Draft Regulations laid before Parliament under section 214(2)(j) of the Housing and Planning Act 2016, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

HOUSING, ENGLAND

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2018

Made - - - - ***

Coming into force in accordance with regulation 1(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 133, 135 and 214(6) of the Housing and Planning Act 2016(**1**).

In accordance with section 214(2)(j) of that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2018.

(2) These Regulations come into force on 1st April 2019.

Interpretation

2. In these Regulations—

"approved or designated client money protection scheme" means a client money protection scheme that has been approved or designated for the purpose of these Regulations by the Secretary of State under regulations made under section 134 of the Housing and Planning Act 2016;

"client money" means money—

(a) received by a property agent(**2**) in the course of English letting agency work within the meaning of section 54 of the Housing and Planning Act 2016 or English property agency work within the meaning of section 55 of that Act; and

(b) held on behalf of another person; and

(**1**) 2016 c.22.
(**2**) See section 133(4) of the Housing and Planning Act 2016 for the definition of property agent.

"regulated property agent" means a person who is required to be a member of a client money protection scheme under regulation 3.

Requirement to belong to a client money protection scheme

3.—(1) A property agent who holds client money must be a member of an approved or designated client money protection scheme.

(2) The property agent must ensure that the membership obtained results in a level of compensation being available which is no less than the maximum amount of client money that the agent may from time to time hold.

Transparency requirements

4.—(1) A regulated property agent must—

(a) obtain a certificate confirming the agent's membership of the approved or designated client money protection scheme;

(b) display the certificate—

(i) at each of the agent's premises in England at which the agent deals face-to-face with persons using or proposing to use the agent's services as a property agent; and

(ii) at a place in each of those premises where the certificate is likely to be seen by such persons;

(c) publish a copy of the certificate on the agent's website (if any); and

(d) produce a copy of the certificate to any person who may reasonably require it, free of charge.

(2) A regulated property agent must notify each client in writing—

(a) if the agent's membership of an approved or designated client money protection scheme is revoked; or

(b) if the agent ceases to be a member of a particular approved or designated client money protection scheme and becomes a member of a different approved or designated client money protection scheme.

(3) A notification under paragraph (2) must—

(a) be given to each established client within 14 days of the event mentioned in paragraph (2); and

(b) if it is given under paragraph (2)(b), give the name and address of the scheme of which the agent becomes a member.

(4) In this regulation—

"client" means—

(a) any person on whose behalf the agent holds client money;

(b) any person not falling within sub-paragraph (a) on whose behalf the agent has an agreement to hold client money; and

(c) any person, not falling within sub-paragraph (a) or (b), from whom the agent is likely to receive client money; and

"established client" means a person who is a client on the day on which the event mentioned in paragraph (2) occurs.

Enforcement

5.—(1) It is the duty of every local authority in England(**3**) to enforce the requirements of regulations 3 and 4 in its area, subject to regulation 8(3).

(2) A breach of regulation 3 or 4 by a property agent is taken to have occurred in each local authority area in England in which—

(a) the agent has premises; or

(b) housing is situated in relation to which the property agent's English letting agency work(**4**) or English property management work(**5**) is undertaken.

(3) A local authority in England must have regard to any guidance given by the Secretary of State about the exercise of its functions under these Regulations.

Penalty for breach of the requirement to belong to a client money protection scheme

6.—(1) Where a local authority in England is satisfied beyond reasonable doubt that a property agent has breached regulation 3, the authority may impose a financial penalty in respect of the breach.

(2) The financial penalty—

(a) may be of such amount as the authority imposing it determines; but

(b) must not exceed £30,000.

Penalty for breach of the transparency requirements

7.—(1) Where a local authority in England is satisfied beyond reasonable doubt that a property agent has breached regulation 4, the authority may impose a financial penalty in respect of the breach.

(2) The financial penalty—

(a) may be of such amount as the authority imposing it determines; but

(b) must not exceed £5000.

(3) Paragraph (1) does not apply in relation to a breach of regulation 4(1) if the agent has taken all reasonable steps to obtain a copy of a certificate confirming the agent's membership of the approved or designated client money protection scheme and the scheme administrator has not provided it.

Enforcement outside an authority's area

8.—(1) A local authority in England may impose a financial penalty under these Regulations in respect of a breach of a requirement under regulation 3 or 4 which occurs outside that authority's area (as well as in respect of a breach which occurs within that local authority's area).

(2) Where a local authority ("LA1") proposes to impose a financial penalty under these Regulations in respect of a breach of a requirement under regulation 3 or 4 which occurs (or which also occurs) in the area of a different local authority ("LA2"), LA1 must notify LA2 of its intent to do so.

(3) On receipt of a notification under paragraph (2) LA2 is relieved of its duty under paragraph (1) of regulation 5 in relation to the breach of the requirement referred to in the notice.

(**3**) See section 135(5) of the Housing and Planning Act 2016 for the definition of local authority in England.
(**4**) See section 54(5) of the Housing and Planning Act 2016 for the definition of English letting agency work.
(**5**) See section 55(3) of the Housing and Planning Act 2016 for the definition of English property management work.

Further provision about financial penalties

9.—(1) Only one penalty may be imposed on the same property agent in respect of the same breach, subject to paragraph (2).

(2) More than one penalty may be imposed on the same property agent in respect of a breach where—

(a) the breach continues after the end of the relevant period, unless the property agent appeals against the final notice within that period; or

(b) if the property agent appeals against the final notice within the relevant period, the breach continues after the end of 28 days beginning with the day after that on which the appeal is finally determined, withdrawn or abandoned.

(3) In paragraph (2)—

"relevant period" means the period of 28 days beginning with the day after that on which the final notice in respect of the previous penalty for the breach was served; where

"final notice" has the meaning given by paragraph 3(2) of the Schedule to these Regulations.

Procedure for and appeals against financial penalties

10. The Schedule to these Regulations (procedure for and appeals against financial penalties) has effect.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Name
Parliamentary Under Secretary of State
Ministry of Housing, Communities and Local Government

Date