

# **SOCIAL HOUSING REGULATION BILL**

## **Memorandum from the Department for Levelling Up, Housing and Communities to the Delegated Powers and Regulatory Reform Committee**

### **A. INTRODUCTION**

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Social Housing Regulation Bill (“the Bill”). The Bill will be presented to the House of Lords. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

### **B. PURPOSE AND EFFECT OF THE BILL**

2. The Social Housing Regulation Bill (the Bill) will facilitate a new, proactive approach to regulating social housing landlords on consumer issues such as safety, transparency and tenant engagement, with new enforcement powers to tackle failing landlords. The intent of this Bill is to support a new regulatory regime which will drive significant change in landlord behaviour to focus on the needs of their tenants and ensure landlords are held to account for their performance.
3. The Bill has three core objectives:
  - To introduce a new, proactive consumer regulation regime
  - To refine the existing economic regulatory regime
  - To strengthen the Regulator for Social Housing (‘the Regulator’) to help implement the consumer and economic regimes

#### Introduce a new consumer regulatory regime

4. The Bill will facilitate the introduction of a new proactive consumer regulatory regime. To achieve this, we will make safety and transparency an explicit part of the Regulator’s objectives, we will remove the serious detriment test (a legislative barrier to Regulator action on consumer issues) and we will require landlords to nominate a designated person for health and safety issues. The Bill also makes provision for the introduction of new requirements for social housing landlords relating to electrical safety checks.

#### Strengthen the Regulator’s enforcement powers

5. The Bill will seek to strengthen the Regulator by giving it new enforcement powers ensuring they can effectively intervene when required. The measures seek to encourage landlords to maintain standards, to avoid the threat of enforcement action, and ensure that the Regulator has the appropriate tools available to deal with non-compliance with the standards. We are also taking measures to support the Regulator as an institution to ensure they can deliver the new consumer regime and implement the changes to the economic regime.

#### Refine the economic regulatory regime

6. The Bill also seeks to maintain and refine the Regulator's current economic regulatory role, ensuring that providers are well governed and financially viable to protect homes and investment in new supply. This will support the existing work of the Regulator, intending to create continued stability and viability in the sector through robust economic regulation. Through these measures the Government aims to encourage continued investment in the sector, to support the development of new homes, while protecting tenants from the risks of provider insolvency.

7. The Delegated Powers in the Bill are:

- i. **Clause 6: Registration Criteria**  
Power of the regulator to set criteria as to a body's ability to meet the regulatory standards set under sections 193, 194 and 194A of the Housing and Regeneration Act 2008 (as amended by this Bill) upon which registration will be conditional.
- ii. **Clause 9: Appointment of health and safety lead by registered provider.**  
(2) (126A(6)) Power to amend this section to alter who may be the health and safety lead for a registered provider.
- iii. **Clause 10: Electrical Safety Standards**  
Extension of the power in the Housing and Planning Act 2016 to make regulations in relation to electrical safety to the social rented sector.
- iv. **Clause 17: Standards relating to information and transparency**  
(2) (194A(1)) Power to set standards for registered providers relating to information and transparency.
- v. **Clause 18: Code of practice: standards relating to consumer matters**  
Power to issue codes of practice relating consumer standards.
- vi. **Clause 19: Direction by Secretary of State**  
Power to direct the Regulator on the standards for registered providers related to the provision of information to their tenants concerning the accommodation, facilities or services provided in connection with social housing.
- vii. **Clause 21: Performance monitoring**  
(1) Power to give directions to registered providers requiring them to collect, process and publish information about their performance in relation to matters covered by standards under sections 193, 194 and 194A.
- viii. **[Clause 31: Housing ombudsman scheme**  
(2) Power for the housing ombudsman of a scheme approved by the Secretary of State under Schedule 2 to the Housing Act 1996 to issue a code of practice about complaint handling procedures members of the scheme should have in place.]
- ix. **Clause 33: Power to make consequential provision.**  
(1) Power to make provision consequential on the Bill that may amend, repeal or revoke provision made by or under an Act.

- x. **Clause 35: Commencement**  
Power to commence various provisions of the Act on such day or days as the Secretary of State may appoint, including the power to make connected transitional or saving provision.
- xi. **Schedule 1, paragraph 4: Limited Liability Partnerships (LLPs).**  
Power to provide for any provision of Schedule B1 to the Insolvency Act 1986 or any other insolvency legislation to apply to cases where a housing administration order is made in relation to a LLP.  
Power to modify any insolvency legislation as it applies in relation to a LLP if the Secretary State considers the modifications are appropriate in connection with provision made in Chapter 5 of Part 4 of the Housing and Planning Act 2016.

## C. DELEGATED POWERS

### Clause 6: Registration Criteria

Power to set criteria as to a body's ability to meet the regulatory standards set under sections 193, 194 and 194A of the Housing and Regeneration Act 2008 (as amended by this Bill) upon which registration will be conditional.

*Power conferred on:* The Regulator of Social Housing

*Power exercised by:* Published criteria

*Parliamentary Procedure:* None

#### Context and Purpose

8. The regulation of social housing is governed by Part 2 of the Housing and Regeneration Act ("HRA 2008"). Registered providers of social housing in England ("registered providers") are regulated by the Regulator of Social Housing ("the Regulator"). Registered providers are comprised of local authority providers of social housing and private registered providers of social housing ("PRPs").
9. To be regulated, PRPs, unlike local authorities, must apply to be registered. Section 112 HRA 2008 (which this clause, and paragraph 7 of Schedule 5 to, this Bill amends) provides that an English body (as defined in section 79 HRA 2008) is eligible for voluntary registration if it is a provider of social housing in England or intends to become a provider of social housing in England and satisfies any relevant criteria set by the Regulator under section 112(3) as to its financial situation, constitution and other arrangements for its management.
10. This clause amends section 112(3) to enable the Regulator to set criteria to secure that the body would meet, on registration, the consumer, economic and transparency standards applicable to registered providers. This will enable the Regulator to make the registration of private registered providers of social housing conditional upon their ability to meet the regulatory consumer, economic and transparency standards.

11. Registration criteria set by the Regulator are published in its Guidance for new entrants on applying for registration as a provider of social housing<sup>1</sup>. The current registration criteria set under section 112(3) are set out at page 20.

#### Justification for taking the power

12. The power sought within the Bill follows the existing regulatory approach whereby the HRA 2008 sets the legislative framework whilst leaving the detail of execution of the policy to the Regulator. This approach protects the Regulator's operational independence from Government and enables it to deliver against its fundamental objectives (set out in section 92K HRA 2008).

13. In exercising its functions, including that of setting registration criteria, the Regulator is required, by section 92K(5), to exercise its functions in a way that minimises interference and is proportionate, consistent, transparent and accountable. It must also have regard to the Regulators' Code when developing policies and operational procedures that guide its regulatory activities.

14. Taking a power for the regulator to set criteria gives the Regulator flexibility to adjust its registration criteria as necessary to reflect changes to its regulatory standards and respond to developments in the sector, whilst this flexibility is appropriately constrained by law and the Regulator's code.

#### Justification for the procedure

15. No procedure is specified. This replicates the approach in the existing power for the Regulator to set registration criteria and is appropriate within the regulatory framework as set out in the section above. The regulatory standards to which the power relates are consulted on in full to ensure that they are appropriate requirements to impose on registered providers.

### **Clause 9: Appointment of health and safety lead by registered provider**

(2) (126A(6)) Power to amend this section to alter who may be the health and safety lead for a registered provider.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations

*Parliamentary Procedure:* Affirmative procedure

#### Context and Purpose

16. Every registered provider of social housing will be required to have a named individual as their health and safety lead. This person will monitor the registered provider's compliance with health and safety requirements, assess risks of failure to comply with health and safety requirements, and will report health and safety

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failures and risks to the registered provider's governing body, advising them on action to take. These requirements will all apply to all registered providers, including local authorities, and PRPs of all types and sizes.

17. The legislation sets out who can fulfil the health and safety lead role in different sizes and types of registered providers.

#### Justification for taking the power

18. Whilst legislation sets out who must take on the health and safety lead role for different types of registered provider, this provision is detailed and specific and may require amendment, in particular, to reflect the establishment of other local authority models (pursuant to regulations under section 9BA of the Local Government Act 2000) or to ensure that the requirements as to the person who may be appointed reflects, in practice, the most effective way of delivering the health and safety lead function in different sizes and types of organisations. This power is therefore taken to give flexibility to respond to such changes and issues arising with the operation of these provisions in practice. The power is a narrow one and can only be used to amend the section to alter who may be the health and safety lead for a registered provider. It will not alter the requirement established by the Bill that each registered provider must have an identifiable and accountable health and safety lead.

#### Justification for the procedure

19. In line with convention and the recommendations of the DPRRC, it is appropriate that amendments to primary legislation follow the affirmative procedure in both Houses of Parliament, and that amendments to secondary legislation will follow the negative procedure.
20. Objection may be made to the principle of a "Henry VIII" power to amend primary legislation using secondary legislation. However, the overall purpose and policy of the clause is clear and would be preserved by such changes. The alternative approach the Government could take to preserve the necessary flexibility to reflect evolving governance models would be to make provision for new models, or the modification of provision for particular types or sizes of organisation through affirmative secondary legislation but confine the supplementary content that includes to the statutory instrument itself rather than through amendments to the primary legislation itself. That however is ultimately less accessible to those consulting the Bill's provisions and would make no practical difference to the degree of parliamentary scrutiny involved assuming the affirmative procedure would continue to be used.

### **Clause 10: Electrical Safety Standards**

Extension of the enabling power in the Housing and Planning Act 2016 to make regulations in relation to electrical safety to the social rented sector.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (Statutory Instrument)

## *Parliamentary Procedure: Affirmative*

### Context and Purpose

21. This clause makes provision for regulating electrical safety standards in respect of socially rented residential premises in England. The power will enable the Secretary of State to impose duties on registered providers of social housing in England requiring them to ensure that any electrical safety standards specified in the regulations are met during the tenancy and/or that a qualified person has checked that the electrical safety standards are met.
22. The regulation-making power will enable the Secretary of State to set regulations regarding how and when electrical safety checks are carried out and by whom. The regulations may also require that a certificate be obtained from the person who conducted the electrical safety tests and that the certificate be provided to tenants and any other persons specified by the regulations.
23. The Secretary of State may make provisions about enforcement of the standards in the regulations. There is a power to confer functions on local housing authorities in England to support this measure. This power would be required in order to ensure that local housing authorities are able to enforce the electrical safety standards duty on private registered providers; including by arranging for any breaches of the duty to be remedied. There is also a power to enable financial penalties to be imposed on private registered providers for breaches of their duty. The power would enable financial penalties to be levied for continuing breaches. This power is required in order to ensure that a landlord will not opt to pay a fine rather than carry out potentially more expensive work to their property in order to meet the electrical safety standards. The power will also enable the Secretary of State to set out, in regulations, the procedure to be followed before financial penalties can be imposed, the amount of the penalties, rights of appeal against penalties, how any penalties are to be enforced and the application of the sums paid as penalties.
24. The regulations may also provide for covenants to be implied into a tenancy, giving tenants a potential recourse to the courts for redress if the electrical safety standards are breached.
25. Although stock-owning local authorities cannot take statutory enforcement action against themselves in respect of their own homes, they will be expected to ensure their homes comply and to hold themselves to the same standard they hold other social landlords.
26. A consultation on the Government's proposed approach to regulating electrical safety will be published alongside the introduction of this Bill.

### Justification for taking the power

27. This is a modification of an existing power for the Secretary of State to set regulations for electrical safety in the private rented sector. The existing power (in Sections 122 and 123 of the Housing and Planning Act 2016) is a regulation-making power, and by extending the power we are replicating the same approach for electrical safety standards in the social rented sector.

28. The national standards for electrical safety are set out in the 18th edition of the 'Wiring Regulations', which are published as British Standard 7671. The requirements in British Standard 7671 are amended on an ongoing basis. It is therefore expected that the details of requirements for electrical safety checks will need to change to remain in line with national standards. Setting this electrical safety standard requirements through secondary legislation follows an established precedent and enables electrical safety standards be kept up to date with evolving practice, expectations and standards in the area of electrical safety. A power to implement electrical safety standards by regulations is therefore considered appropriate.

#### Justification for the procedure

29. The affirmative procedure will ensure that there is appropriate Parliamentary scrutiny of forthcoming electrical safety regulations for the social housing sector.

#### **Clause 17: Standards relating to information and transparency**

(2) (194A(1)) Power to set standards for registered providers relating to the provision relating to information and transparency.

*Power conferred on:* The Regulator of Social Housing

*Power exercised by:* Power to set standards

*Parliamentary Procedure:* None

#### Context and Purpose

30. The Regulator of Social Housing sets standards that contain specific expectations registered providers must comply with, and the outcomes that providers are expected to achieve. The Regulator currently has the power to set standards relating to consumer matters (under Section 193 of HRA 2008) and economic matters (Section 194 of HRA 2008).

31. This clause allows the Regulator of Social Housing to set standards for registered providers on matters relating to the provision of information for tenants of social housing and for the Regulator. This will provide a power for the Regulator to deliver on a new fundamental objective, set through the Bill, to ensure that registered providers act in a transparent manner in relation to their tenants. Transparency was one of the major themes of the Government's Social Housing White Paper and this power will enable the Regulator to deliver a number of measures set out within the White Paper including an 'Access to Information Scheme' for tenants; requirements for registered providers to self-report breaches of the regulator's standards to the regulator; requirements on registered providers to provide their tenants with a set of financial metrics on how much they are spending on management costs and executive remuneration; and to provide a clear breakdown of how their income is being spent. Greater transparency will allow tenants and the Regulator to better hold registered providers to account and ensure that tenants are receiving value for money.

#### Justification for taking the power

32. Regulatory standards are the main way the regulator currently regulates the sector. The power sought within the Bill follows the existing regulatory approach whereby the HRA 2008 sets the legislative framework whilst leaving the detail of execution of the policy to the Regulator. This approach protects the Regulator's operational independence from Government and enables it to deliver against its fundamental objectives (set out in section 92K HRA 2008).
33. In exercising its functions, including that of setting standards, the Regulator is required, by section 92K(5), to exercise its functions in a way that minimises interference and is proportionate, consistent, transparent and accountable. It must also have regard to the Regulators' Code when developing policies and operational procedures that guide its regulatory activities.
34. Regulatory standards, unlike primary and indeed secondary legislation, are generally outcomes based rather than prescriptive. As with its existing powers to set standards, this is reflected in the requirement in section 194(4) that in setting standards the regulator must have regard to the desirability of registered providers being free to choose how to provide services and conduct business. This is therefore provision that is more appropriately made via a standard than in primary or secondary legislation.
35. Furthermore, taking a power for the regulator to set standards gives the Regulator flexibility to adjust its standards as necessary to respond to developments in the sector, whilst this flexibility is appropriately constrained by law and the Regulator's code.

#### Justification for the procedure

36. No procedure is specified. This replicates the approach in the existing powers for the Regulator to set standards and is appropriate within the regulatory framework as set out in the section above. In setting such standards it must comply with consultation requirements in section 196.

#### **Clause 18: Code of practice: standards relating to consumer matters**

- (1) Power to issue codes of practice relating consumer standards

*Power conferred on:* the Regulator of Social Housing

*Power exercised by:* Guidance

*Parliamentary Procedure:* None

#### Context and Purpose

37. The Regulator currently has the power to issue codes of practice for its economic standards and previously has had the power to do so for consumer standards, but this was removed by the Localism Act 2011 which amended the regulatory regime to give the Regulator an economic focus. A key part of this Bill is to bring consumer regulation up to the same level as economic regulation.
38. This clause therefore extends the current power to issue a code of practice to give the Regulator the power to issue a code of practice which relates to a matter addressed by a consumer standard or a standard relating to information and



transparency. Such codes of practice will amplify the content of the relevant standard and will enable landlords to understand how compliance with those standards can most readily be achieved. The Regulator may also have regard to the codes of practice in considering whether the standards have been met and is required to make arrangements to bring a code of practice to the attention of registered providers.

#### Justification for taking the power

39. The power sought within the Bill follows the existing regulatory approach whereby the HRA 2008 sets the legislative framework whilst leaving the detail of execution of the policy to the Regulator. This approach protects the Regulator's operational independence from Government and enables it to deliver against its fundamental objectives (set out in section 92K HRA 2008).
40. These codes of practice would be expected to be updated regularly in response to changes to functionality and effectiveness of the codes of practices as well as developments in the sector. The content of these codes of practice will be of a nature and contain a level of detail which is not appropriate for primary or secondary legislation.
41. In exercising its functions, including that of issuing codes of practice, the Regulator is required, by section 92K(5), to exercise its functions in a way that minimises interference and is proportionate, consistent, transparent and accountable. It must also have regard to the Regulators' Code when developing policies and operational procedures that guide its regulatory activities.

#### Justification for the procedure

42. No procedure is specified. This replicates the approach in the existing power for the Regulator to issue a code of practice and is appropriate within the regulatory framework as set out in the section above.

### **Clause 19: Direction by the Secretary of State**

Power to direct the Regulator on the standards for registered providers related to the provision of information to their tenants concerning the accommodation, facilities or services provided in connection with social housing.

*Power conferred on:* Secretary of State

*Power exercised by:* Directions

*Parliamentary Procedure:* None

#### Context and Purpose

43. This clause enables the Secretary of State to issue a direction to the Regulator in relation to standards requiring providers to comply with rules about the provision of information to their tenants about the management of their housing. This is needed to enable the introduction of an Access to information scheme which will

enable tenants of housing associations to be able to request information about the management of their housing from their landlord in a similar way that tenants of local authority owned social housing can get information from their landlord through Freedom of Information Act. This is a government policy set out in the Social Housing White Paper and is being made part of the existing regulatory regime for social housing administered by the Regulator in order to avoid creating a new separate regime and enforcement body. The government would prepare the rules for the scheme with the Regulator and others from the sector, consult on it and then direct the Regulator to set a standard requiring landlords to follow these rules and have a scheme whereby they provide their tenants with relevant information upon request.

#### Justification for taking the power

44. These directions will be updated regularly in response to new requirements for the operation and functionality of the Access to Information Scheme. Their content will change at a frequency which is not an appropriate use of parliamentary time and resources.

#### Justification for the procedure

45. No procedure is specified. This replicates the approach in the existing power for the Secretary of State to give directions to the Regulator which in his opinion, relate to quality of accommodation, tenure, rent, involvement by tenants in the management by registered providers of accommodation and methods of assisting tenants to exchange tenancies, the use of which has been uncontroversial.

### **Clause 21: Performance monitoring**

(2) (198C) Power to give directions to registered providers requiring them to collect, process and publish information about their performance in relation to matters covered by standards under sections 193, 194 and 194A.

*Power conferred on:* The Regulator of Social Housing

*Power exercised by:* Directions

*Parliamentary Procedure:* None

#### Context and Purpose

46. This clause allows the Regulator of Social Housing to set out detailed rules for how registered providers of social housing collect and publish performance information on their activities. This information must be in relation to compliance with the standards set by the Regulator. This is to enable the regulator to require registered providers to prepare and publish a set of tenant satisfaction measures (TSMs) that can be used by both tenants and the Regulator to monitor and compare landlords' performance on issues that matter to tenants such as repairs and complaints handling. Transparency and accountability were major themes of the Government's Social Housing White Paper, this power will allow tenants to better hold their provider to account for their performance.

#### Justification for taking the power

47. For the TSMs to be consistent and comparable, detailed rules and guidance will need to be set out for registered providers to follow that would not be appropriate to have on the face of the bill. We expect that these will also have to be updated regularly to avoid unintended consequences and gaming. As the Regulator will be setting, collecting and monitoring the information it is appropriate they are the ones to set them.

#### Justification for the procedure

48. No procedure is specified. This is consistent with the approach for comparable existing powers of direction under section 127 (directions about preparation of accounts) and 169D (directions about notifications).

#### **Clause 31: Housing ombudsman scheme**

(2) (11A) Power for the housing ombudsman of a scheme approved by the Secretary of State under Schedule 2 to the Housing Act 1996 to issue a code of practice about complaint handling procedures members of the scheme should have in place.

*Power conferred on:* a housing ombudsman

*Power exercised by:* Code of Practice (not legally binding)

*Parliamentary Procedure:* None

#### Context and Purpose

49. By virtue of paragraph 1 of Schedule 2 to the Housing Act 1996 (“the 1996 Act”), “Social landlords”, as defined in section 51 of the 1996 Act, must be a member of an approved scheme. This clause adds to the list of matters the scheme, which has no statutory force, must provide for under Schedule 2 para 2 of the 1996 Act, so that any such scheme must include the power to issue a code of practice on complaint handling to the scheme’s members’

50. The Housing Ombudsman, currently the only housing ombudsman scheme approved by the Secretary of State, has issued a code of practice (called the complaint handling code) to its members, setting out good practice for complaint handling, since 2020. Establishing and maintaining a complaints procedure in line with the complaint handling code is a condition of membership of the scheme and a failure to do this can lead to a complaint handling failure order to rectify this failure and a referral to the Regulator.

51. The Government is not placing a duty in statute on any landlord to have regard to a code issued under this power. Any duty to have regard to a code issued will be included in the underlying scheme document of the ombudsman which has issued the code. The Housing Ombudsman Scheme already includes such a duty.

52. We do not consider that this is a legislative power as the code is not, and will not be, legally binding on members of any scheme. Breaches of, or identified non-compliance with, a code issued under the power established in this clause cannot result in any legislative sanction at present. This would only constitute a breach of any membership condition to adhere to the code placed in the scheme

of a housing ombudsman. However, for completeness, this is included within this memorandum for the DPRRC's attention.

53. Paragraph 7D of Schedule 2 to the 1996 Act allows the Secretary of State to make an order authorising a housing ombudsman under an approved scheme to apply to a court or tribunal to enforce one of that ombudsman's determinations in the manner of a court order. Paragraph 7D is not currently in force. However, were non-compliance with the Code of Practice to be a matter about which complaints can be made under the scheme, and were paragraph 7D to be commenced, there is a possibility in future that a determination made against a scheme member for non-compliance with the Code of Practice mentioned above could be legally binding. We consider that this does not make the Code 'legislative' as such at present, but have justified any potential delegation as usual in case the Committee takes a different view.

#### Justification for delegation

54. The content of any code of practice will contain a level of detail which is not appropriate for secondary legislation.

55. This provision follows within the existing approach whereby the requirements for the scheme are set out on the face of primary legislation at Schedule 2 paragraph 2 to the 1996 Act, and are thus subject to Parliamentary oversight, whilst leaving the execution of the policy to the ombudsman themselves as set out in their scheme which itself requires approval from the Secretary of State. This approach protects the operational independence of any such ombudsman. Adding to the list of matters the scheme must provide for under Schedule 2 paragraph 2 thus maintains the existing approach to delegation.

#### Justification for procedure selected

56. Any code of practice issued under this power would be expected to be updated regularly in response to changes to functionality and effectiveness, as well as developments in the sector. The content of any code of practice will change at a frequency which is not an appropriate use of parliamentary time and resources given that the overall purpose of the housing ombudsman scheme is clear from the 1996 Act.

57. Any approved scheme must provide that before exercising this power to issue or amend a code of practice, a housing ombudsman must consult the members of its scheme, the tenants of those members and the Regulator. This requirement is designed to ensure that these organisations and individuals have the opportunity to raise any issues ahead of a code being issued or amended.

### **Clause 33: Power of Secretary of State to make consequential provision**

(1) Power to make consequential amendment in relation to the Bill.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (Statutory Instrument)

*Parliamentary procedure:* Negative procedure, unless the power is exercised to modify primary legislation then affirmative procedure

#### Context and Purpose

58. This clause confers on the Secretary of State a regulation-making power to make further consequential amendments which arise from this Bill. Regulations that make consequential provision may amend, repeal or revoke an enactment. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations under this clause are subject to the negative procedure.

#### Justification for taking the power

59. This power may only be exercised to make provision that is consequential on the Bill. It is not possible to establish in advance all consequential provision that may be required. A power is needed to avoid any legal uncertainty or legal lacunas after the Act comes into force.

#### Justification for the procedure

60. It is conventional, as well as appropriate, that amendments to primary legislation will follow the affirmative procedure in both Houses of Parliament, and that amendments to secondary legislation will follow the negative procedure.

### **Clause 34: Commencement**

Power to commence various provisions of the Act on such day or days as the Secretary of State may appoint, including the power to make connected transitional or saving provision.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (Statutory Instrument)

*Parliamentary Procedure:* None

#### Context and Purpose

61. This clause contains a standard power for the Secretary of State to bring provisions of the Bill into force by commencement regulations, and to make transitional or saving provision in connection with the bringing into force of provisions of the Bill.

#### Justification for taking the power

62. It is appropriate to provide for commencement of the substantive powers of the Bill by regulation and to make transitional provision in connection with the commencement of the Bill in order to ensure the orderly implementation of the provisions.

#### Justification for the procedure

63. As usual with commencement powers and associated transitional provision, regulations made under this clause are not subject to any Parliamentary

procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time and in an orderly manner.

### **Schedule 1: Limited Liability Partnerships (LLPs)**

Power to provide for any provision of Schedule B1 to the Insolvency Act 1986 or any other insolvency legislation to apply to cases where a housing administration order is made in relation to a LLP.

Power to modify any insolvency legislation as it applies in relation to a LLP if the Secretary State considers the modifications are appropriate in connection with provision made in Chapter 5 of Part 4 of the Housing and Planning Act 2016.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations*

Parliamentary Procedure: Affirmative

#### Context and Purpose

64. Section 102 of the Housing and Planning act 2016 sets out a Housing administration regime with the objective of ensuring that if a registered provider of social housing which is a company, a registered society (within the meaning of the Co-operative and Community Benefit Societies Act) or a Charitable Incorporated Organisation (within the meaning of Part 11 of the Charities Act 2011) gets into financial difficulty its social housing, it will remain within the regulated sector.

65. Part 2 of Schedule 1 will extend these provisions to apply in relation to registered providers that are LLPs, so that they are covered by the housing administration regime that does not currently apply to this type of provider. The existing regime seeks to ensure both creditors and tenants are offered the best protection.

#### Justification for taking the power

66. Section 102 allows the Secretary of State to provide for any provision of Schedule B1 to the Insolvency Act 1986 or any other insolvency legislation to apply, with or without modifications, to cases where a housing administration order is made in relation to a limited liability partnership.

67. LLPs registered under the Limited Liability Partnerships Act 2000 (“LLPA 2000”) have an insolvency landscape that may require a different approach to that taken in relation to registered providers that are companies. Necessary amendments will need to be made to ensure that the housing administration regime in Section 102, and delegated powers for the Secretary of State to apply other insolvency legislation, operates as intended for LLPs who are registered providers of social housing.

68. It is appropriate for the protection offered by the housing administration regime to be available to LLPs in line with the rest of the sector.

#### Justification for the procedure

69. As these provisions permit the amendment of primary legislation as appropriate to give effect to the housing administration regime in relation to a private registered provider of social housing that is an LLP the Department considers that the affirmative resolution procedure is appropriate.

**Department for Levelling Up, Housing and Communities**  
**30 May 2022**