

SOCIAL HOUSING REGULATION BILL

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

A. INTRODUCTION

1. This supplementary 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”). It addresses Government amendments which include provision relating to delegated powers at Report Stage 18 October. 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 which have been added or impacted by Government amendments at Report are:

C. DELEGATED POWERS

Before Clause 19: New clause: Standards relating to competence and conduct

Power to set standards for registered providers relating to the competence and conduct of individuals involved in the provision of services in connection with the management of social housing.

Power conferred on: The Regulator of Social Housing

Power exercised by: Power to set standards

Parliamentary Procedure: None

Context and Purpose

8. 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). Clause 19 of the Bill would amend the HRA 2008 to, in addition, give the Regulator power to set standards for registered providers in matters relating to the provision of information to their tenants of social housing and to the Regulator.
9. New clause "Standards relating to competence and conduct" would allow the Regulator of Social Housing to set standards for registered providers on matters relating to the competence and conduct of individuals involved in the provision of services in connection with the management of social housing.
10. The need to strengthen professional development was recognised in the Social Housing White Paper as a necessary means of improving the quality of landlord-tenant engagement and ensuring that residents receive a professional service from competent and empathetic staff. The Social Housing White Paper made a commitment to establish a review of professional training and development. Based on the findings of this review (which concluded in late summer 2022), Ministers concluded that the best means of improving professional standards was to direct the Regulator to set regulatory standards on this matter.

11. This power enabling the Regulator to set standards on competence and conduct, will deliver on the commitment made in the White Paper to strengthen professional development.
12. Standards for competence and conduct will ensure landlords' senior leaders and Boards are held to account for ensuring they manage their organisations effectively and drive forward cultural change to ensure all their staff act professionally, listen to their residents and at all times treat them with courtesy and respect.

Justification for taking the power

13. 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).
14. 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, so far as is possible, 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.
15. Regulatory standards, unlike primary and indeed secondary legislation, are generally outcomes based rather than prescriptive. This is therefore more appropriately made via a standard than in primary or secondary legislation.
16. As with its existing powers to set standards, the new power will be qualified by the requirement 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 (see the amendment in the Minister's name to Schedule 5, page 49, line 32).
17. 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

18. 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 21, page 17, line 21: Direction by the Secretary of State relating to competence and conduct standard

Power to direct the Regulator on the standards for registered providers related to the competence and conduct of individuals involved in the provision of services in connection with the management of social housing.

Power conferred on: Secretary of State

Power exercised by: Directions

Parliamentary Procedure: None

Context and Purpose

19. This amendment would enable the Secretary of State to direct the Regulator to set a standard under the power in new clause: standards relating to competence and conduct, about the contents of such a standard, and to have regard to specified objectives when setting those standards.
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21. The need to improve professional development is set out in the Social Housing White Paper. The Professionalisation Review concluded that regulatory standards overseen by the Regulator are the best means of improving the capabilities of social housing staff.

Justification for taking the power

22. In light of the findings of the Professionalisation Review it was concluded that the most appropriate way to drive up staff capabilities was for the Regulator to set regulatory standards. Whilst it is appropriate for the Regulator to determine the detail of the regulatory requirements, the power of direction will enable the Secretary of State to require the Regulator to set a standard on competence and conduct of individuals involved in the provision of services in connection with the management of social housing and to set the overarching policy by directing the Regulator on the content of such a standard and to have regard to specified objectives when setting it. The power is needed to enable Government to issue a Direction on these matters, as the scope of the existing Direction powers does not encompass matters of staff competence and conduct. The Secretary of State would be required to consult specified stakeholders before it issues a Direction under this power (see s. 197(4) HRA 2008). In deciding to give such a direction the Secretary of State must, in particular, have regard to the Regulator's fundamental objectives which are set out in section 92K HRA 2008 (see s. 197(3) HRA 2008).

Justification for the procedure

23. 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.

Department for Levelling Up, Housing and Communities
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