

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 (Approval and Designation of Schemes) 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 134 and 214(6)(a) 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 (Approval and Designation of Schemes) Regulations 2018.

(2) These Regulations come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

“the 2016 Act” means the Housing and Planning Act 2016;

“approved scheme” means a client money protection scheme approved under regulation 3;

“client money” means money—

(a) received by a property agent 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;

“client money protection scheme” has the meaning given in section 133(4) of the 2016 Act;

“designated scheme” means a government administered client money protection scheme designated under regulation 6;

“government administered client money protection scheme” has the meaning given in section 133(4) of the 2016 Act;

“property agent” has the meaning given in section 133(4) of the 2016 Act; and

“scheme administrator” means—

- (a) in the case of an approved scheme, the person appointed to administer that scheme;
- (b) in the case of a designated scheme administered by the Secretary of State, the Secretary of State;
- (c) in the case of any other designated scheme, the person appointed to administer that scheme on behalf of the Secretary of State.

Applications for approval

3.—(1) The Secretary of State may only approve a client money protection scheme for the purposes of regulations under section 133 of the 2016 Act if the Secretary of State considers—

- (a) that the provisions of the scheme and the manner in which it will be operated are satisfactory for those purposes; and
- (b) in particular, that the conditions in regulation 5(1) are satisfied.

(2) An application to the Secretary of State for approval of a client money protection scheme must be—

- (a) made in writing; and
- (b) accompanied by information as to—
 - (i) the provisions of the scheme and the manner in which it will be operated; and
 - (ii) how the conditions in regulation 5(1) are satisfied.

(3) The Secretary of State must notify the applicant of the decision on an application for approval in writing, giving reasons for any refusal.

Amendments to an approved scheme

4.—(1) An amendment to an approved scheme (“amendment”) is not effective unless approved in writing by the Secretary of State.

(2) The Secretary of State may only approve an amendment if the Secretary of State considers that the scheme as amended would meet the conditions in regulation 3(1).

(3) Regulation 3(2) and (3) applies in relation to an application for approval of an amendment as it applies in relation to an application for approval of a scheme.

Conditions which must be satisfied before approval may be given

5.—(1) The conditions are that—

- (a) the rules of the scheme—
 - (i) make satisfactory provision for the manner of becoming and of ceasing to be a scheme member;
 - (ii) require scheme members to meet the conditions for the handling of client money in paragraph (2);

- (iii) require the scheme administrator, in the event that a scheme member (M) fails to account for client money to the person (P) entitled to it, to make good M's liability to P as soon as reasonably practicable and without any deduction; and
 - (iv) require the scheme administrator to accept claims for compensation under the scheme for at least twelve months after the date on which the circumstances giving rise to a claim occurred;
 - (v) if the scheme administrator receives a scheme closure notice, require the scheme administrator to—
 - (aa) give written notice to each scheme member of the matters mentioned in regulation 9(3) as soon as reasonably practicable;
 - (bb) facilitate the transfer of the scheme's members to an alternative designated or approved scheme at no additional cost to scheme members before the scheme closure date; and
 - (cc) cease accepting any new member or any membership renewal;
 - (b) arrangements have been made for the appointment of a scheme administrator who is independent from the scheme members;
 - (c) arrangements have been made to secure insurance that—
 - (i) covers any foreseeable liability which may arise in connection with the administration of the scheme; and
 - (ii) is appropriate with regard to the size and number of scheme members and the amount of client money held by scheme members; and
 - (d) the scheme specifies—
 - (i) the process for making claims for compensation under the scheme; and
 - (ii) the procedures that will apply in relation to the investigation and determination of such claims and any complaints under the scheme.
- (2) The conditions for the handling of client money are that scheme members must—
- (a) have and comply with written procedures for handling client money;
 - (b) publish their procedures for handling client money on their website (if any);
 - (c) provide a copy of their procedures for handling client money to any person who may reasonably require a copy, free of charge;
 - (d) keep records and accounts that show all dealings with client money;
 - (e) repay any client money, including where feasible any interest earned, without delay if there is no longer any requirement to retain that money or the client requests it;
 - (f) hold client money in a client money account with a bank or building society authorised by the Financial Conduct Authority; and
 - (g) hold and maintain professional indemnity insurance cover that is appropriate for the member's size, income, type of work and the amount of client money held.
- (3) In this regulation—
- “client money account” means an account which—
- (a) does not contain any sums other than the whole or any part of client money paid into it, or such sums of money as may be necessary to replace any sum which by error has been withdrawn from the account, together with accrued interest on such amounts; and
 - (b) includes in its title the word “client” or an appropriate abbreviation of that word;
- “scheme closure date” has the meaning given in regulation 9(3)(c); and

“scheme closure notice” has the meaning given in regulation 9(2).

Designation as a government administered client money protection scheme

6.—(1) The Secretary of State may designate a government administered client money protection scheme for the purposes of regulations under section 133 of the 2016 Act if the Secretary of State considers that it satisfies the conditions set out in regulation 5(1)(a), (c) and (d).

(2) An amendment to a government administered client money protection scheme (“amendment”) is not effective unless approved in writing by the Secretary of State.

(3) The Secretary of State may only approve an amendment if the Secretary of State considers that the scheme as amended would satisfy the conditions set out in regulation 5(1)(a), (c) and (d).

Matters to which the Secretary of State may have regard

7. In considering whether to approve or designate a scheme the Secretary of State may have regard to the number of other client money protection schemes which are (or are likely to become) approved under regulation 3 or designated under regulation 6.

Conditions with which scheme administrators must comply

8.—(1) The scheme administrator must provide each scheme member with a certificate confirming that person’s membership of the scheme as soon as reasonably practicable.

(2) The scheme administrator must, in relation to each quarter of the financial year, provide such information as the Secretary of State may require on the operation of the scheme within a month of the end of the quarter or by such later date as is notified to the scheme administrator by the Secretary of State.

(3) The scheme administrator must provide a relevant person with such information relating to a member’s membership or a claim under the scheme as the relevant person may require in connection with their functions.

(4) Within a month of renewing the scheme’s insurance, the scheme administrator must provide the Secretary of State with confirmation of the renewal by sending a hard copy of the broker’s certificate or similar document detailing the type and amount of insurance held by the scheme.

(5) The scheme administrator must publish on the scheme’s website—

- (a) the scheme’s procedures for making claims against the scheme, the investigation and determination of such claims and dealing with any complaints that may be made under the scheme; and
- (b) a copy of a current broker’s certificate or similar document detailing the type and amount of insurance held by the scheme.

(6) In this regulation—

“financial year” means a period of 12 months beginning with 6th April; and

“relevant person” means—

- (a) any person exercising functions under an approved or designated scheme;
- (b) any person exercising functions under a tenancy deposit scheme within the meaning of section 212(2) of the Housing Act 2004(2);

(2) 2004 c.34.

- (c) any person exercising functions under a redress scheme approved or designated in accordance with provision made under section 87 of the Enterprise and Regulatory Reform Act 2013⁽³⁾;
- (d) any local authority in England exercising functions under regulations under section 135 of the 2016 Act; and
- (e) any other person exercising regulatory or enforcement functions in relation to property agents.

Withdrawal of approval or revocation of designation

9.—(1) The Secretary of State may—

- (a) withdraw the approval of an approved scheme; or
- (b) revoke the designation of a designated scheme.

(2) The Secretary of State must give the scheme administrator a notice of the decision (“scheme closure notice”) if the Secretary of State decides to—

- (a) withdraw the approval of a scheme; or
- (b) revoke the designation of a scheme that is not administered by the Secretary of State.

(3) The scheme closure notice must be given in writing and state—

- (a) that the scheme’s approval is to be withdrawn or designation is to be revoked;
- (b) the reasons why the approval is to be withdrawn or designation is to be revoked; and
- (c) the date from which the withdrawal of approval or revocation is to take effect (“the scheme closure date”).

(4) In specifying the scheme closure date the Secretary of State must have regard to the need to enable the orderly transfer of scheme members to an alternative designated or approved scheme before the scheme closure date.

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

Date

Name
Minister of State
Ministry of Housing, Communities and Local
Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 134 of the Housing and Planning Act 2016 provides that the Secretary of State may by regulations make provision about the approval or designation of client money protection schemes for the purposes of regulations under section 133 of that Act that require a property agent to be a member of an approved or designated government administered client money protection scheme.

Regulation 3 gives the Secretary of State power to approve a client money protection scheme and sets out the procedure that applies to applications for approval of a scheme.

Regulation 4 provides for the approval of an amendment to an approved scheme.

Regulation 5 sets out the conditions that must be satisfied before approval is given.

Regulation 6 gives the Secretary of State power to designate a government administered client money protection scheme. It also provides for the amendment of a designated scheme.

Regulation 7 provides that in considering whether to approve or designate a scheme the Secretary of State may have regard to the number of other approved or designated schemes.

Regulation 8 sets out the conditions with which scheme administrators must comply.

Regulation 9 gives the Secretary of State power to withdraw the approval or revoke the designation of a scheme and sets out the procedures that are to apply if that happens.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available in pdf format at www.gov.uk or in hard copy from the Ministry of Housing, Communities and Local Government, Fry Building, 2 Marsham Street, London SW1P 4DF.