

## **LEASEHOLD AND FREEHOLD REFORM BILL**

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

#### **A. INTRODUCTION**

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Leasehold and Freehold Reform Bill (“the Bill”). The Bill was introduced in the House of Commons on 27 November 2023 and moved to the House of Lords on 28 February 2024. 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.
2. The Bill contains sixty three clauses and schedules that create one hundred and twenty delegated powers.
3. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

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

4. The Leasehold and Freehold Reform Bill is the second part of a legislative package to reform English and Welsh property law to make home ownership fairer and more secure. It follows on from the Leasehold Reform (Ground Rent) Act 2022, which put an end to ground rents for new, qualifying long residential leasehold properties in England and Wales.
5. The Bill will make long-term changes to improve home ownership for millions of leaseholders in England and Wales by empowering leaseholders and improving their consumer rights. The main elements of the Bill are:
6. Empowering leaseholders:
  - Making it cheaper and easier for existing leaseholders in houses and flats to extend their lease or buy their freehold.
  - Increasing the standard lease extension term from 90 years to 990 years for both houses and flats, with ground rent reduced to a peppercorn.
  - Removing the requirement for a new leaseholder to have owned their house or flat for two years before they can benefit from these changes.
  - Increasing the 25 per cent ‘non-residential’ limit preventing leaseholders in buildings with a mixture of homes and other uses such as shops and offices, from buying their freehold or taking over management of their building.

- Banning the granting of new leasehold houses all but permitted circumstances.
7. Improving leaseholders' and freehold homeowners' consumer rights:
- Requiring transparency over leaseholders' service charges.
  - Replacing buildings insurance commissions for managing agents, landlords and freeholders with transparent administration fees.
  - Scrapping the presumption for leaseholders to pay their freeholders' legal costs when challenging poor practice.
  - Granting freehold homeowners on private and mixed tenure estates the same rights of redress as leaseholders, by extending equivalent rights to transparency over their estate charges, access to support via redress schemes, and to challenge the charges they pay by taking a case to a Tribunal, just like existing leaseholders.
  - It will also require sales information to be provided on request to both leaseholders and freeholders on managed estates and will regulate rentcharges.
8. Improving the building safety regime in relation to leaseholder protections contained in the Building Safety Act 2022, Part V:
- Clarifying the scope of remediation orders (ROs) and remediation contribution orders (RCOs) to clarify that Applicants can recover the cost of relevant interim measures related to the remediation of defects, including the costs of temporary accommodation.
  - Enabling Resident Management Companies (RMCs) and Right To Manage (RTMs) to raise funds from leaseholders to fund litigation for remediation costs.
  - Improving the functionality of Remediation Orders and Remediation Contribution Orders to provide more clarity in relation to landlords' obligations to provide expert reports.
  - Revoking Section 125 of the Building Safety Act 2022 in relation to insolvent landlords and including a requirement for insolvency practitioners, when appointed to the insolvency of a landlord of a relevant residential building, to notify local regulators.

### **C. DELEGATED POWERS**

9. The delegated powers in the Bill are:
- **Clause 10: Permitted leases: transaction warning conditions**
    - (8) Power to specify the manner and form of the warning notice, the

information that must be contained in the notice, along with the manner, form, and contents of the notice of receipt.

- **Clause 16: Redress regulations: exercising and giving effect to the right to acquire**
  - (1) Power for the relevant authority to set and amend the regulations which form the processes and detail around the homeowner's right to redress.
- **Clause 18: Financial penalties**
  - (6) Power for the Secretary of State to amend the minimum and maximum level of financial penalties that can be imposed for breaching the ban.
- **Clause 20: Lead enforcement authority**
  - (4) & (5) Power for the Secretary of State to appoint a local weights and measures authority to act as lead enforcement authority and exercise the enforcement regime contained in this Part. The clause also confers a power on the Secretary of State to change the lead enforcement authority.
- **Clause 21: General duties of the lead enforcement authority**
  - (3) Power for the Secretary of State to direct the lead enforcement authority to issue guidance, including on the contents of the guidance, to local weights and measures authorities regarding enforcement of the ban.
- **Clause 24: Power to amend: permitted leases and definitions**
  - (1)(a) and (1)(b) Power to amend definitions of what constitutes long leases of houses or the definition of a house, or to add new or remove existing categories of permitted leases from the Schedule.
- **Clause 24: Power to amend: permitted leases and definitions**
  - (1)(b): Power to alter the definition of certain 'permitted leases'.
- **Clause 37: Costs of enfranchisement and extension under LRA 1967**
  - (6) (19B and 19C) Power to prescribe by regulations the amounts payable by a leaseholder in respect of their landlord's non-litigation costs where exceptions from the general non-litigation costs rules apply, and (19D) power to set out the circumstances in which the reversioner is required to part of the amount arising from 19B and 19C to other landlords.
- **Clause 38: Costs of enfranchisement and extension under LRHUDA 1993**
  - (9) (89B, 89C, 89D, 89E and 89F) Power to prescribe by regulations the amounts of the landlord's non-litigation costs payable in a collective enfranchisement and lease extension claim by a tenant where exceptions from the general non-litigation costs rules apply, and (89G) a power to set out the circumstances in which the reversioner or competent landlord is required to pay part of the amount arising from 89B, 89C, 89E and 89F-to other (relevant) landlords.

- **Clause 52: Notice of future service charge demands**
  - (4) power to specify the form, its contents and how it may be provided to tenants (that is, the leaseholder).
  - (5) power to specify information to be included in a future demand notice to include: (a) an amount estimated as the costs incurred (an “estimated cost”), (b) an amount the tenant is expected to contribute toward the costs (an “expected contribution”), and (c) a date on or before which it is expected that the variable service charge will be demanded (“expected demand date”).
  - (6) power to provide for a “relevant rule” to apply where (a) the tenant has been given a future demand notice and (b) the demand for payment of a variable service charge as a contribution to the costs is served on the tenant more than 18 months after the costs were incurred.
  - (8) power to provide the relevant rule in new subsection (7)(c) - concerning demands received after the expected demand date - may also provide that the rule is to apply as if, for the expected demand date, there were substituted a later date determined in accordance with the regulations.
- **Clause 53: Service charge demands**
  - (3) (21C(1)) Power to prescribe the form, its contents and how it may be provided to the tenant.
  - (3) (21C(3)) Power to exempt certain landlords, types of service charges, or any other matter from the requirement to comply.
- **Clause 54: Accounts and annual reports**
  - (2) (21D(2)) Power to determine the form and content of the written statement of accounts.
  - (2) (21D(5)) Power to provide for exemptions to comply with the proposals, in whole or in part.
  - (2) (21E(2)) Power to set out the information that must be contained in the annual report, along with the form and how it may be provided to the tenant.
  - (2) (21E(3)) Power to prescribe regulations on other matters of interest to the tenant, whether or not they directly relate to service charges.
  - (2) (21E(6)) Power to set the exceptions to the duty to provide an annual report by reference to descriptions of the landlord, the service charge, or any other matter.
- **Clause 55: Right to obtain information on request**
  - (2) (21F(1)) Power to require landlords to provide information specified in regulations.
  - (2) (21F(2)) Power to specify information for the purposes of (21F(1)) only if it relates to (a) service charges or (b) services, repairs, maintenance, improvements, insurance or management of dwellings.

- (2) (21F(8)) Power to (a) provide for how a request may be made; (b) provide that a request may not be made until the end of a particular period or until the end of a particular period or until another condition is met; (c) provide for circumstances when a request under subsection (4) and (6) must be made; (d) provide for circumstances in which a duty to comply with a request does not apply.
- (2) (21G(3)) Power to specify the time period to (a) provide information and (b) allow access to inspect information and make and remove a copy of the information.
- (2) (21G(7)) Power to provide circumstances when a specified period may be extended
- (2) (21G(8)) Power to provide for how information under (21F) is to be provided.
- **Clause 56: Enforcement duties relating to service charges**
  - (3) (25A(6)) Power to amend the maximum amount of damages in (25A(5)) from £5,000 where it is expedient to do so to reflect changes in the value of money.
- **Clause 57: Limitation on ability of landlord to charge insurance costs**
  - 20G(4) (5) Power to set out what permitted insurance payments will be able to be passed through a variable service charge, which will be the only be permitted insurance costs which will able to be claimed back from tenants.
- **Clause 58: Duty to provide information about insurance to tenants**
  - (2) (1A(2)) Power to set out the information a landlord must obtain about insurance, including by requesting the information from another person, and the specific time period in which to provide to the tenant.
  - (2) (1A(3)) Power to set out circumstances where the specific time period may be extended.
  - (2) (1A(5)) Power to set out the form and manner in which the information is to be provided.
  - (2) (1A(8)) Power to provide for exceptions to the duty in sub-paragraph (1) by reference to descriptions of landlord, insurance, or any other matter.
  - (2) (1B(5) and (6)) Power to specify the period in which a person must provide the information they are required to provide under this paragraph.
  - (2) (1B(8)) Power to make provision (a) for how a request is to be made under paragraph 1A(2)(a) or this paragraph; (b) that a request may not be made until the end of a particular period or until another condition is met; (c) on the period within which a request under sub-paragraph (3) must be made; (d) for circumstances in which a duty to comply with a request under paragraph 1A(2)(a) or this paragraph does not apply; (e) for how the information is to be provided.

- (2) (1C(6)) Power to amend the maximum amount of damages in (1C(5)) from £5,000 where it is expedient to do so to reflect changes in the value of money.
- **Clause 59: Duty of landlords to publish administration charge schedules**
  - (1) (4A)(5) Power to make regulations as to (a) the meaning of “building” for the purpose of this paragraph; (b) the form an administration charge schedule must take; (c) the content an administration charge schedule must have (d) how an administration charge schedule must be published; and (e) how an administration charge schedule is to be provided to a tenant.
  - (1) (4B(4)) Power to amend the maximum amount of damages in (4B(3)) from £1,000 where it is expedient to do so to reflect changes in the value of money.
- **Clause 60: Limits on rights of landlords to claim litigation costs from tenants**
  - (3) (20CA(5)) Power to set out matters the relevant court or tribunal must consider when deciding to make an order on a landlord’s application for their litigation costs to be considered relevant costs when determining the amount of a variable service charge.
  - (3) (20CA(6)) Power to make regulations to provide (a) how an application by a landlord under subsection (20CA(2)) is made; (b) whether and how notice of application by a landlord is to be given to person(s) specified and not specified in the application; (c) the effect of giving notice of an application and failing to give notice of an application; and (d) circumstances where a person not specified in an application by a landlord is to be treated as having been specified in the application.
  - (6)(b) (5B(5)) Power to make regulations to set out matters the relevant court or tribunal must consider when deciding to make an order on a landlord’s application for their litigation costs to be considered payable as an administration charge
- **Clause 61: Right of tenants to claim litigation costs from landlords**
  - (1) (30J(3)) Power to set out matters the relevant court or tribunal must consider when deciding to make an order on a tenant’s application for their landlord’s litigation costs.
  - (1) (30J(6)) Power to set out in regulations other matters which should be considered “relevant proceedings” which the tenant should have the right to apply for their litigation costs.
- **Clause 65: Leasehold sales information requests**
  - 30K (4) and (5), 30L (10), 30M (2) & 30N (4) Regulation making powers that set out what leasehold information is to be provided, by whom, to whom, by when and at what cost.
- **Clause 73: Limitation of estate management charges: consultation requirements**

- (2) and (3) Power to define an appropriate amount, including what may constitute an appropriate amount.
- (6) and (7) Power to prescribe consultation requirements, including what a consultation exercise may include.
- **Clause 74: Limitation of estate management charges: time limits**
  - (3) Power to specify in regulations the specified form, information and manner for the provision of a future demand notice;
  - (4) power to specify information to be included in a future demand notice to include: (a) an amount estimated as the costs incurred (an “estimated cost”), (b) an amount the owner is expected to contribute toward the costs (an “expected contribution”), and (c) a date on or before which it is expected that the estate management charge will be demanded (“expected demand date”).
  - (5) power to provide for a “relevant rule” to apply where (a) the homeowner has been given a future demand notice and (b) the demand for payment of a variable service charge as a contribution to the costs is served on the owner more than 18 months after the costs were incurred.
  - (7) power to provide the relevant rule in new subsection (6)(c), - concerning demands received after the expected demand date - may also provide that the rule is to apply as if, for the expected demand date, there were substituted a later date determined in accordance with the regulations.
- **Clause 76: Demands for payment**
  - (1) Power to determine the form and content of the demand and how it may be provided.
  - (3) Power to exempt certain persons making the demand, types of estate management changes and any other matter.
- **Clause 77: Annual reports**
  - (3) Power to set out the information that must be contained in the annual report, the form of the report and the manner in which the report is to be provided.
  - (6) Powers to exempt certain estate managers, types of estate management changes and any other matter.
- **Clause 78: Right to request information**
  - (8) Powers to make regulations to (a) provide for how a request may be made; (b) provide that a request may not be made until the end of a particular period or until the end of a particular period or until a condition is met; (c) provide for circumstances when a request under subsection (3) and (5) must be made; (d) provide for circumstances in which a duty to comply with a request does not apply.
  - (1) and (2) Powers to specify information for the purposes of the section, but only as it relates to estate management.
- **Clause 79: Request under section 78: further provision**

- (3) Power to define the specified period for providing information and to allow an individual to access information requested under subsection (2) during a specified period.
- (7) Powers to make provision for a specified period under subsection (3) to be extended.
- (8) Power to make further provision on how information requested under section 47 is to be provided.
- **Clause 80: Enforcement of sections 76 to 79**
  - (6) Power to amend the maximum amount of damages in 48(5) from £5,000 where it is expedient to do so to reflect changes in the value of money.
- **Clause 81: Meaning of "administration charge"**
  - (2) Power to amend the definition of administration charge.
- **Clause 82: Duty of estate managers to publish administration charge schedules**
  - (5) Power to make provision as to (a) the form an administration charge schedule must take; (b) the content an administration charge schedule must have (c) how an administration charge schedule must be published; and (d) how an administration charge schedule is to be provided to an owner of a dwelling.
- **Clause 83: Enforcement of Section 82**
  - (4) Power to amend the maximum amount of damages in 52(3) from £1,000 where it is expedient to do so to reflect changes in the value of money.
- **Clause 87: Notice of complaint**
  - (2) Power to set out in regulations any other information which should be included in a notice of complaint.
  - (6) Power to make provision for determining when a notice of complaint is given.
- **Clause 89: Conditions for applying for an appointment order**
  - (4) Power to set out in regulations any other information which be included in a final warning notice.
  - (9) Power to make provision for determining when a notice under this section is given.
- **Clause 90: Criteria for determining whether to make appointment order**
  - (1) Power to set out in regulations any circumstances in which the appropriate tribunal would be prevented from making an appointment
- **Clause 92: Estate Management: sales information requests**
  - (2) power to specify the form and manner of providing the form for a sales information request.
  - (3) power to specify information that can be requested in a sales information request.



- (5) power to set out in regulations to provide that a sales information request may not be given until the end of a particular period, or until another condition is met.
- **Clause 93: Effect of sales information request**
  - (6) power to specify the period within which information must be provided.
  - (8) power to specify the form, manner in which the form can be given and the information to be contained within, a negative response confirmation.
  - (9) power to specify the period within which a negative response confirmation must be provided.
  - (10) power to provide for how the process for making onward requests for information and sales information requests should work.
- **Clause 94: Charges for the provision of information**
  - (2) Power to (a) limit the amount that may be charged under subsection (1), and (b) prohibit a charge being incurred under subsection (1) in specified circumstances or unless requirements set out in regulations are met.
- **Clause 95: Enforcement of sections 93 and 94**
  - (4) Power to amend the maximum amount of damages that the relevant tribunal may order to be paid for failure to provide the requested sales information, where it considers it expedient to do so or to reflect changes in the value of money.
- **Clause 98: Leasehold and estate management: redress schemes**
  - (1) power to require that a person who carries out estate management in respect of a dwelling in England in a relevant capacity is a member of a redress scheme. 98(5) makes clear regulations under this power may require a person to remain a member of a redress scheme for a specified period, after ceasing to provide estate management.
  - (10) power to allow for the definitions of “relevant capacity”, “relevant landlord” and “relevant obligation” to be amended should this be needed in the future.
- **Clause 101: Approval and designation of redress schemes**
  - (2) Power to set out conditions which are to be satisfied before a redress scheme is approved or designated under clause 98(4)(b).
  - (6) Power to make regulations for further provision about the approval or designation of a redress schemes.
  - (7)(a) Power to confer functions on the lead enforcement authority or authorise or require a scheme to do so.
  - (7)(b) Power to provide for the delegation of such functions by the lead enforcement authority or authorise or require a scheme to provide for that.
- **Clause 103: Financial penalties**

- (2) Power to allow for suspected breaches of regulations under clause 98(1) to be investigated.
- **Clause 104: Financial penalties: maximum amounts**
  - (6) Power to amend the financial penalty amounts specified in subsection (1) to reflect changes in the value of money.
- **Clause 105: Decision under a redress scheme may be made enforceable as if it were a court order**
  - (1) Power to make provision for a redress scheme to apply to a court or tribunal for an order that decisions made by the redress scheme are enforced as if it were an order of the court.
- **Clause 106: Lead enforcement authority: further provisions**
  - (4) The lead enforcement authority may issue guidance to enforcement authorities about the exercise of their function under Part 6.
  - (5) An enforcement authority (other than the lead enforcement authority) must have regard to guidance issued under (4).
- **Clause 106: Lead enforcement authority: further provisions**
  - (6)(a) The Secretary of State may make arrangements in connection with the person's role as the lead enforcement authority, which may include arrangements for payments by the Secretary of State and about bringing the arrangements to an end.
  - (6)(b) The Secretary of State may give directions to the lead enforcement authority about the exercise of any of its functions.
- **Clause 106: Lead enforcement authority: further provisions**
  - (7) Power to make transitional or saving provision which applies where a change of lead enforcement authority occurs.
- **Clause 107: Guidance for enforcement authorities and scheme administrators**
  - (1) The Secretary of State may issue or approve guidance about co-operation between enforcement authorities and redress schemes
  - (2) An enforcement authority must have regard to guidance issued or approved under this section.
- **Clause 111: Regulation of remedies for arrears of rent charges**
  - (2) (120D(1)) Power to limit the amounts payable by landowners, directly or indirectly, in respect of action to recover or compel payment of regulated rentcharge arrears.
  - (2) (120D(2)) Power to make provision that no amount is to be payable by landowners in respect of particular descriptions of action to recover or compel payment of regulated rentcharge arrears.
  - (2) (120D(3)) Power to make different provisions for different cases or to make transitional or saving provisions.
- **Clause 114: Remediation Contribution Orders**
  - (3)(2B) Power to specify descriptions of costs which are within or outside the scope of a remediation contribution order

- **Clause 119: Power to make consequential provision**
  - (1) and (2) Power to make provision that is consequential on the Act - including provision amending an Act of Parliament (including an Act passed in the same session as this Act). This is a Henry VIII power.
- **Clause 120 (2): Regulations**
  - (2): Power to make regulations under Part 6 also includes power to make different provision for different areas
- **Clause 120 (6): Regulations**
  - (6) If a draft of a statutory instrument containing regulations under Part 6 would otherwise be treated as a hybrid instrument, it is not to be treated as a hybrid instrument.
- **Clause 122: Commencement**
  - (3) Power to commence various provisions of the Act on such day as the Secretary of State may appoint.
  - (4) Power to make transitional or saving provision in connection with the coming into force of any provision of this act.
  - (5) Power to make regulations under this section for different provision for different purposes.
- **Schedule 1 Part 1: Categories of permitted lease - Community housing leases**
  - (2) Power to amend the definition of community housing leases
- **Schedule 1 Part 1: Categories of permitted lease - Retirement housing leases**
  - (3) Power to amend the definition of retirement housing leases.
- **Schedule 1 Part 2: Categories of permitted lease - Shared ownership leases**
  - (6) Power to amend the definition of shared ownership leases.
- **Schedule 1 Part 2: Categories of permitted lease - Home finance plan leases**
  - (7) Power to amend the definition of home finance plan leases.
- **Schedule 2: Leasehold houses: financial penalties**
  - (10) Power to set regulations on the manner for providing a notice under the Schedule, including when the notice is treated as being provided.
- **Schedule 3 “Exception to enfranchisement for certified community housing providers”**
  - (4)(3) New section 4B(2)(b) of the 1967 Act and (5)(3) New section 8B(2)(b) of the 1993 Act: Powers to describe a community-led housing provider that may receive a community housing certificate from the Tribunal to exempt it from freehold acquisition rights.
  - (4)(3) New section 4B(6)(a), (b) and (c) of the 1967 Act, and (5)(3) New section 8B(6) (a), (b) and (c) of the 1993 Act: Powers to provide for the procedure for an application or cancellation of a community-housing certificate; and to set out matters the Tribunal must have regard to in

deciding whether to issue or cancel a certificate.

- (4)(3) New section 4B(7) of the 1967 Act, and (5)(3) New section 8B(7) of the 1993 Act: Powers for dealing with the effect of an application to the Tribunal where an enfranchisement claim is ongoing.
- **Schedule 3: “Eligibility of leases of National Trust property for extension”**
  - (7) New section 32(8) of the 1967 Act and (8) New section 95(5) of the 1993 Act: Power to make provision for the “prescribed buy-back term”
  - (7) New section 32ZA(1) of the 1967 Act and (8) New section 95A(1) of the 1993 Act: Power to make provision for a “protected National Trust tenancy” which do not benefit from lease extension rights.
- **Schedule 4 Determining and Sharing the Market Value Part 5: The standard valuation method and Part 7: Determining the term value**
  - 26(8), 27(7) and 38(1) Power to set the deferment and capitalisation rate to be used for the mandated methodology in lease extension and freehold acquisition claims.
- **Schedule 8 Leaseholder enfranchisement and extension: miscellaneous amendments Part 2: Shared Ownership Leases and the LRA 1967 etc**
  - (13) Power to exclude certain shared ownership leases from freehold acquisition rights.
  - (19)(2) Power to exclude certain shared ownership leases from freehold acquisition rights.
- **Schedule 9 – Right to vary lease to replace rent with peppercorn rent**
  - (14)(2) Power to prescribe by regulations the amounts payable by a leaseholder for a failed claim in respect of their landlord’s non-litigation costs where an exception from the general non-litigation costs rules applies.
  - (15)(3) Power to prescribe by regulations the amounts of the landlord’s non-litigation costs payable in a successful claim by a tenant where an exception from the general non-litigation costs rules applies.
- **Schedule 9: Right to vary lease to replace rent with peppercorn rent**
  - (21)(1) Power to give effect to the right of the qualifying tenant to a variation of the lease such that the rent payable thereafter is a peppercorn.
  - (21)(4) Power to amend the provisions (and modifications thereof) of the LRHUDA 1993 which apply in this Schedule in relation to the qualifying leases of flats and houses respectively.

## **D. ANALYSIS OF DELEGATED POWERS BY CLAUSE**

### **Clause 10: Permitted leases: transaction warning conditions**

- (8) Power to specify the manner and form of the warning notice, the information that must be contained in the notice, along with the manner, form, and contents of the notice of receipt.

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

10. Vendors will be required to issue a warning notice to the purchaser prior to the grant of a permitted new lease on a house to make sure they are aware that they are purchasing a lease of a house, and that this lease is permitted under the ban. There is currently no legal requirement to do so rendering buyers vulnerable to unknowingly purchasing houses that are being sold as a permitted lease.
11. Where the lease falls under Part 1 of Schedule 1 (Categories of permitted lease), the warning notice will reference tribunal approval. Where the lease falls under Part 2 of Schedule 1 “Schedule (Categories of permitted lease)”, the warning notice will contain a statement explaining that the lease is permitted under the relevant permitted lease definition.
12. Prospective leaseholders must acknowledge this warning notice with a notice of receipt, which is also then endorsed in the lease. This makes clear that the purchaser was aware that the house was being sold as a permitted lease.

### Justification for taking the power

13. Finer details of the warning notice and notice of receipt will need to be set out in regulations to accommodate potential changes should the processes of obtaining an exemption change. For example, with regards to the need for tribunal approval. The warning notice and notice of receipt may also need to be adapted according to market need. For example, the manner in which they are to be supplied to the purchaser or vendor, or the way that compliance with the procedure is endorsed in the lease (which allows future purchasers to confirm that the lease is permitted).

### Justification for the procedure

14. Regulations made under this section will be subject to the negative procedure. This is considered appropriate due to the technical nature of their subject matter. The core details of the contents and procedure for service of the two notices are detailed in primary legislation and so are subject to the appropriate level of Parliamentary scrutiny. The regulation making power will refine these requirements into specific documents and processes. As this power is only intended to be used for the purpose of ensuring that the core details of the content are kept up to date and in step with industry practice, it is not considered necessary that there be significant parliamentary scrutiny of any variations to notices made under this power.

15. The negative process is deemed proportionate given the limitations on this power and the technical nature of amendments.

#### **Clause 16: Redress regulations: exercising and giving effect to the right to acquire**

- (1) Power for the relevant authority to set and amend the regulations which form the processes and detail around the homeowner's right to redress.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

16. The homeowner will be able to exercise a right to redress when mis-sold a leasehold house contrary to this legislation (this does not apply to existing leases of houses). This will enable the homeowner to acquire the freehold and any superior leasehold interest at zero cost.
17. The redress regulations will provide detail on the processes involved with exercising the right to redress, including the service on the landlord of the notice to exercise this right, the orders to be made by the tribunal, the apportionment of costs, and the requirements for the conveyance.
18. This core right is set out in primary legislation and is subject to appropriate Parliamentary scrutiny; the main framework for these regulations is set out in primary and will be supplemented by regulations.

#### Justification for taking the power

19. Consumer redress will potentially need to accommodate many different scenarios where the homeowner has been wronged, including where the lease was not permitted and so has been mis-sold, or for example, a more minor infraction where the lease is permitted but restricted because of an error when registering the lease with HMLR.
20. The legislation sets out a detailed framework for how redress rights will work under these scenarios. Redress regulations will be extensive and may need updating in future to reflect changes to the way that the right to redress is exercised, including the processes for applying to the tribunal and allocating costs, as well as to accommodate other scenarios where redress may be required.

#### Justification for the procedure

21. The negative procedure is proposed. Much of the detail surrounding the redress right is contained in primary and so is subject to appropriate levels of Parliamentary scrutiny.
22. Only technical changes to the detail of the regulations will be needed and will include things like changes to the period in which the landlord must respond to a notice from the leaseholder, the terms of the conveyance of the property in question, or liability for costs.
23. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration.

### **Clause 18: Financial penalties**

- (6) Power for the Secretary of State to amend the minimum and maximum level of financial penalties that can be imposed for breaching the ban.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

24. An enforcement authority will be able to issue a fine for breaching the ban. These fines are to be set between £500 and £30,000 and may be issued according to the nature of the breach.
25. The current framework grants the lead enforcement authority the discretion to impose a fine according to the factors of the case, including how often the vendor breached the ban, the type of breach incurred, and the number of leases involved.
26. Fines may also be imposed where the vendor has not complied with the marketing or warning notice requirements, or where they have granted or assigned a prohibited lease.

#### Justification for taking the power

27. Flexibility is needed to amend the fines to reflect the changes to the value of money over time, as well as to react to the volume of breaches incurred, including the behaviour of vendors should this be required.
28. If it is clear that the current level of fines is not deterring vendors from breaching the ban, or from failing to comply with other requirements around marketing and registration, then the level of fines may need to be increased.

### Justification for the procedure

29. The core penalty framework will be set out in primary and so is subject to the appropriate level of Parliamentary scrutiny. The power is being taken is to update the amounts that can be charged to reflect real world changes to the value of the fines, as well as market behaviour around the ban.
30. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration.

### **Clause 20: Lead enforcement authority**

- (4) & (5) Power for the Secretary of State to appoint a local weights and measures authority to act as lead enforcement authority and exercise the enforcement regime contained in this Part. The clause also confers a power on the Secretary of State to change the lead enforcement authority.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

31. This power grants the Secretary of State the power to act as lead enforcement authority, or to appoint a lead enforcement authority to investigate possible breaches of the ban and implement financial penalties.
32. The regime will be enforced by one lead authority due to the small number of cases likely to be associated with breaches of the ban. It is considered that using one authority as opposed to placing a duty on all local weights and measures authority is a more cost-effective way of enforcing breaches, and means that the lead enforcement authority will have better oversight of the regime allowing them to more easily spot repeat offenders and report back to the Secretary of State.

### Justification for taking the power

33. Flexibility is required to select an appropriate lead authority to enforce the ban, and in the case of poor performance, appoint an alternative lead authority to investigate breaches. The power also enables the Secretary of State to make transitional arrangements where there is need for a change to the lead enforcement authority.
34. The drafting mirrors similar regimes such as the Tenant Fees Act 2019 or the



Estate Agent Act 1979, whereby the Secretary of State appoints a lead enforcement authority to head up enforcement of the legislation.

#### Justification for the procedure

35. This power concerns the appointment of a lead enforcement authority. Much of the detail surrounding expectations of how the regime will be enforced are contained in primary, and so is subject to the appropriate level of Parliamentary scrutiny.
36. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration.

#### **Clause 21: General duties of the lead enforcement authority**

- (3) Power for the Secretary of State to direct the lead enforcement authority to issue guidance, including on the contents of the guidance, to local weights and measures authorities regarding enforcement of the ban.

*Power conferred on: Secretary of State*

*Power exercised by: Directive for guidance*

*Parliamentary Procedure: N/A*

#### Context and Purpose

37. Local weights and measures authorities will report to the lead enforcement authority, and will rely on guidance provided by the lead enforcement authority to report likely cases of breaches of the ban to the lead enforcement authority.
38. This guidance may need occasional updates to reflect market behaviour or amends to the enforcement regime.

#### Justification for taking the power

39. This statutory guidance may need reissuing or amendment from time to time to reflect relevant changes to the housing market or changes to the ban. This power grants the Secretary of State ability to direct the lead enforcement authority as needed. The guidance will include more practical details to help practitioners understand in which circumstances penalties will be imposed and how the level of the penalty will be calculated. It is important for practitioner subject to the regime to understand information on enforcement and process. This level of detail is not suitable for primary legislation.

#### Justification for the procedure

40. The Department considers a power to direct the lead enforcement authority is a proportionate and appropriate approach given the limited subject matter of these Regulations. This power does not amend how the regime is exercised, but does provide for smaller changes to guidance on the basis of enforcement regime, and the ban as a whole.
41. Given the limitations on this power and the technical nature of amendments, a power to direct is proportionate and adequate.

#### **Clause 24: Power to amend: permitted leases and definitions**

- (1)(a) and (1)(b) Power to amend definitions of what constitutes long leases of houses or the definition of a house, or to add new or remove existing categories of permitted leases from the Schedule.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Affirmative procedure for Subsections (1)(a) and (1)(b)*

#### Context and Purpose

42. The ban is predicated on several key definitions; the definition of a house, the definition of a long lease of a house; and categories of permitted leases contained in Schedule 1. If a lease does not meet the definition of a house or a long residential lease, then it is not within scope of the ban.
43. Conversely, if a lease is a long residential lease of a house but does not meet one of the definitions contained in Schedule 1 then it is not a permitted lease and cannot be sold or granted.
44. Flexibility may be required should the definition of a long lease or house need to change (for example, because developers of new leasehold houses adapt how they design their houses or lease agreements expressly with the intention to evade the ban); because new types of leases need to be permitted; or because leases that are currently permitted no longer need to be exempt from the ban.

#### Justification for taking the power

45. This power will give the government flexibility to reflect changes to the housing market over time. Leases are private contracts and therefore, their structure can vary significantly. Being able to adjust such definitions to respond to emerging patterns of potential exploitation in the housing market is critical to delivering the intent of the measure, to prohibit unjustified use of leasehold for houses.
46. Equally, agility may be needed to adjust the Schedule of 'permitted leases',

where the emergence of new products requiring a lease merits new exemptions being added, or the emergence of new freehold products which would remove the need for an exemption.

#### Justification for the procedure

47. We think that this is a broad power that will attract Parliamentary debate and consideration, and so should follow the affirmative procedure.
48. Subsections (1)(a) and (1)(b) would amend the two key definitions which set out what would be prohibited under the ban on new leases of houses and add in or remove products. Therefore, this would affect the scope of the ban and should be subject to appropriate Parliamentary scrutiny.

#### **Clause 24: Power to amend: permitted leases and definitions**

- (1)(b): Power to alter the definition of certain ‘permitted leases’.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure for Subsection (1)(b) (amendments of definitions contained in the Schedule (Categories of permitted lease)).*

#### Context and Purpose

49. Under the ban, some leases by virtue of their structure are justified in being sold. For example, because the leased house is built on land that can never be sold as freehold, or because a lease is required for the model to operate – e.g. lease-based financial products.
50. These leases are classed as ‘permitted leases’ and can be sold or granted as compliant with the legislation. The definition of certain categories of permitted leases may need to change to reflect changes to how such exceptions are provided in the market, for instance should definitions result in consumer exploitation, or alternatively as the market innovates and evolves that there are new types of lease products that ought to be permitted leases but are frustrated by the drafted definition.

#### Justification for taking the power

51. This power grants flexibility to reflect changes to certain models of permitted lease, should evidence emerge in the market of exploitation of exemption definitions, or alternatively to incorporate a new product that should be included within the definition for a type of permitted lease.

#### Justification for the procedure

52. For Subsection (1)(b) amendments to definitions contained within Schedule 1 (Categories of permitted lease), we have consulted on the types of leases that should be permitted under the ban, and announced our position in response to these public consultations.
53. Changes to the definitions will not substantially alter the publicised intent and scope of the policy, or developer expectations around what will generally be permitted under the measures and what will not. We will engage with sector bodies who would provide a permitted lease under one of the categories that can be amended by this power before making changes to the definitions.
54. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration.

**Clause 37: Costs of enfranchisement and extension under LRA 1967**

- (6) (19B and 19C) Power to prescribe by regulations the amounts payable by a leaseholder in respect of their landlord's non-litigation costs where exceptions from the general non-litigation costs rules apply, and (19D) power to set out the circumstances in which the reversioner is required to part of the amount arising from 19B and 19C to other landlords.

**Clause 38: Costs of enfranchisement and extension under LRHUDA 1993**

- (9) (89B, 89C, 89D, 89E and 89F) Power to prescribe by regulations the amounts of the landlord's non-litigation costs payable in a collective enfranchisement and lease extension claim by a tenant where exceptions from the general non-litigation costs rules apply, and (89G) a power to set out the circumstances in which the reversioner or competent landlord is required to pay part of the amount arising from 89B, 89C, 89E and 89F-to other (relevant) landlords.

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

*Context and Purpose*

55. Clause 37 sets out the financial costs to be paid by a leaseholder (referred to as tenants) seeking to acquire the freehold or extend the lease of a house. Clause 38 sets out the costs of extending the lease of an individual flat and the collective acquisition of the freehold of a block of flats by a group of leaseholders. The clauses provide in each of these circumstances that, in general, tenants will no longer be required to pay the non-litigation costs (which

include valuation and conveyancing costs) of the landlord. The clauses provide exceptions to these new rules, so that in the cases, as described, the tenant (or nominee purchaser) is liable to pay the fixed non-litigation costs to their landlord, with the amounts to be prescribed in regulations.

56. There are three types of exception to the new general rule: failed claims (19B, 89B and 89E), “low value” claims (19C, 89C and 89F), and leasebacks (89D). The failed and “low value” claims exceptions apply to lease extensions of flats and houses, acquisition of the freehold of a house and collective enfranchisement of flats. The leaseback exception applies only to collective enfranchisement claims. In failed claims the exception provides that a tenant should be liable to pay a small, fixed sum to the landlord where their enfranchisement claim is withdrawn, struck out, or otherwise fails and the reason for the failure is not a permitted reason. The permitted reasons relate, in general, to cases in which the claim fails due to matters beyond the leaseholder’s control. The “low value” exception covers the circumstances where a landlord’s non-litigation costs would be greater than the price (“premium”) to be paid by the tenant or nominee purchaser when exercising their enfranchisement rights. As tenants will no longer be required (by the general rules) to contribute towards the landlord’s non-litigation costs when acquiring their rights, the grant of the lease extension or transfer of a freehold could result in a net financial loss for the landlord, whose own non-litigation costs would not be fully reimbursed by the premium they receive. Without any contribution to their costs a landlord may be disinclined to cooperate with the claim, causing delays to the transaction being carried out.
57. The leaseback exception applies where the freeholder has incurred expense in preparing and settling the terms of a leaseback which the freeholder is required to accept by the nominee purchaser. Completing work related to leasebacks can be complex requiring the services of professional valuers and solicitors and landlords will incur expenses. But, as a result of the leaseback, the freeholder will receive a smaller premium, and so will not be compensated for the additional work carried out. The leaseback exception means prescribed fixed costs must be paid where the freeholder is required to take a leaseback.
58. Clauses 37 and 38 (19D and 89G) also contain a further power to make regulations that set out the circumstances when and how to allocate the proportion of the amount, received by a reversioner as a result of the exceptions, to other landlords.

#### Justification for taking the power

59. The purpose of the power is to enable the Secretary of State (in England) and Welsh Ministers (in Wales) to prescribe by regulations the amounts payable in failed claims, “low value” claims and leasebacks, and how costs are to be

shared between the reversioner or competent landlord and the freeholder or other landlords freeholder and other landlords.

60. It is necessary to make provisions to prescribe amounts to reduce costly and protracted disputes between landlords and leaseholders about the proper level of the landlord's reasonably incurred non-litigation costs. We will be working with practitioners to form a view on the appropriate amounts to be prescribed (and how such amounts are to be shared between reversioners and competent landlord and other landlords freeholders, and other landlords, and how they could be applied in different circumstances. Fixing the amounts (and proportions) in primary legislation would mean doing so without the benefit of practitioner engagement from those affected by the new regime and is not considered a suitable vehicle for the detailed analysis involved with such considerations.
61. We also want to keep the prescribed amounts (and proportions) in regulations so that they can be more easily amended over time, creating maximum flexibility to allow for market factors.

#### Justification for the procedure

62. This power will be subject to the negative procedure. The negative resolution procedure would afford a level of scrutiny in the case of regulations made under this clause. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration. This power will not address matters of principle which will already have been approved by Parliament in providing for the exceptions from the general costs rules.

#### **Clause 52: Notice of future service charge demands**

- (4) power to specify the form, its contents and how it may be provided to tenants (that is, the leaseholder).
- (5) power to specify information to be included in a future demand notice to include: (a) an amount estimated as the costs incurred (an "estimated cost"), (b) an amount the tenant is expected to contribute toward the costs (an "expected contribution"), and (c) a date on or before which it is expected that the variable service charge will be demanded ("expected demand date").
- (6) power to provide for a "relevant rule" to apply where (a) the tenant has been given a future demand notice and (b) the demand for payment of a variable service charge as a contribution to the costs is served on the tenant more than 18 months after the costs were incurred.

- (8) power to provide the relevant rule in new subsection (7)(c) - concerning demands received after the expected demand date - may also provide that the rule is to apply as if, for the expected demand date, there were substituted a later date determined in accordance with the regulations.

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

63. Clause 52 replaces part of subsection (2) and inserts new subsections (3) to (9) into Section 20B of the Landlord and Tenant Act 1985. This Clause makes changes to the provisions in cases where the landlord is going to demand payment from tenants over 18 months after works or services are carried out. This will require landlords to provide tenants with more information through a future demand notice when Section 20B is used. Tenants will have more certainty and landlords will need to be clearer on costs incurred, how costs will be apportioned and when they will charge tenants.

### Justification for taking the power

64. The purpose of the powers is to ensure that tenants are aware of future demands for payment, when they might expect to receive a future demand and the likely amount of the future demand. This will ensure that they are not taken by surprise by such costs leading to anxiety and debt. It will also ensure that there is greater transparency in the process.
65. The regulation making powers will firstly, enable the Secretary of State and Welsh Ministers to prescribe by regulations the detailed content of the form, and to update the form over time to reflect industry practice; and secondly to provide the detail on how to give full effect to these provisions. This ensures that the information provided by the landlord must be adhered to. Government believes that a flexible secondary power setting out the content of a form and how it is to be provided is the most effective vehicle for addressing non contentious administrative information. We will be working with practitioners on the level of information to be included in the form. These powers give the Secretary of State the flexibility to react to changes in the market, tenant's concerns and changes within the leasehold sector. It would not be appropriate to deal with these administrative issues on the face of the bill.

### Justification for the procedure

66. The power is well defined and limited. Regulations made under this power will not set out any detailed policy. Instead, they will address the content of the form

for future demands. Regulations will provide transparency of the approach. Given the limited changes they will make, the negative procedure is appropriate. Amendments to information contained within the form would be made with the aim to make them more suited to market conditions.

67. Before any instrument is laid there would be examination of current practice and we may work with practitioners and other stakeholders to identify the best approach. Regulations made under this power will not address the principle of the legislation which will already have been approved by Parliament, which is that landlords should provide a future demand form where demands for payment will be carried out over 18 months after the work has been carried out. Based on the subject matter of these Regulations and the limited changes they will make, the negative procedure is appropriate. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration.

### **Clause 53: Service charge demands**

- (3) (21C(1)) Power to prescribe the form, its contents and how it may be provided to the tenant.
- (3) (21C(3)) Power to exempt certain landlords, types of service charges, or any other matter from the requirement to comply.

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

### Context and Purpose

68. Clause 53 inserts a new Section 21C into the 1985 Act and creates a new provision that requires landlords to demand payment of a service charge using a specified form. The intention is to ensure that, unless there are good exceptions otherwise, every leaseholder receives the basic minimum information to accompany the demand for payment.
69. This Clause, along with many other Clauses in Part 4 of the Bill, seek to empower leaseholders by giving them more information on matters of importance to them. They replace and update the existing regulatory framework set out in Sections 21 to 25 and the Schedule to the 1985 Act. Although the existing measures are more prescriptive in places, for example in relation to financial information, than what is proposed, this new regulatory framework broadens the scope of information to be required but is also designed to provide consistency and greater flexibility to respond to changing market circumstances.



### Justification for taking the power

70. The purpose of the powers are firstly, to enable the Secretary of State (and Welsh Ministers) to prescribe by regulations the detailed content of the form, and to update the form over time to reflect industry practice; and secondly to provide limited exclusions from the requirement to comply. It is the standard approach for a statutory secondary power to be used with regard to setting out the content of a form and how it is to be provided. It is also standard procedure to create limited exemptions to general provisions. We will be working with practitioners on the level of information to be included and on the extent of any exemptions from this provision. It is also considered appropriate for this power to be as flexible as possible to allow for changes to the detail of relevant information of interest to leaseholders as that can evolve frequently depending on market conditions which can be unpredictable. This level of flexibility would not be achieved if primary legislation was required to update the form and/or make any exemptions to the need to comply.

### Justification for the procedure

71. The power will be subject to the negative procedure. Amendments to information contained within the forms would be made with the aim to make them more suited to market conditions and would not be made in a vacuum. Before any instrument is laid there would be examination of current practice and we may work with practitioners and other stakeholders to identify the best approach. Regulations made under this power will not address matters of principle which will already have been approved by Parliament, which is that certain information must be provided to tenants when a demand for payment is made. The negative resolution procedure is sought to ensure that adequate parliamentary scrutiny is afforded to make the largely technical changes proposed.

### **Clause 54: Accounts and annual reports**

- (2) (21D(2)) Power to determine the form and content of the written statement of accounts.
- (2) (21D(5)) Power to provide for exemptions to comply with the proposals, in whole or in part.
- (2) (21E(2)) Power to set out the information that must be contained in the annual report, along with the form and how it may be provided to the tenant.
- (2) (21E(3)) Power to prescribe regulations on other matters of interest to the tenant, whether or not they directly relate to service charges.

- (2) (21E(6)) Power to set the exceptions to the duty to provide an annual report by reference to descriptions of the landlord, the service charge, or any other matter.

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

### Context and Purpose

72. Clause 54 introduces two new provisions which are designed to increase the amount of relevant information that tenants receive regarding the management, maintenance and improvement of their block. New section 21D ensures that tenants in blocks of 4 or more dwellings receive key financial information through the provision of service charge accounts. Section 21E ensures that tenants have the right to obtain other key, financial and non-financial information on an ongoing basis, through the provision of an annual report.

### Justification for taking the power

73. The purpose of the powers under new section 21D are to enable the Secretary of State (and Welsh Ministers) to prescribe by regulations the detailed form and content of service charge accounts; and secondly to prescribe exceptions when the prescribed terms implied into leases should not apply.
74. The Secretary of State (and Welsh Ministers) also has powers under new section 21E with respect to annual reports: firstly, over the detail of information contained within them, as well as the form and manner in which they must be provided; secondly, it gives powers to prescribe information that are likely to be of interest to tenants, whether or not they pay for such matters by way of a service charge; and thirdly, it confers powers to provide exceptions from the need to comply with the need to provide an annual report.
75. The Government intends to work with practitioners on the level of information to be included in both the statement of accounts and the annual report. The overriding policy intention is to ensure that relevant financial and non-financial information is provided to tenants every year. Where possible, the intention is to align the technical detail of the service charge account with any financial provisions in the annual report to provide a level of consistency. It is important that the form and content are flexible to reflect changing market conditions, changing circumstances and needs of tenants, as well as changes to standard financial procedures as and when they occur.
76. The clause affording the Secretary of State (and Welsh Ministers) the power to prescribe by regulations exemptions from the need to provide certified statements of account, in whole or in part, is designed to exempt those types of

landlords for which alternative arrangements may adequately exist or which the cost of preparing statements of the kind proposed would be disproportionate to the overall cost of the service charge. Given the many different types of landlords and leases, it is not feasible to prescribe specific sectors on the face of the Bill. The level of technical detail involved in prescribing sectors is deemed too high for inclusion in primary legislation. A delegated power will also enable the Secretary of State (and Welsh Ministers) to respond quickly to any further changes which may be needed to adapt the regime to deal with emerging issues. As with other proposals, the Government intends to work with practitioners on the detail.

### Justification for the procedure

77. The power will be subject to the negative procedure. Amendments to information contained within the accounts and the annual reports would be made with the aim to make them more suited to market conditions and would not be made in a vacuum. Before any instrument is laid there would be examination of current practice and we may work with practitioners and other stakeholders to identify the best approach. Regulations made under this power will not address matters of principle which will already have been approved by Parliament, which is that certain information must be provided to tenants within a certain time. The negative resolution procedure is sought to ensure that adequate parliamentary scrutiny is afforded to make the largely technical changes proposed.

### **Clause 55: Right to obtain information on request**

- (2) (21F(1)) Power to require landlords to provide information specified in regulations.
- (2) (21F(2)) Power to specify information for the purposes of (21F(1)) only if it relates to (a) service charges or (b) services, repairs, maintenance, improvements, insurance or management of dwellings.
- (2) (21F(8)) Power to (a) provide for how a request may be made; (b) provide that a request may not be made until the end of a particular period or until the end of a particular period or until another condition is met; (c) provide for circumstances when a request under subsection (4) and (6) must be made; (d) provide for circumstances in which a duty to comply with a request does not apply.
- (2) (21G(3)) Power to specify the time period to (a) provide information and (b) allow access to inspect information and make and remove a copy of the information.

- (2) (21G(7)) Power to provide circumstances when a specified period may be extended
- (2) (21G(8)) Power to provide for how information under (21F) is to be provided.

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

### Context and Purpose

78. Clause 55 introduces a new Section 21F and 21G which sets out new obligations on landlords to provide specified information to tenants on request within a specific time period. Further detail on what this information will entail will be set out in regulations but will be restricted to information relating to service charges or services, repairs, maintenance, improvements, insurance of management of dwellings. This complements the provisions in Clauses 53 and 54, which requires landlords to provide specific information on a proactive basis. The clauses will also provide the period during which the information must be provided as well as how a request for information may be made.

### Justification for taking the power

79. The Secretary of State (and Welsh Ministers) has a range of powers to provide specific detail on how to give full effect to the proposals. These powers enable the Secretary of State to react flexibly to changes in the market and in tenant behaviour/demand based on practical experience and changing circumstances in the leasehold sector. Setting a defined list in primary legislation would be unnecessarily restrictive and, without the creation of a Henry VIII power, restrict the Secretary of State (and Welsh Ministers) in the ability to prescribe further information that would be beneficial to tenants. As with other measures, the Government intends to seek the views of practitioners on the level and type of information to be included.

### Justification for the procedure

80. The power will be subject to the negative procedure. This procedure is appropriate as the regulations will simply set out the detail and form of the information to be provided. The principle of the obligation to provide certain prescribed information within a specified period of time, and following a prescribed request, will have been subject to Parliamentary scrutiny through consideration of the primary legislation. The negative resolution procedure is sought to ensure that adequate parliamentary scrutiny is afforded to make the largely technical changes proposed.

## **Clause 56: Enforcement duties relating to service charges**

- (3) (25A(6)) Power to amend the maximum amount of damages in (25A(5)) from £5,000 where it is expedient to do so to reflect changes in the value of money.

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

### Context and Purpose

81. Clause 56 introduces a new Section 25A which provides that the appropriate tribunal may make an Order to award damages of up to £5,000 in damages for a breach of a duty specified in Clauses 53 to 55 above. This Order is intended to act as an incentive for landlords to comply. Clause 56 contains a power for the Secretary of State (and Welsh Ministers) to make regulations amending the level of damages that the tribunal may award where they consider it expedient to do so to reflect changes in the value for money.

### Justification for taking the power

82. The Government considers a power to amend the level of damages the tribunal may award is justified. These are changes that are intended only to reflect changes in the value of money and not alter the intent of this legislation. Allowing the tribunal to award damages is intended to act as an incentive for landlords to comply with the relevant duty. Ensuring this level of damages continues to deliver its intended purpose requires periodic review and adjustment. The inclusion of a power to reflect changes in the value of money ensures the Government can ensure the level of damages remains appropriate without the need for primary legislation. There is precedent for delegation of powers for this purpose in Sections 9(9) and (10) of the Leasehold Reform (Ground Rent) Act 2022.

### Justification for the procedure

83. The Government considers that, given the very limited scope of the power, the negative procedure is proportionate. As referred to above there is also precedent for this approach in the Leasehold Reform (Ground Rent) Act 2022.

## **Clause 57: Limitation on ability of landlord to charge insurance costs**

- 20G(4) and (5) Power to set out what permitted insurance payments will be able to be passed through a variable service charge, which will be the only permitted insurance costs which will be able to be claimed back from tenants.

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Affirmative procedure

### Context and Purpose

84. Clause 57 20G(4) and (5) gives the relevant authority the power to set out what permitted insurance payments landlords can charge to leaseholders through their variable service charge. The regulations may provide that a payment is a permitted insurance payment by reference to the kind of person to or in respect of which the payment is made; the circumstances in which the payment is made; the method by which the amount of the payment is calculated (which may be a method specified in the regulations); the nature of its connection with work done, costs incurred or time spent; or any other matter. For example, this may include administrative functions of placing and managing insurance, such as the managing agents handling claims on behalf of the leaseholder and engaging the broker. It also allows us to specify how this would be calculated and how it can be charged. It also gives us the power to exclude certain types of persons from the powers such as Social Housing if we need to.

### Justification for taking the power

85. Through stakeholder engagement with the sector, the government found that some managing agents, landlords, and freeholders do take on work to place and manage the insurance that goes beyond their normal managing agents' duties that they charge for through the service charge. The government want to allow for this type of work to continue and to be charged in a transparent way that is commensurate with work and time undertaken to carry out the work. As this industry and the work undertaken is flexible, it may need amending more often than Parliament can be expected to legislate for by primary legislation and so we therefore want to keep the detail of what permitted payments can be charged in regulations so that it can be more easily amended over time. Further the intention is to also work with practitioners on the detailed implementation of this policy to ensure the regulations capture the correct types of insurance work that managing agents, landlords and freeholders undertake.

### Justification for the procedure

86. The technical detail and specifics will be best addressed in regulations, so they can be amended more easily. It is the department's view that as this is the first legislative measure on building insurance commissions, where most of the detail in relation to what permitted fees can be charged will be in regulations, it is right this should be scrutinised in more detail by Parliament through the affirmative procedure. This measure is also linked to wider building insurance premiums concerns, which have increased dramatically following the Grenfell

Tower Tragedy and subsequent cladding crisis. Through this link to building safety, where many of the associated regulations have gone through the affirmative procedure, it seems appropriate that these measures have a similar level of scrutiny.

### **Clause 58: Duty to provide information about insurance to tenants**

- (2) (1A(2)) Power to set out the information a landlord must obtain about insurance, including by requesting the information from another person, and the specific time period in which to provide to the tenant.
- (2) (1A(3)) Power to set out circumstances where the specific time period may be extended.
- (2) (1A(5)) Power to set out the form and manner in which the information is to be provided.
- (2) (1A(8)) Power to provide for exceptions to the duty in sub-paragraph (1) by reference to descriptions of landlord, insurance, or any other matter.
- (2) (1B(5) and (6)) Power to specify the period in which a person must provide the information they are required to provide under this paragraph.
- (2) (1B(8)) Power to make provision (a) for how a request is to be made under paragraph 1A(2)(a) or this paragraph; (b) that a request may not be made until the end of a particular period or until another condition is met; (c) on the period within which a request under sub-paragraph (3) must be made; (d) for circumstances in which a duty to comply with a request under paragraph 1A(2)(a) or this paragraph does not apply; (e) for how the information is to be provided.
- (2) (1C(6)) Power to amend the maximum amount of damages in (1C(5)) from £5,000 where it is expedient to do so to reflect changes in the value of money.

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

### Context and Purpose

87. Clause 58 places an obligation on landlords to provide specified information on insurance it procures for buildings to their tenants. While further detail on what information this will entail will be set out in regulations, this could include what

the building insurance premium covers and what quotes were obtained by the landlord when placing the insurance. The leaseholder will also be able to request more information on the insurance from the landlord on a reactive basis, which the landlord will have to provide within a specific time frame.

Justification for taking the power

88. The Secretary of State (and Welsh Ministers) is conferred a power to specify the information to be provided, the time period in which such information is to be provided, how a request for information may be made, the manner in which the information is to be provided, as well powers to disapply the requirement to meet these obligations. It is the standard approach for a statutory secondary power to be used with regard to setting out the content of information, how the information is to be provided and limited exemptions to general provisions. The Government considers that taking these powers is justified since information required may evolve depending on how the market develops, and that time periods may change depending on specific circumstances and new ways in which information is stored. This would not be achieved if primary legislation was required to update the information to be provided and/or make any exemptions to the need to comply.

Justification for the procedure

89. The power will be subject to the negative procedure. This is considered appropriate as the regulations will specify procedural requirements for the type and form of information to be provided. Any regulations that specify the matters would be bounded by the general considerations in clause 32, which again have been subject to Parliamentary scrutiny. The regulations will not address matters of principle which will already have been approved by Parliament, which is that certain information must be provided by a certain time. The Government considers that the negative procedure would be appropriate and would allow for the requisite flexibility to make the largely technical changes proposed.

**Clause 59: Duty of landlords to publish administration charge schedules**

- (1) (4A)(5) Power to make regulations as to (a) the meaning of “building” for the purpose of this paragraph; (b) the form an administration charge schedule must take; (c) the content an administration charge schedule must have (d) how an administration charge schedule must be published; and (e) how an administration charge schedule is to be provided to a tenant.
- (1) (4B(4)) Power to amend the maximum amount of damages in (4B(3)) from £1,000 where it is expedient to do so to reflect changes in the value of money.



*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

### Context and Purpose

90. This clause places an obligation on landlords to publish details of administration charges that leaseholders may face. These charges may be payable for individual transactions between the landlord and tenant on issues which fall outside areas payable through the service charge, for example, seeking permission to have a pet or to sub-let a property. It ensures that tenants are better aware of the financial obligations they may face and costs they may be asked to pay. Administration charges are required to be reasonable.

### Justification for taking the power

91. The Secretary of State is conferred powers to set out the form and content of an administration charge schedule, as well as how it must be published. As with other measures, these powers provide the detail and need to be flexible in order to keep up with any changes to the market. The administrative information required may evolve frequently depending on how the market develops. It is not possible to predict exactly what additional information may be required in future, what those changes to the form might be or what exemptions from compliance may be required. A flexible power is therefore sought to make these changes in response to changes in market conditions. The level of administrative and technical detail involved is deemed too high for inclusion in primary legislation.

### Justification for the procedure

92. Provisions made under these powers will be of an administrative and/or technical nature. Therefore, the negative resolution procedure is proposed. It will not address matters of principle which will already have been approved by Parliament, which is that certain information must be provided by a certain time.

## **Clause 60: Limits on rights of landlords to claim litigation costs from tenants**

- (3) (20CA(5)) Power to set out matters the relevant court or tribunal must consider when deciding to make an order on a landlord's application for their litigation costs to be considered relevant costs when determining the amount of a variable service charge.
- (3) (20CA(6)) Power to make regulations to provide (a) how an application by a landlord under subsection (20CA(2)) is made; (b) whether and how notice of application by a landlord is to be given to person(s) specified and not specified in the application; (c) the effect of giving notice of an application and failing to give notice of an application;

and (d) circumstances where a person not specified in an application by a landlord is to be treated as having been specified in the application.

- (6)(b) (5B(5)) Power to make regulations to set out matters the relevant court or tribunal must consider when deciding to make an order on a landlord's application for their litigation costs to be considered payable as an administration charge

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

### Context and purpose

93. Clause 60 inserts new section 20CA into the 1985 Act and new paragraph 5B into Schedule 11 of the Commonhold and Leasehold Reform Act 2002. These new provisions will require landlords to apply to the relevant court or tribunal for an order before they may recover any or all of their litigation costs either through the service charge, or from a tenant who participated in the proceedings as an administration charge, respectively. The relevant court or tribunal will make such order on the application as it considers just and equitable in the circumstances. The power allows the appropriate authority to set factors that the relevant court or tribunal will consider when deciding to make an order on an application for costs.

### Justification for taking the power

94. The purpose of the power under new section 20CA(5) will be to allow the Secretary of State (and Welsh Ministers) to set out matters the relevant court or tribunal must consider when making a decision on a landlord's application under new section 20CA that their litigation costs should be considered relevant costs when determining the amount of a variable service charge. The power under new section 20CA(6) will detail the procedure landlords making an application must follow, including whether to serve notice of the application on those specified and not specified in the application as well as the effect of doing so or not doing so. This may provide a mechanism for tenants who are not participating in proceedings but will be affected by their landlord's application for litigation costs, to be notified at an earlier stage. The purpose of the power under new paragraph 5B(5) will be to allow the Secretary of State (and Welsh Ministers) to set out matters the relevant court or tribunal must consider when making a decision on a landlord's application under new paragraph 5B that their litigation costs should be payable by a tenant as an administration charge. The regulations will set out a level of detail not appropriate for primary legislation and will allow changes to be made in the future should they be needed, for example to align with market developments.

### Justification for the procedure

95. The powers will be subject to the negative procedure. The level of administrative and procedural detail involved is deemed too high for inclusion in primary legislation. Provision about landlord's applications for their litigation costs will be made in response to the practicalities of making an application and will be aimed at facilitating a more efficient process for tenants, landlords and the court or tribunal. It will not address matters of principle which will already have been approved by Parliament, which is that landlords must successfully apply to the relevant court or tribunal in order to recover their litigation costs from tenants whether through the service charge or as an administration charge.

### **Clause 61: Right of tenants to claim litigation costs from landlords**

- (1) (30J(3)) Power to set out matters the relevant court or tribunal must consider when deciding to make an order on a tenant's application for their landlord's litigation costs.
- (1) (30J(6)) Power to set out in regulations other matters which should be considered "relevant proceedings" which the tenant should have the right to apply for their litigation costs.

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

### Context and purpose

96. Clause 61 implies into all leases a right for tenants to apply to the relevant court or tribunal for an order that their landlord pay any or all of their litigation costs incurred in connection with relevant proceedings concerning the lease. The relevant court or tribunal will make such order on the application as it considers just and equitable in the circumstances. The power under new section 30J(3) allows the appropriate authority to set factors that the relevant court or tribunal will consider when deciding to make an order on an application for costs. The power under new section 30J(6) will allow the appropriate authority to specify in regulations other matters which are considered "relevant proceedings" to which the tenant's right to apply for their litigation costs should apply.

### Justification for taking the power

97. The purpose of the power under new section 30J(3) will be to allow the Secretary of State (and Welsh Ministers) to set out matters the relevant court or tribunal must consider when making a decision on an application for costs. The purpose of the power under new section 30J(6) will be to allow the appropriate authority to specify other matters which are considered "relevant proceedings".

The regulations will set out a level of detail not appropriate for primary legislation and will allow changes to be made in the future should they be needed, for example to align with market developments.

#### Justification for the procedure

98. The power will be subject to negative procedure. The level of administrative and procedural detail involved in amendments is deemed too high for inclusion in primary legislation. Provision about applications for costs will be made in response to the practicalities of the process and will be aimed at facilitating a more efficient process for leaseholders, landlord and the court/tribunal. It will not address matters of principle which will already have been approved by Parliament, which is that leaseholders will have a right to claim their litigations costs from their landlord upon successful application to the relevant court or tribunal.

#### **Clause 65: Leasehold sales information requests**

- 30K (4) and (5), 30L (10), 30M (2) & 30N (4) Regulation making powers that set out what leasehold information is to be provided, by whom, to whom, by when and at what cost.

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations (statutory instrument)

Parliamentary Procedure: Negative procedure

The clause amends the Landlord and Tenant Act 1985.

#### Context and Purpose

99. There are currently no statutory requirements for landlords to respond to sales information requests within a set time period and there is no cap on the maximum cost that can be charged. The current voluntary practice has not overcome the obstacles faced by leaseholders. A statutory requirement is needed for freeholders to respond to leaseholder information requests within a set time period and to provide for a cap on the maximum cost. The provisions will also allow for the requirements to be enforced. This is to ensure that requests are dealt with in a timely manner to prevent delays in transactions that hinder or prevent sales. Regulations made under this power will provide leaseholders with certainty on what information will be provided and when and at what cost. The introduction of these requirements will decrease uncertainty and stress and ensure greater transparency in the sales process.

#### Justification for taking the power

100. These powers enable the Secretary of State and Welsh Ministers to prescribe

by regulations the specified leasehold information to be provided, the timescales for the provision of the information, the amount that can be charged for a request and to update these requirements over time to reflect industry practice.

101. A power will enable the Secretary of State to update or change the forms, timescales and costs as required to respond to changes in industry practice. It is important that the information landlords are required to provide reflects current law and practice, and that this can be updated quickly and as needed by regulations.

#### Justification for the procedure

102. Regulations made under this power will be limited in scope, setting out the requirements for an information request and detailing processes for compliance. The negative resolution procedure would afford a level of scrutiny in the case of regulations made under this clause. Given the limitations on this power and the technical nature of amendments, the negative process is deemed most appropriate.

103. The negative procedure will still provide Parliament with the opportunity to debate these matters, if necessary, whilst ensuring changes can be made promptly. The procedure provides for transparency about the content of requests and how they should be handled.

#### **Clause 73: Limitation of estate management charges: consultation requirements**

- (2) and (3) Power to define an appropriate amount, including what may constitute an appropriate amount.
- (6) and (7) Power to prescribe consultation requirements, including what a consultation exercise may include.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

#### Context and Purpose

104. Clause 73 sets out obligations on estate managers to consult homeowners if the individual cost of the carrying out estate management works exceeds an appropriate amount. The powers allow the Secretary of State to set the appropriate threshold for consultation as well as the detail of the consultation requirements.

#### Justification for taking the power

105. The primary function of this clause is to place an obligation on estate management to consult about a specific threshold. Thresholds will be developed through detailed consultation with homeowners and may need to be amended quickly in response to changes in market conditions. This power would enable the Secretary of State to keep the threshold under review in order to respond to market factors and ensure it remains at a proportionate level, taking account of the value of money and evolution in the market. In the same way, it is suitable to ensure transparency and consistency in this practice to set out the detail of consultation arrangements to reflect how the market evolves. Provisions made under this power will be exclusively of a technical nature and will set the specific threshold and/or prescribe the detailed consultation requirements.
106. There is precedent for delegation in these circumstances in Sections 20(5) and 20ZA(4) and (5) of the Landlord and Tenant Act 1985. Including regulation powers enables the legislation to be periodically reviewed and updated to remain relevant over time, without recourse to primary legislation.
107. In a leasehold context, the threshold under the 1985 Act is £250 and it is anticipated that the same amount will apply under Part IV of the Bill. There will accordingly be equivalence between the leasehold regime and the freehold estates regime.

#### Justification for the procedure

108. The power will be subject to negative procedure. Provisions that apply will be of a technical or administrative nature. It will not address matters of principle which will already have been approved by Parliament, which is that consultation arrangements must apply above a specific threshold. As referred to above there is precedent for this approach in the Landlord and Tenant Act 1985.

#### **Clause 74: Limitation of estate management charges: time limits**

- o (3) Power to specify in regulations the specified form, information and manner for the provision of a future demand notice;
- o (4) power to specify information to be included in a future demand notice to include: (a) an amount estimated as the costs incurred (an “estimated cost”), (b) an amount the owner is expected to contribute toward the costs (an “expected contribution”), and (c) a date on or before which it is expected that the estate management charge will be demanded (“expected demand date”).
- o (5) power to provide for a “relevant rule” to apply where (a) the homeowner has been given a future demand notice and (b) the demand for payment of a variable service charge as a contribution to the costs is served on the owner more than 18 months after the costs were incurred.

- o (7) power to provide the relevant rule in new subsection (6)(c), - concerning demands received after the expected demand date - may also provide that the rule is to apply as if, for the expected demand date, there were substituted a later date determined in accordance with the regulations.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary process:* Negative procedure

### Context and Purpose

109. The purpose of this clause is to prevent homeowners from suffering adversely from hidden or unexpected costs. Clause 74 clarifies the time limits around when costs incurred by an estate manager can be defined as “relevant costs”. This includes that a cost is not a “relevant cost”, and hence not recoverable by the estate manager, if it were incurred more than 18 months before a demand for payment was served on the homeowner. However, this limitation does not apply if, before the end of the 18 month period, the homeowner receives a “future demand notice” by the estate manager to notify them that relevant costs have been incurred and that the owner will be required to contribute to these costs through the payment of an estate management charge. Homeowners will have more certainty and estate managers will be required to be clearer on costs incurred, how costs will be apportioned and when they will charge homeowners.

### Justification for taking the power

110. The power to comply with an information standard for future matters of administrative and procedural detail which are more suitable for secondary legislation. The purpose of the powers are: firstly, to enable the Secretary of State to prescribe by regulations the detailed content of the form, and to update the form over time to reflect industry practice; and secondly to provide the detail on how to give full effect to these provisions. This ensures that the information provided by the estate manager must be adhered to. It is the standard approach for a statutory secondary power to be used with regard to setting out the content of a form and how it is to be provided. We will be working with practitioners on the level of information to be included in the form. These powers give the Secretary of State the flexibility to react to changes in the market and changes within the freehold estate sector, which would not be available if the details were set out in the primary legislation.

### Justification for the procedure

111. The power will be subject to negative procedure. Amendments to information contained within the form would be made with the aim to make them more suited to market conditions. Before any instrument is laid there would be examination

of current practice and we may work with practitioners and other stakeholders to identify the best approach. Regulations made under this power will not address matters of principle which will already have been approved by Parliament, which is that estate managers should provide a future demand form where demands for payment will be carried out over 18 months after the work has been carried out. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration.

### **Clause 76: Demands for payment**

- (1) Power to determine the form and content of the demand and how it may be provided.
- (3) Power to exempt certain persons making the demand, types of estate management changes and any other matter.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* (Negative procedure)

#### Context and Purpose

112. Clause 76 sets out obligations on estate managers, who provide estate management services on shared or communal areas, to prepare estate charge demand forms in a prescribed manner. Its purpose is to standardise the form where possible.

#### Justification for the procedure

113. This power will be used to make a purely administrative provision for the estate demand process; such provision may need to change in light of changing practicalities. There may, for example, be a requirement to update the forms in the light of changes to data protection or companies' legislation. The Clause confers powers on the Secretary of State to prescribe the detailed content of the form, and to update the form over time and provide for exceptions from compliance by reference to descriptions of the person making the demand, description of estate management charge, or any other matter.

114. The Government intends to seek the views of practitioners on the level of detail of the information to be included and on the case for any exemptions from this provision to ensure the information required is proportionate and helpful. It is also considered appropriate for this function to be flexible, as relevant information of interest to leaseholders may evolve frequently depending on how the market develops. This would not be achieved if primary legislation was required to update the form and/or make any exemptions to the need to comply.



### Justification for the procedure

115. Regulations made under this power will be subject to negative procedure. The information provided will only include information on content of the estate demands, therefore this power is largely administrative and technical in nature. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary for administrative regulations of this kind. The regulations made under this power will not address matters of principle which will already have been approved by Parliament, which is that certain information must be provided to leaseholders when a demand for payment is made. The negative resolution procedure is sought to ensure that adequate parliamentary scrutiny is afforded to make the largely technical changes proposed.

### **Clause 77: Annual reports**

- (3) Power to set out the information that must be contained in the annual report, the form of the report and the manner in which the report is to be provided.
- (6) Powers to exempt certain estate managers, types of estate management changes and any other matter.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

### Context and Purpose

116. Clause 77 is part of a suite of clauses that seek to increase the amount of relevant information homeowners receive from estate management companies. This Clause mandates the provision of an annual report which entitles homeowners to receive key financial and non-financial information each year.

### Justification for taking the power

117. The purpose of the powers is to enable the Secretary of State to prescribe detailed matters that should form part of the annual report. Firstly, over the information contained within them, as well as the form and manner in which they must be provided. Secondly, it gives powers to prescribe information that may be of interest to homeowners. Thirdly, it confers powers to provide exceptions from the need to comply with the need to provide an annual report.

118. The overriding policy intention is to ensure that relevant financial and non-financial information is provided to homeowners every year. Given the setting out detailed technical information, it is important that the form and content are

flexible to reflect changing market conditions, changing circumstances and needs of homeowners, as well as the ability to make any exemptions to the need to comply. Similarly, the contents of the report might need to respond to legislative changes.

119. The Government intends to seek the views of practitioners on the level of information to be included and on the case for any exemptions from this provision. It intends only to provide exemptions from this requirement in extremely limited circumstances.

#### Justification for the procedure

120. Regulations made under this power will be subject to negative procedure. The information provided is largely administrative and procedural. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary for administrative regulations of this kind. The regulations will not address matters of principle which will already have been approved by Parliament which is that certain information must be provided by a certain time.

#### **Clause 78: Right to request information**

- (8) Powers to make regulations to (a) provide for how a request may be made; (b) provide that a request may not be made until the end of a particular period or until the end of a particular period or until a condition is met; (c) provide for circumstances when a request under subsection (4) and (6) must be made; (d) provide for circumstances in which a duty to comply with a request does not apply.
- (1) and (2) Powers to specify information for the purposes of the section, but only as it relates to estate management.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

#### Context and Purpose

121. Clause 78 sets out obligations on estate managers to provide specific information to homeowners on request, within a specific time period. Further detail on what this information will entail will be set out in regulations but will be restricted to information relating to estate management (which is defined as the provision of services; carrying out maintenance, repairs or improvements, effecting of insurance of the making of payments). This complements the provisions in Clauses 76 and 77, which requires landlords to provide specific information on a proactive basis.

### Justification for taking the power

122. The Secretary of State has a range of powers to provide specific detail on how to give full effect to the proposals. This provision does not affect the core principle of the Bill, which is that some prescribed information is provided within a certain time. These powers enable the Secretary of State to react flexibly to changes in the market and in tenant behaviour/demand based on practical experience and changing circumstances in living on freehold estates. The level of detail within regulations made under this power is deemed too high for inclusion in primary legislation. The Government intends to work with practitioners on the level and type of information to be included to ensure that it is helpful and proportionate to the intent of the clause.

### Justification for the procedure

123. The power will be subject to negative procedure. The level of technical detail that will need to be set out is not considered to be appropriate for inclusion within primary legislation. It is also likely that provisions will need to be updated from time to time to accommodate changes in the market. It will not address matters of principle which will already have been approved by Parliament which is that certain information must be provided by a certain time. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration. The negative resolution procedure therefore provides sufficient scrutiny of regulations made under this power.

### **Clause 79: Request under section 78: further provision**

- (3) Power to define the specified period for providing information and to allow an individual to access information requested under subsection (2) during a specified period.
- (7) Powers to make provision for a specified period under subsection (3) to be extended.
- (8) Power to make further provision on how information requested under section 47 is to be provided.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* (Negative procedure)

### Context and Purpose

124. Clause 79 sets out further obligations on estate managers to provide specific information to homeowners on request, within a specific time period and

allowing a homeowner to access requested information within a specific time period.

Justification for taking the power

125. The Secretary of State has a limited set of powers to ensure that proportionate requisite information is provided, or made accessible, in a timely manner. This provision does not affect the core principle of the Bill, which is that some prescribed information is provided within a certain time. The level of technical detail and administrative nature of what is specified in regulations is not considered to be appropriate or practical for inclusion within primary legislation. It is likely that regulations made under this power will need to be updated from time to time to enable the Secretary of State to react flexibly to changes in the market and in tenant behaviour/demand based on practical experience and changing circumstances in living on freehold estates.

Justification for the procedure

126. The government considers that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament for administrative regulations of this kind. The Regulations made under this power will not address matters of legal principle which will already have been approved by Parliament during the passage of the Bill. The intention of the power is to require certain information to be provided by a certain time and to provide criteria for how the requisite information is to be provided by estate managers to homeowners and the timescales for compliance.

**Clause 80: Enforcement of sections 76 to 79**

- (6) Power to amend the maximum amount of damages in 48(5) from £5,000 where it is expedient to do so to reflect changes in the value of money.

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* (Negative procedure)

Context and Purpose

127. Clause 80 sets out the enforcement measures and orders that the appropriate tribunal can make along with the minimum and maximum amount of damages that can be awarded.

Justification for taking the power

128. The purpose of the powers is to enable the Secretary of State (in England) and

Welsh Ministers (in Wales) to amend by regulations the total damages in subsection (5) that the appropriate tribunal can award, which primary legislation is to set at £5,000. This power enables the Secretary of State and Welsh Ministers to react flexibly to changes in the market and changes to financial procedures as and when they apply.

#### Justification for the procedure

129. The power will be subject to negative procedure as it needs to be a flexible power that can be amended in response to economical and market factors. In spite of the Henry VIII properties of the power, we consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament for administrative regulations of this kind. Regulations made under this provision will not address matters of principle which will already have been approved by Parliament which is that the appropriate tribunal can award damages or make an order in accordance with the existing legislation. The provision of this delegated power will ensure the Tribunal's power to award damages remains operable and can respond to changes in the market and financial procedures in future contexts.

#### **Clause 81: Meaning of "administration charge"**

- (2) Power to amend the definition of administration charge.

*Power conferred on:* Secretary of State and Welsh ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Affirmative procedure

#### Context and Purpose

130. Clause 81 sets out the definition of an "administration charge" for the purposes of this part. An administration charge is an amount that is payable by an individual homeowner, directly or indirectly, when they engage with the estate manager for a defined list of activities on matters that are not covered by an estate management charge.

#### Justification for taking the power

131. Clause 81 sets out a clearly defined list of measures that constitute an administration charge but the Secretary of State is able to amend the definition of administration charge. This capability to change the definition allows the Government to keep the definition under periodic review and to ensure it reflects any evolution in the market arising from the behaviour of estate managers and the needs and requirements of freehold estate homeowners.

#### Justification for the procedure

132. The power to amend the definition of “administration charge” will be subject to the affirmative procedure in both Houses of Parliament. This will ensure that there is appropriate parliamentary scrutiny of any changes to the definition of an administration charge.

### **Clause 82: Duty of estate managers to publish administration charge schedules**

- (5) Power to make provision as to (a) the form an administration charge schedule must take; (b) the content an administration charge schedule must have (c) how an administration charge schedule must be published; and (d) how an administration charge schedule is to be provided to an owner of a dwelling.

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

#### Context and Purpose

133. Clause 82 places an obligation on the estate manager to publish details of administration charges that they may face. These charges may be payable for individual transactions between the estate manager and the homeowner on issues which fall outside areas payable through the estate management charge. It ensures that homeowners are better aware of the financial obligations they face and costs they may be asked to pay. Administration charges are required to be reasonable.

#### Justification for taking the power

134. Powers are to be conferred on the Secretary of State to set out the form and content of an administration charge schedule, as well as how it must be published. It is the standard approach for a statutory secondary power to be used with regard to setting out the content of a form and how it is to be provided. It is not considered appropriate for primary legislation to perform this role since information required may evolve frequently depending on how the market develops.

#### Justification for the procedure

135. The power will be subject to negative procedure. The information provided is largely administrative and procedural. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary for administrative regulations of this kind. Regulations made under this provision will not address matters of principle which will already have been approved by Parliament, which is that certain information must be provided by a certain time.

## **Clause 83: Enforcement of Section 82**

- (4) Power to amend the maximum amount of damages in 52(3) from £1,000 where it is expedient to do so to reflect changes in the value of money.

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

### Context and Purpose

136. Clause 83 provides that the appropriate tribunal may make an Order to require an estate manager to pay damages to the homeowner for failure to publish an administration charge schedule of up to £1,000. This penalty is intended to provide an incentive for homeowners to hold estate managers to account. This Clause also contains a power for the Secretary of State (in England) and Welsh Ministers (in Wales) to make regulations amending the level of damages that the Appropriate Tribunal may charge where they consider it expedient to do so to reflect changes in the value of money.

### Justification for taking the power

137. The Government considers that a power to amend the level of damages that the appropriate tribunal may charge is necessary to ensure that the damages are proportionate to the value of money. The power conferred is a flexible one that allows for changes to be made to damages that are intended only to reflect changes in the value of money and not to alter the intent or effect of the legislation. Ensuring the value of damages is maintained requires regular periodic review of any adjustment to the maximum amount that may be charged. Including a power to adjust the maximum level of damages ensures that the main purpose of the level of damages is maintained and is able to respond to changes in the value of money without the need for primary legislation. There is precedent for this approach in Section 9 of the Leasehold Reform (Ground Rent) Act 2022.

### Justification for the procedure

138. Regulations made under this power will be subject to negative procedure. The information provided will only include information on the level of damages. Any adjustment rates provided for in regulations will be limited to in the value of money in order to ensure that the legislation remains relevant over time. This power is therefore largely administrative and technical. Given the very limited scope of the power we consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament.

## **Clause 87: Notice of complaint**

- o (2) Power to set out in regulations any other information which should be included in a notice of complaint.
  
- o (6) Power to make provision for determining when a notice of complaint is given.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary process:* Negative procedure

### *Context and Purpose*

139. Clause 87 sets out the process for an owner of a managed dwelling to give notice of complaint to an estate manager. This is the first stage in a process that allows homeowners on managed estates to appoint a substitute manager in cases of significant management failure. This power is necessary as it provides freeholders on managed estates with a formal, transparent process via which they can expect their complaints about the service they have received to be considered and addressed.

### *Justification for taking the power*

140. The purpose of the power in subsection (2) is to provide flexibility for the potential criteria which may be required to give a notice of complaint, which will account for any future changes or feedback to practice in the management sector. Subsection (6) confers powers on the Secretary of State to make provision for determining when a notice of complaint is given, and from time to time this may need to be reviewed to make sure when the notice is issued remains appropriate for all parties and the wider process of appointing a substitute manager. These provisions are administrative and technical in nature and do not affect the core purpose of this clause, which is that specified information must be provided to the estate manager in a certain manner for complaints to be handled fairly and efficiently.

### *Justification for the procedure*

141. Regulations made under this power will be subject to negative procedure. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in the case of regulations made under this clause. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and scrutiny. The regulations will not address matters of principle which will already have been approved by Parliament which is that certain information must be provided by a certain time. The negative procedure allows for a flexible approach to the powers in order to achieve the policy aim of ensuring that



complaints are made and handled in a transparent and timely manner and parties understand what is expected of them in the process.

### **Clause 89: Conditions for applying for an appointment order**

- o (4) Power to set out in regulations any other information which be included in a final warning notice.
- o (9) Power to make provision for determining when a notice under this section is given.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary process:* Negative procedure

#### Context and Purpose

142. Clause 89 sets out the conditions which must be met before an application to appoint a substitute manager can be made, including the issuing of a final warning notice. It allows the Secretary of State, when a final notice is served prior to an application to the tribunal for the appointment of a substitute manager over an estate, to make regulations determining the contents of that notice and when that final notice is served.

#### Justification for taking the power

143. The purpose of the power in subsection (4) is to provide flexibility for the potential criteria which may be required to serve a notice of complaint, which will account for any future changes to practice in the estate management sector. It is also the standard approach for a statutory secondary power to be used with regard to setting out the content of a form and how it is to be provided. We will be working with practitioners on the level of information to be included in forms as well as the details to make the onward request measures work effectively. Likewise, subsection (9) confers powers on the Secretary of State to make provision for determining when a final warning notice is given, and from time to time this may need to be reviewed to make sure when the notice is issued remains appropriate for all parties and the wider process of appointing a substitute manager.

#### Justification for the procedure

144. Regulations made under this power will be subject to negative procedure. The negative resolution procedure would afford a level of scrutiny in the case of regulations made under this clause. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration.

## **Clause 90: Criteria for determining whether to make appointment order**

- o (1) Power to set out in regulations any circumstances in which the appropriate tribunal would be prevented from making an appointment order against a specific type of estate manager.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary process:* Negative procedure

### Context and Purpose

145. Clause 90 sets out the criteria and grounds on which the appropriate tribunal may make an order to appoint a substitute manager. The Secretary of State has powers to prevent the appropriate tribunal from making an appointment order against a specific, or types of, estate manager.

### Justification for taking the power

146. The purpose of this power is to prevent the tribunal from making an appointment order in case the need should ever arise where a certain type of estate manager should not be replaced with a substitute manager. The Government intends only to provide exemptions should they be required and in extremely limited circumstances before this power is to be used, and we will be working with practitioners before setting out any exemptions.

### Justification for the procedure

147. Regulations made under this power will be subject to negative procedure. The negative resolution procedure would afford a level of scrutiny in the case of regulations made under this clause. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration.

## **Clause 92: Estate Management: sales information requests**

- o (2) power to specify the form and manner of providing the form for a sales information request.
- o (3) power to specify information that can be requested in a sales information request.
- o (5) power to set out in regulations to provide that a sales information request may not be given until the end of a particular period, or until another condition is met.

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

148. As with leasehold estates, there are currently no statutory requirements to regulate responses to sales information requests for freehold estates within a set time period and there is no cap on the maximum cost that can be charged. The current voluntary practice has not overcome the obstacles faced by those making sales information requests. A statutory provision is therefore required. Clause 92 creates a new provision that allows a homeowner on a managed estate to make a sales information request to the estate manager in anticipation of selling their property. This must be done on a specified form. This clause also allows for provision to set out that an information request may not be given until the end of a particular period or until conditions are met. The purpose of this power is to provide homeowners on managed estates with greater certainty on how their requests will be handled and to reduce delays and costs. The average home buying and selling transaction time continues to increase and currently stands at 22 weeks for freehold properties.

### Justification for taking the power

149. The purposes of these powers are: firstly, to enable the Secretary of State (and Welsh Ministers) to prescribe by regulations the detailed content of the form and information in it to ensure that the process is fit for purpose, consistent and as fair as possible. Regulations will also provide for the manner in which the form is to be provided and will give clarity on when a sales information request may or may not be given, thereby balancing the interests of the parties and ensuring that homeowners do not suffer any unnecessary costs.

150. We consider that secondary regulations setting out the content of a form and how it is to be provided will achieve the policy intent of introducing a flexible power that can respond to industry practice whilst also achieving legislative consistency and certainty by ensuring all requirements relating to sales information are standardised (including costs and timescales). We will be working with practitioners on the level of information to be included and conditions when it is inappropriate to make a sales information request. It is considered appropriate for this power to allow for flexibility where there are changes within the market or within the managed estates sector, which is subject to change in the future. Setting a defined list within primary legislation would not allow for the flexibility to make changes where necessary and would be unduly restrictive and unlikely to effectively achieve the policy aims.

### Justification for the procedure

151. The power will be subject to the negative procedure. Regulations made under this power will be limited in scope, setting out specific matters relating to an administrative process. Regulations will not address matters of principle which will already have been approved by Parliament. These regulations will set out the details and form of information to be provided. The Government considers that the negative procedure, which will provide sufficient parliamentary scrutiny for such provision.

### **Clause 93: Effect of sales information request**

- (6) power to specify the period within which information must be provided.
- (8) power to specify the form, manner in which the form can be given and the information to be contained within, a negative response confirmation.
- (9) power to specify the period within which a negative response confirmation must be provided.
- (10) power to provide for how the process for making onward requests for information and sales information requests should work.

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

### *Context and Purpose*

152. Clause 93 sets out new obligations for an estate manager to provide the information requested in a sales information request, and request the information from other parties by way of an onward request where they believe another party holds the information. This clause contains powers for the Secretary of State and Welsh Ministers to make regulations to set out the time period for responding to requests, how to respond to the person who made the request where information is not held, and the process for making onward requests for information.

### *Justification for taking the power*

153. The Secretary of State wishes to improve the process, timeliness and costs to homeowners on managed estates when making information requests to estate management companies so that the process is not unnecessarily drawn out or delayed, resulting in some cases with sales falling through. To address this, the Secretary of State and Welsh Ministers are conferred powers to set out: firstly, the time period for responding to a request for information where the information

is held; secondly, to set out the form and manner in which the person who does not have the information informs the person who made the request, and the period by when a response must be provided; and thirdly, provide the detail of the process for onward requests for information, to give full effect to these proposals. This includes how an onward request is to be made, and when it is not appropriate to comply with an onward request.

154. It is the standard approach for a statutory secondary power to be used in order to set out the content of a form and how it is to be provided. We will be working with practitioners on the level of information to be included in forms as well as the details to make the onward request measures work effectively. These powers enable the Secretary of State and Welsh Ministers to react flexibly to changes in the market and to allow for flexibility where unusual or novel types of information may be requested.

#### Justification for the procedure

155. The power will be subject to the negative procedure. The Government considers that the affirmative procedure would be disproportionate to make the largely technical changes proposed.

#### **Clause 94: Charges for the provision of information**

- (2) Power to (a) limit the amount that may be charged under subsection (1), and (b) prohibit a charge being incurred under subsection (1) in specified circumstances or unless requirements set out in regulations are met.

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

156. Clause 94 regulates the charges for the provision of sales information and sets out when charges can be made. It confers powers on the Secretary of State and Welsh Ministers to limit or prohibit charges that may be incurred for (a) determining whether information requested in a sales information request or onward request is in the individual's possession and (b) providing or obtaining sales information, with a maximum permitted fee being set in regulations.

#### Justification for taking the power

157. The provision of sales information has become too costly for freeholders and different estate management companies are charging different amounts for the provision of information. There is currently no statutory duty for an estate

management company to provide sales information at a reasonable cost, leaving homeowners on freehold estates with little certainty over costs they will incur when looking to sell their home. The purpose of this power is therefore to enable consistency and fairness by enabling the Secretary of State and Welsh Ministers to prescribe a maximum amount that can be charged for the provision of sales information and to prohibit a charge unless specified requirements are met. This provision does not affect the core principle that a charge can be incurred for searching for and providing any sales information. The power balances the interests of estate management companies by allowing charges to be made but ensuring those charges are reasonable and not excessive to the homeowner. This power enables the Secretary of State and Welsh Ministers to react flexibly to changes in the market and amend the maximum permitted amount to account for possible changes in the value of money over time (e.g. inflation) if required.

#### Justification for the procedure

158. The Government considers that, given the limited scope of the power, the negative procedure is proportionate. Regulations made under this provision will not address matters of principle which will already have been approved by Parliament which is that a charge may be incurred in relation to a sales information request or onward request. The provision of this flexible delegated power will ensure that the maximum charge incurred can be reviewed and can be amended to respond to changes in the value of money over time and to adequately take into account the interests of those affected by it.

#### **Clause 95: Enforcement of sections 93 and 94**

- (4) Power to amend the maximum amount of damages that the relevant tribunal may order to be paid for failure to provide the requested sales information, where it considers it expedient to do so or to reflect changes in the value of money.

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

159. Clause 95 sets out the enforcement provision available where the requested sales information has not been provided or where the charges incurred are above the maximum permitted amount or made in breach of the requirements. Amongst its powers it provides that the appropriate tribunal may make an Order to award damages of up to £5,000 for failure to provide information. This Order is intended to act as an incentive for estate managers to comply with requests

for information in order to prevent delays and obstacles to sales. Clause 95 contains a power for the Secretary of State (and Welsh Ministers) to make regulations amending the level of damages that the tribunal may award where they consider it expedient to do so to reflect changes in the value for money.

Justification for taking the power

160. The Government considers a power to amend the level of damages the appropriate tribunal may award is justified. These are changes that are intended only to reflect changes in the value of money and not alter the intent of this legislation. Allowing the tribunal to award damages is intended to act as an incentive for estate managers to comply with the relevant duty in order that the policy aim – of providing timely information at a reasonable cost - can be met. Ensuring this level of damages continues to deliver its intended purpose requires periodic review and adjustment. The inclusion of a power to reflect changes in the value of money ensures the Government can ensure the level of damages remains appropriate without the need for primary legislation. There is precedent for delegation of powers for this purpose in Sections 9(9) and (10) of the Leasehold Reform (Ground Rent) Act 2022.

161. The purpose of this flexible power is to ensure that the legislation remains relevant over time, to reflect changes in the value of money.

Justification for the procedure

162. The Government considers that, given the limited scope of the power, the negative procedure is proportionate. Regulations made under this provision will not address matters of principle which will already have been approved by Parliament which is that the appropriate tribunal can award damages in accordance with the existing legislation. The power is limited to amending the level of damages to reflect changes in the value of money over time to ensure that the damages are an effective deterrent to non-compliance. As referred to above there is also precedent for this approach in the Leasehold Reform (Ground Rent) Act 2022.

**Clause 98: Leasehold and estate management: redress schemes**

- (1) power to require that a person who carries out estate management in respect of a dwelling in England in a relevant capacity is a member of a redress scheme. (5) makes clear regulations under this power may require a person to remain a member of a redress scheme for a specified period, after ceasing to provide estate management.
- (10) power to allow for the definitions of “relevant capacity”, “relevant landlord” and “relevant obligation” to be amended should this be needed in the future.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Affirmative procedure*

### Context and Purpose

163. Clause 98 introduces new provisions setting out that individuals that provide property or estate management in England (either as a leasehold landlord or a freehold estate manager) may be required to be a member of a redress scheme. It introduces a requirement for individuals to remain a member of the redress scheme for a specified period after they cease to provide property or estate management and allows for the definitions of “relevant capacity”, “relevant landlord” and “relevant obligation” to be amended to account for changes in industry practice.
164. This clause closes the gap in redress for certain homeowners by having a power to require landlords of leasehold properties who manage their property, and estate managers who manage communal areas on freehold estates, to join a redress scheme. These powers are necessary to ensure that leaseholders’ and homeowners’ complaints are handled fairly and consistently by creating legal obligations for compliance with a regulated complaints scheme, thereby setting a level playing field for landlords and estate managers.

### Justification for taking the power

165. The purpose of the powers in subsection (1) is to enable the Secretary of State to prescribe by regulations those persons who provide estate management in a dwelling in England in a “relevant capacity” who will be required to be a member of a redress scheme. “Relevant capacity” is defined in subsection (2) and is designed to capture landlords and estate managers. The power in subsection (1) provides the ability to “exempt” (i.e. not require) certain descriptions of person from having to join a redress scheme, where appropriate. This is may be necessary, for example, if it is decided that requiring certain persons to join the redress scheme would be disproportionate – for example, a landlord who is only responsible for a very small number of properties. We will engage with relevant stakeholders to ensure any exemptions are proportionate and appropriate.
166. Subsection (5) allows regulations to specify the period for which persons must remain a member of the redress scheme, after ceasing to carry out an estate management. Allowing this period to be specified in regulations will allow sufficient flexibility to align with market developments.
167. The power in subsection (10) will enable the Secretary of State to amend the definitions of “relevant capacity”, “relevant landlord” and “relevant obligation”



should this be required in the future. This will enable the Government to ensure that the requirement to join a redress scheme remains in step with industry practice and the requirements of other redress schemes. The ability to amend these definitions allows the Government to quickly respond to market changes and make amendments, to ensure that the intended landlords and estate managers are caught by the requirement to join a scheme. It will also enable the Government to respond to any artificial arrangements that are created by landlords or estate managers in order to obfuscate their legal obligation to join a redress scheme.

#### Justification for the procedure

168. The powers in this clause will be subject to the affirmative procedure in both Houses of Parliament, since this offers appropriate Parliamentary scrutiny of any suggested changes to the requirement to join a redress scheme under subsection (1) and any proposed changes to the definitions set out in subsection (10).

#### **Clause 101: Approval and designation of redress schemes**

- (2) Power to set out conditions which are to be satisfied before a redress scheme is approved or designated under clause 98(4)(b).
- (6) Power to make regulations for further provision about the approval or designation of a redress schemes.
- (7)(a) Power to confer functions on the lead enforcement authority or authorise or require a scheme to do so.
- (7)(b) Power to provide for the delegation of such functions by the lead enforcement authority or authorise or require a scheme to provide for that.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Affirmative procedure*

#### Context and Purpose

169. Clause 101 provides that applicants who wish to be approved for a redress scheme(s) under Clause 98 must satisfy certain conditions before approval or designation can be given. Subsection (2) requires the Secretary of State to set out in regulations the conditions that are to be satisfied before a redress scheme is approved or designated. Subsection (3) specifies conditions that must be met, and subsection (4) notes, amongst other things, that the scheme may be required to meet some or all of the conditions on an ongoing basis, or after

ceasing to be an administrator of the scheme. Subsection (5) makes it clear that those conditions may need to be amended over time to reflect changes in practice. The clause also allows for the Secretary of State to make further provision about the approval or designation of the redress scheme(s) in subsection (6).

170. Subsection (7)(a) provides that the Secretary of State may make regulations to confer functions on the lead enforcement authority (or authorise or require a redress scheme to do so); and make provision for the delegation of such functions by the lead enforcement authority (or authorise or require a scheme to provide for that).

Justification for taking the power

171. The list of approval conditions under Subsections (3) and (4) is not exhaustive, but it provides Parliament with a good indication of what the Secretary of State will require a scheme to provide. Any additions to the approval conditions will be made by regulations subject to the affirmative procedure, providing Parliament with the opportunity to scrutinise the changes. The detailed criteria for approval or designation of a scheme will be set out in the regulations following further engagement with stakeholders to ensure that the Secretary of State is best placed to determine what (if any) additional conditions are appropriate. Legislating to change, expand or add to the approval conditions via secondary legislation will also provide necessary versatility for these approval criteria should conditions in the sector change, and the Secretary of State considers that the scheme must change the way it works to tackle any emerging issues.
172. Similarly, the power under subsection (6) will allow appropriate flexibility to provide for the approval and designation of the redress scheme(s) where arrangements may need to change over time, such as the number of schemes that may be approved or designated, or detail regarding the withdrawal of approval or revocation of designation.
173. Delegation of the setting of conditions for approval/designation of property agent redress schemes was provided for under section 87 of the Enterprise and Regulatory Reform Act 2013. That section similarly provides for the Secretary of State to make an order which includes the conditions which must be satisfied before a scheme is approved to provide redress, and while the scheme is in operation (see The Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) (England) Order 2013).
174. It may be necessary in certain circumstances for the Secretary of State to confer functions on the lead enforcement authority or to provide for the delegation of

such functions by the lead enforcement authority. Alternatively, the redress scheme can be authorised or required to confer functions on the lead enforcement authority or to provide that the lead enforcement authority shall delegate such functions. The power at subsection (7) provides the Secretary of State with flexibility as to how functions should be discharged. The conferment of functions on the lead enforcement authority or the delegation of functions by the lead enforcement authority will be made by regulations subject to the affirmative procedure, providing Parliament with the opportunity to scrutinise the changes.

175. Delegating this power is justified to allow the Secretary of State to adapt the legislative framework in a timely fashion, under the supervision of Parliament, to ensure that the scheme can adapt to the fast-moving nature of the market and remains effective.

#### Justification for the procedure

176. The affirmative resolution procedure is the appropriate mechanism for this power, as the parameters of the conditions may define the scope of the framework. It is important that Parliament has the opportunity to debate any changes to this framework. The affirmative procedure will ensure that there is appropriate parliamentary scrutiny in both Houses of Parliament of the conditions that a redress scheme provider must meet to be approved or designated under subsection (2); regarding the approval or designation of the redress scheme, including the period for which an approval or designation is valid, under subsection (6); and where regulations may confer functions on the lead enforcement authority under subsection (7). It is important in these circumstances that Parliament has the opportunity to debate changes to the legislative framework that control the imposition of conditions for redress.

177. Although the regulations would deal principally with an administrative process of approval, those procedures are the main mechanism for the scrutiny and review of redress schemes. As such, they are an important safeguard for the quality of such schemes. The affirmative procedure will ensure Parliament is able to subject these procedures to detailed scrutiny.

#### **Clause 103: Financial penalties**

- (2) Power to allow for suspected breaches of regulations under clause 98(1) to be investigated.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Affirmative procedure*

#### Context and Purpose

178. Clause 103 provides for an enforcement authority to impose a financial penalty if there has been a breach of regulations under Clause 98(1), where landlords or freehold estate managers who are required to join a redress scheme fail to do so. The financial penalty is set out in clause 104 but will be up to a maximum of £5,000 for an initial breach and up to a maximum of £30,000 for repeated breaches. This clause allows for the Secretary of State to make regulations to allow for the investigation of suspected breaches, which may include provision about co-operation and information sharing between enforcement authorities for the purposes of an investigation.

#### Justification for taking the power

179. The purpose of the power in subsection (2) is to enable the Secretary of State to make provision in regulations regarding the investigation of breaches, including regarding co-operation and information sharing in relation to investigations. Enforcement authorities' priorities are likely to need to change over time in response to issues that emerge in the sector, so this power allows for flexibility to make changes to the provisions for investigation. The requirements of enforcement authorities in order to investigate breaches will only become apparent as the redress scheme becomes operational and, if necessary, where an enforcement authority has been designated by the Secretary of State. The required level of flexibility would not be achieved if primary legislation was required to update the provisions. Guidance may be issued to enforcement authorities on investigating breaches (if deemed appropriate).

#### Justification for the procedure

180. The affirmative procedure will ensure that there is appropriate Parliamentary scrutiny in both the Houses of the regulations providing for investigations of suspected breaches, including for the co-operation and information sharing between enforcement authorities.

#### **Clause 104: Financial penalties: maximum amounts**

- (6) Power to amend the financial penalty amounts specified in subsection (1) to reflect changes in the value of money.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

181. Clause 104 introduces maximum penalties that may be imposed under Clause 103 for a breach of regulations under Clause 98(1). The financial penalty for

non-compliance with the requirement to join a scheme is up to a maximum of £5,000 for an initial breach, with a maximum of up to £30,000 for repeated breaches. This power allows for the maximum amount for the financial penalties set out in subsection (1) to be amended to reflect changes in the value of money.

182. This power mirrors the powers in section 23(9) of the Housing Act 2016 and section 9 of the Tenant Fees Act 2019 which allows the Secretary of State to change the level of financial penalties to reflect the value of money.

#### Justification for taking the power

183. The purpose of this power is to enable the Secretary of State to amend the maximum amount for the penalties that may be imposed. This power enables the Secretary of State to amend the maximum amount, where it considers it expedient to do so to reflect changes in the value of money over time.

#### Justification for the procedure

184. Regulations made under this power will only amend the financial penalty to reflect changes in the value of money. The Government considers that, given the limited, administrative scope of the power, the negative procedure is proportionate. Regulations made under this provision will not address matter of principle which will already have been approved by Parliament which is that financial penalties can be imposed for an initial breach and multiple breaches of the requirement to join a redress scheme. The Government considers that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary, for administrative regulations of this kind.

#### **Clause 105: Decision under a redress scheme may be made enforceable as if it were a court order**

- (1) Power to make provision for a redress scheme to apply to a court or tribunal for an order that decisions made by the redress scheme are enforced as if it were an order of the court.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

185. Clause 101 sets out that a redress scheme under this Part will provide for complaints against members from relevant owners to be independently investigated and determined. The decisions of the redress scheme will be binding on members if the leaseholder/homeowner accepts them. Clause 105

enables the Secretary of State to make regulations to allow a decision made by a redress scheme enforceable as it were a court order if it transpires that compliance with scheme decisions is not as high as we would expect.

*Justification for taking the power*

186. This power will only be commenced if landlord and freehold estate manager compliance with redress scheme decisions is not as high as we would expect. The scale of any non-compliance with scheme decisions will only become clear once the scheme is in operation. It is sensible to assess whether non-compliance is an issue, and if other measures to encourage compliance such as expulsion are ineffective, before making use of this power.

*Justification for the procedure*

187. The power will be subject to the negative procedure. The government does not consider use of this power will be controversial and similar powers have been taken, for example, in the Housing Act 1996. It is intended to be used as a last resort, where other enforcement levers have proved ineffective in achieving the aim of the legislation. We consider, therefore, that it is appropriate for these regulations to be subject to the negative procedure.

***Clause 106: Lead enforcement authority: further provisions***

- (4) The lead enforcement authority may issue guidance to enforcement authorities about the exercise of their function under Part 6
- (5) An enforcement authority (other than the lead enforcement authority) must have regard to guidance issued under (4).

*Power conferred on: "Lead enforcement authority" – defined as the Secretary of State or other body designated by the Secretary of State*

*Power exercised by: Guidance*

*Parliamentary Procedure: None*

*Context and Purpose*

188. There may be instances where the enforcement authority will be required to take action where there has been a breach of the requirement to be a member of a redress scheme. Clause 103 provides that an enforcement authority may impose a financial penalty if it is satisfied that there has been a breach of the requirement. It also provides for the Secretary of State to make regulations to provide for enforcement authorities to investigate suspected breaches to determine whether to impose a financial penalty.

189. Subsection (4) provides for the lead enforcement authority to issue guidance to enforcement authorities about the exercise of their functions under Part 6 of the Bill.
190. Subsection (5) will require an enforcement authority (other than the lead enforcement authority) to have regard to the guidance issued under subsection (4).
191. Such guidance may support enforcement authorities in understanding and undertaking their responsibilities under the provisions of the Bill. In particular, the government would expect that it will provide detail regarding practical aspects of enforcement such as interactions between the lead enforcement authority and enforcement authorities, including the setting out of reporting requirements and/or procedures. The government would also expect that guidance will be used to promote and provide examples of best practice and to promote consistency in application of the legislation, for example as to the appropriate levels of financial penalty in particular circumstances.

*Justification for taking the power*

192. Setting out principles in guidance to which enforcement authorities must have regard may help to ensure that the approach of different enforcement authorities is consistent, whilst allowing relevant enforcement authorities an appropriate measure of discretion as to how those principles are applied.

***Clause 106: Lead enforcement authority: further provisions***

- (6)(a) The Secretary of State may make arrangements in connection with the person's role as the lead enforcement authority, which may include arrangements for payments by the Secretary of State and about bringing the arrangements to an end.
- (6)(b) The Secretary of State may give directions to the lead enforcement authority about the exercise of any of its functions.

*Power conferred on: Secretary of State*

*Power exercised by: Arrangements and directions*

*Parliamentary Procedure: None*

*Context and Purpose*

193. Clause 106 (6) makes further provision for where the Secretary of State has designated a person other than themselves to be the lead enforcement authority. Clause 106 (6)(a) gives the Secretary of State the power to make arrangements in connection with the person's role as the lead enforcement authority, which may include making payments to the lead enforcement

authority, as well as the termination of such arrangements. Furthermore, clause 106 (6)(b) gives the Secretary of State the power to direct a lead enforcement authority on how it uses its functions; this direction may relate to all or certain types of enforcement authorities, and may make different provision for different purposes.

Justification for taking the power

194. The ability for the Secretary of State to make arrangements or give directions in relation to role or functions of the lead enforcement authority gives the Secretary of State the flexibility to require a lead enforcement authority to adapt how it exercises its functions to respond to a development in the market. It will also provide the Secretary of State with the appropriate tools to oversee the operation of the lead enforcement authority as necessary. For example, the Secretary of State may want to direct a lead enforcement authority on what guidance they want it to produce, and when, if they consider that there are particular factors to which enforcement authorities should have regard in the exercise of their functions.

Justification for the procedure

195. The exercise of this power will not be subject to any Parliamentary procedure. The government considers that this is appropriate given the time specific and potentially sensitive nature of arrangements with lead enforcement authorities, and possibly confidential nature. It would not be appropriate for directions of this kind to require a statutory instrument.

**Clause 106: Lead enforcement authority: further provisions**

- (7) Power to make transitional or saving provision which applies where a change of lead enforcement authority occurs.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

Context and Purpose

196. Clause 106 makes further provision about the lead enforcement authority. This clause states that the lead enforcement authority must oversee the operation of a redress scheme and may provide information and guidance to other enforcement authorities. This clause also makes provision where the Secretary of State has designated the role of the lead enforcement authority.

Justification for taking the power



197. The purpose of the power at subsection (7) is to allow for the Secretary of State to make transitional or saving provision where there is a change in lead enforcement authority. These transitional and saving arrangements may be necessary to facilitate the smooth transition from one lead enforcement authority to another. Similar arrangements exist in the Tenant Fees Act 2019 (Section 24(4) and (5)) for changes in the lead enforcement authority.

#### Justification for the procedure

198. The regulations in subsection (7) will set out a level of detail regarding transitional matters that would not be appropriate for primary legislation. They will allow the Secretary of State the flexibility to provide for an orderly transition between lead enforcement authority and another. They will not address matters of principle which will already have been approved by Parliament.

#### **Clause 107: Guidance for enforcement authorities and scheme administrators**

- (1) The Secretary of State may issue or approve guidance about co-operation between enforcement authorities and redress schemes
- (2) An enforcement authority must have regard to guidance issued or approved under this section.

*Power conferred on: Secretary of State*

*Power exercised by: Guidance*

*Parliamentary Procedure: None*

#### Context and Purpose

199. There may be instances where the enforcement authority will be required to take action where there has been a breach of the requirement to be a member of a redress scheme. Co-operation between the enforcement authority and the redress scheme will be needed to make sure that these bodies can work together to achieve the desired outcomes.

200. Subsection (1) provides for the Secretary of State to issue or approve guidance to enforcement authorities in England and administrators of redress schemes about co-operation.

201. Subsection (2) will require an enforcement authority in England to have regard for the guidance issued or approved under this section. In addition, subsection (3) requires the Secretary of State to exercise the powers in clause 101 to require the administrator of a redress scheme to have regard to the guidance.

#### Justification for taking the power

202. It is not intended that the guidance will be issued via legislation. The power in this clause allows for the Secretary of State to issue or approve guidance which will support the co-operation of a redress scheme and the enforcement authority. This guidance may be necessary to enable these bodies to understand their respective roles in this redress context and how they must work together.

#### Justification for the procedure

203. The government's view is that statutory guidance containing technical, practical and operational details does not require parliamentary oversight. Stakeholder engagement is likely to be undertaken before guidance is issued to ensure that interested persons are given the chance to provide their views on the proposed guidance. This will ensure a degree of stakeholder involvement and transparency short of Parliamentary scrutiny.

#### **Clause 111: Regulation of remedies for arrears of rent charges**

- (2) (120D(1)) Power to limit the amounts payable by landowners, directly or indirectly, in respect of action to recover or compel payment of regulated rentcharge arrears.
- (2) (120D(2)) Power to make provision that no amount is to be payable by landowners in respect of particular descriptions of action to recover or compel payment of regulated rentcharge arrears.
- (2) (120D(3)) Power to make different provisions for different cases or to make transitional or saving provisions.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

#### Context and Purpose

204. Clause 111 introduces new measures in instances where an existing homeowner fails to make payment of a "regulated" rent charge, that is of a kind that could not be created in accordance with section 2 of the Rentcharges Act 1977, within 40 days of its due date. The proposals prevent rent owners from utilising certain statutory remedies and requires new notification procedures before rent owners can seek to recover or compel payment.

#### Justification for taking the power

205. This Clause inserts new section 120D into the Rentcharges Act 1977 which confers powers on the Secretary of State to limit the amounts payable by

homeowners, directly or indirectly, in relation to action for recovering or requiring payment of a rent charge, or to provide that no amount is to be payable. This introduces a provision, that was previously uncapped, to allow for a proportionate charge to accept payment of arrears or to remove of any restriction on the freehold title at the Land Registry. It does not cover any fee directly payable to the Land Registry. The Government intends to work with practitioners on the level of fee.

### Justification for the procedure

206. The power will be subject to the negative procedure. The Government considers that the negative procedure would be most effective for provisions relating to a technical matter such as this which covers an issue that needs to be kept under periodic review to ensure it remains appropriate and proportionate.

### **New Clause 114: Remediation Contribution Orders**

- (3)(2B) Power to specify descriptions of costs which are within or outside the scope of a remediation contribution order.

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by statutory instrument*

*Parliamentary procedure: Negative resolution*

### Context and Purpose

207. The Building Safety Act ('the Act') came into force on 28 June 2022, with the objective of reforming regulation of building safety.

208. It delivered far-reaching protections for qualifying leaseholders from the costs associated with remediating historical building safety defects, and an ambitious toolkit of measures that allowed those responsible for such defects to be held to account.

209. As a result, building owners are not legally able to charge qualifying leaseholders (defined under the Act but including those living in their own homes and with no more than three UK properties in total) for any costs in circumstances where a building (in the majority of cases meaning those over five storeys or eleven metres tall) requires cladding to be removed or remediated.

210. Qualifying leaseholders also have robust protections from the costs associated with non-cladding defects, including interim measures like waking watches.

211. Sections 116-125 of the Act contain a set of provisions specifically aimed at

remediation of particular types of defects defined as 'relevant defects'. One feature is to give leaseholders, and other interested parties, the power to apply for an order that the landlord remediate such defects, or alternatively for the party at fault for the defects to pay for the costs of remediation.

212. The broad policy objective of these provisions was to ensure that the cost of remediating these building safety defects is not automatically met by leaseholders through the service charge, and to create a mechanism to ensure remediation is carried out and/or paid for. Section 124 of the Act, which is subject to the proposed amendment, specifies the permitted scope of a remediation contribution order - an order by which the First Tier Tribunal (FTT) can prescribe that a specified body corporate or partnership should make payments to a specified person in relation to a relevant building, for the purpose of meeting costs incurred or to be incurred in remedying relevant defects in that building.
213. At present Section 124 (2) states "*Remediation contribution order*", *in relation to a relevant building, means an order requiring a specified body corporate or partnership to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying relevant defects (or specified relevant defects) relating to the relevant building.*"
214. Subsection (2B) provides the Secretary of State with the power to make regulations specifying descriptions of costs which are, or are not, to be regarded as falling within subsection (2). This delegated power effectively enables the Secretary of State to supplement the description of costs incurred in remedying (or taking relevant steps in relation to) relevant defects, to specify certain costs as within or outside the scope of the remediation contribution order, as appropriate.
215. The policy driver behind the amendments to section 124 is to clarify the scope of a remediation contribution order to include interim costs and temporary accommodation costs by specifying that such costs can be covered by such an order. By clarifying this point, we hope to avoid any argument before the FTT that leaseholders (and other interested persons) are unable to claim for such costs via a remediation contribution order
216. Furthermore, in the case of temporary accommodation costs, it will, for example, enable Local Housing Authorities (LHAs), who sometimes agree to pay for the costs of temporary accommodation for residents at risk of becoming homeless whilst unsafe buildings are remediated, to reclaim the costs of temporary accommodation which they have already paid for from landlords/ developers, via a remediation contribution order. They will therefore be able to provide temporary accommodation to residents safe in the knowledge that they can reclaim these costs in due course.

## Justification for taking the power

217. We seek a permissive power rather than a duty on the Secretary of State to make regulations. This is because we want a flexible power that ensures that the system accommodates any future changes or detail as to the nature of heads of loss which applicants may or may not claim for, allowing for the possibility of expanding the defined permissible scope of a remediation contribution order if the current drafting proves inadequate to accommodate/refuse some head of loss which has not presently been anticipated. This flexible approach will ensure that the Secretary of State can sufficiently respond to emerging issues affecting applicants particularly in circumstances when new issues from heads of loss not previously anticipated present themselves.
218. This permissive power allows the greatest flexibility in terms of implementation: it accommodates the fact that the current drafting may be sufficient to enable the FTT to operate the remediation contribution order regime adequately without further use of the power to supplement the definition of “costs”, but envisages a simple way of clarifying the power via secondary legislation in the event that further clarification is necessary.
219. The precise details of the appropriate scope of a remediation contribution order may extend to technical matters, related to the question of construction/ remediation of buildings which are subject to any defects arising as a result of something done (or not done) in connection with relevant works, which cause a building safety risk, such as a fire hazard. This may be better captured in future secondary legislation after consultation with FTT panels and wider stakeholders.
220. It is currently difficult to be precise about all the implications of a building requiring remediation, as every building is likely to be different and construction is subject to continual innovation. As applications to the FTT in respect of remediation contribution orders mature there will be a growing body of evidence which will inform whether there is a need to update or refine the definitions of which costs can and cannot be included within the scope of a remediation contribution order. This will be much easier to achieve where the definitions are set out in secondary legislation and where we have provided for the Secretary of State to be able to update or expand the definitions through secondary legislation.
221. By virtue of section 168 (7) of the Act, regulations made under section 124 are subject to the negative procedure. Relevant stakeholders could be engaged before such regulations are made to ensure that the regulations address stakeholder considerations adequately and appropriately.

### Justification for the procedure

222. The negative procedure is appropriate as defining and describing the scope of relevant remediation contribution order costs are likely to be detailed and technical in nature, for example, in relation to certain construction costs, for example, where the Secretary of State wishes to avoid repeated arguments on a particular head of loss. The power needs to be agile to keep up with emerging issues and developments to ensure its effectiveness. Given that these regulations are reserved to addressing technical matters, with the policy having been set out in primary legislation, the Government considers that the negative procedure affords an appropriate level of parliamentary scrutiny.

### **Clause 119: Power to make consequential provision**

- (1) and (2) Power to make provision that is consequential on the Act - including provision amending an Act of Parliament (including an Act passed in the same session as this Act). This is a Henry VIII power.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Affirmative if amending an Act of Parliament. Negative otherwise.

### Context and Purpose

223. This clause confers a power on the Secretary of State to make provision consequential on the Bill, including provision amending an Act of Parliament (including an Act passed in the same session).

### Justification for taking the power

224. Clause 119 grants the Secretary of State the power to make further consequential amendments by regulations that arise from this Bill. These regulations may amend, repeal or revoke an enactment passed either before this Act or later in the same session of Parliament as this Bill. and it is considered prudent to allow for the Secretary of State to make further amendments in the event that provisions in the Bill conflict with provisions in other legislation, which had not been identified prior to introduction. This is a Henry VIII power. It is conventional, as well as appropriate, that amendments to primary legislation will follow the affirmative procedure in both Houses of Parliament, and that amendments to secondary legislation will follow the negative procedure. The Department is of the view that power can be justified in the circumstances. The proposed power is a broad one, but it is thought that any amendments to primary would be minor, making the negative procedure still sufficient. It is anticipated that any consequential or transitional provisions will be limited and uncontroversial. The power extends to England and Wales.

225. This Bill introduces a wide-ranging set of reforms into leasehold legislation. This segment of property law is complex. Where possible we have sought to make consequential amendments to other legislation identified as necessary on the face of the Bill (see Part 5). Nevertheless, it is possible, given the complexity of leasehold legislation, that not all such consequential changes have been identified in the Bill. This consequential amendment power is based on the end provisions in the Office of Parliamentary Counsel's publish drafting guidance. As such we believe it is prudent for the Bill to contain a power to deal with consequential amendments in secondary legislation. It is anticipated that any consequential or transitional provisions will be limited and uncontroversial.

226. There are various precedents for such provisions, including section 92 of the Immigration Act 2016, section 213 of the Housing and Planning Act 2016 and section 42 of the Neighbourhood Planning Act 2017.

#### Justification for the procedure

227. It is conventional, as well as appropriate, that amendments to primary legislation will follow the affirmative procedure in both Houses of Parliament, and that amendments to secondary legislation will follow the negative procedure. It is therefore considered that this provides the appropriate level of Parliamentary scrutiny.

#### **Clause 120 (1): Regulations**

- (1)(a) Powers to make regulations includes power to make consequential, supplementary, incidental, transitional or saving provision.
- (1)(b) Powers to make regulations includes power to make different provision for different purposes.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* See relevant related power

#### Context and Purpose

228. This clause provides that powers to make regulations in the Bill includes power to make consequential, supplementary, incidental or saving provision and different provision for different purposes.

#### Justification for taking the power

229. This clause enables consequential, supplementary, incidental, transitional, saving or differential provision to be made if necessary, in connection with the

exercise of other powers under the Bill. Justification for power. This power may only be exercised in connection with a provision of the Bill regulations made under it. It is not possible to establish in advance all consequential provisions that may be required; a power is needed to avoid any legal uncertainty or legal lacunas after the Act comes into force

Justification for the procedure

230. The procedure applicable will be that of the relevant related power. It is conventional, as well as appropriate, that amendments to primary legislation will follow the affirmative procedure in both Houses of Parliament, and that amendments to secondary legislation will follow the negative procedure.

**Clause 120 (2): Regulations**

- (2): Power to make regulations under Part 6 also includes power to make different provision for different areas

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: See relevant related power under that Part*

Context and Purpose

231. Clause 120(2) provides that a power to make regulations under Part 5 (redress schemes) includes power to make different provision for different geographical areas. This, in addition to clause 120(1)(b) which allows regulations to make different provision for different areas, will allow for staged implementation of the requirement to join a redress scheme should that be required, for example, by geographical area or landlord/estate manager portfolio size. If taken forward, a staged implementation of the requirement to join a redress scheme could help landlords or estate managers to adapt and to ensure a smooth transition.

Justification for taking the power

232. The clause enables different provisions for different geographical areas to be made, where regulations are made under Part 6. This power may only be exercised in connection with a provision of the Bill regulations made under it. It is not possible to establish in advance all consequential provisions that may be required; a power is needed to avoid any legal uncertainty or legal lacunas after the Act comes into force

Justification for the procedure

233. The procedure applicable will be that of the relevant related power. Staged implementation of redress requirements may be required according to



geographical area in order to assist landlords/ estate managers to adapt and ensure a smooth transition.

### **Clause 120 (6): Regulations**

- (6) If a draft of a statutory instrument containing regulations under Part 6 would otherwise be treated as a hybrid instrument, it is not to be treated as a hybrid instrument.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: See relevant related power*

### Context and Purpose

234. Clause 120(6) provides that a draft of a statutory instrument containing regulations under Part 6 is not to be treated as a hybrid instrument, if (apart from that subsection) it would otherwise be treated as such.

235. The risk of hybridity may arise where a decision is taken to implement the redress requirement on a staged basis. This could, for example, be because certain categories of landlord/ estate manager are required to join a scheme before others. In order to prevent unnecessary delay to the redress scheme roll-out resulting from the hybrid instruments procedure, this de-hybridising provision has been included.

### Justification for taking the power

236. The clause provides that a draft statutory instrument under Part 6 will not be treated as a hybrid instrument. This is needed in order to provide for redress schemes to be rolled out flexibly, without delay, and on a staged basis, should the need arise.

237. Instruments that would otherwise be classed as hybrid will already be subject to the affirmative procedure and will therefore be subject to sufficient Parliamentary scrutiny. Furthermore, the Government intends to engage with relevant landlord / estate manager stakeholders who are likely to be specifically affected if regulations are proposed to be made that may otherwise be classed as hybrid instruments.

### Justification for taking the power

238. The procedure applicable will be that of the relevant related power.

### **Clause 122: Commencement**

- (3) Power to commence various provisions of the Act on such day as the Secretary of State may appoint.
- (4) Power to make transitional or saving provision in connection with the coming into force of any provision of this act.
- (5) Power to make regulations under this section for different provision for different purposes.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: (Negative procedure)*

*Context and Purpose*

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

*Justification for taking the power*

240. It is appropriate to provide for commencement of the substantive powers of the Bill by regulation and to make transitional provision in connection with the commencement of the Bill in order to ensure the orderly implementation of the provisions. This is a standard clause for commencing the provisions of an Act, and making saving and transitional provisions related to commencement, by regulations. Leaving a subset of provisions in the Bill, other than those for which

*Justification for the procedure*

241. Consistent with common practice, commencement regulations and associated transitional provision, regulations made under this clause are not subject to any Parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at the appropriate time and in an orderly manner. Consistent with common practice, commencement regulations under this

**Schedule 1 Part 1: Categories of permitted lease - Community housing leases**

- (2) Power to amend the definition of community housing leases

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

## Context and Purpose

242. The Bill outlines at a high level what a community-led housing lease is, and that it will be considered a 'permitted lease' for the purpose of the ban. The government intends to support further innovation in the sector by keeping the scope of the definition under review. We will continue to engage with industry over time to determine what changes may be required to be incorporated into the definition where needed.

## Justification for taking the power

243. Community led-housing is an emerging housing model that often seeks to provide affordable housing and typically requires a lease to operate and ensure that the property remains within the organisation or community for future generations, to the benefit of the community.

244. There are various models that can be adopted for a community led-housing development, dependent on the needs of the community and the intentions for the development.

245. The power is needed because there is no single way in which a community led-housing development must be set up and managed. Indeed, there are many different legal structures that can be used to create a community led-housing development. Beyond the legal structure underpinning the development, community led-housing is often defined by the features and purposes of the organisation and development.

246. We do not want to unnecessarily put a limit on how this model evolves, meaning that flexibility is required to amend the definition in future to reflect any innovation in the sector and calcification of the government's preferred definition.

## Justification for the procedure

247. The negative procedure is proposed to enable a flexible power that can respond to market changes. We have consulted on the types of leases that should be permitted under the ban, and announced our position publicly, including the exemption for community-led housing. Changes to the definition will be small and do not open the scope of the ban or alter how it operates in practice.

248. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration. The Department considers the negative procedure would be proportionate and appropriate given the limited subject matter of these Regulations.

## Schedule 1 Part 1: Categories of permitted lease - Retirement housing leases

- (3) Power to amend the definition of retirement housing leases.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

249. Retirement leases are permitted to be sold as a new leasehold house because they often require the homeowner to contribute towards the cost of bespoke and additional facilities or services through the service charge, and this is managed through a lease. The lease also enables the property to remain within the retirement development for future purchasers, particularly as the leases may be owned for shorter periods than for other types of long residential leases. These types of development are also subject to certain planning conditions.
250. The Bill outlines at a high level what a retirement lease is, and that it will be considered a 'permitted lease' for the purpose of the ban. The government intends to support changes to the retirement development model by keeping the scope of the definition under review. For example, if the age restriction in planning conditions were to change. We will continue to engage with the industry to determine what changes should be incorporated into the definition overtime where necessary.

### Justification for taking the power

251. The definition of retirement leases for the purpose of the ban may need updating in future to reflect an evolving model. For example, these developments are used by consumers over the age of 55, and may be limited by planning requirements.
252. Should these planning conditions be updated to mirror more general population changes, then flexibility is needed to ensure that the definition can meet these planning conditions.
253. Being able to amend the definition will also help the government to potentially prevent companies from seeking to exploit and abuse their position as a provider of homes falling under the definition of a permitted lease.

### Justification for the procedure

254. The negative procedure is proposed. We have consulted on the types of leases that should be permitted under the ban, and announced our position publicly, including the definition of retirement houses. Any future changes to the definition

will likely be small and technical and need to be dealt with quickly to ensure that the policy objective is met. These changes will not seek to significantly open the scope of the ban or alter how it operates in practice.

255. Given the limitations on this power and the technical nature of amendments, we consider the negative resolution procedure provides sufficient scrutiny of regulations made under this power.

## **Schedule 1 Part 2: Categories of permitted lease - Shared ownership leases**

- (6) Power to amend the definition of shared ownership leases.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

256. Shared ownership leases of a house are permitted because they are one of the key government affordable housing products and they require a lease to operate. When a homeowner staircases to 100%, they have the right to acquire the freehold.

257. The government intends to support changes to shared ownership leases by keeping the scope of the definition under review, including for Older People's Housing. We will engage with the industry when determining what changes should be incorporated into the definition in future, where necessary.

### Justification for taking the power

258. The definition of shared ownership leases may need updating in future to reflect an evolving model and ensure that access to this type of affordable housing product can continue.

### Justification for the procedure

259. The negative process is proposed. We have consulted on the types of leases that should be permitted under the ban and announced our position publicly. Any future changes to the definition will likely be small and technical and will not seek to significantly open the scope of the ban or alter how it operates in practice.

260. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration.

## **Schedule 1 Part 2: Categories of permitted lease - Home finance plan leases**

- (7) Power to amend the definition of home finance plan leases.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

261. Home finance plans are permitted to be sold as a house in the context of this ban as they require a lease to operate and can be purchased by those unable to acquire a mortgage for religious reasons (e.g. Sharia-compliant finance). Home finance plan leases must be regulated by the Financial Conduct Authority to meet the definition in the Schedule (Categories of permitted lease).
262. The government intends to support changes to financial products by keeping the scope of the definition under review. For example, if new and innovative financial products emerge. We will engage with the industry when determining what changes should be incorporated into the definition in future, where necessary.

### Justification for taking the power

263. The definition of home finance plan leases may need updating in future to reflect an evolving model or incorporate new types of lease-based financial products.
264. Being able to amend the definition will also help the government to prevent companies from seeking to exploit and abuse their position as a provider of homes falling under the definition of a permitted lease.

### Justification for the procedure

265. The negative process is proposed. We have consulted on the types of leases that should be permitted under the ban and announced our position publicly. Any future changes to the definition will likely be small and technical and will not seek to significantly open the scope of the ban or alter how it operates in practice.
266. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration.

## **Schedule 2: Leasehold houses: financial penalties**

- (10) Power to set regulations on the manner for providing a notice under the Schedule, including when the notice is treated as being provided.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

267. Schedule 2 (Leasehold houses: financial penalties) sets out the requirements for penalty notices when enforcing the ban on the grant of new leases of houses. These notices include a notice of intent, a final notice, or a withdrawal or amendment notice. These notices inform the offender that, amongst other things: they may (or will) be required to pay a penalty, the amount of the proposed penalty, the reasons for the penalty, the appeals process, and consequences for failure to comply with the notice.

268. The Schedule also contains provisions for the recipient of the notice(s) to make written representations and appeal within 28 days, starting the day after the notice is given for the final notice, and with 28 days starting on the day the notice is given for the notice of intent.

### Justification for taking the power

269. The power will allow regulations to be updated on how warning notices must be supplied to encompass behavioural and technological advances; for example, if email becomes the norm for supplying such a notice, or whether an alternative method is needed.

270. It also allows regulations to determine how a notice is given and ensure that persons in receipt of the notice are aware of the period to make written representation or to appeal a penalty.

### Justification for the procedure

271. The negative procedure is proposed because the regulations will make small, technical changes to the process of supplying the notice. A flexible power is therefore required.

272. Given the limitations on this power and the technical nature of amendments, these matters are not appropriate for the face of a Bill and there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration. A flexible delegated power is therefore sought in the Bill to effect these changes in response to sector specific needs and requirements as they arise.

## **Schedule 3 “Exception to enfranchisement for certified community housing providers”**

- (4)(3) New section 4B(2)(b) of the 1967 Act and (5)(3) New section

8B(2)(b) of the 1993 Act: Powers to describe a community-led housing provider that may receive a community housing certificate from the Tribunal to exempt it from freehold acquisition rights.

- (4)(3) New section 4B(6)(a), (b) and (c) of the 1967 Act, and (5)(3) New section 8B(6) (a), (b) and (c) of the 1993 Act: Powers to provide for the procedure for an application or cancellation of a community-housing certificate; and to set out matters the Tribunal must have regard to in deciding whether to issue or cancel a certificate.
- (4)(3) New section 4B(7) of the 1967 Act, and (5)(3) New section 8B(7) of the 1993 Act: Powers for dealing with the effect of an application to the Tribunal where an enfranchisement claim is ongoing.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Affirmative procedure*

### Context and Purpose

273. There will be a new exemption from freehold acquisition claims available in respect of community-led housing (CLH). The exemption should apply to a community-led housing organisation which has obtained a declaration from the Tribunal to that effect that it satisfies or will satisfy the definition of community-led housing. The development will cease to benefit from the exemption if at any time it no longer satisfies the definition of community-led housing.

274. The face of the Bill includes a definition of a community housing provider. The purpose of the power is to prescribe in regulations additional forms of CLH organisations who may be able to apply to the Tribunal for a community-housing certificate. Regulations may provide for the procedure for an application for or cancellation of a community-housing certificate; and to set out matters the Tribunal must have regard to in deciding whether to issue or cancel a certificate. Regulations may also provide for the effect of an application for an exemption certificate to the Tribunal where an enfranchisement claim from a leaseholders who may be affected is ongoing.

### Justification for taking the power

275. Community-led housing developments are a means of providing an affordable supply of housing to members of a community for the long-term benefit of that community. There are various models that can be adopted for a CLH development, dependent on the needs of the community and the intentions for the development.

276. The power is needed because there is no single way in which a CLH



development must be set up and managed. Indeed, there are many different legal structures that can be used to create a CLH development. Beyond the legal structure underpinning the development, CLH is often defined by the features and purposes of the organisation and development.

277. The power is intended to provide Government with flexibility to designate further types of CLH organisation that should be entitled to exemption from freehold acquisition rights as the CLH sector innovates, grows and develops which will, in turn, help to diversify the housing market.

278. It is necessary to make provision in regulations for dealing with the effect of an application to the Tribunal where an enfranchisement claim is ongoing. Examples are set out in 4B (7) and (8) and 8B (7) and (8).

#### Justification for the procedure

279. The affirmative procedure will provide Parliament with the opportunity to scrutinise and debate the implementation and proportionality of the application process for CH organisations and it is considered that this provides the appropriate level of parliamentary scrutiny.

#### **Schedule 3: “Eligibility of leases of National Trust property for extension”**

- (7) New section 32(8) of the 1967 Act and (8) New section 95(5) of the 1993 Act: Power to make provision for the “prescribed buy-back term”
- (7) New section 32ZA(1) of the 1967 Act and (8) New section 95A(1) of the 1993 Act: Power to make provision for a “protected National Trust tenancy” which do not benefit from lease extension rights.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

280. The National Trust play a big role in looking after the heritage of the nation. Inalienable National Trust land is held for the benefit of the nation, forever. In order to ensure that that land remains in national ownership for future generations, freehold acquisition is restricted on National Trust land. The Bill introduces rights for National Trust leaseholders to benefit from the new lease extension rights in line with other leaseholders (e.g. 990 years).

281. The first power enables the Secretary of State to provide for a term which must be inserted into an extended lease, which allows the National Trust to buy back the extended lease at market value if the leaseholder chooses to dispose of it.

That will allow the National Trust to manage the long-term use of its inalienable land on behalf of the nation.

282. The second power also makes provision to make a narrow exception to the right to a lease extension for a small number of protected National Trust tenancies of specified visitor attraction properties and donor leases, so that the Trust may make bespoke lease agreements when a noteworthy property comes into its ownership, for example, where a property could be opened to the public in whole or in part. Those limited exceptions will be set out in regulations made by the Secretary of State.

#### Justification for taking the power

283. The power in relation to the buy-back term is required to set out the prescribed buy-back term which is to be inserted into National Trust leases extended under the new extension rights contained in the Bill. It is also required to set out technical procedural requirements, the price payable, how costs are dealt with and the operation of the term if the National Trust is not party to the extended lease.

284. There are only a small number of identifiable leases or properties that would fall within the new exemption for protected National Trust Tenancies. It is considered appropriate for this power to be flexible given that it's a narrow power that needs to be able to promptly respond to changes in circumstances to notable properties in the future. It is considered appropriate for this power to be flexible given that it's a narrow power that needs to be able to promptly respond to changes in circumstances to notable properties in the future. The power allows the Secretary of State to set out the list of exempted tenancies and to amend or add to that list, on the advice of the National Trust, albeit this is not a requirement to exercise the power in all circumstances. These tenancies were never intended to receive new enfranchisement or lease extension rights, therefore the power to set these out is appropriate. The power to amend or add to that list provides for future notable properties which come into the Trust's ownership. Those tenants retain their pre-commencement rights to a lease extension under the Leasehold Reform Act 1967 Act where they already exist.

#### Justification for the procedure

285. Regulations made under this power will be subject to negative procedure. The negative resolution procedure would afford a level of scrutiny in the case of regulations made under this clause. Given the limitations on this power and the technical nature of amendments, the negative resolution procedure is sought to ensure that adequate parliamentary scrutiny is afforded to make the largely technical changes proposed.

## **Schedule 4 Determining and Sharing the Market Value Part 5: The standard valuation method and Part 7: Determining the term value**

- 26(8), 27(7) and 38(1) Power to set the deferment and capitalisation rate to be used for the mandated methodology in lease extension and freehold acquisition claims.

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* (Negative procedure)

### Context and Purpose

286. These paragraphs confer a power on the Secretary of State to set the capitalisation and deferment rates used in valuation calculations where the mandated methodology is used for qualifying statutory lease extensions and freehold acquisitions. The rates will be reviewed on a 10-yearly cycle and set via the regulatory framework.

### Justification for taking the power

287. This power will resolve one of the issues with the current leasehold valuation market, which is currently based on negotiation, custom, and practice. By allowing the Secretary of State to set the rates used in lease extensions and freehold acquisitions, it will standardise the process and negate the need for a case-by-case assessment. This will reduce disputes between leaseholders and freeholders, as well as their costs. It will also enable the use of an online calculator, which will help each party to understand the premium payable to extend a lease or price payable to purchase the freehold from the outset.

### Justification for the procedure

288. The Government considers that the negative procedure is appropriate for this mostly technical provision to set standardised rates. This power will not address matters of principle, which will already have been approved by Parliament to make the process for calculating the cost of extending a lease or acquiring the freehold consistent.

## **Schedule 8 Leaseholder enfranchisement and extension: miscellaneous amendments Part 2: Shared Ownership Leases and the LRA 1967 etc**

- (13) Power to exclude certain shared ownership leases from freehold acquisition rights.
- (19)(2) Power to exclude certain shared ownership leases from freehold acquisition rights.

*Power Conferred On: Secretary of State*

*Power Exercised By: Regulations (Statutory Instrument)*

*Parliamentary Procedure: Negative Procedure*

### Context and Purpose

289. The Bill excludes most shared ownership leases from freehold acquisition rights. The policy objective of shared ownership property is to provide a means for households who can't yet afford to buy the whole property to do so gradually by staircasing: if instead the freehold could be acquired by enfranchisement, rather than by staircasing, it would undermine the product. Whether shared ownership leaseholders have freehold acquisition rights already, before the Bill, is uncertain: they're explicitly excluded under the 1967 Act for houses, whilst the provisions in the 1993 Act have been subject to conflicting court and tribunal decisions with regard to the enfranchisement rights of shared owners. This uncertainty renders legislative powers necessary to better clarify the legal position.

290. More specifically, the Bill excludes shared ownership leases from freehold acquisition rights *where the leaseholder has the right to staircase to 100% ownership* (or where the shared ownership provisions in their lease thereafter drop away). Shared ownership leases where the leaseholder cannot staircase to 100% ownership are therefore not excluded from freehold acquisition rights.

291. The power conferred on the Secretary of State in Schedule 8 enables the Secretary of State by regulations made to exclude shared ownership leases from freehold acquisition rights where they do not allow the leaseholder to staircase to 100%, and are therefore not excluded on the face of the Bill.

### Justification for taking the power

292. The purpose of these provisions is to create a more flexible and proportionate legislative framework. The Secretary of State may want to exclude certain shared ownership leases from freehold acquisition rights even where they do not allow the leaseholder to staircase to 100% ownership. For example, some shared ownership leases for the elderly do not allow the leaseholder to staircase to 100%, but the Secretary of State may decide that we do not want the retirement property stock to be acquired, and cease being retirement stock. The same may be true for other types of shared ownership property where the leaseholder is prevented from staircasing to 100%, but which we do not want to be acquired, say because the type of property fulfils some policy objective. The power conferred on the Secretary of State will enable the Secretary of State by regulations made to identify which further types of shared ownership leases (that do not allow staircasing to 100%) we want to exclude from freehold acquisition rights. This may change over time either if we have not yet identified

all types, or because affordable housing policy develops over time, and we do not yet know how shared ownership structures may be used in future, so that the Government requires flexibility, which is given to it by this power. The Department wants to ensure a more agile framework. It wants to provide powers to enable a mechanism that supports a more responsive, adaptive system than the current structure allows so that Government can quickly respond to developments in the market or in response to other economic circumstances.

### Justification for the procedure

293. As this power is primarily intended to be used for the purpose of ensuring that most shared ownership leases are excluded from freehold acquisition rights, it is not considered necessary that there be significant parliamentary scrutiny of any variations to arrangements under this power. Indeed the power will need to be used relatively rarely and industry engagement is likely in order to establish which arrangements should be excluded. Therefore, the Department considers the negative procedure would be proportionate and appropriate. The Bill sets out the conditions under which a shared ownership lease is excluded from freehold acquisition rights. It sets out that shared ownership leases where the leaseholder is prevented from staircasing to 100% are not excluded by the Bill, and very clearly sets out that it is those such leases that the Secretary of State may by regulations made further exclude. It is only for the Secretary of State to set out exactly what type of those such leases are to be further excluded, which does not require the same level of Parliamentary scrutiny that the broader framework does. The fundamental principle of the policy is provided for in the Bill with these elements being more a matter of detail and operational in nature. Therefore, the negative procedure is proposed.

### **Schedule 9 – Right to vary lease to replace rent with peppercorn rent.**

- (14)(2) Power to prescribe by regulations the amounts payable by a leaseholder for a failed claim in respect of their landlord's non-litigation costs where an exception from the general non-litigation costs rules applies.
- (15)(3) Power to prescribe by regulations the amounts of the landlord's non-litigation costs payable in a successful claim by a tenant where an exception from the general non-litigation costs rules applies.

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations (statutory instrument)

*Parliamentary Procedure:* Negative procedure

### Context and Purpose

294. Schedule 9 sets out the financial costs to be paid by a leaseholder (referred to as a tenant) seeking to vary their lease to replace the rent with a peppercorn rent. Paragraphs 14 and 15 provide that, in the circumstances specified in the paragraphs, tenants will be required to pay the fixed non-litigation costs (which include valuation and conveyancing costs) of the landlord.
295. Costs are payable under paragraph 14 where the tenant's claim for a peppercorn rent fails and the reason for the failure is not a permitted reason. The permitted reasons relate, in general, to cases in which the claim fails due to matters beyond the leaseholder's control.
296. Costs are payable under paragraph 15 where the tenant's claim for a peppercorn rent succeeds but a "low-value" claims exception applies. The low-value exception covers the circumstances where a landlord's non-litigation costs would be greater than the premium to be paid by the tenant for the variation of their lease.
297. Under paragraphs 14(2) and 15(3), the amount of the fixed costs is to be prescribed in regulations. Additionally, the threshold below which the premium must fall for a claim to count as a low-value claim is also to be prescribed in regulations (under paragraph 15(1)(c) and (3)).

#### Justification for taking the power

298. The purpose of these powers is to enable the Secretary of State (in England) and Welsh Ministers (in Wales) to prescribe by regulations the amounts payable in failed claims and low-value claims, and the threshold below which a claim will be a low-value claim.
299. It is necessary to make provisions to prescribe amounts to reduce costly and protracted disputes between landlords and leaseholders about the proper level of the landlord's reasonably incurred non-litigation costs. We will be working with practitioners to form a view on the appropriate amounts to be prescribed. Fixing the amounts (and proportions) in primary legislation would mean doing so without the benefit of practitioner engagement from those affected by the new regime and is not considered a suitable vehicle for the detailed analysis involved with such considerations.
300. We also want to keep the prescribed amounts (and proportions) in regulations so that they can be more easily amended over time, creating maximum flexibility to allow for market factors. Additionally, the prescribed threshold for low-value claims needs to be responsive to the level of fixed costs a landlord can recover, because the low-value claims exception should apply where the premium will not cover the landlord's fixed costs.

#### Justification for the procedure

301. The Department considers that these powers should be subject to the negative procedure. The Department considers that this is appropriate as it will provide a degree of Parliamentary oversight, whilst ensuring that the details of the regulations can be updated to reflect developing policy and stakeholder engagement on what should be prescribed amounts. Given the limitations on these powers and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration. These powers will not address matters of principle which will already have been approved by Parliament in providing for the right to vary a lease to replace a rent with a peppercorn rent, and exceptions from the general costs rules

### **Schedule 9: Right to vary lease to replace rent with peppercorn rent**

- (21)(1) Power to give effect to the right of the qualifying tenant to a variation of the lease such that the rent payable thereafter is a peppercorn.
- (21)(4) Power to amend the provisions (and modifications thereof) of the LRHUDA 1993 which apply in this Schedule in relation to the qualifying leases of flats and houses respectively.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary Procedure: Negative*

#### Context and Purpose

302. The Bill introduces a ground rent buy out right, under which tenants with more than 150 years remaining on the lease will be able to reduce their rent to peppercorn on payment of a premium. The ground rent buy out right is to enable a leaseholder with a long lease to buy out the ground rent without extending the lease, since by doing so they only pay the term value, and not the reversion value too – in other words, it's cheaper than paying for an extension, when an extension is probably not desired due to the long lease. The clauses enable the authority to make regulations so that the lease can be varied as such, and also to make regulations to amend the provisions of the 1993 Act which apply to the right.

#### Justification for taking the power

303. (21) (1) is an equivalent to the power that exists for all current enfranchisement claims under the 1993 Act. It lets procedural regulations to be made, potentially specifying the use of a contract, terms to be included, standard forms to be used. These are (a) complex detailed matters that would not be best addressed on the face of a Bill, and (b) need to be flexible, because conveyancing practices change or develop. (21) (4) is required because including a full set of legislative

provisions for ground rent buy outs would be disproportionate given the right will affect a relatively small number of leaseholders, and also because the provisions in the previous Acts for other enfranchisement rights can be used – the power is taken in case those provisions need to be amended to make them work for ground rent buy outs.

Justification for the procedure

304. These new powers to make regulations are no wider (and no different in nature) than the existing powers to specify enfranchisement procedure.

**Department Name:** Department for Levelling Up, Housing and Communities

**Date:** 29 February 2023