

## **SUPPORTED HOUSING (REGULATORY OVERSIGHT) BILL**

### **DELEGATED POWERS MEMORANDUM BY THE DEPARTMENT FOR LEVELLING UP, HOUSING AND COMMUNITIES**

#### **A. INTRODUCTION**

*This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Supported Housing (Regulatory Oversight) Bill (the “Bill”). This Bill is a Private Members Bill, sponsored by Bob Blackman MP, introduced in the House of Commons on 15 June 2022 in draft form, pre legislative scrutiny.*

*This memorandum identifies the measures within 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**

*The purpose of the Supported Housing (Regulatory Oversight) Bill is to regulate the provision of supported exempt accommodation in England, thereby ensuring minimum standards for the support and accommodation provided to residents. The Bill makes provision about local authority oversight of, and enforcement powers relating to, the provision of supported exempt accommodation and for connected purposes. Broadly, the Bill does this by:*

- 1. Establishing a Supported Housing Advisory Panel to provide information and advice about or in connection with supported exempt accommodation.*
- 2. Placing a duty on local housing authorities to carry out a review of the supported exempt accommodation in its district, and in light of that review, publish a “supported housing strategy”. Local housing authorities and social services authorities must have regard to the relevant supported housing strategy in the exercise of their functions.*
- 3. Providing the Secretary of State with a power to prepare and publish national standards for England in relation to any aspect of the provision of supported exempt accommodation.*
- 4. Providing the Secretary of State with powers to prescribe, by regulations, licensing requirements in respect of the provision of supported exempt accommodation.*
- 5. Providing for the sharing and use of information relating to supported exempt accommodation.*
- 6. Placing a duty on the Secretary of State to review the effect of the first licensing regulations on the type and condition of premises used for the provision of accommodation within clause 12(2) and the provision of care, support and*

*supervision at such accommodation, and in light of that review, consider whether to exercise the power to specify a use-class.*

- 7. Providing that in relation to a person leaving supported exempt accommodation, such person will not be treated as intentionally homeless for the purposes of section 191 of the Housing Act 1996, where the reason for leaving related to the standard of the accommodation or support provided and the accommodation or care does not meet the National Supported Housing Standards.*

## **C. HOUSING (REGULATORY OVERSIGHT) BILL**

### **Clause 2(2)(a) – Power to prescribe by regulations the date by which a local housing authority must comply with clause 2(1).**

*Powers conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

1. Under clause 2(1) a local housing authority must carry out a review of the supported exempt accommodation in its district and in light of that review publish a strategy for the provision of supported exempt accommodation in its district.
2. The purpose of the power delegated to the Secretary of State is to establish the time limit within which the local authority must comply with the requirements of clause 2(1).

#### Justification for delegation

The time within which local authorities will be required to comply with clause 2(1) will depend on the time required for the Secretary of State to issue guidance necessary guidance in accordance with clause 2(7). The time limit for local authorities to carry out their review and to formulate their strategy is accordingly delegated to the Secretary of State.

#### Justification for procedure selected

Regulations under clause 2(1) will be subject to the negative procedure in both Houses of Parliament. This is considered appropriate for this operational matter.

### **Clause 2(3)(b) – Power to prescribe by regulations the matters to be included in a local housing authority’s supported housing strategy.**

*Powers conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

1. A supported housing strategy published by a local authority is required by clause 2(3)(a) to include the local housing authority's assessment of: (i) the level of provision of supported exempt accommodation in its district; and (ii) the likely need for supported exempt accommodation in its district during the period of five years beginning with the date on which the strategy is published.
2. The power is to provide for such other matters as may be required to be included in a local authority's supported housing strategy.

### Justification for delegation

The power is required in order that the Secretary of State may from time-to-time direct local authorities to address matters in their supported housing strategies in light of changing circumstances.

### Justification for procedure selected

Regulations made under clause 2(3)(b) will be subject to the negative procedure in both Houses of Parliament. The type of information to be prescribed is likely to include a level of detail that is not suited to primary legislation. We also need the flexibility to amend the list of matters to be addressed in local housing authority's supported housing strategies as participants build experience.

**Clause 2(7) – power to issue guidance applicable to (1) local housing authorities or social services authorities or (2) specified descriptions of local housing authorities or social services authorities, in relation to the exercise of their functions under clause 2.**

*Powers conferred on: Secretary of State*

*Powers exercised by: Issuing guidance*

*Parliamentary Procedure: None*

### Context and Purpose

1. Under clause 2 local housing authorities must carry out reviews of supported exempt accommodation in their districts, publish supported housing strategies and have regard to such supported housing strategies in the exercise of their functions. Social services authorities must give the local housing authority for its district such assistance in connection with the carrying out by the housing authority of its duties under clause 2 as the housing authority may reasonably require, and must also have regard to the relevant supported housing strategy in the exercise of its functions.
2. Clause 2(7) confers on the Secretary of State a discretion to issue guidance to local housing authorities or social services authorities, either generally or to specified descriptions of local housing authorities or social services authorities, in relation to the exercise of their functions under clause 2.

### Justification for delegation

A power to issue guidance in relation to formulation of supported housing strategies is needed to promote a consistent approach by different local authorities and social services authorities.

#### Justification for procedure selected

The guidance issued under this power will be informative rather than imposing legal requirements, as a local housing authority or social services authority must have regard to any such guidance only. In addition, the content of such guidance is likely to change over time in light of the experience gained by the sector. For these reasons, it is considered that Parliamentary oversight of this guidance is not required.

### **Clause 3(1) – power to publish National Supported Housing Standards in relation to any aspect of the provision of supported exempt accommodation.**

*Powers conferred on: Secretary of State*

*Powers exercised by: Publication*

*Parliamentary Procedure: None*

#### Context and Purpose

1. Under clause 3(1) the Secretary of State may prepare and publish “*National Supported Housing Standards*” in relation to any aspect of supported exempt accommodation.
2. National Supported Housing Standards may set minimum standards in respect of: (i) the type or condition of premises used for the provision of supported exempt accommodation; or (ii) the provision of care, support or supervision at supported exempt accommodation.
3. The Secretary of State is required to keep National Supported Housing Standards under review, and may publish amended or replacement standards or withdraw standards.

#### Justification for delegation

The power is required in order that the Secretary of State may from time-to-time publish and revise National Supported Housing Standards depending on changed circumstances and / or advice.

#### Justification for procedure selected

Enforcement of the National Supported Housing Standards will be only by means of licensing regulations under clauses 4(1) or 4(4). Clause 4(6) provides that licensing regulations under clauses 4(1) or 4(4) must be made with a view to securing that National Supported Housing Standards (if any) are met. We consider that the Standards are technical and operational matters which will be of a detailed nature and are not suitable for inclusion in primary or secondary legislation.

**Clause 4(1), (4) and 5(7) – Power to make regulations requiring certain persons to hold a licence in certain areas in respect of supported exempt accommodation.**

*Powers conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: Affirmative procedure*

Context and Purpose

1. Clause 4(1) provides the Secretary of State with a power to make licensing regulations in respect of supported exempt accommodation that is within clause 12(2) and located within a designated district. Clause 4(3) imposes a duty on the Secretary of State to lay licensing regulations under clause 4(1) within the period of 18 months beginning with the day on which the Bill is passed. If, at the end of the period of one year beginning on the day the Bill is passed, the power under clause 4(1) has not been exercised, the Secretary of State must publish a report on progress.
2. Clause 4(3) provides the Secretary of State with a power to make licensing regulations in respect of supported exempt accommodation that is not within clause 12(2) and located in a designated district.
3. The licensing regulations must provide for a local housing authority to self-designate its district as being subject to licensing, may require a local housing authority to self-designate its district if conditions are met, and may provide for the Secretary of State to designate a local housing authority's district (or all districts).
4. Under clause 5 licensing regulations may include the matters specified by that clause. Clause 5(5) provides that provisions that may be made by virtue of clause 5(1)(e) on other consequences of compliance or non-compliance with regulations or with conditions attached to licenses includes: provisions disapplying any requirement relating HMO licenses or selective licenses under Part 2 or Part 3 of the Housing Act 2004; provisions limiting the housing benefit payable in respect of accommodation that is required to be licensed under licensing regulations but is not so licensed; or provisions limiting the rent that may be determined under section 14 of the Housing Act 1988 in respect of such accommodation. Clause 5(7), which is linked to clause 5(5), therefore provides that licensing regulations may amend, repeal or revoke any enactment, make different provisions for different purposes or different areas, and make supplementary, incidental, consequential transitional or saving provision. Provision for amending other relevant enactments is required to ensure the function of the licensing regulations, in particular, that the provisions under clause 5(5) and 5(1)(e) may function as required.

Justification for delegation

Formal consultation is required on the detail of the licencing regulations in accordance with clause 6. Regulations are required to make the licencing scheme legally binding and ensure local authorities can compel certain persons to hold a licence. The detail which may be required in the scheme is best set out in secondary legislation following the benefit of consultation.

Justification for procedure selected

Regulations made under this power will be subject to affirmative resolution in both Houses of Parliament. The licensing scheme requires Parliamentary scrutiny before approval as it will compel certain persons to hold a licence, where directed by a local authority running a scheme. The licensing scheme will include penalties that need to be proportionate to the scheme's objectives. We consider that Parliament should have the opportunity for a high degree of scrutiny in respect of proposals of this nature and consequently we consider it is appropriate for this power to be subject the affirmative resolution procedure in both Houses of Parliament.

The Henry VIII power at clause 5(7) provides that the licensing regulations may amend, repeal or revoke any enactment. This clause is linked to clauses 5(5) and 5(1)(e) which provide for other consequences of compliance or non-compliance with licensing regulations or with conditions attached to licenses. The power at clause 5(7) is required as we will need to ensure licensing regulations made under clauses 4(1) and 4(4) are able to operate alongside other applicable licensing schemes such as HMO licenses or selective licenses under Part 2 or Part 3 of the Housing Act 2004, including being able to deal with or prevent overlap across the schemes. Further, clause 5(5)(b) allows provisions to be made limiting the housing benefit payable where there has been a failure to obtain a license and clause 5(5)(c) makes provision limiting rent that may be determined under section 14 of the Housing Act 1988. These matters will need to be developed alongside the detail of the licensing regulations. This Henry VIII power at clause 5(7) is therefore required to ensure various aspects of the licensing regulations fit alongside other applicable legislation. We consider that Parliament should have the opportunity for a high degree of scrutiny in respect of proposals of this nature and consequently we consider it is appropriate for this power to be subject the affirmative resolution procedure in both Houses of Parliament.

**Clause 10(1)– Power to make regulations about the sharing of information related to supported exempt accommodation, including requiring or authorising a person in section 10(3) to provide specified information to another person in section 10(3).**

*Powers conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: Negative procedure*

Context and Purpose

1. Under clause 10(1) the Secretary of State may by regulations make provision about the sharing of information relating to supported exempt accommodation.
2. Under clause 10(2) the regulations may make provision requiring or specified persons to provide specified information to another specified person.
3. The persons for the purpose of clause 10(2) are local housing authorities in England, registered providers of social housing in England, the Regulator of Social Housing and the Secretary of State.
4. The regulations are required to provide that information obtained by virtue of the regulations under this clause may be used only for a purpose connected with the

exercise of a function under or by virtue of the Bill, or otherwise relating to supported exempt accommodation.

5. Clause 11 makes provision for the use of information that has been obtained for certain statutory purposes specified under clause 11(2) for purposes relating to specified exempt accommodation or for investigating whether any offence has been committed by virtue of the Bill.

#### Justification for delegation

A legislative gateway is needed to enable appropriate information sharing regarding supported exempt accommodation.

#### Justification for procedure selected

We will consult with the Information Commissioners Office as required. The negative procedure provides appropriate amount of Parliamentary scrutiny for this clause.

### **Clause 14(3) and (4) – Power to make, by regulations, transitional, transitory or saving provisions.**

*Powers conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: None*

#### Context and Purpose

1. Under Clause 14(3) the Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of the Bill. Clause 14(4) provides that the power to make regulations under clause 14(3) includes power to make different provision for different purposes.

#### Justification for delegation and procedure selected

This is a standard clause for commencing the provisions of an Act, and making saving and transitional provisions related to commencement, by regulations and it is usual for this not to be subject to a procedure in Parliament.