

ANNEX B

Proposed Clause 2A – Methods of Payment

1. As the Department has indicated during deliberations on the Bill, it has no detailed evidence to clarify any of the issue(s) raised with Committee as a result of its call for evidence and, therefore, the need for policy and legislative intervention. It cannot, therefore, be definitive in terms of intended or unintended impact.

Offence(s) and Enforcement

2. The first and most obvious unintended consequence is that the amendment as drafted does not include any offence(s) for non-compliance. When there is a duty under legislation, there is normally an offence for non-compliance and, if proved, a sanction or penalty. Without an offence there is no power to effect change in landlord behavior.
3. There is then further detail needed to specify in detail the offences (for example Landlord provides no options, less than 3 options, no choice offered) when they can occur (prior to the tenancy, at the granting of the tenancy, during the tenancy) what evidence is used and where/how it is captured (e.g. within the written tenancy terms but that would unlikely capture payments prior to the tenancy), whom enforces (PTO offences are normally investigated and enforced by District Councils) the severity of the offence and the nature of the sanction based on that severity (most PTO offences are at level 4 equating on conviction to a maximum fine of £2,500), if a Fixed Penalty Notice (FPN) alternative is available and what happens for recurring or continuing offences.

Available Payment Methods

4. The Department has no evidence on the current payment practices of Landlords and Tenants, so is unaware if the payment methods outlined in the amendment are those currently in use.
5. There are a number of similar payment methods included in the amendment (with and without online technology). Based on this, in reality there may be 4 broad Tenant to Landlord payment methods:
 - Cash;

- Cheque/Postal Order (that require in person cashing or deposit);
- Debit Cards, Direct Debit, Standing Order and other on-line payment methods e.g. Paypal or Revolut (i.e. arrangements whereby one person gives his authority for payments to be made from an account of his, or on his behalf, to another person or to an account of that other person); and
- Credit Cards- i.e. a credit card company provides credit to facilitate payment for goods/services.

Use of Credit Cards

6. There are unintended consequences in proposing Credit Card as a payment method. Unless a tenant has the ability to pay the amount owed to the credit card supplier within the period in their credit card agreement they are effectively creating rent arrears for themselves. Whilst not actually creating rent arrears (as the rent amount has been received by the landlord) they are effectively creating a credit liability with the interest chargeable on such liabilities.

Charges arising from some payment methods

7. In the time available officials have not had the time to explore the extent to which some of the payment methods have charges associated with them (for both landlord and tenant) Committee will want to note that some of the payment methods are likely to include charges (for each transaction or for a change in amount) which may be a significant issue for some tenants.

Payment of Rental Payments direct to landlord

8. The amendment does not deal explicitly with Tenants in receipt of Universal Credit (UC) or Housing Benefit (HB) where all or some of the rent is paid directly to the Landlord via automated systems. UC housing costs are normally paid directly to the landlord and for HB the tenant can choose whether it is paid to themselves or to the landlord. The amendment should deal with this issue and either consider that the reach of this amendment includes this as a potential payment choice or it is not a payment choice and,

therefore, it is only the element of any “top up” (i.e. difference between UC or HB entitlement and the rental amount) that is paid directly from Tenant to Landlord that needs to be considered here.

3 Options

9. Committee wished to have 3 payment options offered to tenants to minimize a difficult landlord offering a very limited choice which, in reality, will mean that a tenant will be obliged to pay in cash. Whilst 3 options will mitigate this to some extent, the Department has no evidence to establish current practices to indicate if 3 should be the minimum number of options offered.
10. “Accidental Landlords” i.e. those with one or two properties, are unlikely to have the technology to support some payment methods in person, particularly debit card/credit card thereby reducing the number of options available to his/her tenant.

1 Payment Method

11. The amendment as drafted does not clarify how decisions on the payment method are determined – does the Tenant choose from the 3 options, does the Landlord choose or is there an agreement between the 2 parties.
12. This links to the reference regarding offences and enforcement above. Depending on how a payment method is determined the Landlord could commit a number of potential offences – not offering any options, offering less than 3 options, offering options not on the list, insisting on a payment method other than the tenant’s preference.
13. Linked to the latter, there are additional potential offence(s) if one payment method is determined by Landlord, the tenant insists on paying via another and Landlord refuses payment (e.g. Landlord states cash, Tenant offers payment by debit card and Landlord refuses payment).
14. As indicated above, the amendment as drafted does not deal specifically with UC/HB payments made directly to the Landlord. If they are within scope there is an unintended consequence that those needing to “top up” will require two permitted payment methods i.e. the automated payment from UC /HB and the top up payment that Tenant has to make to landlord. As drafted two payment types are not permitted.

15. There may be other situations where the flexibility for more than one payment type may be needed. For example to quickly secure a tenancy a prospective tenant wishes to pay the required deposit in cash, but thereafter pay monthly rental by direct debit. Indeed Landlords wanting to manage the risks associated with providing the tenant with the keys to his/her property may wish to have this payment in cash rather than awaiting the clearance of cheque, direct debit etc. Not having this flexibility may mean obligating Tenants to pay in cash until a change in payment method can be determined.
16. Linked to this the amendment as drafted does not deal specifically with changes in payment methods during the tenancy. For a number of reasons both the Landlord and Tenant may wish to change the payment method during the tenancy. The unintended consequence here is that this may increase rather than decrease the number of tenants obliged to pay by cash.
17. Some tenants may not have access to a bank account (for example international students) and may wish to pay cash instead of other methods such as standing order/bank transfer. If cash is always an option to choose from, this Clause may have the unintended consequence of more tenant/landlord transactions in cash.

Commencement

18. Committee wish to have this introduced quickly. Committee may wish to consider these comments which, whilst bringing clarity, would make their proposal more detailed and would of necessity take longer to commence.
19. The Department would also have to engage with an Authority (most likely Councils) to agree the scope of and develop and implement the enforcement element and this too will take some time