

SOCIAL HOUSING (REGULATION) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Social Housing (Regulation) Bill [HL] as introduced in the House of Lords on 8 June 2022 (HL Bill 21).

- These Explanatory Notes have been prepared by the Department for Levelling Up, Housing and Communities in order to assist the reader. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 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 reform the regulatory regime to drive significant change in landlord behaviour to focus on the needs of their tenants and ensure landlords are held to account for their performance.
- 2 The Bill has three core objectives:
 - To facilitate a new, proactive consumer regulation regime;
 - To refine the existing economic regulatory regime; and
 - To strengthen the Regulator for Social Housing (the regulator)'s powers to enforce the consumer and economic regimes.

Reform the consumer regulatory regime

- 3 The Bill will facilitate a new proactive consumer regulatory regime. To achieve this, the Government will make safety and transparency explicit parts of the regulator's objectives and give it new powers on transparency and the provision of information. The Government will remove the serious detriment test (a legislative barrier to regulator action on consumer issues) and the Government 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.

Refine the economic regulatory regime

- 4 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, creating 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.

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.

Policy background

- 6 Social housing is low-cost rented housing provided by private registered providers of social housing (PRPs), the majority of whom are housing associations, and local authorities who act as social landlords. Social housing can offer secure long-term tenancies with more affordable rents compared to the private rented sector, as rents are linked to local incomes.
- 7 The social housing sector provides homes to 4 million households. PRPs own c.60% of the housing stock and local authority landlords own c.40%. The sector aims to provide homes that are safe and of a high quality with services that meet tenant expectations.
- 8 There is significant variance in scale of social landlords, with the largest providers owning over 125,000 units and the smallest owning only a few units. Social landlords vary not only in size but in operations and business models as well. Some providers undertake a lot of development while others' operations provide care and support services as well as homes.
- 9 Following the Grenfell Tower tragedy in June 2017, serious concerns were raised about how some social tenants were being treated by their landlord. In response, alongside the public inquiry, the Government published the [Social Housing Green Paper: A new deal for social housing](#)¹ in 2018 and launched a [Call for Evidence: Review of social housing regulation](#)² about how social housing is regulated. Many tenants reported positive experiences, but others did not. Concerns were raised about safety and quality, about complaints being handled slowly and poorly, and about tenants feeling that they were not listened to or treated with respect.
- 10 Overall, the responses to the Call for Evidence showed widespread support for the current economic regulatory system. There was also recognition that there needed to be greater consumer regulation of social housing landlords.
- 11 In November 2020 the Government published [The Charter for Social Housing Residents: Social Housing White Paper](#)³ outlining the Government's proposals to change how social housing will be regulated in the future. A core element of the proposals is appropriate regulation and expectations on landlords, ensuring that landlords are transparent and accountable to tenants and that tenants are the focus of their operations, with safety being a top priority.
- 12 This Bill takes forward these proposals to drive up service delivery to tenants by holding landlords to account for delivery against the consumer standards, to rebalance the tenant-landlord relationship and maintain robust economic regulation. The Social Housing White Paper also set out a number of policy changes which will be delivered operationally through the regulator, within their existing powers.
- 13 Another element of the proposals outlined in the Social Housing White Paper is changes to the economic regulatory regime for social housing. Whilst the Government does not consider that the economic regulatory regime requires significant changes, the Social Housing White Paper set out a small number of policy changes to assist the regulator in addressing some concerns raised in the Social Housing Green Paper and the Call for Evidence about increasing sector risks. The Bill takes forward these proposals to improve the ability of the regulator to monitor PRPs.

¹ The Social Housing Green Paper: *A new deal for social housing*, August 2018: <https://www.gov.uk/government/consultations/a-new-deal-for-social-housing>

² Call for Evidence: *Review of Social Housing Regulation*, published alongside the Social Housing Green Paper, August 2018: <https://www.gov.uk/government/consultations/review-of-social-housing-regulation-call-for-evidence>

³ *The Charter for Social Housing Residents: Social Housing White Paper*, November 2020: <https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>

- 14 The Social Housing White Paper also outlined proposals to keep the Housing Ombudsman’s powers under review and consider ways to strengthen them. This Bill takes forward these proposals to ensure the Housing Ombudsman is empowered to issue a code of practice and make clear that the Housing Ombudsman can issue orders that seek to prevent the recurrence of issues identified during an investigation.
- 15 The Bill also enables legislation that will allow for the introduction of electrical safety regulations in the social housing sector at a later date, subject to consultation.

Legal background

- 16 The main legislation relevant to the regulation of social housing is:
 - the Housing and Regeneration Act 2008;
 - the Localism Act 2011;
 - the Housing and Planning Act 2016; and
 - the Legislative Reform (Regulator of Social Housing) (England) Order 2018.
- 17 The Housing and Regeneration Act 2008 (HRA 2008) established the framework for the regulation of social housing. The HRA 2008 created the Homes and Communities Agency (HCA) and set out its objectives and powers. The HRA 2008 also created a new social housing regulator, the Office for Tenants and Social Landlords, and set out its objectives and powers.
- 18 The HRA 2008 was later amended by the Localism Act 2011 in response to the Review of Social Housing 2010 (also known as the “Shapps Review”). The Review of Social Housing concluded that the Tenant Services Authority (TSA) (the operating name of the Office for Tenants and Social Landlords) should be abolished and its regulatory functions transferred to the HCA and vested in a statutory committee within the HCA. The Localism Act 2011 transferred the functions of the TSA to the HCA and made changes to the system for tenants to make complaints about their social landlords.
- 19 The legislative framework established by the HRA 2008 was further amended by the Housing and Planning Act 2016 (HPA 2016) which reduced regulation of social housing and local authority influence over PRPs. The HRA 2008 reduced regulation by, among other things, removing various requirements for the regulator’s consent of PRP activities and reducing the regulator’s powers to appoint managers or officers of PRPs.
- 20 In 2018, the Legislative Reform (Regulator of Social Housing) (England) Order 2018 made the regulator a standalone body completely separate from the HCA, in line with a recommendation from a Tailored Review of the HCA.

Territorial extent and application

- 21 The territorial extent and application of this Bill is England and Wales, with the exception of clauses 12 and 13, Part 1 of Schedule 1 and Schedule 2 which have UK extent and application.
- 22 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

The Regulator of Social Housing

Clause 1: Fundamental objectives

- 23 Clause 1 amends section 92K of the HRA 2008 which sets out the fundamental objectives that guide the regulator's approach to regulation. These currently comprise an economic regulation objective and a consumer regulation objective. The economic objective is about good governance, financial viability and value for money of registered providers of social housing (RPs) that maintains lender confidence and protects the taxpayer. The consumer objective is about supporting the provision of quality social housing that is well managed and ensuring tenants have choice and protection and can hold their landlord to account. The regulator is also accountable to Parliament for the discharge of these fundamental objectives. This amendment specifies that the regulator must support the provision of housing that is 'safe' in addition to the existing expectations of being 'well managed' and of 'appropriate quality'. It also adds a new objective for the regulator to require RPs to be transparent with their tenants. These changes were set out in the Social Housing White Paper.

Clause 2: Advisory panel

- 24 Clause 2 amends the HRA 2008 by inserting a new section 96A. Subsection (1) requires the regulator to set up an Advisory panel (the Panel). The Panel will comprise of a range of voices from across the sector, including tenants and landlords, enabling them to inform the regulator on a wide range of matters connected to the regulation of social housing. The regulator will refer to the Panel when they see fit, but the Panel will also be able to proactively raise issues affecting social housing regulation with the regulator. The Panel must include, but is not restricted to, the persons specified in subsection (4).
- 25 The Panel will provide advice on matters including, but not limited to, significant proposed changes to the regulatory standards and codes of practice, proposed changes to the regulator's approach to regulating the standards, and key sector issues and risks. For example, the regulator may engage the Panel on the design and implementation of new consumer standards and how it engages with key stakeholders such as tenants helping shape the regulator's view prior to formal consultation.

Clause 3: Collection of information

- 26 Clause 3 amends sections 107 and 108 of the HRA 2008 to broaden the existing power for the regulator to require persons to provide documents or information for purposes connected to its regulatory functions.
- 27 Existing legislation limits the power to request information to that which relates to:
- The financial or other affairs of a RP;
 - Activities carried out by a person who is or has applied to become a RP; or
 - Activities carried out by a local authority in England which is, or may become, a provider of social housing.
- 28 Furthermore, at present, the regulator may only require persons to provide information from third parties if the body to which it relates has failed to provide the information or documentation in question, or the regulator thinks the body is unable to provide it.

- 29 By broadening the existing power, the policy aim is to ensure the regulator is able to follow information relating to funds or assets once they have left the regulated sector. The existing power is also amended to enable the regulator to request information directly from third parties and authorise another person to exercise those powers. The authorisation must specify the extent to which that person is authorised to exercise any of the regulator’s powers under this section. This will enable specialists, such as forensic accountants, to conduct investigations into a provider on behalf of the regulator if necessary.
- 30 This clause further amends section 107 by making it an offence in purported compliance with a requirement under this section, knowingly or recklessly to provide the regulator with a document, information or an explanation which is false or misleading.
- 31 It is intended that this power will provide the regulator with the powers necessary to be able to access information to understand better how a RP is operating and in turn improve its investigation into concerns about a provider’s compliance with regulatory standards. For example, the power would enable the regulator to follow money paid to bodies outside of the social housing sector and investigate potential fraud by examining the financial accounts of organisations thought to be deriving profits from the activities of a RP. As set out in the Social Housing White Paper, the intention is for this to improve the ability of the regulator to conduct effective economic regulation of PRPs.

Clause 4: Relationship between regulator and housing ombudsman

- 32 Clause 4 amends the HRA 2008 and the Housing Act 1996 (HA 1996) to add measures on the relationship between the regulator and a housing ombudsman in order that they can exchange information quickly and effectively to provide better protection for tenants.
- 33 The regulator and the housing ombudsman both have a role in overseeing the performance of social housing landlords and making sure that landlords treat their tenants fairly. The regulator regulates RPs in England and the housing ombudsman seeks to resolve complaints from residents about RPs. The HA 1996 allows for multiple housing ombudsman schemes to be approved by the Secretary of State but only one has been approved.
- 34 A new section, 100H, is added to the HRA 2008 requiring both bodies to cooperate and to prepare, publish and regularly review a memorandum of understanding outlining how they will do so.
- 35 Housing ombudsman is added to the relevant lists of bodies in the HRA 2008 that the regulator and Secretary of State are required to consult when setting standards and giving directions to the regulator respectively.
- 36 The HA 1996 is amended to require an ombudsman to consult the regulator about changes to its scheme before these can be approved by the Secretary of State.
- 37 Arrangements are already in place for the two bodies to work together. A non-statutory memorandum of understanding⁴ (‘MoU’) has been agreed between the regulator and the housing ombudsman, originally in 2017 and updated in 2020.

⁴ Memorandum of Understanding between the Housing Ombudsman and the Regulator of Social Housing, September 2020:

<https://www.housing-ombudsman.org.uk/wp-content/uploads/2020/09/MOU-Ombudsman-and-Regulator-20200901.pdf>

Registration of providers of social housing

Clause 5: Meaning of “English body”

- 38 Clause 5 amends section 79 of the HRA 2008 so that eligibility for voluntary registration as a PRP is explicitly limited to entities taking certain corporate forms with a registered office or an address for charity registration purposes in England.
- 39 This change is intended to ensure that registration, and the regulatory regime which applies in consequence of it, is limited to bodies which the regulator can regulate in an appropriate manner given their corporate form and location.
- 40 Only an “English body”, as defined in section 79 of the HRA 2008, may be eligible for voluntary registration as a PRP under section 112 of the HRA 2008.
- 41 Section 79(1) is amended so that a limited liability partnership (LLP) which has its registered office in England is included within the definition of “English body”.
- 42 Section 79(1)(d) is removed, since the Government’s intention is that only community land trusts which fit the categories set out within section 79(1) as amended are to be registered.
- 43 Section 79(1)(e) is removed to ensure that only English bodies as defined in section 79(1)(a)-(c) and (f) are able to register with the regulator. These bodies will be registered companies, registered societies, registered charities and limited liability partnerships with a registered office or registered address for charity registration purposes in England.

Clause 6: Registration criteria

- 44 Clause 6 enables the regulator to make the registration of social housing providers conditional upon their ability to meet, on registration, regulatory standards. Under section 112 of the HRA 2008, the regulator is able to set criteria which specify the financial, constitutional and management arrangements that must be satisfied by new registrants. This change allows the regulator to add to that. The change will allow the regulator to confirm that providers are capable of meeting registration requirements related to all its standards – for instance, on its consumer standards in relation to maintaining homes and adopting suitable procedures for addressing tenant complaints - before they become a RP.

Clause 7: Designation

- 45 Clause 7 amends section 115 of the HRA 2008 so that the regulator can look beyond constitutional form when determining an organisation’s status as either a profit-making or non-profit organisation.
- 46 This is achieved by removing the automatic designation of charities as non-profit organisations and clarifying that the fact that a body is prohibited by its constitution from trading for profit does not automatically mean that, for the purposes of section 115, it is a body that does not trade for profit eligible for designation as a non-profit provider. This allows the regulator to look at a provider's operations to make the appropriate designation.
- 47 This is to ensure that the regulator is able to designate RPs according to the substance of how they actually operate (or intend to operate). Designation as a non-profit provider may bring with it benefits to that landlord. It is important that providers are not able to benefit in that way if they, in practice, do not truly operate as a non-profit organisation.
- 48 This clause will also remove the condition which states that a non-profit provider can satisfy one of the conditions in the non-profit test if it is prohibited by its constitution from issuing interest or dividend beyond a prescribed rate. No rate has ever been prescribed, which therefore leaves a potential loophole.

Clause 8: De-registration

- 49 Clause 8 amends section 118 of the HRA 2008 allowing the regulator to de-register a PRP for failing to meet a regulatory standard. This change follows from Clause 6, which enables the regulator to make the registration of social housing providers conditional upon their ability to meet, on registration, regulatory standards.

Duties of registered providers

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

- 50 Clause 9 inserts new clauses into the HRA 2008 that require RPs to designate a person to act as lead on certain functions relating to the provider's compliance with its health and safety obligations towards tenants (known as the 'health and safety lead'). Legal responsibility for ensuring compliance with relevant obligations to protect the health and safety of tenants will remain with the RP.
- 51 The RP may only designate an individual who meets the relevant criteria set out in section 126A which ensure the health and safety lead is an employee, officer or member of the provider.
- 52 The health and safety lead's functions, as outlined in section 126B, are to monitor the provider's compliance with health and safety requirements, to assess risks of failure to comply, to notify the provider's responsible body of any material risks to or failures of this compliance, and to advise on steps to ensure the provider addresses these. The relevant health and safety requirements are statutory requirements that relate to the health and safety of tenants of social housing.
- 53 The RP has duties, under section 126C, to ensure that the health and safety lead has the authority, capacity and resources needed to carry out their role. The RP is also required to notify the regulator of the contact details of the health and safety lead and publish this information so that tenants know who it is and can contact them. The RP can nominate a person to carry out the role if the health and safety lead is unable to do so due to absence or illness.
- 54 Clause 9 also amends sections 220 (grounds for giving enforcement notice), 227 (grounds for imposition of penalty), 247(1) (management tender), 251(1) (appointment of manager of PRP) and 252A(2) (appointment of advisers to local authorities) of the HRA 2008 so the regulator can use those enforcement actions in relation to these requirements.

Clause 10: Electrical safety standards

- 55 This clause amends section 122 of the HPA 2016. It extends the power for the Secretary of State, by regulations, to impose duties on landlords so that these duties can also be imposed on landlords who are RPs in England, rather than just private landlords. The duties imposed by regulations under this power are for the purposes of ensuring that electrical safety standards are met during any period when the premises are occupied under a tenancy.
- 56 Such duties relating to electrical safety standards might include ensuring checks of electrical installations and/or appliances are carried out. Regulations may impose obligations on RPs with regards to the frequency of the electrical checks and the expertise expected of any persons who undertake such checks. The regulations may also require the landlord to obtain a certificate from a qualified person confirming that the standards are met, and to give a copy to the tenant or prospective tenant.
- 57 Regulations made under section 122 of the HPA 2016 may make provision for the enforcement of any duties imposed by such regulations, including the use of financial penalties and rights of appeal (see section 123 of the HPA 2016).

Registered providers: insolvency, restructuring etc

Clause 11: Moratorium on disposal of land

- 58 Clause 11 amends the moratorium process, including provision as to how and when the period commences and ends. During a housing moratorium, the prior consent of the regulator is required for disposals of a RP's land. This protects social housing stock while solutions can be explored to support a provider experiencing financial difficulty.
- 59 This is achieved in a new section 145 that sets out the events that trigger the commencement of a moratorium. These are:
- Presentation of a petition for the winding up of a provider;
 - An application by the provider to pass a resolution for voluntary winding up;
 - Application for an administration order;
 - Appointment of an administrator; and
 - Notice of intention to enforce a security over the property of a provider.
- 60 This modifies the existing position in relation to all but the last of the events mentioned above (where currently the moratorium is triggered by the giving of a notification to the regulator that the event has occurred).
- 61 Subsection (3) makes consequential changes to section 146 relating to the ending of the moratorium by expiry of the relevant period (which is usually 28 days from the "relevant day" unless the moratorium is extended in accordance with section 146(3)). A housing moratorium can also be brought to an end by the making of an administration order or the cancellation of the moratorium in accordance with section 146(5).

Clause 12: Limited liability partnerships

- 62 Clause 12 introduces Schedule 1 which makes a number of amendments to apply the housing moratorium and housing administration regimes in relation to PRPs that are LLPs and make related provision.

Schedule 1: Limited liability partnerships

- 63 Schedule 1 makes a number of amendments to apply the housing moratorium and housing administration regimes in relation to PRPs that are LLPs and make related provision.
- 64 The existing regime seeks to balance protection of creditors and of tenants.

Part 1: Amendments of the Housing and Planning Act 2016

- 65 Part 1 of Schedule 1 makes amendments to the HPA 2016 to extend the housing administration regime to LLPs. This regime currently applies only in relation to companies, registered societies and charitable incorporated organisations.
- 66 Paragraph 3 defines "relevant officer" for LLPs as a member of the partnership.
- 67 Paragraph 4 extends the regulation making power in relation to the conduct of administration etc to LLPs.
- 68 Paragraphs 5 to 9 amend sections 104 to 108 to provide that a winding up order or ordinary administration order cannot be made, an administrator cannot be appointed by creditors, and security cannot be enforced in relation to a PRP that is an LLP unless the regulator is given notice and 28 days have elapsed (or the regulator waives the notice requirement). Its effect is to

add LLPs to the provisions that prevent a housing administration being frustrated by such steps being taken before the Secretary of State and the regulator have been given an opportunity to apply for a housing administration order, or by such orders or appointments being made when an application for a housing administration order has been made and is outstanding.

69 Paragraph 10 adds LLPs to the interpretation section for Chapter 5 of Part 2 of the HPA 2016.

Part 2: Amendments of the Housing and Regeneration Act 2008

70 Part 2 of Schedule 1 amends the HRA 2008 to extend existing provisions to LLPs.

71 Paragraph 12 has the effect that where the regulator makes proposals under section 152 of the HRA 2008, the members of an LLP must co-operate with the implementation of agreed proposals.

72 Paragraph 13 amends section 160 to extend, to LLPs, the existing notification requirements applicable when a company enters arrangements or reconstructions in the event of an insolvency.

73 Paragraph 14 amends section 270 so that in relation to an LLP, “officer” is defined as being a member of the LLP.

Clause 13: Insolvency of registered providers

74 Clause 13 introduces Schedule 2 which amends provisions in the HPA 2016 in relation to the procedures to be followed in the event of an insolvency of a RP.

Schedule 2: Amendments to restrictions on insolvency procedures

75 Schedule 2 amends provisions in the HPA 2016 in relation to the procedures to be followed in the event of an insolvency of a RP.

76 Sections 104, 105, 106, 107 and 108 are amended to make clear the notification requirements a RP must comply with in the following scenarios:

- Section 104 – winding-up orders;
- Section 105 – voluntary winding up;
- Section 106 – ordinary administration orders;
- Section 107 – appointment of administrator; and
- Section 108 – enforcement of security.

77 Details of the notification requirements include how and by whom notice must be given, as well what must be included in the notice. These sections are also amended to allow the regulator to treat purported notice as notice given, in cases where it might not meet the requirements set out.

Clause 14: Notification requirements: expansion to profit-making organisations

78 Clause 14 expands to profit-making RPs the requirements in sections 160, 161, 163, 165, 169A and 169C of the HRA 2008 (currently imposed only on non-profit RPs) to notify the regulator of various restructuring and dissolution events. This is to align requirements across the sector regardless of a provider’s profit-making status.

79 Subsections (3) and (4) make consequential provision in relation to provisions governing the registration of a new body created where a company has converted into a registered society or a registered society restructures.

- 80 This aligns notification requirements across the sector to ensure that the regulator is able to keep its register up to date and is alerted where there are significant changes to the corporate form of a provider.

Clause 15: Receipt of transfers of engagements from a registered society

- 81 Clause 15 inserts new provisions in the HRA 2008 creating a new notification requirement applicable to RPs that are companies and registered societies.
- 82 The new provisions require such RPs to notify the regulator if a registered society that is not a RP passes a resolution transferring its engagements to the provider.

Clause 16: Notification of constitutional changes

- 83 Clause 16 concerns notification of constitutional changes. It adds new requirements to the HRA 2008.
- 84 Subsection (2) adds a requirement that a registered society which is a RP must notify the regulator of any change to its name or registered office (in addition to notifying the regulator about any change to its rules).
- 85 Subsection (3) adds a requirement that a registered charity which is a RP must notify the regulator of any change to its trusts, purposes, name, Charity Commission registration number or postal address. (Currently a charity need only notify the regulator of any change to its objects.)
- 86 Subsection (4) adds a requirement on LLPs to notify the regulator of any change to its name or registered office.
- 87 Clauses 14, 15 and 16 will ensure that the regulator has a clear understanding of a RP's corporate structure, as well as any significant changes taking place that could influence the manner in which it operates.

Standards

Clause 17: Standards relating to information and transparency

- 88 Clause 17 adds new section 194A to the HRA 2008 allowing the regulator to set standards for RPs on the provision of information and transparency to their social housing tenants and to the regulator, implementing the commitments set out in the Social Housing White Paper.
- 89 New section 194A(2) sets out examples of things that the standards could contain. Subsection (2)(a) relates to provisions for an 'Access to Information scheme' for tenants; subsection (2)(b) relates to requirements for RPs to self-report breaches of the regulator's standards to the regulator; subsection (2)(c) relates to requirements on RPs to provide their tenants with information 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.
- 90 Clause 17 also amends the HRA 2008 in order to provide that a failure to meet a standard set under the new section 194A will be a ground to exercise various of the regulator's enforcement powers.

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

- 91 Clause 18 amends section 195 of the HRA 2008 so that the regulator is able to issue a code of practice in relation to its consumer standards. A code of practice amplifies the standard; it does not bind providers. This means RPs will have a better idea of what is expected of them, and tenants will have a better idea of what to expect from their landlords. The regulator can issue a code of practice which relates to economic standards made under section 194 of the HRA 2008

and it publishes codes of practice on financial viability and governance and value for money. This clause permits the regulator to issue a code of practice for any of its standards, ensuring there is parity between these areas of regulation.

Clause 19: Direction by Secretary of State

- 92 This clause amends section 197 of the HRA 2008 by adding a new subsection (2A) which allows the Secretary of State to issue a direction to the regulator in relation to standards (under section 194A) requiring providers to comply with rules about the provision of information to their tenants about the management of their housing.
- 93 This amendment, in partnership with Clause 17 which sets out powers for the regulator to set standards relating to information and transparency, will enable the Secretary of State to direct the regulator to introduce requirements on PRPs to follow an 'Access to Information scheme', which allows tenants to access information from their landlord about how their housing is managed, as set out in the Social Housing White Paper.

Clause 20: Intervention powers: removal of "serious detriment" test

- 94 Clause 20 amends section 198A of the HRA Act 2008. This clause removes the requirement that the regulator must have reasonable grounds to suspect that a breach of the consumer standards has caused or could cause 'serious detriment' to the RP's tenants or potential tenants. Examples of 'serious detriment' would include harm or potential harm including, but not exclusively:
- Health and safety;
 - Loss of home;
 - Unlawful discrimination;
 - Loss of legal rights; and
 - Financial loss.
- 95 The clause provides that the serious detriment test no longer applies to the exercise of powers set out in section 198A(3) where there has been a failure to meet a consumer standard (and repeals that subsection), or to the exercise of powers where there is a risk that a RP will fail to meet a standard, if no action is taken (section 198A(4)).
- 96 The clause amends section 198A of the HRA 2008 by removing subsection (6). This means that the regulator is no longer subject to the requirement to have regard to information received from various specified bodies when considering whether to exercise a monitoring or enforcement power following a breach of consumer standards, as set out within subsections (1) to (4). This requirement was introduced at the same time as the serious detriment test and is no longer necessary or appropriate. The regulator will continue to be able to consider evidence from any sources, in accordance with section 96 of the HRA 2008. The regulator will also continue to have a duty to exercise its functions in a way that is proportionate and minimises interference, as required by section 92K of the HRA 2008.
- 97 This measure will enable the regulator to use its monitoring and enforcement powers in Chapters 6 and 7 of the HRA 2008 in relation to a failure to meet a consumer standard, without first applying the serious detriment test. This will enable the regulator to regulate consumer standards proactively and bring parity between economic and consumer regulation, as committed to in the Social Housing White Paper. Abolishing the serious detriment test will allow the regulator to intervene on grounds of a breach or potential breach of the consumer standards, whether or not the breach in question has caused or may cause tenants serious harm.

Clause 21: Performance monitoring

- 98 Clause 21 amends the HRA 2008 to insert a new section, section 198C, which gives the regulator a power to direct RPs to collect, process and publish information concerning their performance in relation to standards set by the regulator that apply to them. The regulator can apply these directions to all RPs or only to specified cases, circumstances or RPs.
- 99 This will give the regulator a clear power to introduce new Tenant Satisfaction Measures, as set out in the Social Housing White Paper. These will provide tenants with greater transparency about their landlord's performance and will inform the regulator about how a provider is complying with the consumer standards under a proactive consumer regulation regime.
- 100 Subsection (2) provides a non-exhaustive list of the things the regulator may direct on and allows these directions to be specified or described. Subsection (5) enables the regulator to require providers to share their information and analysis related to their compliance with regulatory standards, and to provide detail about how this information is collected, analysed and published so that the regulator can get assurances on the quality of the information and processes involved.
- 101 Clause 21 also amends section 220 and section 227 so that a failure by a RP to comply with a direction made under section 198C or provide information requested under subsection 5 means that the regulator is permitted to take enforcement action by issuing an enforcement notice or imposing a financial penalty. The regulator will also be able to require a performance improvement plan as enforcement action for non-compliance with a direction under section 198C.

Monitoring and enforcement

Clause 22: Surveys

- 102 These changes give the regulator the power to arrange for surveys of the condition of properties more quickly, by reducing the notice period which must be given, and enabling a warrant to be sought to gain entry in cases where this is reasonably required. This ensures a survey can take place promptly.
- 103 Clause 22 amends section 199 and section 200 of the HRA 2008 and inserts new sections 199A and 199B. The amendments reduce the minimum notice period the regulator must give to the RP and occupier/s before an authorised person can enter to conduct a survey of the condition of premises, in cases where the regulator suspects that the provider is failing to maintain them according to standards under section 193. The changes mean that the regulator can apply for a warrant to allow an authorised person to gain entry in certain cases.
- 104 Amendments to section 199 remove subsections (4), (5) and (6). These provisions focused on powers that the regulator can use to enter a property so they can carry out a survey, and the rules about notifying certain people which the regulator has to follow, and are replaced by the new section 199A. Subsection (3) is amended to refer to sections 199, 199A and 200, so that the definition of an 'authorised person' applies to each of these sections. Subsection (9) is added, which means that the regulator is allowed to pay people whom it does not employ directly as staff to carry out a survey.
- 105 Section 199A provides a power to enter premises to carry out a survey without a warrant. The provision allows an authorised person to enter premises at any reasonable time, providing they give the RP at least 48 hours' notice, and the occupier/s (if any) at least 24 hours' notice. Section 199A(3) provides that the provider or the occupier can choose to let the survey take place before the notice period has elapsed. Subsection (4) provides that the notice can state that an authorised person could apply for a warrant to enter if entry is refused by the provider or occupier/s.

Subsection (5) allows for notice to be provided to occupier/s under subsection (2)(b) by fixing it to some conspicuous part of the premises. Subsection (6) states that the authorised person must show a copy of the authorisation from the regulator on request from an occupier. Subsection (7) allows the authorised person to be accompanied by any other people they think will be needed for them to complete the survey properly, or to take any equipment or materials that they think are necessary for the survey. Subsection (8) allows any of these materials or equipment to be left on the premises until the survey is completed, provided the equipment or materials is needed for the survey to be completed properly, and does not significantly impair an occupier from using the premises.

106 Section 199B allows an authorised person to apply for a warrant from a justice of the peace to enter a property and conduct a survey. Subsection (1) requires a justice to be satisfied that it is reasonable for the authorised person to need to enter the property, based on sworn information provided in writing by an authorised person. Subsection (2) states that the justice must be satisfied that the authorised person has tried to enter the premises but that they have been refused entry, that the premises are currently unoccupied, or the occupier is temporarily absent, or that there are reasons to believe entry will not be possible without a warrant. Subsection (3) allows for entry at a reasonable time and using reasonable force if necessary. Subsection (4) allows the authorised person to take any equipment or materials that they think are necessary for the survey. Subsection (5) allows any of these materials or equipment to be left on the premises until the survey is completed, provided the equipment or materials are needed for the survey to be completed and do not significantly impair an occupier from using the premises. Subsection (6) allows the authorised person to be accompanied by any other people they think will be needed for them to complete the survey properly. Subsection (7) clarifies that ‘accompanying persons’ have the same powers as the authorised person but that they must be in the company of the authorised person at the time and supervised by them. Subsection (8) states that the authorised person must show a copy of the warrant and authorisation from the regulator to anybody who asks to see it. Subsection (9) states that the warrant is in force until the survey is completed. Subsection (10) requires premises that were unoccupied (or had a temporarily absent occupier) at the time of entry to be left as effectively secured against trespassers as they were found upon entry.

107 Subsection (1) of section 200, which requires an authorised person to give a copy of the authorisation from the regulator allowing them to carry out a survey to an occupier, is repealed; this is now covered by section 199A(8).

108 Section 200 is amended so that it is no longer a criminal offence if a provider does not give occupiers notice ahead of a survey taking place. This is removed as the amendments to section 199, and the addition of section 199A, mean that it is the duty of the authorised person to give notice, rather than the provider. Subsection (4) is amended so that a RP or an officer of a RP commits an offence if they obstruct an authorised person exercising a power under section 199A, or 199 where the authorised person has entered to conduct a survey under powers in section 199A. Subsection (4A) is also added to make it an offence for a person to obstruct an authorised person exercising a power under a warrant conferred under section 199B or to obstruct an authorised person in exercising a power under section 199 where the authorised person has entered the premises to carry out a survey with a warrant under section 199B.

Clause 23: Performance improvement plans

109 Clause 23 will add sections 218A, 218B, 218C and 218D to the HRA 2008 enabling the regulator to require a registered provider of social housing to prepare and implement a performance improvement plan (‘PIP’). This enforcement measure was first promised in the Social Housing White Paper.

- 110 A PIP is a plan which the regulator will be able to require landlords who are failing to meet regulatory standards to produce and follow. The change will allow the regulator to hold a RP to account in relation to how, and by when, it proposes to address an issue that has been identified. It will also allow tenants to be aware of the actions their landlord is required to carry out and when, so they can hold their landlord to account. As well as increasing the tools available to the regulator and underpinning the new consumer regulation by allowing the regulator to intervene proactively in cases where providers do not meet standards, this change will promote improved landlord performance and service delivery for the benefit of tenants. It provides an opportunity for RPs to address issues prior to the taking of further enforcement action by the regulator.
- 111 Section 218A relates to the PIP notice itself. Subsection 218A(1) sets out the grounds on which the regulator can give a provider a PIP notice. Any one of the below cases constitutes such grounds:
- 112 The provider has failed to meet a standard under section 193, 194 or 194A. These sections refer to consumer standards, economic standards, and new standards relating to information and transparency, created by the Bill.
- There is a risk the provider could fail to meet a standard under section 193, 194 or 194A unless action is taken by the provider or the regulator.
 - The provider has failed to comply with directions under the new section 198C, which will also be created by the Bill. These are directions relating to collecting and publishing performance information.
 - The interests of the RP's tenants of social housing require protection.
 - The RP has given an undertaking under section 125 and failed to comply with it. A voluntary undertaking is a commitment made to the regulator to carry out specified actions.
- 113 Subsection 218A(2) sets out requirements for the PIP notice. The PIP notice must specify on which of the grounds (listed above) the PIP is given; identify the issues which led the regulator to be satisfied of those grounds; require the provider to prepare and submit to the regulator a plan setting out the action the provider will take to address the issues identified; specify the date by which the PIP must be submitted to the regulator; require the provider to publish a PIP if it is approved by the regulator and specify the manner of such publication; and explain the effect of subsections (3) and (4) and sections 218B to 218D meaning it must explain the wider effects of the PIP, as set out below.
- 114 The regulator may withdraw the PIP by notice to the provider. If a provider fails to comply with a PIP notice, the regulator must consider exercising another enforcement power under Chapter 6 or 7.
- 115 Section 218B sets out duties for the regulator and provider relating to the PIP. The regulator is required to either approve a PIP submitted or reject it and provide reasons for doing so. The provider is required to implement the PIP that has been approved by the regulator. If a PIP is not approved by the regulator, the provider is deemed to have failed to comply with the PIP notice. Following a rejection, the regulator can consider exercising another enforcement power. Subsection 218B(4) places a duty on the provider to submit a copy of a PIP which has been approved by the regulator to a tenant as soon as practicable, but only if the tenant makes a written request for a copy.

- 116 Section 218C relates to the cancellation of a PIP. The regulator can, by notice to the provider, cancel a PIP which it has approved. This could, for example, be because the initial concerns which led to the PIP notice being issued are no longer held or have been adequately addressed. If a PIP is cancelled, the provider's duties to publish a PIP which has been approved, to implement the PIP, and to provide a copy of the PIP on request from a tenant, no longer apply. However, if the provider breached one of these duties prior to the plan being cancelled, this cancellation does not impact action being taken in relation to this breach.
- 117 Section 218D sets out appeals provisions for providers that have been required to prepare and implement a PIP. Providers can appeal to the High Court against a decision by the regulator to issue a PIP notice within 28 days of the provider receiving the notice. The appeal is suspensory, meaning that the requirement for the PIP to be prepared and submitted is suspended during the appeal period (which is defined as the period during which an appeal could be brought, or where an appeal is brought the period pending the final determination or withdrawal of the appeal). However, if a PIP has already been approved, an appeal does not suspend the provider's duties to publish, implement, or provide copies of the PIP.
- 118 Clause 23 also amends section 220 to add failure to comply with a PIP notice or implement a PIP which has been approved by the regulator as grounds for the regulator giving a provider an enforcement notice.
- 119 Sections 227 and 237 are amended, so that failure to comply with a PIP notice, and failure to provide a copy of a PIP to a tenant who requests one, are added as grounds for the regulator to impose a financial penalty on the provider and to award compensation to a person who has suffered as a result of that failure, e.g. a tenant.
- 120 Sections 247 and 251 are amended to add failure to comply with a PIP notice as grounds for the regulator to require a provider to invite persons to apply to undertake management functions of the provider and select from the applicants to make an appointment, and to appoint a manager to a provider. Section 252A is also amended so that failure to comply with a PIP notice is added as further grounds for the regulator to appoint advisers to a local authority or to require the authority to appoint advisers.

Clause 24: Emergency remedial action

- 121 Clause 24 adds sections 225A to H to the HRA 2008. These measures enable the regulator, following completion of a survey under section 199, to arrange for an authorised person to take emergency remedial action on premises to remedy specified failures on the part of registered providers that cause an imminent serious health and safety risk. Section 225A provides an overview of the provisions added.
- 122 Section 225B(1) enables the regulator to arrange for an authorised person to take emergency remedial action, as long as:
- A survey of the premises has been carried out under section 199;
 - The Regulator is satisfied that the RP has failed to maintain premises in accordance with standards under section 193 and the regulator is satisfied that the failure has caused an imminent risk of serious harm to the health or safety of the occupiers of the premises/building; and
 - The RP has failed to comply with an enforcement notice requiring it to take action to address these failures.
- 123 Subsection (5) defines 'emergency remedial action' as carrying out works which the authorised person considers immediately necessary to remove the imminent risk of serious harm.

Subsection (6) defines ‘authorised person’ as a member of the regulator’s staff, or another person who has been authorised in writing by the regulator to carry out the action on its behalf. Subsection (7) allows arrangements for payment to be made when a person other than a member of the regulator’s staff is carrying out emergency remedial action.

124 Section 225C(1) provides the power for an authorised person to enter premises at any reasonable time (or times in cases of multiple entry) to carry out emergency remedial action. However, subsection (2) clarifies that this power can only be used if the authorised person has given a pre-entry notice to:

- The occupier or any one of the occupiers (if the premises are occupied), including of each of the premises in the building that use common parts in such cases;
- The RP; and
- The proprietor of a registered estate in the premises.

125 Subsection (3) states that any pre-entry notices must be given at least 24 hours before the authorised person proposes to enter the premises. However, in the case of notice for occupiers they can choose to allow entry to take place before the 24-hour period has finished, if they wish. Subsection (4) confirms that a pre-entry notice must:

- Identify the premises to be entered;
- Identify the failure in question to be remediated;
- State that a person authorised by the regulator intends to enter the premises;
- Specify the (first) date of proposed entry;
- Specify that the power under section 225C will be used to allow the authorised person to enter; and
- Explain rights of appeal (set out in section 225H).

126 Subsection (5) states that an authorised person need only give a pre-entry notice once, even if they make multiple entries. Subsection (6) notes that a pre-entry notice can state that an authorised person would look to apply for a warrant if they are not allowed to enter the premises. Subsection (7) defines “common parts” of a building as including the structure, exterior and any common facilities for persons occupying the building.

127 Section 225D (1) allows for a pre-entry notice to be provided by fixing it to a conspicuous part of the premises. Subsection (2) notes that where a pre-entry notice must be given to owners of the land in question, it may be sent to an address supplied for such purposes. Subsection (3) states that the authorised person must show a copy of the authorisation from the regulator to an occupier who asks to see it. Subsection (4) allows the authorised person to be accompanied by any other persons they think will be needed for them to conduct the emergency remedial action and to take any equipment or materials that they think are necessary for the action. Subsection (5) allows any of these materials or equipment to be left on the premises until the action is completed, provided the equipment or materials are needed for the action and do not significantly impair an occupier from using the premises.

128 Section 225E allows an authorised person to apply for a warrant from a justice of the peace to enter a property and conduct emergency remedial action. Subsection (1) requires a justice to be satisfied that it is reasonable for the authorised person to need to enter the property to take the action. Subsection (2) provides that the justice must be satisfied that the authorised person has

tried to enter the premises but that they have been refused entry, that the premises are currently unoccupied or the occupier is temporarily absent, or that there are reasons to believe entry will not be possible without a warrant. Subsection (3) allows for entry at a reasonable time, and using a reasonable amount of force if necessary. Subsection (4) allows the authorised person to take any equipment or materials that they think are necessary for the emergency remedial action. Subsection (5) allows any of these materials or equipment to be left on the premises until the action is completed, provided the equipment or materials are needed for the action and do not significantly impair an occupier from using the premises. Subsection (6) allows the authorised person to be accompanied by any other people they think will be needed for them to complete the action properly. Subsection (7) clarifies that ‘accompanying persons’ have the same powers as the authorised person, but that they must be in the company of the authorised person at the time, and be supervised by them. Subsection (8) states that the authorised person must show a copy of the warrant and authorisation from the regulator to anybody who asks to see it. Subsection (9) states that the warrant is in force until the action is completed. Subsection (10) requires premises that were unoccupied (or had a temporarily absent occupier) at the time of entry to be left as effectively secured against trespassers as they were found upon entry. Section 225F(1)(a) and (b) make it an offence for a RP, or an officer of a RP, to obstruct an authorised person entering or using powers to carry out emergency remedial action after entry without a warrant. Subsection (2) states that any person commits an offence if they obstruct an authorised person in using powers given to them by a warrant. Subsection (3) states that a person guilty of one of these offences is liable on summary conviction to a fine not exceeding level 4 on the standard scale. Subsection (4) clarifies that proceedings must be brought by or with the consent of the regulator or the Director of Public Prosecutions.

129 Section 225G(1) allows the regulator to reclaim ‘relevant expenses’ for carrying out emergency remedial action (and interest on those expenses) from the RP. Subsection (2) defines ‘relevant expenses’ as reasonable expenses which the regulator has incurred in taking emergency remedial action or deciding whether to take emergency remedial action (as well as any related costs). Subsection (3) states that these expenses must be paid by providers within 28 days of the notice being given to them, and subsection (4) adds that interest may be charged on any sums not paid by the end of this period.

130 Section 225H(1) permits a RP to appeal to the High Court against decisions by the regulator to enter premises to conduct emergency remedial action, and/or a decision to reclaim ‘relevant expenses.’ Subsections (2) and (3) provide that appeals must be brought within 28 days from the day the RP is given the pre-entry/expenses notice, (or in relevant cases the day the premises were first entered under a warrant). Subsection (4) states that a question cannot be raised on appeal against the reclaiming of expenses by the regulator, if it could have been raised on an appeal against the carrying out of the emergency remedial works themselves instead. Subsection (5) states that where an appeal against reclaiming expenses is made, the provider does not need to pay these expenses until the appeal outcome has been determined or the appeal is withdrawn (and the provider also does not have to pay any interest on the expenses owed during this period.)

131 These measures will allow the regulator to take emergency remedial action quickly to address issues causing an imminent risk of serious harm to the health and safety of occupiers.

Clause 25: Extension of powers to charities who have not received public assistance

132 Clause 25 amends the HRA 2008 to repeal provisions which prevent the regulator from exercising various enforcement powers against registered charities who have not received public assistance. These changes will allow the regulator to exercise the following enforcement powers against registered charities who have not received public assistance:

- Holding an inquiry (section 209);
- Placing a restriction on the charity’s financial dealings during an inquiry or as a result of an inquiry where the regulator has identified mismanagement of its affairs (sections 256 and 257);
- Suspending an officer, employee or agent of the charity during an inquiry (section 259);
- Removing or suspending an officer, employee or agent of the charity as result of an inquiry where the regulator has identified mismanagement (section 260);
- Removing an officer where they are unfit to fulfil their position (e.g. being made bankrupt, being absent from duties, suffering from mental illness which affects their ability to carry out their role, etc) (section 267); and
- Appointing a new officer to replace an officer who has been removed or suspended (section 269).

133 These changes will give the regulator stronger enforcement powers to use in relation to registered charities that have not received public assistance. This will allow the regulator to ensure these charities meet consumer standards, and ensure they are held to account by their tenants in the same way as other RPs.

Clause 26: Notification of Charity Commission of exercise of enforcement powers

134 Clause 26 amends the HRA 2008 to introduce a requirement for the regulator to inform the Charity Commission when it exercises certain enforcement powers against registered charities. The clause amends the sections listed below to add provisions requiring such notification of the Charity Commission when the following powers are exercised:

- Placing a restriction on the charity’s financial dealings during an inquiry or following an inquiry where the regulator has identified mismanagement of its affairs (sections 256 and 257);
- Removing an officer where they are unfit to fulfil their position (e.g. being made bankrupt, being absent from duties, suffering from mental illness which affects their ability to carry out their role, etc) (section 267); and
- Appointing a new officer (section 269). The clause amends this from a requirement to consult the Charity Commission to a requirement to notify.

135 These amendments ensure the Charity Commission is fully informed about the activities of the regulator relating to registered charities who are also RPs. The change to section 269, from a requirement to consult to a requirement to notify, allows the regulator to act more quickly in urgent circumstances where a social landlord of this nature fails to meet a consumer standard.

Clause 27: Exercise of powers: land with a Crown or Duchy interest

136 Clause 27 clarifies that the regulator may exercise its powers in relation to premises located on land where there is a Crown or Duchy interest as defined in subsections (2) and (3).

Clause 28: Regulatory and enforcement powers: further amendments

137 This clause is self-explanatory.

Schedule 3: Regulatory and enforcement powers

Inspections: Secretary of State approval

138 Schedule 3, paragraph 2 amends section 201 of the HRA 2008 to remove the requirement for the regulator to obtain the Secretary of State's consent to use its own staff to conduct inspections of social housing properties. Section 201 provides that the regulator may arrange for a person to inspect a RP's performance of its functions in relation to the provision of social housing, or the financial or other affairs of a RP.

Inquiry appointments

139 Schedule 3, paragraph 3 amends section 206 of the HRA 2008 to provide that consultants of the regulator are no longer ineligible for appointment to conduct an inquiry.

140 Section 206 gives the regulator the power to hold an inquiry where it suspects that the affairs of a RP may have been mismanaged. Subsection (3) restricts who can be appointed to conduct an inquiry to individuals who are independent of the regulator. This paragraph amends subsection (4) so that consultants of the regulator are no longer listed as individuals who are not independent of the regulator. The definition of 'consultant' in subsection (5) is removed.

141 This amendment ensures that the regulator can appoint independent inquirers with the right skills on a timely basis.

Penalties

142 Schedule 3, paragraphs 4 and 5 amend sections 226 and 227 of the HRA 2008 to allow the regulator to issue fines to all RPs, including local authority providers. This aligns the regulator's enforcement powers for local authority providers with those it has in relation to PRPs.

143 Paragraph 6 amends the HRA 2008 to remove a cap on the level of penalty the regulator is able to impose on RPs. Section 227 provides for the grounds on which the regulator can issue penalties to RPs. As committed to in the Social Housing White Paper, section 229 is amended to allow the regulator to issue penalties of an unlimited amount. This gives the regulator flexibility to determine the appropriate level of penalty depending on the circumstances.

Appointment of a manager

144 Schedule 3, paragraph 7 amends section 251 of the HRA 2008 to provide that the regulator may appoint an organisation as a manager of a PRP, by removing the reference to appointing an 'individual'.

145 Section 251 provides that the regulator can appoint a manager of a PRP of social housing that has failed to comply with regulatory standards or been found to have mismanaged its affairs. The amendment in paragraph 7 removes the reference to an 'individual', enabling the regulator to appoint an organisation as a manager if required. This will allow the regulator to draw from a wider pool of potential managers. Organisations may be more effective in cases where wider expertise, skills and capacity are required to improve the management of a provider quickly and effectively.

146 Section 252 states that the regulator must give the RP notice of its intention to appoint a manager. Paragraph 8 amends section 252 to change the 28-day minimum representations period to a 5-day period. The 5-day representations period will commence on the day that the provider receives the notice. The regulator will not be able to appoint a manager until the expiry of this 5-day period, unless the RP consents. The reduction in the period for representations will allow the regulator to intervene quickly and take urgent action to remedy issues such as critical financial viability problems or serious deficiencies in service delivery.

Extend Enforcement Powers to For-Profit providers

147 Paragraphs 9 to 14 amend the HRA 2008 to extend a number of the regulator's enforcement powers so that they also apply to for-profit providers of social housing. This is achieved by replacing "non-profit" (RP) with "private" (RP) in the following sections of the HRA 2008:

- Paragraph 9 amends section 256 – restrictions on dealings during inquiry;
- Paragraph 10 amends section 257 – restrictions on dealings following inquiry;
- Paragraph 11(a) amends section 259 – suspension during inquiry;
- Paragraph 12(a) amends section 260 – removal or suspension following inquiry;
- Paragraph 13(a) amends section 266 – removal of officers; and
- Paragraph 14(a) amends section 269 – appointment of new officers.

148 These amendments more closely align the regulation of for-profit providers with non-profit providers, to provide equal protection for tenants regardless of the profit status of their landlord.

Suspension and removal of officers

149 Schedule 3, paragraphs 11, 12 and 13 also amend sections 259, 260 and 266 of the HRA 2008 to add new grounds on which the regulator can remove or suspend the officers of RPs. The regulator may suspend an officer by order, but this order expires 6 months after the regulator publishes its final report following an inquiry or may be revoked before the expiry of 6 months.

150 Section 259 provides for the regulator to suspend or remove an officer during an inquiry in cases where it has reasonable grounds to believe that the affairs of the RP have been mismanaged and the interests of tenants or the provider's assets require protection or, if as a result of an interim report during the inquiry, it is satisfied that the affairs of the provider have been mismanaged.

151 Paragraph 11(c) adds a third case for removing or suspending an officer, employee or agent of a provider during an inquiry, allowing removal or suspension if the regulator is satisfied that the officer, employee or agent has either obstructed or failed to co-operate with the inquiry.

152 Section 260 provides for the regulator by order to remove or suspend an officer, agent or employee of a RP following an inquiry in which mismanagement has been identified. Paragraph 12 of the Schedule extends the grounds to include obstruction or failure to co-operate with the inquiry as grounds for removing an officer, agent or employee.

153 Section 266 lists grounds under which the regulator can remove an officer of a RP. Paragraph 13 of the Schedule adds a further case to this list where a person is obstructing or failing to co-operate with the regulator in the performance of its regulatory functions.

154 These changes enable the regulator to act where it encounters unreasonable resistance from a RP's officers.

Appointment of officers

155 Schedule 3, paragraph 14(b) amends subsection (4)(a) to clarify that on the expiry of an order by the regulator to appoint an officer to a provider under section 269, the regulator may renew the appointment on any number of occasions.

Social housing

Clause 29: Leaving the social housing stock: end of lease

- 156 Clause 29 amends section 74 of the 2008 Act which provides that where the lease of a home held by a RP expires it ceases to be social housing.
- 157 Subsection (1)(b) clarifies that homes will cease to be social housing no matter how the leasehold ends and not just at the end of the term of the lease. Subsection (1)(a) is a consequential change to the title of section 74.
- 158 Subsection (1)(c) closes a loophole which potentially might allow a RP to dispose of or declassify social housing stock without notifying or seeking consent from the regulator if the party from which it had leased the dwelling was one of its associates or subsidiaries or another RP.
- 159 Subsection (2) provides that these amendments will have retrospective effect. It will apply to leases that exist at the time the provision comes into force if they were granted on or after the 10 June 2022, i.e. those granted after the date on which this Bill was published.

Appeals

Clause 30: Appeals

- 160 This clause is self-explanatory.

Schedule 4: Appeals

- 161 Schedule 4 makes amendments to the HRA 2008, relating to appeals against deregistration decisions and enforcement action. These amendments provide that relevant appeals against the regulator must be brought within 28 days of when the body or RP is notified or given a relevant notice. The amendments also stipulate that penalty notices and compensation notices (in addition to some existing appeals provisions) are suspended during the appeal period (including during the period when an appeal could be brought).
- 162 Paragraph 2 amends section 115 (profit-making and non-profit-making organisations), so that an addition is made to subsection (9) imposing a duty on the regulator to notify a RP in cases where it changes its registered designation from profit to non-profit, or vice versa.
- 163 Paragraph 3 adds subsection (2A) to section 116 (voluntary registration), requiring the regulator to notify a body of the outcome of its application to be registered as a provider of social housing.
- 164 Paragraph 4 amends section 118 (compulsory de-registration) to provide that the regulator must give RPs notice and consider representations when the regulator is considering deregistration of the body. This is also amended so that there is a duty on the regulator to notify a PRP that it is considering deregistering them, and to specify a minimum 14-day period for the provider to make representations (as well as a supplementary duty for the regulator to consider any representations that are made).
- 165 Paragraph 5 amends section 121 (registration decisions: appeals) which provides that a body may appeal a decision by the regulator to de-register it using de-registration powers in section 118, and decisions relating to designation of the body. An appeal under this section must be brought within a 28-day period beginning with the day on which the body is notified of the decision it wishes to appeal. Subsection (2) states that the regulator cannot de-register a body during the appeal period. A definition of 'appeal period' is added by subsection (2A). It is defined as the period in which an appeal is brought, beginning with the day on which notice of the decision to be appealed against is given to a provider and ending with the day on which the appeal is finally determined or withdrawn. Subsection (2)(b) provides that the appeal period will otherwise be the time in which an appeal could be brought, i.e., the 28-day period.

Subsection (2B) states that the provisions relating to an appeal period do not apply to a decision of the regulator to de-register a body where it suspects that body has ceased to exist (under 118(1)(c).)

- 166 Paragraph 6 adds a new subsection (2) to section 223 (enforcement notice: appeal) which provides that an appeal against an enforcement notice must be brought within a 28-day period beginning with the day on which the RP is given the enforcement notice.
- 167 Paragraphs 10, 12 and 14 add a new subsection to sections 248, 250 and 252. These provide that an appeal must be brought within a 28-day period beginning with the day on which the RP is notified of the imposition of requirements under these sections.
- 168 Paragraphs 7 and 8 amend sections 235 and 245 respectively so that an appeal under the respective section must be brought within a 28-day period beginning with the day on which the RP is given the penalty/compensation notice. A new subsection (3) adds that the requirement to pay the penalty/compensation is suspended during the appeal period, and subsection (4) clarifies that regulations made under section 234(2) and 244(2) may not authorise the regulator to charge interest or impose additional penalties/compensation during the appeal period. Subsection (5) defines 'appeal period' in the same way as in section 121.
- 169 Paragraph 9 amends section 247 (management tender) so that the regulator must issue a notice in cases where it requires a RP to invite applications for, or to make, a new managerial appointment to its board.
- 170 Paragraph 11 changes section 249 so that the regulator must issue a notice in cases where it requires a RP to transfer management functions to a specified person.
- 171 Paragraph 13 changes section 251 so that where the regulator appoints a new manager to a RP or requires a provider to appoint a new manager, this must be done by notice to the provider.
- 172 New subsections (7A) and (5A) are added to sections 259 (suspension of officer etc during inquiry) and 260 (removal of officers: supplemental) respectively by paragraphs 15 and 16, providing that if the regulator makes an order suspending/removing an officer, employee or agent of a RP, it must notify the RP and take all reasonable steps to notify the person suspended or removed.
- 173 Paragraph 17 adds a new subsection (1A) to section 267 (removal of officers: supplemental), providing that if the regulator makes an order removing an officer from a RP, it must notify the RP and take all reasonable steps to notify the person removed.
- 174 Paragraph 18 amends section 268 so that an appeal under this section must be brought within the period of 28 days beginning with the day on which the RP concerned is notified of the removal or suspension.

Housing ombudsman scheme

Clause 31: Housing ombudsman scheme

- 175 This clause will ensure the housing ombudsman of a scheme approved by the Secretary of State under Schedule 2 to the HA 1996 is empowered to issue a code of practice on complaint handling and makes clear that the housing ombudsman of an approved scheme can issue orders that seek to prevent the recurrence of issues identified during an investigation by ordering a member to review its practice and/or policy.
- 176 Subsection (2) amends paragraph 2 of Schedule 2 to the HA 1996 to add the power for the housing ombudsman of an approved scheme to issue a code of practice on complaint handling to the matters for which such a scheme must provide. Such a code of practice will inform

members of the scheme of the complaint handling standards they are expected to maintain and will give the residents of those members a better idea of what to expect from their landlord.

177 Subsection (2) also amends the HA 1996 to put a duty on a housing ombudsman issuing a code of practice to consult the members of that ombudsman's scheme, individuals who may make complaints under the scheme (which will include residents of members of the scheme) and the regulator prior to issuing or making changes to that code. This will provide a mechanism for the views of these individuals/organisations to be fed into any code issued under this power.

178 Subsection (3) amends the HA 1996 to specify that a housing ombudsman, as part of a determination it has made following an investigation into a complaint against a member of its scheme, may order that member to review its practice and/or policy relating to a service failure identified during that investigation.

179 As part of a determination made by a housing ombudsman following a complaint received, an ombudsman can issue orders which seek to address the individual complaint to the member that the complaint relates to, for example through compensation paid by the member to the complainant. This provision will specify that a housing ombudsman has the power to issue orders that aim to prevent the recurrence of issues identified during investigation which may recur for other residents in the future.

General

Clause 32: Minor and consequential amendments and transitory provision

180 Clause 32 gives effect to Schedule 5, which contains minor and consequential amendments and transitory provision.

Schedule 5: Minor and consequential amendments and transitory provision

181 Paragraphs are grouped together where they have similar effects.

Part 1: Housing and Regeneration Act 2008

182 Part 1 contains minor and consequential amendments to the HRA 2008, including the below.

183 Paragraph 4 omits subsections (2) to (5) of section 79. As community land trusts are removed from the definition of 'English body', these provisions are removed as consequential amendments.

184 Paragraphs 6, 21(a), 24 and 25 make the references to the housing ombudsman consistent in the HRA 2008. Housing ombudsman will be defined by clause 5.

185 Paragraph 8 repeals section 113. Paragraphs 7 and 9 are consequential on that repeal.

186 Paragraph 11 amends section 153 of the HRA 2008 to remove the specification that moratorium proposals must be sent to the officers of a RP.

187 Paragraph 12 creates a new section (169ZA) which provides that the group of sections relating to notification of constitutional changes does not apply to local authorities.

188 Paragraph 15 clarifies that the regulator's consumer standard setting power includes requiring registered providers to comply with specified rules about safety of accommodation (consistent with the change to the regulator's objectives in Clause 1 and policies and procedures in place around domestic abuse).

189 Paragraph 16 amends section 197 of the HRA 2008 by providing that safety of accommodation is a matter on which the Secretary of State may give a direction to the regulator under subsections (1)(a) and (b). The other matters on which the Secretary of State may give such a direction are

quality of accommodation, tenure, rent, tenant involvement, and methods of assisting tenants to exchange tenancies. The change makes section 197 consistent with changes made in Clause 1 where 'safety' is made explicit in the fundamental objectives for the regulator.

190 Paragraphs 17 and 18 amend sections 203(3) and 208(4) as consequential amendments following the changes to section 107 of the HRA 2008 by Clause 3 of this Bill.

191 Paragraph 19 removes a requirement for the regulator to publish guidance about the information it receives about the performance of RPs. The regulator is being given powers through Clause 21: "Performance monitoring" to require landlords to provide performance information and set directions in relation to this and this new clause contains separate requirements for the regulator to bring these to the attention of every RP they apply to.

192 Paragraphs 21(b), 22, 23, 26 and 27 are consequential amendments to the HRA 2008 to repeal provisions which allowed a range of enforcement powers to be used by the regulator on the grounds that a RP failed to comply with social housing rent requirements in the Welfare Reform and Work Act 2016. The requirements in the Welfare Reform and Work Act 2016 have now fallen away because they applied in relation to RPs only for four relevant years. The four relevant years expired on 30 March 2021. Consequently, those grounds will become redundant in due course.

Part 2: Other Acts

193 Part 2 contains minor and consequential amendments to other Acts, including the following.

194 Paragraph 35 omits section 30 of the Welfare Reform and Work Act 2016, which amended the HRA 2008 to enable the regulator to use specific enforcement powers on the grounds that RPs failed to comply with rent requirements. As noted above the amendments made will become redundant in due course.

195 Paragraph 36 amends the Leasehold Reform (Ground Rent) Act 2022. A definition of 'community land trust', removed from the HRA 2008 by paragraph 4 of Schedule 5, is added to the Leasehold Reform (Ground Rent) Act 2022.

Part 3: Transitory Provision

196 Part 3 contains transitory provision relating to measures in the Bill.

Clause 33: Power to make consequential provision

197 Clause 33 enables the Secretary of State to make provision that is consequential on this Bill by regulations. Such regulations may amend an Act of Parliament including an Act passed in the same session as this Act.

Clause 34: Extent

198 Clause 34 details the territorial extent of the provisions in the Bill. See Territorial extent and application above and Annex A of these Explanatory notes for additional detail.

Clause 35: Commencement

199 Clause 35 is explained under Commencement below.

Clause 36: Short title

200 Clause 36 is self-explanatory.

Commencement

- 201 The Bill will come into force on such day or days as the Secretary of State may appoint by regulations, except for the following clauses. Clause 10 (electrical safety standards) and Clauses 33-36 will come into force the day the Act is passed. Clause 31 will come into force at the end of the period of two months beginning with the day on which the Act is passed.
- 202 The Secretary of State may by regulations made by statutory instrument make transitional or saving provisions in connection with the coming into force of any provision of the Bill. This includes the power to make different provisions for different purposes.

Financial implications of the Bill

- 203 An Impact Assessment has been prepared for the Bill and covers the implications of the Bill for the regulator and both PRPs and local authority landlords.
- 204 The majority of the measures do not have monetisable costs and are aimed at ensuring there is behavioural change in the sector. There are however non-monetisable costs associated with these measures. Some of the measures covered by the Impact Assessment require further development to identify exactly how they will be put into practice; this further work will affect costs and benefits. A fuller assessment of the measures will be completed by the regulator at a later stage, in relation to the regulatory requirements it sets.
- 205 It is not anticipated that there will be any costs for social housing tenants.
- 206 Though the majority of the measures in the Bill do not have monetisable costs, there are monetisable costs associated with some of these measures. Based on the analysis conducted for the Impact Assessment, financial implications arising from the Bill are likely to include, but are not limited to, the following:
- Introducing new requirements for social housing landlords relating to electrical safety checks. The largest source of cost is predicted to come from the requirements on RPs to perform 5 yearly electrical safety checks. The total cost for the electrical safety policy over the initial 10-year period is estimated at around £56.04 million for PRPs and £31.37 million for LAs.
 - Requiring landlords to identify a nominated person responsible for compliance with their health and safety requirements. It is estimated that the policy will cost the sector approximately £4.15 million in the year it is introduced. Between 2025 and 2035, it is estimated that this measure will cost housing associations £35.8 million and LAs £5.9 million.
 - Requiring the regulator to establish a set of Tenant Satisfaction Measures (TSMs). These are currently in development by the regulator, and the regulator has carried out its own Impact Assessment.
- 207 Any changes to the existing fees regime to reflect the new role of the regulator in relation to consumer regulation will be subject to further consideration in the development of the new regime, including further consultation with stakeholders, and is not in the scope of this impact assessment.
- 208 The Department for Levelling Up, Housing and Communities estimates that the cost to providers of social housing as a result of the combined effect of the measures in the Bill is £173.90 million over the 10-year appraisal period.

Parliamentary approval for financial costs or for charges imposed

209 This section will be completed when the Bill transfers to the Commons.

Compatibility with the European Convention on Human Rights

210 Lord Greenhalgh, Minister of State for Levelling Up, Housing and Communities has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights.

Compatibility with the Environment Act 2021

211 Lord Greenhalgh, Minister of State for Levelling Up, Housing and Communities is of the view that the Bill as introduced into the House of Lords does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Related documents

212 The following documents are relevant to the Bill and can be read at the stated locations:

- The Social Housing Green Paper: A new deal for social housing, August 2018: <https://www.gov.uk/government/consultations/a-new-deal-for-social-housing>
- Call for Evidence: Review of Social Housing Regulation, published alongside the Social Housing Green Paper, August 2018: <https://www.gov.uk/government/consultations/review-of-social-housing-regulation-call-for-evidence>
- The Charter for Social Housing Residents: Social Housing White Paper, November 2020: <https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>
- Review of social housing regulation (also known as the “Shapps Review”), October 2010: <https://www.gov.uk/government/publications/review-of-social-housing-regulation--2>
- Memorandum of Understanding between the Housing Ombudsman and the Regulator of Social Housing, September 2020: <https://www.housing-ombudsman.org.uk/wp-content/uploads/2020/09/MOU-Ombudsman-and-Regulator-20200901.pdf>

Annex A – Territorial extent and application in the United Kingdom

Provision ⁵	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clauses 1-11, 14-36, Schedule 1, Part 2 and Schedules 3-5 (except para 36 of Schedule 5)	Yes	Yes	Yes	No	No	No	No
Clauses 12 and 13, Schedule 1, Part 1 and Schedule 2	Yes	Yes	No	Yes	No	Yes	No
Para 36 of Schedule 5	Yes	Yes	No	No	No	No	No

Subject matter and legislative competence of devolved legislatures

213 The main subject matter of this Bill is the law of housing which is an area of devolved legislative competence in Scotland, Wales and Northern Ireland.

214 The majority of the Bill’s provisions amend Part 2 of the HRA 2008 and, consistent with Part 2, extend to, and have application in, England and Wales. With some small exceptions, it is not currently possible for a body with a registered office in Wales to be a RP under Part 2 of the HRA 2008 and this possibility will be ruled out completely by the amendments made by clause 5 to the definition of “English bodies” in section 79. However, it is possible that an England-based RP nonetheless is responsible for social housing stock in Wales as well as England. Therefore, the amendments being made to the powers of the regulator and the duties on RPs would have effect in respect of any social housing stock held by those providers in Wales.

215 Similarly, the amendments to the powers of a housing ombudsman appointed in accordance with a scheme approved under Schedule 2 to the Housing Act 1996 may also have some application in Wales, in particular, where an England-based RP owns stock in Wales.

⁵ For the purposes of Annex A, provisions that have minor or consequential effects in devolved territories are not listed as ‘applying’ to those territories.

- 216 As such the Bill makes provision that relates to a devolved matter in Wales and therefore a legislative consent motion will be sought from Senedd Cymru.
- 217 Clauses 12 and 13, Part 1 of Schedule 1 and Schedule 2 to the Bill contain amendments to the HPA 2016 which have UK-wide extent. The UK Government's view is that, in the case of Scotland and Wales, these amendments relate to the reserved matter of insolvency as set out in Schedule 5 to the Scotland Act 1996 and Schedule 7A to the Government of Wales Act 2006 respectively . As regards Northern Ireland the UK Government considers these amendments to be incidental/consequential to the overriding (non-devolved) purpose of the Bill. Therefore, the UK Government will not be seeking legislative consent motions for these amendments from the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly.
- 218 Finally, paragraph 36 of Schedule 5 makes a consequential amendment, with England and Wales extent and application, to provision in the Leasehold Reform (Ground Rent) Act 2021, the subject matter of which is the law of property and accordingly outside the legislative competence of the Senedd Cymru pursuant to paragraph 3(1) of Part 1 of Schedule 7B to the Government of Wales Act 2006. Accordingly, the UK Government will not be seeking a legislative consent motion in respect of this provision.

Glossary

Term	Notes
HA 1996	Housing Act 1996
HCA	Homes and Communities Agency
HPA 2016	Housing and Planning Act 2016
HRA 2008	The Housing and Regeneration Act 2008
LLP	Limited Liability Partnership
PRP	Private Registered Provider of Social Housing
RP	Registered Provider of Social Housing
The Social Housing Green Paper	The Social Housing Green Paper: A new deal for social housing, August 2018
The Social Housing White Paper	The Charter for Social Housing Residents: Social Housing White Paper, November 2020

SOCIAL HOUSING (REGULATION) BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Social Housing (Regulation) Bill [HL] as introduced in the House of Lords on 8 June 2022 (HL Bill 21).

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