluctance to do likewise has likely been millions. We owe it to all private renters to bring the Bill into force quickly.

We will shortly discuss the issues posed by the wording of clause 32 and the merits of our amendments 20 and 21. I will not go into too much detail here, beyond pointing out that clauses 1 and 2 are not currently included in the provisions that will come into force on the day on which the Act is passed. As we will hear,

[Sarah Jones]

clause 32 is problematic, as it allows the Secretary of State to choose the day when the full Act, including clauses 1 and 2, will come into force, and it currently sets no limit on how long he or she might delay that decision. We believe that the combined uncertainty over the effective start date and the year's delay proposed in clause 28 would be unacceptable to tenants. If the Minister does not support the amendments, will he set out a clear timetable, either now or in writing, for how that year will be used?

The amendment is not onerous. It would not cause disproportionate hardship to tenants, agents, enforcement authorities or the Government. What it would do is ensure that tenants get more quickly the fair deal they were promised which, I think we all agree, is something they deserve.

Rishi Sunak: Clause 28 deals with how the prohibitions described in clauses 1 and 2 will apply in relation to agreements that were entered into before the commencement of the relevant parts of the Bill. Upon commencement, the fees ban will apply to all new tenancies and agreements between agent and tenant. The transitional provisions in clause 28 mean that for a period of a year the ban will not apply to tenancies the terms of which were agreed prior to commencement. Similar transitional provision is made for agents' agreements with tenants.

The amendments that we are considering seek to reduce that transitional period from a year to six months, and we do not believe that that would be fair on landlords and agents. Although most fees are charged at the outset of a tenancy, some landlords and agents will have agreed that tenants should pay other fees at a later stage. Tenants will have signed a contract accordingly, and we need to allow time for landlords and agents to renegotiate those contracts to ensure that they are not unfairly penalised.

Data from the English Housing Survey 2015-16 shows that 48% of tenants had an initial tenancy agreement of 12 months and 39% had an initial agreement of six months. Reducing the transitional provision would mean that more landlords and agents with pre-commencement tenancies—tenancies that were entered into before the legislation came into force—would be at risk of not being able to renegotiate their contracts, and would be responsible for fees that their tenant had previously contractually agreed to pay. That strikes me as retrospective and does not seem fair, and we do not seek in the Bill to unfairly penalise landlords and agents.

We recognise the importance of having a clear date when the ban on fees applies to all tenancies, and we know that tenants are eager for the ban to come into force. That is why the Government have revised their position from that reflected in the draft Bill, which had no end date for when fees could be charged in pre-commencement tenancies. The transitional provisions as drafted here mean that all tenants will see the benefit of the fees ban a year after it comes into force. Unlike the proposed amendments, they ensure that agents and landlords will not be significantly financially affected retrospectively, and will have an opportunity to review their contracts during that transitional period. I therefore ask the hon. Lady to withdraw the amendment.

Sarah Jones: I listened to the Minister, and I agree with him that tenants are eager for the clause to come into force, but I will not withdraw the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 7]

AYES

Elmore, Chris
Frith, James
Hayes, Helen
Jones, Sarah
Onn, Melanie
Stevens, Jo
Williams, Dr Paul
Zeichner, Daniel

NOES

Afolami, Bim
Caulfield, Maria
Goodwill, rh Mr Robert
Graham, Richard
Green, Chris
O'Brien, Neil
Philp, Chris
Sunak, Rishi
Tolhurst, Kelly

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: Clause 28 deals with how the prohibitions described in clauses 1 and 2 will apply in relation to tenancy agreements that were entered into before the commencement of the relevant parts of the Bill. As we have just discussed, the fees ban will apply to all tenancies, but the clause provides for a transitional period of one year during which the ban will not apply to what we call "pre-commencement tenancies"—tenancies the terms of which were agreed to prior to the commencement of the ban. After one year, any term of a tenancy agreement that breaches the fees ban will not be binding on the tenant, regardless of the date on which the tenancy agreement was entered into. Any payment accepted by the landlord and not returned within 28 days will then be a prohibited payment.

2.30 pm

Equivalent provisions also apply in relation to any agreement between tenants and letting agents. We have provided for this 12-month transitional period in order to mitigate the risk of retrospective effect on landlords of pre-commencement tenancies—although we consider that risk to be relatively low and also offset by the benefit of having a clear date when no letting fees can be charged to tenants. These transitional provisions will mean that all tenants will see the benefit of the fees ban a year after the ban comes into force. That will create a clear marker after which no tenant fees may be charged. That is likely to reduce confusion in the marketplace and facilitate tenant-led policing of the ban. I beg to move that the clause stand part of the Bill.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Clause 29

FINANCIAL PROVISIONS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 30 and 31 stand part.

Rishi Sunak: Clause 29 deals with the financial provisions of the Bill, which we have already discussed at some length, so I shall be brief. The Government intend to provide funding of up to £500,000 in year one of the policy to support local authorities in implementation and up to £300,000 per year for the lead enforcement authority.

Clause 30 deals with the application of the Bill to the Crown. The Bill will apply in relation to the tenancies of those Crown interests that are capable of granting an assured shorthold tenancy but the Crown will not be criminally liable for any breach, as is customary. I am pleased to tell the Committee that the Queen's consent has been granted.

Clause 31 sets out the territorial extent of the Bill, which is, in part, England and Wales, and in part, England and Wales, Scotland and Northern Ireland. As the Bill will apply in relation to housing in England only, and housing is a devolved matter in relation to Scotland, Wales and Northern Ireland, the latter perhaps requires some explanation. The amendments made by clauses 6(6), 7(4) and 24(10) apply the investigatory powers set out in schedule 5 of the Consumer Rights Act 2015 to authorities enforcing the provisions of this Bill. In line with that Act, they therefore have UK-wide extent, although the application of this Bill is England-only.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clauses 30 and 31 ordered to stand part of the Bill.

Clause 32

COMMENCEMENT

Melanie Onn (Great Grimsby) (Lab): I beg to move amendment 20, in clause 32, page 21, line 17, leave out from "force" to end of subsection (1) and insert

"on the day on which it is passed."

This amendment would bring the Act into force on the day it is passed.

The Chair: With this it will be convenient to discuss the following:

Amendment 21, in clause 32, page 21, line 21, leave out subsection (3).

This amendment is consequential on Amendment 20.

Clause stand part.

Melanie Onn: The amendments would alter the Bill by making the provisions come into force on the day of enactment, rather than leaving them at the discretion of the Secretary of State and when he chooses to bring a statutory instrument forward. The Government's rationale behind the Bill was that it would save tenants millions of pounds and make the market fairer and more transparent. That is a principle we have long supported. However, the potential for a delay in the enactment of legislation surely flies in the face of such an intention. Although we welcome the legislation, we cannot see it as the end of the road for measures to improve the situation that private renters all too regularly find themselves in. There are aims in the Bill that all of us in this room support, because we know how much this is costing tenants and how confusing the housing market can be, but we need the Bill to come forward and make a positive change as soon as possible.

Right now, we are in the middle of exam season across our schools, colleges and universities. That means that in around two to three months, hundreds of thousands of ex-students and graduates will be taking their first steps in their new career. For many of those new graduates, that will mean moving away from home and, potentially, facing the rental market for the first time while holding down a full-time job. People in this group are exactly the type that the Bill should do the most good for.

Unexpectedly high fees can cause huge problems for those who are moving for the first time to start a job. For many at the moment, that means finding large amounts of money before they can even start to find employment, as they will have to pay tenant fees on top of a significant deposit and the first month's rent. That can easily run into thousands of pounds for people who might have had little income to call on to get that sort of money, or even no income at all. That might mean that people in such a scenario have to turn down dream jobs or graduate placements because they simply cannot afford to move close to work. That impacts on the country as a whole.

Those costs are highest in our capital, which is where many of those dream jobs and placements will be, but people from poorer backgrounds in our northern towns and cities, who are unable to call on family for help in affording their deposits, might find that hurdle too high to overcome. That means that some of our best and brightest will miss out on the jobs and opportunities that are afforded to people who are able more easily to commute to London from a relative's home, or who can call on family to support start-up renting costs.

This process will happen again very shortly: many graduate jobs start in September, although others go straight on the back end of school, college or university and will start as early as next month, so we should ensure that the Bill is in place for that cohort of people to enable us to prevent yet another year of unfair tenant fees and high deposits, which present such an affordability problem for many first-time renters and graduates.

As well as providing a better deal for tenants, setting a fixed date now for the Bill to come into force would provide certainty for landlords and letting agents by giving a clear set date from which they would have to comply. I understand that the decision not to specify such a date in the Bill is not a usual one, so perhaps the Minister will explain. At the moment, that point is simply to be defined by way of a statutory instrument when the Secretary of State so chooses. That means that landlords and letting agents will have no idea when they will have to stop charging prohibitive fees and tenants will have no idea when they will be entitled to challenge a fee.

I cannot consider the reason for delay in implementing the legislation to be justified in any meaningful way. The Minister has said that work is already under way on guidance. Therefore, it must be possible to get the guidance produced, published and circulated in a speedy fashion, so that tenants would be protected at the earliest opportunity. If the Minister feels that that is not possible, he should explain exactly why tenants will continue to be penalised while the Government get their act together. Perhaps trailing an implementation date now—with Government-led advertising and awareness-raising ahead of the duties' coming into force, a bit like with the general data protection regulation rules—would provide for readiness across the sector and local authorities.

[Melanie Onn]

Rishi Sunak: We, like many tenants, are keen for the legislation to come into force as soon as possible, but we have to strike a fair balance between protecting tenants and allowing landlords and letting agents adequate time to become compliant with the legislation. The ban is not about unfairly penalising landlords and letting agents or driving them deliberately out of business. Letting agents should be reimbursed for the services they provide, but that must be by the landlord rather than by the tenant.

If commencement began the day the Bill was passed, as the amendment suggests, letting agents would have no time to renegotiate their contracts with landlords, which would have an adverse effect on their business model. We propose that there should be a fair period—a few months—to allow for that renegotiation and adjustment to happen. We are also taking steps now to engage with landlord and agent groups to ensure that they are taking steps themselves to prepare for the legislation coming into force. I ask that the amendment be withdrawn.

Melanie Onn: The Minister says he is keen for the legislation to be brought into force, but he does not seem to be taking decisive action, other than offering us a few months, which is particularly imprecise. It is unrealistic to suggest that letting agents cannot start negotiations when they know that the Government's stated intention is going through Parliament.

Rishi Sunak: I gently point out that the Government's approach is to have a precise date, and allowing them a few months to decide enables them to do that. The amendment specifies that the Bill would come into force on Royal Assent—that parliamentary process could take place be on any particular day—whereas the Government's approach is to allow some time after Royal Assent so that they can set a specific day for all communications and so on. That provides the sector and tenants with greater precision than having an indeterminate day that is out of the control of Ministers, Government or anyone else. The hon. Lady's amendment would result in the parliamentary timetable deciding the date of enforcement.

Melanie Onn: I am confident the Minister will have the ear of the Leader of the House when it comes to enacting the Bill. He says that he is confident that the sector will be provided with certainty and that that will happen within a matter of months, but perhaps he could prescribe whether it will take six, eight or 10 months.

Rishi Sunak: At least a few months.

Melanie Onn: The Minister is ready to say a few months. I reserve the right to return to the issue, but I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 32 ordered to stand part of the Bill.

Clause 33

Short title

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: Clause 33 sets out the short title of this legislation, which is to be the Tenant Fees Act, and as such I hope it will stand part of the Bill.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

New Clause 2

Transferable deposits

"The Secretary of State may by regulations made by statutory instrument amend paragraph 2 of Schedule 1 to make provision which enables a relevant person, at the conclusion of a tenancy, to transfer all or part of a tenancy deposit from the landlord or agent with whom that tenancy was held to a second landlord or agent".—*(Sarah Jones.)*

This new clause would enable the Secretary of State to provide for a tenant to transfer their deposit from one landlord to the next when moving tenancy, rather than needing to find the money for a new deposit before the old one had been refunded.

Brought up, and read the First time.

Sarah Jones: I beg to move, That the clause be read a Second time.

The new clause seeks to build on the positive outcomes we all hope this Bill will have for tenants by allowing for much-needed changes to the tenancy deposits system. The new clause seeks to resolve the problem faced by large numbers of tenants whereby deposits are charged on new tenancies before the deposit from a previous tenancy is returned, costing significant sums of money every time a tenant moves. There is no need for such a situation to occur, and members on both sides of the Committee support looking at ways of solving it.

As we pointed out last week, it would fail tenants and be a waste of our time if we sat here and allowed through a Bill that simply reinforced the status quo. We have said repeatedly that we welcome the Bill's ban on agency fees. We urge the Government to go further to resolve other significant up-front fees faced by private renters.

The most significant up-front fees are tenancy deposits, which I remind the Committee are significantly higher than agency fees, often running to several thousand pounds. We have already touched on the issue of the six-week cap for tenancy deposits, but I ask the Government one more time to look at that cap before Report and to think about what we could do. A lower cap would have a measurable benefit for tenants. There are options that the Minister could consider if he really wants to make provision for what he calls "high-risk tenants".

2.45 pm

Aside from the cap, and as several organisations have highlighted, the Bill is an opportunity to look again at whether the whole tenancy deposits system is fit for purpose. Our new clause proposes a system for deposit passports. In its report "Rethinking Tenancy Deposits", Generation Rent, which we heard oral evidence from, argues convincingly for a new standard of deposit protection

based on personal tenant accounts. That would result in a much-needed shift in the deposits system back towards tenants, who too often surrender their money with insufficient control over it. Of course, the arbitration facility in the deposit protection system would remain, so that landlords could be confident they could claim for damage, and tenants would still have the required incentive to keep their property in a good state. More importantly, the system would help to alleviate the pressure on tenants who are being asked to stump up significant sums twice.

If properly implemented, the new system could also allow tenants to recoup some of the interest from the £4 billion of their money that is currently being held, predominantly by landlords and agents through insurance-based deposit schemes. Generation Rent estimates that tenants lose out on £80 million of interest per year to agents and landlords who are essentially able to use deposit funds as a low-cost loan.

The proposed personal tenant account would provide tenants with an individual account with an accredited deposit protection scheme. It would allow the tenant to transfer or passport deposit funds between tenancies. Suggested requirements are that the tenant gives adequate notice to their landlord and pays the final month's rent. If that happens, an equivalent portion of the protected deposit could be released so that the tenant can transfer those funds towards the deposit on a new tenancy.

It is possible that this new type of scheme would require insurance-based deposit schemes to be phased out. However, the licenses for those types of schemes are set to expire in the next couple of years anyway, and the figures compiled by Generation Rent suggest that they have a negative impact on tenants. Insurance-based schemes allow landlords and agents to pay an insurance premium in exchange for a guarantee on the deposit, enabling them to hold that deposit rather than lodge it with a custodial deposit scheme. Agents and landlords are currently free to collect interest on their tenants' deposit funds through the insurance-based schemes. One of the two main schemes, the tenancy deposit scheme, advises its members first to collect tenants' consent. However, figures from a Generation Rent survey found that only one in four agents has tenants' agreement for that, and only 2% pass interest on to tenants.

We heard evidence that there is support across the sector for this proposed measure, including from the Residential Landlords Association, Generation Rent and Shelter. Generation Rent argues that there is support for passports in the existing deposit protection system. All those organisations have offered to work with the Government to develop a system that works.

The new clause would give the Secretary of State the powers, through secondary legislation, to amend paragraph 2 of schedule 1 after developing a system with which the Government are happy. It is important to note that the new clause sets no requirement on the Secretary of State to implement that change if the Government cannot come up with a system they are happy with. In the evidence we heard, however, there was a clear desire from across the sector to make this work.

If supported, the new clause will be warmly welcomed for giving the opportunity to streamline the existing deposit system, to remove excess bureaucracy for landlords and agents, and to solve a needless and costly problem that continues to present barriers to people hoping to rent in the private sector.

Mr Robert Goodwill (Scarborough and Whitby) (Con): If I may briefly interject, the hon. Lady identifies a problem, which came through in the evidence sessions, that affects landlords as well as tenants. The frustration of having a deposit locked up with the current landlord that cannot be given to the new landlord is a problem. However, now is not the time to address it. Indeed, the hon. Lady said that we should look at ways of solving the problem. Were we to try to do that in this Bill, we could end up delaying the introduction of legislation that everyone agrees will be of great benefit to tenants, because a lot of consultation would need to be done. We would need to look at situations where, for example, the tenant misleads the new landlord that all the deposit will be released when in fact there might be some deductions.

I absolutely sympathise with the feelings expressed, but I hope the Minister will not allow this issue to delay the Bill. Although I sympathise with the hon. Lady, I am sure many on the Conservative Benches will not be able to support the new clause at this time.

Rishi Sunak: I am delighted to say that I agree with both the hon. Member for Croydon Central and my right hon. Friend the Member for Scarborough and Whitby. We fully support and encourage innovation in the tenancy deposit sector. We know that it can often be difficult for tenants to raise funds for a deposit at the outset of a tenancy, especially if they are moving from one property to another; indeed, that is partly the motivation for bringing forward the Bill.

In the Government's response to the Housing, Communities and Local Government Committee following the pre-legislative scrutiny, we emphasised our commitment to assess the merits of alternatives to traditional security deposits and promised to report our findings to the Committee. The Government responded only in May, so I hope Members will forgive me when I say that the work is not quite completed, but it is in process.

We have been exploring this issue for a while, including in the 2017 consultation on banning letting fees. It may interest hon. Members to know that my Department, like many others, offers an employer-backed deposit scheme to civil servants living in the private rented sector. That works in the same way as a season ticket loan, allowing employees to borrow from their salary up front to pay for a rental deposit and repay it from salary payments over the course of their career. Many private businesses, such as Starbucks, take the same approach, and we definitely encourage more to do so.

I am pleased to say that in May the Minister for Housing and Homelessness held a roundtable with my hon. Friend the Member for Broxbourne (Mr Walker), who has been passionate about this issue, along with the three deposit protection schemes and Shelter, to explore further how existing tenant deposit protection was working and what further innovation was possible. I am pleased to say that, as a result of that preliminary work, the Minister has been working much harder to progress the issue and will convene a formal working group with the deposit schemes and key representatives from tenant and landlord groups to explore it further.

[Rishi Sunak]

There are still many things that need to be considered, as was highlighted by my right hon. Friend the Member for Scarborough and Whitby. For example, the key concern with deposit passporting is ensuring that landlords are still able to recover any damages at the end of a tenancy. There is a great deal of technical complexity that needs to be examined. That would involve understanding the percentage of the deposit that could be passported, and when and how liability for providing a tenant with the relevant prescribed information about where their deposit is protected should be passed from one landlord to another.

We certainly need to consult the sector and get its input before implementation. We are also keen to explore other alternatives, aside from passporting, such as payment of deposits by instalment. I hope hon. Members can see that the Government are taking this issue very seriously. My hon. Friend the Minister has already convened groups and is continuing to convene working groups to examine this issue and figure out a way forward. With that in mind, rather than delay this legislation, I call on the hon. Lady to withdraw her new clause.

Sarah Jones: I have listened to the Minister's response, and I am glad that there are working groups, roundtables and other such things looking at these issues. As a former senior civil servant, I know well the line that there are still many things that need to be considered, which can be used to push things into the long grass so that they never get completed.

I take the point from the right hon. Member for Scarborough and Whitby that we do not want to delay the Bill and that we need to look at these matters properly, but I urge the Minister to speed up the working groups and roundtables and to try to come forward with something. If he did, I am sure he would have the support of the Opposition. I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 3

Report on operation of Tenant Fees Act

"The Secretary of State shall within a period of 12 months from the date of commencement of this Act and annually for the four years thereafter lay before Parliament a report on the operation of this Act, setting out the number of breaches of sections 1 and 2, the number and amounts of financial penalties levied by enforcement authorities, and the number of criminal prosecutions commenced and concluded in each 12-month period". —*(Melanie Onn.)*

This new clause would require the Secretary of State to report annually for five years on the effect of the Act

Brought up, and read the First time.

Melanie Onn: I beg to move, That the clause be read a Second time.

The new clause is quite clear that it intends the Act to be reviewed and closely monitored by the Minister. There has not been a great deal of discussion around the monitoring of the implementation of this legislation so far. Assessing the effectiveness of the legislation is incredibly important, and I hope the Minister will be able to support it. We know from the experience in Scotland that legislation, even when well intended, may not be effective if the wording is not clear enough, the rights are not precisely defined, the impact is not fully, properly and regularly communicated to those who need it, and the enforcement mechanisms are inadequate. I do not want to let the Minister leave here without allowing for future Ministers and Governments to recognise early the elements of the Bill that are not quite working as intended. From the discussions we have had, it seems that the Bill will probably not come into force for 18 months, which is quite some time away. How it actually pans out in practice will perhaps be well out of our hands.

It is inevitable that there will be clauses of the Bill that, once in action, do not work quite as anticipated. To rectify that, the Government could accept this new clause, which would ensure regular assessments are undertaken of the number of breaches of sections 1 and 2, as well as providing details around the fines—how many have been issued, what revenue has been generated and whether there have been any prosecutions. It would enable the Government to show their demonstrable concern for tenants by making it clear that they were keeping a beady eye on the practicalities of the measures and not simply leaving matters to chance.

No doubt there would be a Select Committee inquiry without these changes. What do the Government anticipate that they might wish to hide? By being proactive, they would be ahead of the curve and would save the Select Committee a great deal of time that it might spend on other inquiries.

I anticipate that the Minister will say he is confident that local authorities will maintain such records. That might be suitable for him, but it would not compel him to collate such data to gain regional perspectives on the implementation. Given the failure on the display of tenants fees rules so far—so much so that they now have to be beefed up through the Bill's enforcement powers—accepting the new clause would be an honest recognition that legislation does not always work well.

The new clause would provide for an ongoing evidence base from which future improvements could be made. It would show landlords, letting agents, councils and tenants that the Government were taking a responsible approach to a significant piece of new law and showing a keen interest in its future application.

Were it to be found that the funding for new burdens was insufficient, the Government could deal with that rapidly, rather than facing the worst-case scenario of the laws not being used and being completely useless. They could check where the laws were being best utilised, identify why and assist in the sharing of best practice around the country. They could check that the legislative process was quick and that the remedy was proportionate to the breach.

In housing, timing is often of the essence. Those who would be charged prohibited fees are most likely to be those who can ill afford them—those who are forced towards bad landlords or letting agents. Should resolution of the process take too long, a tenant may be two or three properties along since the original complaint was submitted. I urge the Minister to consider this sensible step.

Rishi Sunak: I rise for potentially the last time, to discuss new clause 3. I am pleased to tell the Committee that we do plan to monitor the implementation of the Tenant Fees Bill through continued engagement with key stakeholder groups representing landlords, agents and tenants, as well as through wider intelligence from agencies such as the lead enforcement authority and trading standards, which will enforce the requirements of the Bill. Unfortunately, however, we believe the new clause is unworkable.

We would not be able to identify all breaches of sections 1 and 2, as the new clause suggests, as we will be encouraging tenants to challenge their landlords and agents directly in the first instance if they have been charged prohibited fees. Indeed, we want landlords and agents to rectify breaches first, without the need for an enforcement authority, and it would of course not be possible or practical to record every time that that type of informal enforcement and rectification happened.

With regard to the number of financial penalties and criminal convictions under the ban, that information will, owing to the reporting requirement that already exists in the Bill, be captured by the lead enforcement authority anyway. Those agents and landlords who are banned from operating will also be captured on the rogue landlord database. Local housing authorities also have powers to include persons convicted of a breach of the fees ban on that database, as well as people who receive two or more financial penalties within a year for any banning order offence.

I hope that that reassures hon. Members that we will be tracking and reviewing the effectiveness and enforcement of the ban. We do not think it is necessary to prescribe further reporting requirements on the face of the Bill, but we will consider how to make the information available, especially regarding the lead enforcement authority. We will review the legislation within five years, in line with normal parliamentary and scrutiny practices.

3 pm

We also do not intend to review the Bill in isolation. There have recently been a number of welcome legislative changes to the lettings industry, with more planned—notably the regulation of letting agents. Those changes, with this Bill, support and deliver our commitment to rebalance the relationship between tenants and landlords and to make renting fairer. It is important that any future evaluation consider all those important and transformative measures in the round, so I ask hon. Members not to press their new clause.

Melanie Onn: The Minister says that the Department will monitor the process and the progress of the enforcement of this legislation. He also says it plans to review in five years. That raises the question of why that should not be included in the Bill. The Minister has diligently described to us all the varying places where that information is kept; the new clause simply seeks to ensure that it will be kept centrally by Ministers so that they do not have to go to various different organisations to retrieve it and will have it centrally, at their fingertips, so that reports and responses are full and accurate. Therefore, we will not withdraw the new clause.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 8, Noes 9.

Division No. 8]

AYES

Elmore, Chris
Frith, James
Hayes, Helen
Jones, Sarah
Onn, Melanie
Stevens, Jo
Williams, Dr Paul
Zeichner, Daniel

NOES

Afolami, Bim
Caulfield, Maria
Goodwill, rh Mr Robert
Graham, Richard
Green, Chris
O'Brien, Neil
Philp, Chris
Sunak, Rishi
Tolhurst, Kelly

Question accordingly negatived.

Question proposed, That the Chair do report the Bill to the House.

Rishi Sunak: I gather that we are bringing proceedings to a conclusion, so if I may, Mr Sharma, I will briefly put on record my thanks to you and Mr Bone for your distinguished chairmanship of the Committee; to your team of Clerks for keeping us all on track and ensuring we followed due procedure; to the Whips for ensuring that we were all here on time and did what we were told; and to my fantastic team of officials, including those who are giving up valuable swimming and cocktail time to be with us today, which I very much appreciate. Indeed, I put on record my thanks to all hon. Members for their valuable and insightful contributions, and especially to Opposition Members for the constructive and good-natured way in which they have engaged with the topic. I look forward to continuing those debates in subsequent stages of the Bill. I make one final apology to the daughter of the hon. Member for Stockton South for depriving her party of her father's presence.

Lastly, I put on the record my thanks to the Under-Secretary of State for Housing, Communities and Local Government, my hon. Friend the Member for South Derbyshire (Mrs Wheeler), who of course could not be with us to take the Bill through the Committee, but who put in an extraordinary amount of work in the months leading up to this point to ensure that we were discussing what I am sure we all agree—whatever our individual differences on certain points—is an important piece of legislation addressing a very important topic. She deserves enormous credit for her diligence and hard work in getting us to this point. I know we wish her well, not just at home but with all the other work she is doing to ensure that we bring fairness to the private rented sector, and we look forward to seeing her back soon.

Question put and agreed to.

Bill accordingly to be reported, without amendment.

3.5 pm

Committee rose.

Written evidence reported to the House

TFB48 LiFE Residential

TFB49 London Borough of Newham

TFB50 Yasmine Eldene, Atwell Martin

TFB51 John Socha, Socha Estates

TFB52 Dan Wilson Craw, Director, Generation Rent

TFB53 Chartered Institute of Housing

TFB54 Paul Atwell

TFB55 Will Linley, Linley & Simpson

TFB56 John Socha, Socha Estates (further submission)

TFB57 Hayley Brinn