EXPLANATORY MEMORANDUM TO

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

2020 No. 331

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to extend, by a year, the application of the provision for deemed compliance with the requirement to hold client money in a client money account at an authorised bank or building society in regulation 5(2A) of the Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018(**1**).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England only.

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 For the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The primary purpose of the instrument relates to housing, which is within the devolved legislative competence of each of the three devolved legislatures.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

(**1**) S.I. 2018/751.

5. European Convention on Human Rights

5.1 The Secretary of State for Ministry of Housing, Communities and Local Government has made the following statement regarding Human Rights:

5.2 "In our view the provisions of The Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) (Amendment) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 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.

6.2 The Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018 ("the principal regulations") make provision under section 134.

6.3 Regulation 5 of the principal regulations, in paragraph (1), specifies conditions which must be satisfied before the Secretary of State approves a client money protection scheme. These include the condition that the rules of the scheme must require scheme members to meet the conditions for the handling of client money which are specified in paragraph (2).

6.4 The conditions specified in regulation 5(2) of the principal regulations include the requirement that a property agent must hold client money in a client money account with a bank or building society authorised by the Financial Conduct Authority.

6.5 Regulation 5(2A) of the principal regulations, which these regulations amend, provides that the rules of the scheme are to be treated as complying with that requirement if they provide that, until the relevant date, they have effect as if they required scheme members to make all reasonable efforts to hold client money in a client money account with a bank or building society authorised by the Financial Conduct Authority.

6.6 Regulation 2 of these regulations substitutes the date of 1 April 2021 for the relevant date of 1 April 2020 set out in regulation 5(2A) of the principal regulations. It therefore has the effect of extending, by a year, the application of the provision for deemed compliance with the requirement to hold client money in a client money account at an authorised bank or building society.

7. Policy background

What is being done and why?

7.1 From 1 April 2019 lettings agents in the private rented sector holding client money are required to be members of a Client Money Protection scheme. Mandatory client money protection is intended to give landlords and tenants confidence that their money is safe when it is being handled by an agent. One of the scheme membership requirements for agents is having an appropriate client account in place.

7.2 The Government established a grace period of one year until 1 April 2020 regarding this client account requirement in recognition of the difficulties some agents may be

facing in securing pooled client accounts (where the money they hold for a number of clients is placed in a single account). Pooled client accounts are distinct from regular bank accounts in that the money in a pooled account belongs to the client, not to the business. This presents money laundering risks because funds from multiple different sources can be co-mingled and rapidly move through the account presenting challenges in identifying the true owners of the funds in the account

7.3 There is evidence of banks, on occasion, being reluctant to offer pooled client accounts to lettings agents driven by concern to ensure compliance with Money Laundering Regulations as well as commercial factors. The Government has been supporting the Joint Money Laundering Steering Group through UK Finance to update their guidance on compliance with the Money Laundering Regulations. It is hoped the forthcoming guidance from the Joint Money Laundering Steering Group will better help banks understand the low risk letting agents present, allowing them to continue offering pooled client accounts. In determining the length of the current grace period, the Government had expected final guidance to be published before 1st April 2020, but due to its unexpected complexity a draft for consultation is not now expected to be published until after this date.

7.4 If the Government does not amend the regulations extending the grace period then as legislation currently stands, after 1st April 2020 approved schemes must require that all agents have an appropriate client account in place to maintain their membership of an approved client money protection scheme. This will result in some agents being unable to comply with the Regulations through no fault of their own with attendant sanctions for non-compliance

7.5 Extending the grace period will give the Government time to assess the impact of the Joint Money Laundering Steering Group guidance, and establish what, if any, further steps may be needed.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 No consultation is necessary

10. Consultation outcome

10.1 No consultation is required for this instrument given that its purpose to facilitate internal government processes.

11. Guidance

11.1 No guidance is required as this instrument does not change existing policy

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 No significant long-term impact is expected from this instrument as it is a temporary measure.

13. Regulating small business

13.1 This instrument does not place any additional regulatory burdens upon small businesses.

14. Monitoring & review

14.1 The Secretary of State for Ministry of Housing, Communities and Local Government has made the following statement regarding the duty to review regulatory provisions in secondary legislation.

14.2 "It is not appropriate to make provision for review of the Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) (Amendment) Regulations 2020. A review of the requirements relating to Client Money Protection scheme membership and provision would be disproportionate in relation to its low impact. The Government will monitor the number of agents joining approved schemes and the operation and effectiveness of approved schemes on an ongoing basis as stated at paragraph 7.5 and the Approval Regulations require scheme administrators to report to the Secretary of State on a quarterly basis."

15. Contact

15.1 Anthony Subryan at the Ministry of Housing Communities and Local Government Telephone: 0303 44 42536 or email: anthony.subryan@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Dawn Eastmead, Deputy Director for Private Rented Sector, at the Ministry of Housing Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.