

# SOCIAL HOUSING (REGULATION) BILL

## EXPLANATORY NOTES ON COMMONS AMENDMENTS

### What these notes do

These Explanatory Notes relate to the Commons Amendments to the Social Housing (Regulation) Bill as brought from the House of Commons on 2 March 2023 (HL Bill 109).

- These Explanatory Notes have been prepared by the Department for Levelling Up, Housing and Communities in order to assist the reader of the Bill and the Commons amendments, and to help inform debate on the Commons amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes, like the Commons amendments themselves, refer to Bill 177, the Bill as first printed for the Commons.
- These Explanatory Notes need to be read in conjunction with the Commons amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Commons amendments.
- Commons amendments 1 to 55 were tabled in the name of Michael Gove MP, the Secretary of State for Levelling Up, Housing and Communities, and Dehenna Davison MP, Minister for Levelling Up.



## Table of Contents

Subject	Page of these Notes
<b>Commentary on Commons amendments</b>	<b>3</b>
Commons Amendments to Clause 4: Power to charge fees	3
Commons Amendment 1	3
Commons Amendment 2	3
Commons Amendments to Clause 12: Moratorium on Disposal of Land	3
Commons Amendment 3	3
Commons Amendment 4	3
Commons Amendment 5	3
Commons Amendment 6	3
Commons Amendment 7	3
Commons Amendment 8	4
Commons Amendment 9	4
Commons Amendments to Clause 21: Standards relating Competency and Conduct	4
Commons Amendments 10, 11 and 12	4
Commons Amendment 13	4
Commons Amendments to Clause 22: Standards relating to information and transparency	5
Commons Amendment 14	5
Commons Amendment 15	5
Commons Amendment to Clause 24: Standards relating to energy demand	5
Commons Amendment 16	5
Commons Amendment after Clause 25	5
Commons Amendment 17	5
Commons Amendments to Clause 28: Inspections	5
Commons Amendment 18	5
Commons Amendment 19	5
Commons Amendment 20	6
Commons Amendment 21	6
Commons Amendment after Clause 29	6
Commons Amendment 22	6
Commons Amendments to Clause 31: Emergency remedial action	6
Commons Amendment 23	6
Commons Amendment 24	6
Commons Amendment 25	6
Commons Amendment 26	7
Commons Amendment after Clause 39	7
Commons Amendment 27	7
Commons Amendment 28	7
Commons Amendment 29	7
Commons Amendments to Clause 43: Commencement	7
Commons Amendment 30	7
Commons Amendment to Clause 44	7
Commons Amendment 31	7
Commons Amendments to Schedule 2	8
Restrictions on Insolvency Procedures	8
Commons Amendment 32	8

*These Explanatory Notes relate to the Commons Amendments to the Social Housing (Regulation) Bill as brought from the House of Commons on 2 March 2023 (HL Bill 109)*

Commons Amendment 33	8
Commons Amendment 34	8
Commons Amendment 35	8
Commons Amendment 36	8
Commons Amendment 37	8
Commons Amendment 38	8
Commons Amendment 39	8
Commons Amendment 40	8
Commons Amendment 43	8
Commons Amendment 44	9
Commons Amendment 45	9
Commons Amendment 46	9
Commons Amendment 47	9
Commons Amendment 48	9
Commons Amendment 49	9
Commons Amendment 50	9
Commons Amendment 51	9
Commons Amendment to Schedule 5	9
Commons Amendment 52	9
Commons Amendment 53	9
Commons Amendments to Title	10
Commons Amendment 54	10
Commons Amendment 55	10
<b>Financial Effects of Commons Amendments</b>	<b>10</b>

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# Commentary on Commons amendments

## Commons Amendments to Clause 4: Power to charge fees

### Commons Amendment 1

- 1 This is a consequential amendment to Commons amendment 2.

### Commons Amendment 2

- 2 This amendment repeals the provisions of the Housing and Regeneration Act 2008 which provide a specific power to enable the Regulator of Social Housing (“the regulator”) to charge registered providers of social housing fees for inspections. Fees for inspections will be recoverable under the power in section 117 of the Housing and Regeneration Act 2008, as amended by clause 4.

## Commons Amendments to Clause 12: Moratorium on Disposal of Land

### Commons Amendment 3

- 3 This amendment changes the starting point of the moratorium so it begins when a relevant insolvency-related event occurs, as opposed to the day after the event occurs.

### Commons Amendment 4

- 4 Commons amendment 4 inserts a new subsection (d) which provides that where there is an appointment of an administrator of a private registered provider, the moratorium will start when the notice of appointment of the administrator is filed with the court (as opposed to when the appointment is made).

### Commons Amendment 5

- 5 Commons amendment 5 makes clear that the regulator can extend a moratorium where it has made enquiries but has been unable to locate any secured creditors of the registered provider (as well as where secured creditors have been located and agreed to an extended moratorium).

### Commons Amendment 6

- 6 Commons amendment 6 widens the regulator’s powers to cancel a moratorium so the regulator can cancel it for any reason.
- 7 Normal public law principles would apply to any cancellation decision which provides a safeguard against the regulator improperly cancelling a moratorium.

### Commons Amendment 7

- 8 Commons amendment 7 provides that the regulator can impose a further moratorium where it has made enquiries but been unable to locate any secured creditors of the registered provider (as well as where secured creditors have been located and agreed to a further moratorium).

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## Commons Amendment 8

- 9 Commons amendment 8 changes the process by which proposals about future management of a registered provider made during a moratorium are agreed. This is to provide a clear process for putting in place proposals and amending them if no secured creditors can be identified to agree to them.
- 10 This amendment also amends section 151 of the Housing and Regeneration Act 2008 to make clear that the appointment of an interim manager comes to an end when the regulator notifies the interim manager that proposals have been agreed.

## Commons Amendment 9

- 11 Commons amendment 9 clarifies that the regulator may give financial or other assistance to a registered provider during a moratorium to preserve the provider's position until it decides whether or not to make proposals, and if it makes proposals, pending the agreement of proposals.

## Commons Amendments to Clause 21: Standards relating Competency and Conduct

### Commons Amendments 10, 11 and 12

- 12 Commons amendment 10 provides a label by which to refer to the persons described in the power to set competence and conduct standards so it is easier to refer to them again elsewhere in the provision.
- 13 Commons amendments 11 and 12 are consequential on amendment 10.

### Commons Amendment 13

- 14 Commons amendment 13 inserts a new clause which requires registered providers to ensure senior housing managers and senior housing executives have (or are working towards) a specified qualification in housing management or type of qualification in housing management. A qualification or type of qualification specified for a senior housing executive may only be a qualification regulated by the Office of Qualifications and Examinations Regulation ("OfQual") or a foundation degree. A qualification or type of qualification specified for a senior housing manager may only be an OfQual-regulated qualification.
- 15 A senior housing executive is defined as someone who is an employee or an officer of the registered provider who is part of the provider's senior management and who has responsibility (solely or jointly) for the day-to-day management of the provision of services in connection with the management of social housing provided by the provider.
- 16 A senior housing manager is defined as someone who is an employee of the registered provider and is a senior housing and property manager for the provider, which is determined by reference to the description of that occupation published by the Institute for Apprenticeships and Technical Education.

## **Commons Amendments to Clause 22: Standards relating to information and transparency**

### **Commons Amendment 14**

- 17 Commons amendment 14 clarifies that the regulator’s power to set standards on providing information may be used to require the publication of such information.

### **Commons Amendment 15**

- 18 Commons amendment 15 makes clear that the regulator can set standards relating to the provision of information to tenants about their rights as tenants and how to make complaints against their landlord.

## **Commons Amendment to Clause 24: Standards relating to energy demand**

### **Commons Amendment 16**

- 19 Commons amendment 16 removes clause 24, added in the Lords, from the Bill.

## **Commons Amendment after Clause 25**

### **Commons Amendment 17**

- 20 Commons amendment 17 gives the Secretary of State a duty to direct the regulator to set an information and transparency standard that imposes, on registered providers, requirements to provide tenants with information about their rights and how to make complaints against their landlords.
- 21 The Secretary of State must give a direction to this effect within six months of royal assent.

## **Commons Amendments to Clause 28: Inspections**

### **Commons Amendment 18**

- 22 Commons amendment 18 adjusts the power for a person authorised by the regulator to leave equipment or materials necessary for conducting a survey on the premises, so that they can only be left in a place that significantly impairs the ability of occupiers to use the premises if there is no other place on the premises it can be left which doesn’t impair such use.

### **Commons Amendment 19**

- 23 Commons amendment 19 provides that, when a survey is carried out on premises which include common parts of a building, the ability of occupiers to use the common parts or their dwelling must be taken into consideration when determining whether equipment or materials necessary for the survey will significantly impair the ability of occupiers to use the premises.
- 24 It is clarified that common parts include the structure and exterior of a building and any common facilities provided (whether or not in the building) for persons who occupy the building.

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## Commons Amendment 20

- 25 Commons amendment 20 adjusts the power for a person authorised by the regulator to leave equipment or materials necessary for conducting a survey, which is authorised by a warrant on the premises, so that it can only be left in a place that significantly impairs the ability of occupiers to use the premises if there is no other place on the premises it can be left which doesn't impair such use.

## Commons Amendment 21

- 26 Commons amendment 21 provides that, where a survey which is authorised by a warrant is carried out on premises which include common parts of a building, the ability of occupiers to use the common parts or their dwelling must be taken into consideration when determining whether equipment or materials necessary for the survey will significantly impair the ability of occupiers to use the premises.

## Commons Amendment after Clause 29

### Commons Amendment 22

- 27 Commons amendment 22 requires an inspector to produce a summary of their findings following an inspection, as well as a written report about any matters specified by the regulator and in the form specified by the regulator. The regulator is required to share the summary of findings, and any written report, with the provider. If a written report has not been produced, the inspector must issue the provider with a notice confirming no matters were specified by the regulator. The regulator may choose to publish these documents in full or in part, along with related information.

## Commons Amendments to Clause 31: Emergency remedial action

### Commons Amendment 23

- 28 Commons amendment 23 adjusts the power for a person authorised by the regulator to leave equipment or materials necessary for conducting emergency remedial action on the premises, so that it can only be left in a place that significantly impairs the ability of occupiers to use the premises if there is no other place on the premises it can be left which doesn't impair such use.

### Commons Amendment 24

- 29 Commons amendment 24 provides that, where emergency remedial action is carried out on premises which include common parts of a building, the ability of occupiers to use the common parts or their dwelling must be taken into consideration when determining whether equipment or materials necessary for the emergency remedial action will significantly impair the ability of occupiers to use the premises.

### Commons Amendment 25

- 30 Commons amendment 25 adjusts the power for a person authorised by the regulator to leave equipment or materials necessary for conducting emergency remedial action which is



authorised by a warrant on the premises, so that it can only be left in a place that significantly impairs the ability of occupiers to use the premises if there is no other place on the premises it can be left which doesn't impair such use.

## Commons Amendment 26

- 31 Commons amendment 26 provides that, where emergency remedial action which is authorised by a warrant is carried out on premises which include common parts of a building, the ability of occupiers to use the common parts or their dwelling must be taken into consideration when determining whether equipment or materials necessary for the emergency remedial action will significantly impair the ability of occupiers to use the premises.

## Commons Amendment after Clause 39

### Commons Amendment 27

- 32 Commons amendment 27 confers a power on a housing ombudsman to issue to scheme members guidance as to good practice in the carrying on of housing activities. The amendment also provides that in certain circumstances where a complaint is made against a scheme member the housing ombudsman may order the scheme member to assess whether its policies and practices in relation to a matter to which the complaint relates are consistent with the guidance.

### Commons Amendment 28

- 33 Commons amendment 28 amends the Landlord and Tenant Act 1985. It implies into relevant social housing leases of dwellings in England a covenant by the landlord that the landlord will comply with all prescribed requirements that are applicable to the lease. It also gives a power to make regulations which require the landlord to take action, in relation to prescribed hazards which affect or may affect the dwelling, within the period or periods specified in the regulations (the "prescribed requirements"). It also makes related provision.

### Commons Amendment 29

- 34 Commons amendment 29 brings Commons Amendment 17 into force 2 months after royal assent.

## Commons Amendments to Clause 43: Commencement

### Commons Amendment 30

- 35 Commons amendment 30 brings Commons amendment 27 into force 2 months after royal assent.

## Commons Amendment to Clause 44

### Commons Amendment 31

- 36 Commons amendment 31 omits the Lords privilege amendment.

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## Commons Amendments to Schedule 2

### Restrictions on Insolvency Procedures

#### Commons Amendment 32

- 37 Commons amendment 32 enables notices given to the regulator under s.104(2) of the HPA 2016, notice for a petition of winding up, to be signed by someone acting on behalf of a petitioner (as well as by the petitioner).

#### Commons Amendment 33

- 38 Commons amendment 33 removes the requirement for a notice given under s.104(2) of the HPA 2016 to give explanation for why it is being given.

#### Commons Amendment 34

- 39 Commons amendment 34 enables the regulator to treat notice given under s.104(2) of the HPA 2016 that has not been signed as validly given.

#### Commons Amendment 35

- 40 Commons amendment 35 is consequential on Commons amendment 33.

#### Commons Amendment 36

- 41 Commons amendment 36 enables notices given to the regulator under s.105(4) of the HPA 2016, notice of application for voluntary winding up, to be signed by someone acting on behalf of an applicant (as well as by the applicant).

#### Commons Amendment 37

- 42 Commons amendment 37 removes the requirement for a notice given under s.105(4) of the HPA 2016 to give explanation for why it is being given.

#### Commons Amendment 38

- 43 Commons amendment 38 enables the regulator to treat notice given under s.105(4) of the HPA 2016 that has not been signed as validly given.

#### Commons Amendment 39

- 44 Commons amendment 39 is consequential on Commons amendment 37.

#### Commons Amendment 40

- 45 Commons amendment 40 enables notices given to the regulator under s.106(3) of the HPA 2016, notice of ordinary administration application, to be signed by someone acting on behalf of an applicant (as well as by the applicant).

#### Commons Amendment 41

- 46 Commons amendment 41 removes the requirement for a notice given under s.106(3) of the HPA 2016 to give explanation for why it is being given.

#### Commons Amendment 42

- 47 Commons amendment 42 enables the regulator to treat notice given under s.106(3) of the HPA 2016 that has not been signed as validly given.

#### Commons Amendment 43

- 48 Commons amendment 43 is consequential on Commons amendment 41.

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## Commons Amendment 44

- 49 Commons amendment 44 enables notices given to the regulator under s.107(4) of the HPA 2016, notice of an appointment of an administrator, to be signed by someone acting on behalf of the person making the appointment (as well as by the person making the appointment).

## Commons Amendment 45

- 50 Commons amendment 45 removes the requirement for a notice given under s.107(4) of the HPA 2016 to give explanation for why it is being given.

## Commons Amendment 46

- 51 Commons amendment 46 enables the regulator to treat notice given under s.107(4) of the HPA 2016 that has not been signed as validly given.

## Commons Amendment 47

- 52 Commons amendment 47 is consequential on Commons amendment 45.

## Commons Amendment 48

- 53 Commons amendment 48 enables notices given to the regulator under s.108(2) of the HPA 2016, notice of intention to enforce security over property of a PRP, to be signed by someone acting on behalf of the person intending to enforce a security (as well as by the person intending to enforce the security).

## Commons Amendment 49

- 54 Commons amendment 49 removes the requirement for a notice given under s.108(2) of the HPA 2016 to give explanation for why it is being given.

## Commons Amendment 50

- 55 Commons amendment 50 enables the regulator to treat notice given under s.108(2) of the HPA 2016 that has not been signed as validly given.

## Commons Amendment 51

- 56 Commons amendment 51 is consequential on Commons amendment 49.

## Commons Amendment to Schedule 5

## Commons Amendment 52

- 57 Commons amendment 52 is a consequential amendment which clarifies that notwithstanding the addition of the new power to set standards regarding the provision of information, the regulator's power to set consumer standards allows it to set standards requiring registered providers to comply with specified rules about methods of providing tenants with information in connection with a consultation.

## Commons Amendment 53

- 58 Commons amendment 53 clarifies that provisions in Part 2 of the Housing and Regeneration Act 2008 that relate to data processing do not authorise or require an individual to exercise any power or carry out any duty which would contravene the UK's data protection legislation as defined in the Data Protection Act 2018. This ensures that their provisions are interpreted consistently.

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## Commons Amendments to Title

### Commons Amendment 54

- 59 Commons amendment 54 changes the long title of the Bill to reflect the inclusion of amendment 27.

### Commons Amendment 55

- 60 Commons amendment 55 changes the long title of the Bill to reflect the inclusion of amendment 28.

## Financial Effects of Commons Amendments

- 61 The majority of the Commons amendments do not have monetizable costs and are aimed at ensuring there is behavioural change in the sector.
- 62 The Commons amendments with a clear financial effect are Commons amendment 13 relating to professionalisation and Commons amendment 28 “Awaab’s Law” (Social housing leases: remedying hazards).
- 63 The Government will conduct a fuller assessment with the sector and the Regulator at a later stage when they consult on the detail of these measures ahead of implementation of these requirements.
- 64 It is not anticipated that there will be any costs for social housing tenants.



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