RENTERS (REFORM) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Renters (Reform) Bill as brought from the House of Commons on 1 May 2024 (HL Bill 74). A carryover motion and money resolution were passed in the House of Commons on 23 October 2023.

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

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Overview of the Bill

Policies in the Bill

1 The Renters (Reform) Bill ("the Bill") seeks to support the government's manifesto commitment to deliver 'a better deal for renters', including by abolishing section 21 evictions and reforming landlord possession grounds. The objective of the Bill is to ensure private renters have access to a secure and decent home and that landlords retain the confidence to repossess their properties where they have good reason to. To this end, the Bill seeks to:

a. abolish section 21 evictions and move to a simpler tenancy structure where all assured tenancies are periodic – aiming to provide more security for tenants and empower them to challenge poor practice and unfair rent increases without fear of eviction;

b. reform possession grounds so landlords can still recover their property (including where landlords wish to sell their property or move in close family) and aiming to make it easier for landlords to repossess their properties where tenants are at fault, in cases of anti-social behaviour and repeat rent arrears;

c. introduce a new Ombudsman that private landlords must join. The Ombudsman is intended to provide fair, impartial, and binding resolution to many issues and to be quicker, cheaper, and less adversarial than the court system;

d. introduce a new Property Portal including a database of residential landlords and privately rented properties in England. This is intended to help landlords understand their legal obligations and demonstrate compliance, provide better information to tenants enabling them to make informed decisions when entering into a tenancy agreement, and assist councils in targeting enforcement activity where it is most needed;

e. provide stronger protections against backdoor eviction by ensuring tenants are able to appeal above-market rents including those which are purely designed to force them out. Landlords will still be able to increase rents to market price for their properties;

f. give tenants the right to request a pet in their property, which the landlord must consider and cannot unreasonably refuse. The Bill amends the Tenant Fees Act 2019 so that landlords can require pet insurance to cover any damage to their property;

g. introduce a Decent Homes Standard to the private rented sector. This aims to ensure that tenants benefit from homes that are safe and decent, while simplifying and clarifying requirements for landlords;

h. ensure no family is unjustly discriminated against when looking for a place to live, by making it illegal for landlords and agents to have blanket bans on renting to tenants with children or who receive benefits; and

i. strengthen local councils' enforcement and investigatory powers – to help target criminal landlords.

Structure of the Bill

2 The Bill contains 5 parts and 6 schedules. It introduces substantial new provisions on the face of the Bill and makes changes to a number of pieces of housing legislation.

3 Part 1 deals with changes to assured tenancy legislation, including abolishing section 21 evictions and fixed term assured tenancies; making changes to landlords' grounds for possession; making changes to the procedure for rent increases; making provision for the right to request permission to keep a pet; and making it unlawful for landlords and agents to have blanket bans on renting to those in receipt of benefits or who have children.

4 Part 2 makes provisions for the new Ombudsman (landlord redress scheme) and the Private Rented Property Portal.

5 Part 3 introduces provisions for a Decent Homes Standard to apply to the private rented sector.

6 Part 4 deals with enforcement of the reforms introduced by the Bill including establishing a Lead Enforcement Authority and giving new investigatory powers to local housing authorities.

7 Part 5 contains the technical Clauses related to the Bill, including territorial extent, commencement and application, and powers to make consequential and transitional provision.

Policy background

Context

8 The private rented sector has doubled in size since 2002 and is now the second largest housing tenure. There are 4.6 million households (c 11 million people) that rent from a private landlord, accounting for 19% of the housing market – remaining relatively stable at this level since 2013-14.[1] This compares to 65% of households in the owner-occupied sector and 16% in social housing.

9 With this historic growth of the sector, both landlords and tenants have become increasingly diverse. The private rented sector still provides homes for young professionals and students seeking flexibility but, increasingly, families and older tenants are also looking to the sector for a stable and secure home.[2] There is also great variety in landlords. The English Private Landlord Survey 2021 found that some are large corporates with large portfolios, while others are individuals letting a property as an investment for the future or may have become landlords more by circumstance than design and 4% originally became a landlord in order to let property as a full-time business.

10 The government set out detailed reform plans for the private rented sector in the white paper, *'A Fairer Private Rented Sector'*, which was published in June 2022. Proposals in the white paper were informed by consultations in 2018 and 2019 on tenancy reform; a 2018 consultation that explored the option of a single private rented sector housing Ombudsman; and a digital

[1] DLUHC 2022-2023 English Housing Survey Headline Report

[2] The sector has the highest proportion of younger people (43% aged 16-34). The number of older people (aged 65-75) in the sector is increasing – up 38% since 2010 to 5% in 2020-21.

discovery project, conducted by digital consultancy Zaizi, as part of the exploration of the potential benefits of a property portal. They also built on commitments made in the government's 'Levelling Up the United Kingdom' white paper from February 2022, which committed to halve the number of non-decent rented homes by 2030.

11 The private rented sector and levelling up white papers set out evidence on the case for change, including that:

a. Section 21 evictions have led some tenants to feel reluctant to challenge poor standards due to the risk of eviction without reason. Short notice moves which can occur because of section 21 have negative effects on outcomes and reduce investment in local communities. Further detail is set out in the private rented sector white paper.

b. The private rented sector has a higher proportion of properties that do not meet standards than other housing tenures. According to the 2022 English Housing Survey, 23% of privately rented properties do not meet the Decent Homes Standard (the government's main metric for decency). This is compared to 12% in the social rented sector. Likewise, hazards that present an imminent risk to health exist in 13% of properties – compared to 5% in the social rented sector. Private rented homes containing these hazards are estimated to cost the NHS £340 million annually (Health Equity in England: The Marmot Review 10 Years On, February 2020).

c. There are higher concentrations of homes that do not meet the Decent Homes Standard in certain parts of the UK with lower productivity such as Yorkshire and the Humber. The Building Research Establishment (BRE) has estimated that poor quality housing across all tenures is costing society £18.6 billion every year. [3]

d. Landlords report problems in recovering properties when faced with anti-social behaviour or rent arrears. They face difficulties being able to access information and support to navigate the legal landscape. Landlords are frustrated when criminal landlords undercut those landlords who take their responsibilities seriously and this can be compounded by limited redress options meaning disputes escalate to more costly and protracted court proceedings. Private landlords can voluntarily join an agent redress scheme or the Housing Ombudsman. This covers approximately 80 to 90 private landlords out of an estimated 2.3 million.[4]

12 The private rented sector white paper committed to address these challenges for both landlords and tenants through legislation, including abolishing section 21 evictions and reforming landlord possession grounds.

Detail of individual policies in the Bill

Abolishing section 21

13 The Bill abolishes section 21 evictions and fixed term tenancies. All tenants who would previously have had an assured tenancy or assured shorthold tenancy will move onto a single system of periodic tenancies. Tenants will need to provide two months' notice when leaving a

[3] The Cost of Poor Housing in England, BRE, 2021 Briefing Paper

[4] This data is an estimate based on data directly provided to DLUHC by the Property Ombudsman and the Property Redress Scheme, as well: Housing Ombudsman Annual Report and Accounts 2020/21.

tenancy. Landlords will only be able to evict a tenant in reasonable circumstances as set out in this legislation.

14 Purpose-Built Student Accommodation (PBSA) will be exempt from these changes as long as the provider is registered for government-approved codes, since these tenancies are not assured. Lettings by PBSA landlords are governed by the Protection from Eviction Act 1977.

15 The Bill also mandates that landlords must provide a written statement of terms setting out basic information about the tenancy and both parties' responsibilities while retaining both parties' right to agree and adapt terms to meet their needs.

Reforming landlord possession grounds

16 The Bill reforms the grounds for possession with the intention of ensuring they are comprehensive, fair, and efficient. As far as possible, the grounds have been defined unambiguously, to seek to offer landlords certainty about whether the ground will be met if going to court. Grounds have also been made mandatory where it has been judged reasonable to do so. This means judges must grant possession if the landlord can prove that the ground has been met.

17 The Bill introduces a new ground for landlords who wish to sell their property and amends the ground for moving in to include close family members. These grounds will not be available to be used in the first 6 months of a new tenancy, mirroring the protection tenants currently receive.

18 The Bill also introduces a new mandatory ground for repeated serious rent arrears. Evictions will be mandatory where a tenant has been in at least two months' rent arrears three times within the previous three years, regardless of the arrears balance at hearing. This seeks to support landlords, while making sure that tenants with longstanding tenancies are not evicted due to one-off financial shocks that occur years apart.

19 The Bill increases the notice period for the existing rent arrears ground to four weeks and retains the mandatory ground in cases where a tenant has two months' arrears at both the time of serving notice and of the hearing. This is intended to ensure that tenants have reasonable opportunity to pay off arrears without losing their home.

20 The Bill also expands the discretionary eviction ground to clarify that any behaviour 'capable' of causing 'nuisance or annoyance' can lead to eviction. The government is also considering how to implement the proposal announced in the March 2023 Anti-Social Behaviour Action Plan to set out the principles that judges must consider when making their decision, such as giving weight to the impact on landlords, neighbours, and housemates, and whether the tenant has failed to engage with other interventions to manage their behaviour.

21 The Bill introduces a new mandatory ground which will allow landlords renting to full-time students to seek possession ahead of each new academic year, facilitating the ongoing yearly cycle of short-term student tenancies. It will apply to full-time students who occupy on either joint or individual tenancy agreements. In order for a landlord to rely on this new ground to gain possession, the tenant must have been given a written agreement to that effect before or at the start of the tenancy.

22 The Bill introduces new grounds for possession for the supported housing sector to end tenancies where necessary, to enable them to continue to operate housing safely or effectively, or otherwise protect the viability of their service.

23 The Bill also introduces new grounds for possession in relation to temporary accommodation for homelessness and for sectors that give accommodation tied to employment. This is intended to ensure that these services can continue to be delivered.

24 The Bill makes consequential changes to Part VII of the Housing Act 1996 to remove reference to section 21 notices, as section 21 is being abolished by this Bill, and replace the references to assured shorthold tenancies and fixed term tenancies with assured tenancies. The majority of these changes will be minor wording amendments, excepting the changes to the threatened with homelessness definition which will require local housing authorities to accept a homelessness duty if a household is served with a section 8 notice, instead of a section 21 notice (since such a notice will no longer exist). The Bill also repeals, 'the reapplication duty', as England moves to a new tenancy framework.

Rent increases

25 Landlords will be able to raise rents annually to market prices (replicating existing mechanisms) and must provide two months' notice of any change. Tenants will be able to challenge above-market rent increases through the First-tier Tribunal (Property Chamber) ("the Tribunal") - this seeks to prevent above-market rent increases being used to force tenants to vacate a property. Terms which allow rent increases outside of the statutory mechanism will be of no effect.

Renting with pets

26 The Bill requires landlords not to unreasonably withhold consent when a tenant requests to have a pet in their home, with the tenant able to challenge a decision. It also amends the Tenant Fees Act 2019 to include pet insurance as a permitted payment. This means landlords will be able to require pet insurance, with the intention of ensuring the costs of any damage to their property is covered.

Blanket Bans

27 The Bill makes it unlawful for landlords and agents to have blanket bans on renting to tenants with children or who receive benefits. This will include both overt discriminatory practices such as 'No DSS' adverts, and situations where landlords or letting agents use other indirect practices in order to prevent someone entering into a tenancy, such as requiring higher deposits or sums of rent in advance that are not otherwise applied to tenants without children or in receipt of benefits. Breaches in England will be a civil offence with a fine of up to £5,000, breaches in Wales and Scotland will be subject to criminal sanctions.

28 This prohibition of Blanket Bans will apply in England, Wales and Scotland. However, the enforcement mechanism will vary across the devolved administrations.

Landlord redress schemes

29 The Bill enables the government to approve or designate one or more redress schemes which all private landlords who rent out property on an assured or regulated tenancy in England will be required to join, regardless of whether they use an agent. This will ensure all tenants under relevant tenancies have access to redress services to deal with their complaints, and that landlords remain accountable for their own conduct and legal responsibilities. The intention is that the government will approve or designate only one scheme to act as Ombudsman for the sector.

30 The Bill provides for membership of an approved or designated scheme to be mandatory and for landlords to remain members, including for a specified period after ceasing to let the

property. It provides for local councils to be able to take enforcement action against landlords that fail to join an approved or designated scheme, or who are expelled for failure to adhere to their member obligations. It also sets out the redress powers of a scheme, which will include compelling landlords to issue an apology, provide an explanation, take remedial action, and/or pay compensation.

Private Rented Sector Database.

31 The Bill legislates for a Private Rented Sector Database, which will support the new digital Property Portal service. Landlords will be required to sign up and register all properties they let out, and the Bill provides for local authorities to be able to take enforcement action against landlords who do not meet their obligations to register their properties. The Bill provides for an Operator of the database, who will be the Secretary of State, or an organisation appointed by the Secretary of State. The Bill provides for regulations, which will set out further details about how the database will be operated and overseen, what information will be collected and made public, and details about how renewals will work.

Lead Enforcement Authority

32 The Bill gives the Secretary of State the power to appoint a lead enforcement authority, or lead enforcement authorities, for the purpose of any provisions in the relevant landlord legislation (which is defined in Clause 100). A lead enforcement authority's functions will include providing guidance, information and advice to local housing authorities about how to exercise their functions under that legislation, helping the provisions to be enforced in a consistent way. In addition, a lead enforcement authority will have the power to enforce, allowing it to take on complex or high-profile cases for which the responsible local housing authority may lack the capacity or capability to pursue.

Decent Homes Standard

33 The Bill gives the Secretary of State power, subject to the affirmative resolution procedure, to set requirements for the minimum standards that properties in the private rented sector must meet, thereby introducing the Decent Homes Standard to the private rented sector. The Bill amends the Housing Act 2004 to provide means of enforcement where properties do not meet the new requirements, for example by way of an enforcement notice. For landlords who have failed to take reasonably practicable steps to keep their properties free of serious hazards, local councils will be able to issue fines of up to £5,000, and powers are also available for local councils to prosecute or impose a fine of up to £30,000 for non-compliance with such earlier enforcement action.

Investigatory Powers

34 The Bill strengthens local housing authorities' investigatory powers. Local housing authorities will have additional powers to target rogue landlords including the power to require information and the power of entry into residential or business premises. The new powers contain safeguards to ensure that they are used by local housing authorities when appropriate.

Structure of these notes

35 The Clause-by-Clause commentary in these notes follows a set structure. The explanatory notes for each section are divided as follows:

Effect

36 Details exactly what the Clause is going to do.

Background

37 Explains what the current legal position is. This might be the position under an existing piece of legislation which is being textually amended by the Act, or the position under common law. For example: "this section replaces X provision in the XX Act 2000" or "this is a new provision".

38 It also provides some explanation as to why this change to the law is being made by the Act.

Proposed use of power

39 Where applicable, this section outlines how it is intended that any powers to make regulations will be used.

Examples

40 Where possible, examples are provided detailing how the provision will operate in practice. The descriptions provided are based on an assumption that the relevant provisions are enacted as proposed in the Bill.

Legal background

41 A list of primary legislation referenced or amended by the Bill is as follows (alphabetised)

a. Building Safety Act 2022

b. Consumer Rights Act 2015

c. Criminal Justice and Police Act 2001

d. Deregulation Act 2015

e. Housing Act 1985

f. Housing Act 1988

g. Housing Act 1996

h. Housing Act 2004

i. Housing and Planning Act 2016

j. Housing and Regeneration Act 2008

k. Housing (Scotland) Act 1988

l. Land Compensation Act 1973

m. Local Government Act 1974

n. Local Government and Housing Act 1989

o. Private Housing (Tenancies) (Scotland) Act 2016

p. Protection from Eviction Act 1977

q. Rent (Scotland) Act 1984

r. Renting Homes (Fees etc.) (Wales) Act 2019

s. Renting Homes (Wales) Act 2016

t. Tenant Fees Act 2019

42 The Protection from Eviction Act 1977 protects tenants from illegal eviction and harassment. Local councils and the police have enforcement powers to investigate cases of illegal eviction and harassment and can prosecute where an offence has been committed. The Rent (Scotland) Act 1984 legislates for criminal offences relating to eviction and harassment in Scotland.

43 The Housing Act 1988 sets out the statutory framework for assured and assured shorthold tenancies in England, including introducing section 21 notices. The Housing (Scotland) Act 1988 made similar provision for Scotland. Assured and assured shorthold tenancies are the two main tenancy types in the private rented sector and for tenants of private registered providers of social housing.

44 An assured tenancy is a tenancy agreed under the Housing Act 1988. A landlord may, having given a section 8 notice to the tenant citing one of the statutory grounds for possession, apply to the Court for an order for possession of the premises. Grounds can be mandatory or discretionary. A mandatory ground requires the court to order possession if the landlord can prove that the ground applies. A discretionary ground allows the court to decide whether it is reasonable for possession to be granted if the landlord proves the ground applies. Assured tenancies are currently most commonly offered to tenants of private registered providers of social housing.

45 An assured shorthold tenancy is a type of assured tenancy. Most new tenancies in the private rented sector in England are automatically this type. A tenancy can be an assured shorthold tenancy if all the following apply:

a. It is let by a private landlord or housing association;

b. The tenancy started on or after 15 January 1989;

c. The property is a tenant's main accommodation; and

d. A landlord does not live in the property.

46 A landlord can end a tenancy of this type by either giving to the tenant a section 8 notice citing a ground for possession (as above for an assured tenancy), or by giving to the tenant a section 21 notice requiring the tenant to give up possession at the end of a period of the tenancy but without requiring a reason to be provided or citing a ground.

47 The Housing Act 1996 amended the Housing Act 1988 to remove the requirement of service of a notice to turn an assured tenancy into an assured shorthold tenancy. As a result, assured shorthold tenancies were made the default tenancy in the private rented sector. The Housing Act 1996 also provides for functions of local housing authorities to be used to assist those who are homeless or threatened with homelessness.

48 The Housing Act 2004 sought to modernise and improve standards and management of private rented sector properties, including by requiring Houses in Multiple Occupation to be licensed and removing the ability for section 21 notices to be issued where they are not licensed. It also introduced tenancy deposit schemes and Rent Repayment Orders, alongside the Housing Health and Safety Rating System.

49 The Housing and Planning Act 2016 introduced the Database of Rogue Landlords and Property Agents and banning orders.

50 The Tenant Fees Act 2019 bans unfair letting fees and caps tenancy deposits to either five- or six-weeks' rent. It prevents a landlord from serving a section 21 notice if the landlord has required a prohibited payment and the payment is made as a result or if the landlord breached the rules on holding deposits in relation to an assured shorthold tenancy. A landlord is prevented from serving a section 21 notice to end the tenancy if the payment or deposit has not been repaid. The Renting Homes (Fees etc.) (Wales) Act 2019 introduced similar measures in Wales.

51 The Building Safety Act 2022 intended to improve the design, construction and management of higher-risk buildings. The Act amongst other things makes provisions for information sharing with other bodies.

52 The Consumer Rights Act 2015 amended the law relating to the rights of consumers and protection of their interests, this included make provision about investigatory powers for enforcing the regulation of traders.

53 The Criminal Justice and Police Act 2001 gave extra powers to the police, with the aim to tackle crime and disorder more effectively. The Act gives powers of seizure in specified circumstances.

54 The Local Government Act 1974 introduced the Local Government and Social Care Ombudsman.

55 The Renting Homes (Wales) Act 2016 introduced a new tenancy system in Wales and requirements on landlords related to maintenance and communication.

56 The Private Housing (Tenancies) (Scotland) Act 2016 introduced a new tenancy system in Scotland.

57 The Bill makes consequential changes to a number of existing Acts further to the Decent Homes Standard measures. Consequential changes are made to the Land Compensation Act 1973, Housing Act 1985, Housing and Regeneration Act 2008, Deregulation Act 2015, Housing and Planning Act 2016 and Tenant Fees Act 2019.

Territorial extent and application

58 Clause 136 sets out the territorial extent of Clauses in the Bill, which is England and Wales, and, in respect of certain provisions, Scotland. The extent of a Bill is the legal jurisdiction of which it forms part of the law; application refers to where it has practical effect. The application of the Bill is mostly England only but in relation to blanket bans on renting to tenants who receive benefits or with children, it will also apply to Wales and Scotland.

59 Housing legislation in relation to Wales, Scotland and Northern Ireland is within the devolved legislative competence of Senedd Cymru, the Scottish Parliament, or the Northern

Ireland Assembly respectively. In line with the Legislative Consent Motion Convention (the "Sewel Convention"), the UK Parliament will not normally legislate for areas within devolved legislative competence without the consent of the devolved legislature concerned. A Legislative Consent Motion has been requested from both the Welsh and Scottish Governments.

60 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Part 1: Tenancy reform

Chapter 1: Assured Tenancies

Clause 1: Assured tenancies to be periodic with rent period not exceeding a month

Effect

61 Clause 1 inserts a new section 4A before section 5 of the Housing Act 1988. This clause provides that all assured tenancies will be periodic and can no longer have fixed terms.

62 Subsections (1) and (2) provide that any terms of an assured tenancy that try to create a fixed term will have no legal effect. Terms of an assured tenancy providing for the duration of the periodic tenancy to be different to the rent period will also have no legal effect. Where such terms exist, the tenancy will instead be periodic and the tenancy's periods will be the same duration as the period for which rent is paid.

63 Subsections (3) to (7) limit the length of the rent period of an assured tenancy. Subsection (3) provides that rent periods must be either monthly or no more than 28 days long. Assured tenancy terms which try to create any other length of period will be of no legal effect. Instead, the tenancy has effect as if it provided for monthly periods with the rent payable monthly on the first day of each period. Subsection (5) provides that the rent will remain at the same level as agreed between the parties initially but will instead be paid monthly on a pro-rata basis. Subsection (6) clarifies that the clause does not restrict landlords and tenants agreeing different terms, but any terms cannot contravene subsections (1) and (3).

Background

64 Tenancy agreements under the Housing Act 1988 can currently be either fixed-term or periodic in nature.

65 A "fixed term tenancy" is defined in section 45(1) of the Housing Act 1988 as any tenancy other than a periodic tenancy. As determined by the Court of Appeal in *Goodman v Evely* [2001] EWCA Civ 104, the defined term "fixed term tenancy" includes both a tenancy granted for a fixed period (e.g., one year) and one that is granted for an initial fixed period and thereafter a periodic term (e.g., one year and thereafter month-to-month).

66 In future, it will not be possible to grant an assured fixed term tenancy. Instead, all assured tenancies must be periodic from the beginning of the tenancy. Upon the extended application date, all existing assured tenancies will also become periodic. This will give tenants more flexibility to end tenancies where they need to, including where landlords are failing to meet their obligations, or properties are poor quality.

67 The periods of a periodic tenancy can currently be any length. Unless the parties expressly agree otherwise, when a tenant gives notice to end a tenancy, the date on which they wish to end the tenancy must align with the end of a period. A tenant cannot end a tenancy midway through a period, and so must pay rent for the entirety of the final period. To prevent tenants from being locked into unduly long periods in future – which would have the same or similar impact as a fixed term – it is necessary to limit the length of periods of an assured tenancy.

Clause 2: Abolition of assured shorthold tenancies

Effect

68 Clause 2 removes provisions of the Housing Act 1988 which establish assured shorthold tenancies, so that such tenancies cannot be created in future. This Clause also removes section 21 of the Housing Act 1988. As well as this, section 6A is removed which detailed the mechanism that social housing providers could use to demote their tenants to assured shorthold tenancies if they commit anti-social behaviour.

Background

69 The Housing Act 1988 introduced assured shorthold tenancies and section 21 evictions. This Clause removes the assured shorthold tenancy regime and mechanisms to demote social housing tenants to assured shorthold tenancies as well as section 21 itself, as in future all tenancies will be assured. Removing assured shorthold tenancies will require a very large number of consequential provisions, which are either made elsewhere in the Bill or will be made using relevant powers.

Clause 3: Sections 1 and 2: effect of superior leases

Effect

70 This Clause addresses issues that may arise in relation to existing leases that permit a leaseholder to sub-let their dwelling either on an assured tenancy for a fixed or minimum term or an assured shorthold tenancy, but not on a periodic assured tenancy.

71 Subsections (1) and (2) provide that, on the commencement date, an existing lease that contains the terms described above will have effect as permitting the leaseholder to sub-let their dwelling on a periodic assured tenancy. This is referred to in the Clause as a "relevant assured tenancy", which is defined in subsection (1) as a periodic assured tenancy for rental periods that are the same as those in section 1 of this Bill. The terms of the existing lease, including other conditions on sub-letting, will otherwise continue to apply, unless they are inconsistent with provisions made under this Bill. The effect of subsections (1) and (2) is to therefore ensure that leaseholders who can currently sub-let their dwelling on either an assured tenancy for a fixed or minimum term or an assured shorthold tenancy, can continue to sub-let their dwelling on a periodic assured tenancy, without being in breach of their own leases once the Act abolishes the other types of tenancies and the new system enters into force.

72 Subsection (3) provides for where an existing lease is modified by subsections (1) and (2) and that lease was not a long lease (e.g., for more than 21 years in length). If the leaseholder has lawfully granted a subtenancy that is a periodic assured tenancy, they will not be in breach of an obligation in their own lease to return the dwelling to their landlord free from the subtenancy at the end of their lease, if the subtenancy remains in place. This will ensure leaseholders are not indirectly liable to their own landlords for lease breaches because of changes in the Act. Leaseholders with leases of more than 21 years will have new possession ground 2ZB, to obtain possession where their own lease is coming to an end.

73 Subsections (4) and (5) apply to existing leases that do not prohibit the leaseholder from sub-letting on a periodic assured tenancy (a "relevant assured tenancy"), but which contain terms that might otherwise be inconsistent with other provisions in this Bill. They provide that any terms that apply to sub-letting in an existing lease that are inconsistent with this Bill will not have effect; for example, where lease permits the leaseholder to sub-let, providing the subtenancy contains certain rent review provisions.

74 Subsection (6) provides that this Clause does not apply to existing leases of dwellings that are currently sub-let on either assured tenancies for a fixed or minimum term or assured shorthold tenancies, until the extended application date when such existing subtenancies will convert to periodic assured tenancies under the new tenancy reforms.

Proposed use of power

75 Under subsection (8), the Secretary of State may by regulations disapply or modify the effect of this Clause with regards to some existing leases. Any such regulations will identify the types of existing leases to which they apply. This power may be used to disapply or modify the effect of this Clause if this Clause affects certain types of leases in ways that does not align with that intention or the principles laid out in this Bill. Any regulations will be made via the negative procedure.

Background

76 There are existing superior leases that permit sub-letting but only in a particular form, usually by way of an assured shorthold tenancy or for a minimum or fixed term (e.g., not less than 6 months). In the absence of this Clause, the changes made in Part 1 of this Bill may prevent leaseholders from continuing to sub-let their dwellings without breaching the terms of their own leases. This Clause therefore enables leaseholders who can currently sub-let their dwellings to continue to do so in a substantively similar way, to prevent significant disruption to both leaseholders and tenants.

Clause 4: Changes to grounds for possession

Effect

77 Clause 4 amends the grounds for possession in Schedule 2 of the Housing Act 1988, including in relation to notice periods and the courts making orders for possession. It also makes consequential amendments to the relevant sections of the Housing Act 1988 following the removal of fixed-term tenancies.

78 Each possession ground has a minimum notice period – after this period, a tenant must either vacate the property, or the landlord may start court proceedings to regain possession. Subsection (3) updates section 8 of the Housing Act 1988 to set out notice periods for all grounds other than those for anti-social behaviour (grounds 7A and 14). When serving notice under grounds 1, 1A, 1B, 2, 2ZA, 2ZB, 2ZC, 2ZD, 4A, 5, 5A, 5B, 5C, 5D, 5H, 6, 6A, 7 and 9 the notice period before the landlord can begin court proceedings is two months. When serving notice under grounds 5E, 5F, 5G, 8, 8A, 10, 11 and 18 the notice period before the landlord can begin court proceedings is four weeks. When serving notice under grounds 4, 7B, 12, 13, 14ZA, 14A, 15 and 17 the notice period before the landlord can begin court proceedings is two weeks.

79 Landlords can begin court proceedings under anti-social behaviour grounds (7A and 14) immediately although a court cannot make an order for possession until at least 14 days after the landlord has given notice to the tenant. If the court has used its power to dispense with the requirement for a section 8 notice, the 14 days will begin either from the date on which any purported notice was served if the court thinks that is fair in the circumstances, or from the date on which the possession proceedings began.

80 Clause 4 also inserts new section 8ZA into the Housing Act 1988. Section 8ZA provides for circumstances where the court has used its power to dispense with the requirement for a valid section 8 notice, but the requirements of the grounds relate to the timing of a date specified in a valid notice. . For example, if the invalidity of the notice is only noticed during proceedings,

but the court waives the validity requirement, the timing conditions required to establish the grounds may nevertheless be missed because the landlord has observed the relevant notice periods required following service of a valid section 8 notice before issuing proceedings. The landlord would then be unable to recover possession despite the requirement for a valid notice being waived because the court thought that was fair in the circumstances. Section 8ZA aims to resolve this issue in relation to grounds 4A, 5G and 6. If a purported section 8 notice was served for these grounds which observed the timescales the grounds require for a valid notice, and the court considers it just and equitable, new section 8ZA provides that the ground can still be met if proceedings were started later than the time specified in the ground.

Background

81 The grounds for possession that landlords must use to evict their tenants are set out in Schedule 2 of the Housing Act 1988. Section 7 of the Housing Act 1988 sets out when a court must award possession. Section 8 of the Housing Act 1988 sets out the notice periods that landlords must give tenants before they can begin court proceedings. The government wishes to amend these sections to provide balance between the interests of landlords and tenants. This includes extending the notice period for rent arrears from two weeks to four weeks and reducing the notice period for serious anti-social behaviour (ground 7A) so landlords are able to make a claim for possession immediately.

82 A table detailing the grounds in Schedule 2 of the Housing Act 1988 (incorporating changes made by this Bill) can be found in Annex B.

Clause 5: Possession for anti-social behaviour: relevant factors

Effect

83 Clause 5 adds a new paragraph (d) to subsection (2) of, and adds subsections (3), (4), and (5) to section 9A of the Housing Act 1988. This Clause amends the matters a judge must specifically consider when deciding whether to make an order for possession under the discretionary anti-social behaviour ground (14).

84 Paragraph (d) of subsection (2), requires judges to specifically consider whether the person against whom the eviction order is sought has engaged with attempts by the landlord to resolve the behaviour.

85 Subsections (3) to (5) provide that judges must give particular consideration to the impact of anti-social behaviour on fellow tenants in HMOs who share with the perpetrator accommodation or facilities within the HMO.

Background

86 Under the current provisions of section 9A of the Housing Act 1988, judges must give specific consideration to the impact anti-social behaviour has had on victims, any continuing effect of the behaviour, and any effect the behaviour would have if it was repeated. In future, judges will also have to consider whether the perpetrator has engaged with steps taken to resolve their behaviour and the particular impact of the behaviour on fellow tenants in HMOs.

Clause 6: Form of notice of proceedings for possession

Effect

87 Clause 6 inserts a new subsection (7) into section 8 of the Housing Act 1988. This provides that regulations may allow for the Secretary of State to publish the form to be used when serving notice of possession proceedings, and that the version of the form to be used is the one which has effect at the time the notice is served.

Proposed use of power

88 The addition of new subsection (7) is to allow the government to publish updates to the forms as necessary.

Background

89 This is a new provision which inserts new subsection (7) into section 8 of the Housing Act 1988. The forms for possession are to be used by landlords where possession of accommodation, let under an assured tenancy or an assured agricultural occupancy, is sought on one of the grounds in Schedule 2 to the Housing Act 1988. Currently, any updates to forms need to be made by statutory instrument, rather than being published.

Clause 7: Statutory procedure for increases of rent

Effect

90 Clause 7 amends section 13 of the Housing Act 1988 to provide that issuing a section 13 notice will be the only valid way that a private landlord can increase the rent. The process for relevant low-cost tenancies (defined in subsection (7)(4C) and explained below) is set out in subsection (9).

91 Subsection (4) provides that the notice period for a rent increase will increase from one month to two months. The new rent amount will take effect two months after a section 13 notice is issued, if it is not challenged by the tenant in the Tribunal or if the landlord and the tenant agree on a different variation of rent. This variation must be lower than the rent proposed in the notice. The Tribunal process is set out in section 14 of the Housing Act 1988.

92 Subsection (7) inserts new subsections (4A), (4B), (4C), (4D) and (4E) into section 13 of the Housing Act 1988. Subsections (4A) and (4B) set out the circumstances in which rent can be increased within a tenancy. Rent can only be increased via a section 13 notice or if the landlord and tenant agree a lower amount than the amount proposed in the notice (but this is higher than the current rent), a determination by the Tribunal (as set out in section 14) or agreed in writing between a landlord and tenant after a Tribunal has made a determination as set out in 14ZA and 14ZB. When agreeing the rent after a Tribunal determination, the agreed rent must be lower than the determination. This does not affect the ability of landlords to change other terms in the tenancy, including those reducing the rent.

93 New subsection (4C) of section 13 of the Housing Act 1988 contains a definition of a relevant low-cost tenancy. This subsection defines a relevant low-cost tenancy as an assured tenancy of social housing, within the meaning of Part 2 of the Housing and Regeneration Act 2008, where the landlord is a private registered provider of social housing. This includes tenancies of low cost rental accommodation as defined by section 69 of the Housing and Regeneration Act. Other tenancies offered by private registered providers of social housing besides assured tenancies are not included in the definition of 'relevant low-cost tenancy'. New subsections (4C(b)) and (4D) allow the Secretary of State to make regulations to include any other assured tenancy of a specified description within the definition of 'relevant low-cost tenancy'. Such regulations are subject to the negative resolution procedure.

94 Subsection (8) omits section 13(5) of the Housing Act 1988. This means that all rent increases (apart from those which meet the definition of 'relevant low-cost tenancy') must be via the statutory process. A landlord and tenant can agree to a downward variation of the rent at any time, including after the service of the section 13 notice or determination of the Tribunal.

95 Subsection (9) inserts section 13A into the Housing Act 1988. This sets out how rent will be increased for private registered providers of social housing granting an assured tenancy of social housing, defined as a 'relevant low-cost tenancy'. Landlords of relevant low-cost tenancies will be permitted to increase the rent at any point in the first 52 weeks of a tenancy, and then once every 52 weeks thereafter, and must give one month's notice. Those offering relevant low-cost tenancies will be permitted to increase the rent via a term in the tenancy agreement.

96 Subsection (9) also inserts 13B into the Housing Act 1988. The section allows a tenant under an assured tenancy to challenge the validity of a notice to increase the rent in the First-tier Tribunal, instead of in the county court. The tenant can do this at the same time as challenging the rent, although there is no requirement for the challenges to be brought at the same time.

Proposed use of power

97 New subsection (4C)(b) of the Housing Act 1988, inserted by subsection (7), allows the Secretary of State to specify a description of other assured tenancies that meet the definition of 'relevant low-cost tenancy'. This is to take into account changes in the regulation of rent in the social housing sector where more relevant assured tenancies may fit the definition of a relevant low-cost tenancy. The regulations will be made via the negative procedure.

Background

98 This Clause amends section 13 of the Housing Act 1988, which sets out the process by which a landlord can issue notice to inform the tenant of a rent increase. This means that the only way private landlords (except those of a 'relevant low-cost tenancy') can increase the rent is using a section 13 notice, which gives tenants the opportunity to challenge the rent (under section 14) increase, should they believe it to be above market rate. The aim of this is to stop retaliatory rent increases being used as a route to evict tenants. Assured tenancies of social housing provided by a private registered provider can include terms to increase rents in tenancy agreements, can increase the rent at any point during the first year of a tenancy, and must give one month's notice of any rent increase.

Clause 8: Challenging amount or increase of rent

Effect

99 Clause 8 amends section 14 of the Housing Act 1988. The amended section sets out the circumstances in which a tenant can submit an application to the Tribunal, to challenge the rent amount in the first six months of a tenancy (with similar effect to the existing mechanisms provided for by section 22 of the Housing Act 1988) or following a section 13 rent increase notice.

100 New subsections (A1), (A2) and (A3) of section 14 provide that no application may be made to the Tribunal to challenge the rent payable under the tenancy if the Tribunal has already made a decision on this, or if more than six months have passed since the beginning of the tenancy. All tenants under assured tenancies are able to challenge a rent increase undertaken via the section 13 process. Tenants of relevant low-cost tenancies are not able to challenge the rent amount in the first 6 months of a tenancy.

101 Subsection (6) omits subsection 14(6) of the Housing Act 1988 which refers to the section 6 process of varying terms of a tenancy and is being repealed by the Bill. It also omits subsection 14(7) of the Housing Act 1988 which removes the provision for the Tribunal to determine when the new rent will take effect. This is replaced by provision in 14ZB as set out below.

102 Subsection (9) inserts sections 14ZA (Effect of determination: rent payable) and 14ZB (Effect of determination: proposed new rent) into the Housing Act 1988. These sections outline the processes the Tribunal should follow where a tenant has challenged the rent in the first 6 months of the tenancy (14ZA) and where the tenant is challenging a rent increase as set out in section 13 of the 1988 Housing Act (14ZB).

103 Section 14ZA applies when the Tribunal makes a determination of rent when a tenant has challenged the rent amount in the first six months of the tenancy. This section provides that the rent determined by the Tribunal is the new rent payable for the tenancy and takes effect from the date the Tribunal directs. This must not, however, be earlier than the date of application to the Tribunal. The section also sets out that the new rent will be the rent as determined by the Tribunal. Nothing in this section stops the landlord and tenant agreeing to a lower amount than the Tribunal determines but this should be agreed by the tenant and landlord in writing.

104 Section 14ZB applies when the Tribunal makes a determination of rent when the tenant is challenging a section 13 rent increase under section 14(A3). This section provides that the rent determined by the Tribunal is the new rent payable for the tenancy and takes effect from the beginning of the period specified in the section 13 notice. If it appears to the Tribunal that that would cause undue hardship to the tenant, the new rent will take effect from a date that the Tribunal directs. This must not, however, be later than the date of determination from the Tribunal. Where the landlord has served a section 13 notice, the tenant and landlord can agree to a variation in rent before the Tribunal has made a determination. This can be higher than the current rent but must be the same or below the rent specified in the section 13 notice. As set out in 13(4A)(c) the landlord and tenant can agree a lower rent than the Tribunal's determination (which may be higher than the original rent or rent increase) and this must be agreed in writing.

Background

105 Section 14 of the Housing Act 1988 sets out how rent can be challenged in the Tribunal. The Tribunal will assess the proposed rent against what the landlord could expect to receive if letting to a new tenant on the open market. The Tribunal may determine that this is higher than the proposed rent in the section 13 notice. Should the Tribunal determine a rent higher than what the landlord proposed via section 13, the landlord and tenant can agree in writing to a lower rent. The ability to challenge a rent amount in the first six months of a tenancy has similar effect to the existing provisions of section 22 of the Housing Act 1988.

Clause 9: Repayment of rent paid in advance

Effect

106 Clause 9 inserts new section 14ZC into the Housing Act 1988. This Clause will allow tenants to be repaid rent that they have paid in advance when the tenancy ends before the period for which they have paid has expired. For example, if a tenant pays 12 months of rent up-front, and the tenancy ends after 9 months, the landlord must pay the tenant 3 months of rent back.

Background

107 This Clause entitles tenants to a refund of rent paid in advance where the tenancy has ended earlier than the period that has already been paid for. This includes where the tenant may have paid multiple months of rent in advance and applies regardless of how the tenancy came to an end. This Clause does not restrict landlords from requesting rent in advance.

Clause 10: Right to request permission to keep a pet

Effect

108 Clause 10 adds three new sections, 16A, 16B and 16C, to the Housing Act 1988.

109 Section 16A (Requesting consent to keep a pet) makes it an implied term of every assured tenancy except those listed in subsection (6) that a tenant may keep a pet with the landlord's consent unless the landlord reasonably refuses. Section 16A also sets out the number of days within which a landlord must respond to a written request from the tenant.

110 Subsection 16A(6) sets out that this provision does not apply to tenancies of social housing.

111 Subsection 16B(3) provides that the tenant's request must be made in writing and include a description of the pet sought.

112 Subsection 16B(4) provides that it is reasonable for a landlord to refuse where accepting a pet would breach an agreement with a superior landlord.

113 Subsection 16B(5) permits the court to order specific performance of the obligation not to unreasonably refuse a pet if the landlord breaches the implied term.

114 Section 16C (Indemnity and insurance for pets) provides for when a landlord is allowed to require that insurance to cover damage by a pet is purchased. Either the tenant can purchase it, or the landlord can. Where the landlord has taken out the insurance, it provides that the landlord can recoup the reasonable costs of maintaining this insurance, including the premium for a policy that covers only pet damage and any excess fees, from the tenant.

115 Subsection 16C(2) inserts a provision to define 'pet' and 'pet damage' to section 45 (1) of the Housing Act 1988.

Background

116 This Clause adds new provision to the Housing Act 1988 to strengthen tenants' rights to keep a pet in their home, which has previously been at the landlord's discretion. This includes a new legal obligation for landlords to consider requests to keep a pet, whilst providing a route for landlords to refuse requests to keep a pet when they can give a reasonable justification for why it would not be suitable. Allowing landlords to require insurance to cover pet damage is also a new provision.

Clause 11: Pet insurance

Effect

117 Clause 11 amends section 1(4) of the Tenant Fees Act 2019 to allow landlords to require a tenant keeping a pet to enter into a contract with an insurance company to cover pet damage.

Background

118 Under section 1(3) of the Tenant Fees Act 2019, landlords cannot require tenants to enter into contracts with third parties in respect of their home unless an exemption in section 1(4) applies. The Bill amends section 1(4) to make insurance contracts obtained by the tenant at the landlord's request a further exemption. Currently, insurance costs are not a permitted payment under Schedule 1 of the Tenant Fees Act 2019 and the Government intend to make provision for such costs to be permitted payments in regulations under section 3(4) of the Act.

Clause 12: Duty of landlord and contractor to give statement of terms etc

Effect

119 Clause 12 inserts section 16D (Duty of landlord and contractor to give statement of terms etc) into the Housing Act 1988. This section places a duty on landlords and any contractors responsible for compliance with this section, such as letting agents, to provide the tenant with a written statement of terms and information on or before the first day of the tenancy. This section does not apply to social housing tenancies where the landlord a private registered provider of social housing.

120 If the tenancy arose by succession under the Rent Act 1977 or Rent (Agriculture) Act 1976, or is an assured agricultural occupancy, the requirement must be met within 28 days of the landlord acknowledging the tenancy.

121 Landlords must state in the written statement of terms where they may wish to use any of the 'prior notice' grounds for possession which are 1B, 2ZA, 2ZB, 2ZC, 2ZD, 4, 5 to 5H, or 18 in Schedule 2. It also allows for the Secretary of State to make regulations to specify which terms and information are required in writing at the start of a tenancy.

Proposed use of power

122 The provision in new section 16D(2) of the Housing Act 1988 will allow the Secretary of State to require specified terms or information to be provided in writing as part of the written statement. This will enable Government to reflect future changes to regulation of the private rented sector and allow further consultation on the details of which terms are necessary. Regulations will be subject to the negative procedure.

Background

123 This is a new provision being added to the Housing Act 1988 to require landlords and any contractors responsible for compliance with this section, such as letting agents, to provide a written statement setting out basic information about the tenancy and both parties' responsibilities. The intention in mandating written statements is to help avoid and resolve disputes, and provide evidence if disputes go to court. Landlords who include 'prior notice' possession grounds will warn tenants that they may be evicted under specified circumstances.

Clause 13: Other duties

Effect

124 Clause 13 inserts new sections 16E (Other duties) and 16F (Interpretation of terms related to marketing in section 16E) into the Housing Act 1988. 16E prohibits certain actions by a relevant person (landlords, former landlords or persons acting on their behalf, such as, but not limited to, letting agents) in relation to an assured tenancy, including misuse of possession grounds, and 16F provides an interpretation of terms related to marketing in 16E. These sections do not apply to tenancies of social housing under which the landlord is a private registered provider of social housing.

125 Section 16E sets out the following restrictions placed on relevant persons (i.e., landlords, former landlords or persons acting on their behalf) of an assured tenancy. Subsection 16E(2) sets out that relevant persons are prohibited from purporting to let the property for a fixed term and from purporting to bring the assured tenancy to an end orally or by service of a notice to quit. Relevant persons are also prohibited from: serving a possession notice (or purported possession notice) on the tenant that uses the incorrect form; specifying a ground that the person does not reasonably believe the landlord is entitled to rely upon, for example,

relying on grounds 1 (moving in), 1A (selling) or 6 (redevelopment) in the first six months of the tenancy where the conditions for establishing that ground do not allow this; or specifying a possession ground in relation to which prior notice must be given, having failed to give prior notice in the written statement of terms.

126 Where a relevant person relies on the occupation or selling possession ground, subsection 16E(3) prohibits the landlord from letting the property on a tenancy with a term of 21 years or less, or from allowing occupation under licence in return for money (except as provided for in subsection (4)) within three months of the date specified in the section 8 notice, or until after the date of the possession order if earlier ("the restricted period). Subsection 16E(5) prohibits a relevant person from marketing a property for occupation under such a tenancy or licence during the same period and from authorising such marketing. Subsection 16E(9) provides that these prohibitions continue to apply until the end of the restricted period regardless of whether the tenancy continues during the period or not.

127 Subsections 16E (6) and (7) clarify that the letting and marketing prohibitions during the restricted period following the use of ground 1, detailed in subsections (3) and (5), do not apply if the letting or marketing is to a landlord or a family member mentioned in paragraphs (a) to (d) of ground 1.

128 Subsection 16E(10) makes it clear that a person who relies on a ground in Schedule 2 in relation to a tenancy is a person who has served a tenant a possession notice under section 8, or a purported notice under section 8, which specifies that ground, and that a landlord is entitled to rely on a ground where they can establish it..

129 Subsection 16E(11) makes it clear that that if a relevant person has not provided prior notice in the written statement for a possession ground (1B, 2ZA, 2ZB, 2ZC, 2ZD, 4, 5 to 5H or 18) that they want to rely on as required, the court may still make an order for possession of the property using the ground, but the relevant person may be subject to a financial penalty.

130 Subsection 16E(12) defines 'purported notice under section 8', 'relevant person' and 'the restricted period' for the purposes of this section. A 'purported notice under section 8' refers to any document that either purports (a) to be such a notice or to bring an assured tenancy to an end or (b) asserts that the landlord is or may be entitled to rely on a ground and requests/requires the end of the tenancy. Claim forms and other documents produced pursuant to court proceedings are excluded from this definition. A 'relevant person' in relation to a tenancy is either the landlord or someone who is acting or purporting to act on their behalf, for example, a letting or managing agent. The 'restricted period' refers to the total period during which letting and marketing is prohibited following reliance on the moving and selling possession grounds (Ground 1 or 1A). This starts when notice is served and ends 3 months after the end of the notice period. The restricted period can end earlier if the tenant does not surrender the property and the court has made a possession order on a date before the end of the 3-month period.

131 Section 16F (Interpretation of terms related to marketing in section 16E) clarifies terms related to marketing in 16E, defining what constitutes 'lettings agency work' and stating where exclusions apply.

132 Subsections 16F(1) and (2) set out what constitutes marketing a dwelling house to be let on a tenancy or licence to occupy for the purposes of section 16E. Subsection 16F(3) excludes publication of an advertisement from the definitions in 16F(1)(a) and (2)(a) provided that the publisher does nothing else within the definition of lettings agency work.

133 Subsection 16F(4) defines 'lettings agency work' as activities done by a person in the course of a business in response to instructions given by a prospective landlord or prospective occupier. Subsection 16F(5) excludes certain activities from the 'lettings agency work' definition, on the condition that no other activities listed in subsection 16F(4) have been carried out.

134 Subsections 16F(6) and 16F(7) give the Secretary of State power to exclude other activities from the definition of 'lettings agency work' for the purposes of this section via statutory instrument, which is subject to the negative procedure.

Proposed use of power

135 The power in subsection 16F(6) allows the Secretary of State to specify things in the regulations which do not fall within the definition of "letting agency work". This is necessary to allow for government to have discretion to achieve a consistent definition of "letting agency work" across legislation should definitions change in other Acts or in Part 2 of this Bill. Regulations laid under this Clause are subject to the negative procedure.

Background

136 This is a new provision being added to the Housing Act 1988 which prohibits landlords, former landlords and those acting on their behalf from taking steps that would infringe the security of tenure of an assured tenant.

Clause 14: Landlords acting through others

Effect

137 Clause 14 inserts new section 16G (Landlords acting through others) into the Housing Act 1988 to make clear that the separate duties imposed on landlords and on people acting or purporting to act on behalf of landlords by sections 16D and 16E do not prevent a landlord from fulfilling or contravening any duty imposed on them through another person acting on their behalf.

Clause 15: Landlords etc: financial penalties and offences

Effect

138 Clause 15 inserts new sections 16H, 16I, 16J and 16K into the Housing Act 1988 to set out the financial penalties and offences for the breach of the prohibitions in clause 13, including those relating to the misuse of possession grounds and for not providing a written statement of terms as required by Clause 12.

139 Section 16H (Financial penalties) sets out that a local housing authority will be able to impose a financial penalty if satisfied beyond reasonable doubt that a person (i.e. landlord, former landlord or other relevant person) has contravened provisions contained in Clauses 12 or 13. Subsection 16H(2) provides that where a landlord has already provided a written statement of terms, a person contracted by that landlord cannot be fined for non-compliance only by virtue of 16D(6). Subsection 16H(3) and 16H(4) provide that only one financial penalty may be imposed on the same person for each contravention, except for a contravention of section 16D; more than one financial penalty may be imposed on the same person in relation to a failure to provide a written statement of terms and other information if the contravention continues for more than 28 days after a final notice is given or unsuccessfully appealed. The financial penalty imposed is to be determined by the local authority imposing it but must not be more than £5,000 (subsection 16H(5)). Subsection 16H(6) provides that a local authority may impose a joint financial penalty for the same contravention where persons have acted on behalf of others and the local authority is satisfied beyond reasonable doubt that more than one of the

persons is guilty of the contravention; each person is jointly and severally liable to pay the fine. Subsection 16H(7) provides for circumstances where a financial penalty cannot be imposed, including where a person has been convicted of an offence under 16I in respect of the same conduct and where a financial penalty has been imposed under section 16J as an alternative to prosecution. Subsections 16H(8) and 16H(9) enable the Secretary of State to provide guidance on fines that local housing authorities must have regard to when they are undertaking enforcement activity under this section. Subjection 16H(10) specifies the date on which a financial penalty is imposed.

140 Section 16I (Offences) sets out when a landlord, or person acting on behalf of a landlord, will be guilty of an offence and is liable to prosecution or a financial penalty of up to £30,000 in lieu of prosecution. If prosecuted, a person guilty of an offence is liable on summary conviction to a fine. Offences include, under subsection 16I(1), where they have served a notice seeking possession specifying a possession ground that they are not entitled to use, either knowingly or recklessly, and the tenant has surrendered the tenancy within 3 months of the possession notice and without an order of possession.

141 Subsection 16I(2) applies the interpretation provisions in 16E(10) and 16E(12) to 16I (Offences) in the same way it is applied to 16E (Other duties). Subsection 16I(3) provides that an offence will have been committed where a landlord has (in contravention of section 16E(3) or (5)) let or marketed their property within the restricted period following reliance on the moving or selling grounds, or has instructed a relevant person t to do so, unless the relevant person can prove that they took all reasonable steps to avoid contravening it. Subsection 16I(4) creates an offence for continuing breach where a person receives a financial penalty for prohibited conduct (a "relevant penalty") and continues the same conduct for more than 28 days thereafter. Under subsection 16I(5), a person is guilty of the repeat breaches offence if they conduct themselves in a manner giving rise to liability to a financial penalty under section 16H and within the next 5 years receive a relevant penalty for different conduct, or are convicted of an offence under section 16I for different conduct. Subsection 16I(6) defines 'relevant penalty' for the purposes of subsections 16I(4) and 16I(5). Subsection 16I(7) states that a person may not be convicted of an offence under subsection 16I(1), (3) or (5) if a financial penalty has been imposed for the same conduct. Subsections 16I(8), (9) and (10) provide that officers and members of body corporates that have committed an offence under section 16I may be liable to be prosecuted and punished accordingly, where it can be proved that they consented to, connived in or were negligent as to the commission of the offence as the case may be. The penalty for conviction for an offence set out in this Clause is a fine (subsection 16I(11)).

142 Section 16J (Financial penalties as an alternative to prosecution under section 16IG) provides that a local housing authority can impose a financial penalty of up to £30,000 if they are satisfied beyond reasonable doubt that a person has committed an offence under section 16I. Subsection 16J(2) provides that a financial penalty cannot be issued for the same conduct if the person has been convicted of a criminal offence under 16I, if criminal proceedings are ongoing, or if criminal proceedings have taken place and the person has not been found guilty. Subsection 16J(3) provides that the financial penalty is to be determined by the authority imposing it and the maximum financial penalty is £30,000. Subsection 16J(4) provides that a local housing authority can impose a joint penalty for the same contravention where persons have acted on behalf of others and the local housing authority is satisfied beyond reasonable doubt that more than one of the persons is guilty of an offence. All persons upon whom the penalty is imposed are jointly and severally liable to pay it. Subsections 16J(5) and 16J(6) give the Secretary of State powers to issue guidance on the imposition of financial

penalties that local housing authorities must have due regard to when they are undertaking enforcement activity under this section.

143 Section 16K (Financial penalties: supplementary and interpretation) enables the Secretary of State to give financial assistance to local housing authorities to support their enforcement functions in 16H to 16J. It also gives the Secretary of State powers to amend the maximum penalty levels specified in sections 16H and 16J in regulations to reflect inflation. Regulations made under this power are subject to the negative resolution procedure. Subsection 16K(5) introduces Schedule 2ZA which provides more information on the procedures, appeals and enforcement processes of local authorities, as well as how local authorities are to deal with proceeds from fines. Subsection 16K(6) defines 'local housing authority' for the purposes of sections 16H to 16J, this section and Schedule 2ZA.

Proposed use of powers

144 Sections 16H(8) and 16J(5) allow the Secretary of State to issue guidance on the use of financial penalties that local authorities must have due regard to. Guidance should assist local housing authorities to effectively enforce contraventions of the duties imposed by sections 16D and 16E and prioritise enforcement appropriately.

145 The power under section 16K(2) allows the Secretary of State to amend maximum penalty levels. This aims to ensure that the financial penalties continue to serve as a deterrent by reflecting changes to the value of money.

146 Regulations made under these sections will be subject to the negative procedure.

Background

147 This is a new provision being added to the Housing Act 1988 to ensure appropriate financial penalties for prohibited behaviour under the new system. It is intended to deter non-compliance and help local authorities proportionately target enforcement activity against those landlords, former landlords and relevant persons who wilfully or recklessly disregard their obligations to tenants.

Example 1: Offering a fixed-term contract

A landlord offers a tenant a fixed-term contract, which is in contravention of the new tenancy system (so, the landlord committed a breach under section 16H(1)). No criminal proceedings have been initiated against the landlord. If the local housing authority is satisfied beyond reasonable doubt that this has taken place, they could fine the landlord up to £5,000.

Example 2: Misuse of the moving in ground

A landlord evicted a tenant using the moving in ground, claiming they were planning to move in their brother. The tenant moved out 2 months after the eviction notice was issued. The landlord had never intended for their brother to move into the property and was waiting for the no-let restriction period to end to re-let the property at a higher rent (so, the landlord committed an offence under section 16I(1)). If the local housing authority was satisfied beyond reasonable doubt that this had happened, they would have the choice to impose a fine of up to £30,000 as an alternative to criminal prosecution.

Clause 16: Financial penalties: procedure, appeals and enforcement

Effect

148 Clause 16 inserts Schedule 2ZA (Financial penalties under sections 16H and 16J) into the Housing Act 1988. Paragraphs 1 and 2 impose a duty on a local housing authority to issue a notice of intent before imposing a financial penalty on a person under 16H or 16J within specific timeframes – within six months of collecting sufficient evidence or, if the person is continuing the conduct, any time during that period or within six months of the conduct ending. Paragraph 3 provides for the information the notice must include, including the amount of the proposed penalty and information about the person's right to make representations.

149 Paragraph 4 provides that a person who is given a notice of intent has the right to make written representations within 28 days about the proposed fine to the local housing authority.

150 Paragraphs 5, 6, 7 and 8 provide for what happens after the end of the period in which the person can make written representations. The local housing authority must decide whether to issue a penalty and the amount. If they decide to issue a penalty, they must give the person a final notice. This must set out information including the reasons for imposing the penalty, how to pay the penalty, information about rights of appeal, and the consequences of failure to comply with the notice.

151 Paragraph 9 provides for a local housing authority to withdraw a notice of intent or final notice or reduce the fine amount. This must be communicated to the person in writing.

152 Paragraph 10 sets out the appeals process for a person who has been issued a final notice. They may appeal to the Tribunal within 28 days of the date of the final notice. The Tribunal can confirm, vary, or cancel the fine. Varying the fine means the Tribunal can either reduce the fine or increase it up to the statutory maximum fine stipulated in 16H and 16I. If a person appeals, the final notice is suspended until the appeal is determined, withdrawn, or abandoned. The appeal may take into account additional evidence of which the enforcement authority was unaware.

153 Paragraph 11 details the processes local housing authorities should follow to recover unpaid fines. Should a person fail to pay a fine, the local housing authority can recover it through a county court order. In county court proceedings, a signed certificate by the chief finance officer of the local housing authority confirming the amount has not been paid is conclusive evidence of that fact.

154 Paragraphs 12, 13 and 14 provide that local housing authorities may use the proceeds of financial penalties towards costs and expenses associated with carrying out enforcement functions relating to the private rented sector.

Background

155 This Clause adds a new provision to the Housing Act 1988. It is intended to support local housing authorities with levying fines appropriately and ensuring there is a robust appeals process.

Clause 17: No criminal liability of the Crown under Part 1 of the 1988 Act

Effect

156 Clause 17, which amends section 44 of the Housing Act 1988, provides that the offences created under new section 16I are not binding on the Crown. It is possible under new section 16J for a financial penalty of up to £30,000 in lieu of prosecution to be imposed on the Crown for conduct which would usually make a landlord guilty of an offence under 16I. This exemption from criminal liability does not extend to persons acting in service of the Crown.

Background

157 This Clause adds new provision to the Housing Act 1988 to set out how provision in the Bill will apply to the Crown.

Clause 18: Notices to quit by tenants under assured tenancies: timing

Effect

158 Clause 18 amends section 5 of the Protection from Eviction Act 1977. Subsection (1ZA) sets out rules about the period of notice that a tenant can be required to provide when ending an assured tenancy. A tenant's notice to quit relating to an assured tenancy must be given not less than two months before the date on which the notice is to take effect (i.e., the end of a period of the tenancy), unless the landlord and tenant have agreed a shorter notice period in writing.

159 It also sets out that a valid notice to quit cannot take effect before six months from the day the tenancy agreement states the tenancy agreement began, unless the landlord and tenant have agreed to a shorter period in writing.

160 Subsection (1ZB) specifies what a 'repeat tenancy' means, for the purpose of the applicability of subsection (1ZA).

161 Subsection (1ZC) provides that for other tenancies where the Protection from Eviction Act 1977 applies the notice to quit must be given at least four weeks before the date on which the notice is to take effect.

Background

162 The length of notice that a tenant currently has to provide is set by common law rules or in the tenancy agreement; if this is not specified, it is one calendar month. This Clause amends the Protection from Eviction Act 1977 to specify the length of notice that a tenant in future will need to give when ending an assured tenancy. The default period of notice required is not less than two months before the end of a period of the tenancy. This is intended to provide sufficient notice to the landlord to relet the property as required. A shorter notice period is allowed, if both parties agree in writing – 8hat agreement may be set out in the tenancy agreement or in a separate document.

163 In addition to the length of notice required, it will not be possible for tenants to serve valid notices to quit for assured tenancies that expire before the first six months of a new tenancy has passed. This is intended to ensure that landlords have a sufficient period of guaranteed income at the start of new tenancies. This will not apply where precisely the same parties sign a new tenancy agreement for the same property, less than a month after a previous tenancy of the same property has ended.

164 A landlord under an assured tenancy who wishes to obtain possession must give notice in accordance with the requirements of the Housing Act 1988.

Clause 19: Notices to quit by tenants under assured tenancies: other

Effect

165 Clause 19 inserts new section 5A into the Protection from Eviction Act 1977. Subsections (1) and (2) make clear that any attempts by a landlord to specify the form of writing a notice to quit must take will have no effect.

166 Subsection (3) sets out that a notice to quit may be withdrawn before the date on which it takes effect, if agreed in writing by the tenant and landlord.

Background

167 To end an assured periodic tenancy, tenants must give a notice to quit. Tenants can currently be required by the tenancy agreement to provide notice to quit in a particular way. This Clause provides that such notice must be given in writing, but landlords cannot specify a particular form of written communication.

168 It also provides that tenants may withdraw a notice to quit under an assured tenancy if the landlord agrees – to allow flexibility for both landlord and tenant. These measures do not affect the rights of both parties to agree together to the tenant surrendering the tenancy.

Clause 20: Limitation on obligation to pay removal expenses

Effect

169 Clause 20 amends section 11(1) of the Housing Act 1988 (payment of removal expenses) so that only private registered providers of social housing are required to pay removal expenses to tenants when the court awards possession under grounds 6 (redevelopment) or 9 (suitable alternative accommodation).

Background

170 Under the Housing Act 1988, landlords of assured tenancies are currently required to pay the tenant reasonable moving expenses when they are awarded possession under grounds 6 or 9. When the Bill takes effect, all landlords will use assured tenancies, so this provision is necessary to ensure only private registered providers of social housing are required to pay removal expenses.

Clause 21: Assured agricultural occupancies: grounds for possession

Effect

171 Clause 21 makes consequential amendments to section 25 of the Housing Act 1988 reflecting the removal of fixed-term tenancies and new grounds. Landlords with an Assured Agricultural Occupancy will continue to be excluded from using the "employment" ground (now ground 5C) as well as new grounds 2ZA, 2ZB, 2ZC, 2ZD and 5A to maintain security of tenure.

Background

172 An agricultural worker may qualify for an Assured Agricultural Occupancy (AAO) if they meet the agricultural worker condition set out in Schedule 3 of the Housing Act 1988. An AAO provides greater security of tenure than a standard assured tenancy as a landlord cannot end the tenancy if their employment of the tenant ends. Consequential amendments are needed to ensure tenants with AAOs continue to enjoy greater security of tenure.

Clause 22: Assured agricultural occupancies: opting out etc.

Effect

173 Clause 22 makes consequential changes to section 24 of the Housing Act 1988 to reflect the abolition of assured shorthold tenancies. It also inserts a new section, 24A, into the Housing Act 1988 so that landlords can provide assured periodic tenancies, instead of assured agricultural occupancies, to qualifying workers. It is similar to paragraph 9 of Schedule 2A of the Housing Act 1988 which is omitted by Clause 2(b) of the Bill.

174 Subsection 5(1)(a) provides that landlords must inform their tenant before the tenancy starts that the tenancy will not be as assured agricultural occupancy. Subsection 5(2) provides that the opt-out notice must be provided via a prescribed form.

Background

175 Under paragraph 9 of schedule 2A of the Housing Act 1988, landlords can 'opt-out' of providing assured agricultural occupancies and issue assured shorthold tenancies instead. As the Bill abolishes assured shorthold tenancies, new provisions are required to allow an opt-out to continue in the new system.

Clause 23: Accommodation for homeless people: duties of local authority

Effect

176 Clause 23 amends Part 7 of the Housing Act 1996. Subsection (2)(a) repeals section 193(1A)(b), Part 7 of the Housing Act 1996 which disapplies the main housing duty (section 193) for anyone to whom the local housing authority has served a notice under section 193B(2) (a notice given where an applicant has deliberately and unreasonably refused to cooperate). The amendment will allow local housing authorities to serve a notice to end the relief or prevention duty under section 193B of the Housing Act 1996 with no consequence for applicants who are owed the main duty under section 193 and are in priority need.

177 Subsection (2)(b) repeals section 193(6)(cc) which allows local housing authorities to bring the main housing duty to an end if the applicant accepts an offer of an assured tenancy (other than an assured shorthold tenancy) from a private landlord. Sections 193(7AA) - 193(7AC) go on to set out how a local housing authority can bring the main duty to an end through a private rented sector offer.

178 Subsection (2)(c) amends section 193(7AB), Part 7 of the Housing Act 1996 to remove the requirement for local housing authorities to notify the applicant of the effects of the reapplication duty, since this duty is being repealed by subsection (4) of this Clause.

179 Subsection (2)(d) amends section 193(7AC), Part 7 of the Housing Act 1996 to remove the requirement that for a private rented sector offer to be suitable to end the main housing duty it must be an assured shorthold tenancy for a period of at least 12 months and replaces it with a requirement that such an offer must be an assured tenancy.

180 Subsection (3) amends section 193C by repealing the provisions which disapply the main duty (section 193) for people who have deliberately and unreasonably refused to co-operate with the local housing authority. In place of the main duty an offer of an assured shorthold tenancy of at least 6 months could be offered in these circumstances. The amendments mean that a notice in relation to this section will have the sole consequence of ending any prevention or relief duty owed, with no consequence in relation to the main duty under section 193.

181 Subsection (4) repeals section 195A of the Housing Act 1996, which is the duty in homelessness legislation to offer accommodation following re-application after a private sector offer, known more commonly as 'the reapplication duty'. This Clause repeals this duty,

therefore, at the point of reapplication the local housing authority will owe the applicant whichever is applicable of the prevention, relief, and main duties.

Background

182 Sections 193B and 193C of the Housing Act 1996 deal with what happens when a person, who is owed either the prevention or relief duty, deliberately and unreasonably fails to cooperate with the local housing authority. Section 193B deals with notices and section 193C deals with the consequences of serving a notice under section 193B.

183 If the local housing authority is satisfied that the applicant is homeless, eligible for assistance and has a priority need, and they are not intentionally homeless, then the applicant is still owed a duty to be accommodated but it is a lesser one than the duty under the main housing duty. The duty is to offer a fixed-term tenancy of at least 6 months as opposed to the period of at least 12 months which is required under the main duty, to provide a sanction, for those who deliberately and unreasonably refused to cooperate. With the repeal of fixed-term tenancies the lesser offer is redundant and is removed by this Clause.

184 Subsections 2(b)-(d) make further minor amendments as this Bill abolishes section 21 evictions, assured shorthold tenancies and fixed-term tenancies and references to them must be removed.

185 Separately, subsection (4) removes the reapplication duty from Part 7 of the Housing Act 1996 which is a duty owed by a local housing authority to a homeless applicant who accepted a final offer of suitable accommodation in the private rented sector, and then becomes homeless again within 2 years and reapplies for accommodation. The duty applies regardless of whether the applicant has priority need.

186 The reapplication duty was introduced alongside the introduction of Private Rented Sector Offers (PRSOs) as a means to end the main housing duty, in response to concern that due to the short-term nature of assured shorthold tenancies, applicants who accepted a PRSO may become homeless again within a 2 year period and, on application for assistance, would be found to no longer have priority need. The Bill is repealing assured shorthold tenancies and fixed-term tenancies; therefore, in the future, all tenancies will be assured and offer greater security of tenure. This increased security of tenure and removal of section 21 evictions means the reapplication duty will no longer be required.

Clause 24: Tenancy deposit requirements

Effect

187 Clause 24 makes amendments to Chapter 4 of Part 6 of the Housing Act 2004. Subsections (2) – (4) make consequential amendments to the Housing Act 2004. The effect of these is to continue the requirement for deposits to be protected to new assured tenancies and tenancies that were assured shorthold tenancies immediately before the extended application date.

188 Subsection (5) substitutes section 215. The effect will be to require landlords who take a deposit for an assured tenancy to have ensured it is appropriately protected in line with the requirements in section 213 of the Housing Act 2004 before a court will award possession. This will apply to all grounds for possession in Schedule 2 of the Housing Act 1988, apart from grounds relating to serious crimes and anti-social behaviour (grounds 7A and 14).

189 New section 215 sets out the conditions that must be met for a court to award possession. These are:

a. Subsection (1) requires landlords to have protected the deposit in one of the authorised tenancy deposit schemes.

b. Subsection (2) requires landlords to have complied with any requirements of the scheme that applied when the deposit was received. The landlord can comply with those requirements at any time.

c. Subsection (3) requires landlords, to have complied with the requirements to give tenants certain information in respect of the deposit under:

   i. section 213(5) of the Housing Act 2004, which states that landlords must give the tenant and any relevant person certain prescribed information about the protection of the deposit.

   ii. Section 213(6)(a) requires landlords to provide this in the prescribed form or in a form that is substantially to the same effect (however a failure to comply with the time limit in section 213(6)(b) for the provision of this information is not a barrier to obtaining possession).

190 New section 215(4) creates an exception for possession orders made on Grounds 7A or 14, such that possession can be awarded on these grounds even if the deposit is not properly protected.

191 New section 215(5) disapplies the requirements under subsections (1) – (3) if the deposit has been returned (either in full or with agreed deductions) or where an application to the court has been made under section 214 (1) and has been determined, withdrawn or settled by the parties.

192 New section 215(6) prevents the granting of a possession order (on the grounds in Schedule 2 of the Housing Act 1988) by a court where a landlord has taken an unlawful deposit consisting of property other than money, until the unlawful deposit has been returned.

193 New section 215(8) maintains the current position that a deposit does not need to be protected if the relevant periodic assured shorthold tenancy was created before 6 April 2007.

Background

194 Landlords are currently required to demonstrate compliance with some tenancy deposit rules in order to proceed with a section 21 notice. This supports enforcement of deposit requirements. These provisions therefore amend the existing legislation to apply similar restrictions to most section 8 cases in future.

195 The provisions require landlords to have complied with the deposit protection requirements in order for a court to award possession unless Grounds 7A or 14 are relied upon.

Clause 25: Liability of tenants under assured tenancies for council tax

196 Clause 25 amends section 6(6) of the Local Government Finance Act 1992. This Clause expands the definition of material interest for the purposes of determining council tax liability, so it will include a tenancy that is, or was previously, an assured tenancy under the Housing Act 1988.

Background

197 This provides that tenants with an assured tenancy, or a tenancy that was previously an assured tenancy, will be considered to hold or to have held a material interest in the property for the purposes of being liable for council tax. This will ensure tenants are liable for council tax for the duration of the tenancy, including until the end of the notice period, where they serve notice to end the tenancy.

Clause 26: Other consequential amendments

Effect

198 Clause 26 sets out that Schedule 2 of this Bill contains amendments which are consequential to changes made by Chapter 1 of Part 1 of the Bill.

Background

199 This is a new provision.

Clause 27: Powers of Secretary of State in connection with Chapter 1

Effect

200 This Clause provides the Secretary of State with powers to introduce regulations adapting other legislation and private legal instruments to changes made by Part 1 Chapter 1 of the Bill (Tenancy Reform: Assured Tenancies) or its associated regulations.

201 Subsections (1) and (2) provide that the Secretary of State may introduce regulations to amend existing legislation so that it continues to operate in a way that is similar or correspondent to its effect on tenancies prior to key changes the Bill makes to the assured tenancy system. This applies to (1) provisions relating to fixed term tenancies and assured shorthold tenancies which Clause 1 converts to assured periodic tenancies, so that those provisions can be adapted to cover assured periodic tenancies in future; and (2) provisions relating to the grounds of possession in Schedule 2 Housing Act 1988, which are altered by Clause 4 and Schedule 1.

202 Subsection (3) provides that regulations in relation to assured shorthold tenancies made under subsection 1(b) can include measures to ensure provisions relating to notices served under section 21 of the Housing Act 1988 continue to apply in relation to notices under section 8 of the same.

203 Subsection (4) provides that transitional provisions that may be included under the powers in subsection (1) or (2) include provision modifying the effect of existing private legal instruments which the Secretary of State considers will not operate appropriately. Private legal instruments may include insurance contracts, leases, or mortgages. Subsection (5) clarifies that this includes where a provision made by the instrument is redundant, unclear or outdated following changes to the law, or where the Bill might put a party to an existing agreement in breach of terms it currently complies with.

204 Subsection (6) ensures that, when regulations under subsection (4) change the effect of private legal instruments made before the Bill's changes, the parties to those documents can agree a different result instead of the default one provided by legislation.

205 Subsection (7) provides that regulations made under subsection (4) may apply to an instrument as it had effect before the coming into force of the regulations but after the commencement date.

Proposed use of power

206 The power in this section will allow the Secretary of State to make changes to other legislation and the effect of private legal instruments to reflect changes made by Part 1 Chapter 1 of the Bill. For example, some legislation only applies to assured shorthold tenancies, which the Bill will abolish as a category, rather than to other forms of assured tenancy. It may not be appropriate in each case to transpose all existing rights and duties applicable to assured shorthold tenancies to all assured tenancies in the future. Private legal instruments, such as mortgages, leases or insurance contracts may also contain references to assured shorthold tenancies, or other obsolete terms, and their effect may need amending to reflect changes made by the Bill.

Chapter 2: Tenancies that cannot be assured tenancies

Clause 28: Tenancies of more than seven years

Effect

207 Subsection (1) amends Schedule 1 of the Housing Act 1988 to add fixed-term tenancies of more than seven years to the list of tenancies that are excluded from the assured tenancy system.

208 Subsection (3) amends Section 13 of the Landlord and Tenant Act 1985 (LTA85) to preserve the current application to private registered providers of social housing. They will retain the repairing obligations set out in Section 11 of the Landlord and Tenant Act 1985 for tenancies of over 7 years in length that would have been assured, were it not for their exclusion under Schedule 1 of the Housing Act 1988.

209 Subsection (4) amends Schedule 10 of the Local Government and Housing Act 1989 to prevent the accidental removal of the application of Schedule 10 to leases of dwelling-houses in England which would otherwise be assured but for being at a low rent.

210 Subsections (5) and (6) makes transitional provision. Proceedings commenced in reliance of notices served under section 8 of the Housing Act 1988 before subsection (1) comes into force may continue until they are concluded. A tenancy will remain an assured tenancy until the notice expires or the proceedings conclude.

Background

211 This section excludes leases of more than 7 years or more from the assured tenancy system. This will allow leases over 7 years to have fixed terms, which are necessary for long leases to function. This will primarily affect shared ownership products and leasehold agreements with ground rents high enough to meet the legal threshold of an assured tenancy.

212 It will mean landlords are no longer able to use the section 8 grounds to obtain possession of long leases which are also assured tenancies by virtue that they are not at low rent, including where a shared owner has built up arrears of rent.

Clause 29: Accommodation for homeless people under section 199A of Housing Act 1996

Effect

213 Clause 29 inserts section 199A of the Housing Act 1996, into the list of specified sections already set out in s209(1) of that same Act. This will ensure that, as is the case for the sections

already stated in section 209(1), a tenancy granted pursuant to section 199A cannot be an assured tenancy, other than in the circumstances allowed for in section 209(2).

Background

214 Local authorities have an interim duty to provide temporary accommodation under section 188(1), 190(2), 199A (2), 199A(4)(c) and 200(1) of the Housing Act 1996, where the relevant conditions are met. Section 209(1) already contains an exemption to ensure that interim temporary accommodation provided under section 188, 190 or 200 will not create an assured tenancy, other than in the specified conditions set out in section 209(2). Section 199A applies when a local authority accepts a relief duty to provide interim temporary accommodation, whilst it refers that relief duty under section 198(A1) to another local authority where the applicant is considered to have a local connection, pending its decision.

215 Section 199A was inserted into the Housing Act 1996 by the Homelessness Reduction Act 2017 and came into force on 3 April 2018. This post-dates section 209. This Clause inserts section 199A into section 209(1) alongside the other specified sections where local authorities have an interim duty or discretion to provide temporary accommodation.

Chapter 3: Discrimination relating to children or benefits status: England

Clause 30: Discrimination relating to children

Effect

216 This Clause prohibits discriminatory bans and restrictions on the letting of private rented sector properties on the basis that a child would live with or visit a person at the property ('Blanket Bans'). This prohibition applies to all assured tenancies other than when in connection with social housing or supported accommodation. The Clause also creates a new civil offence which prohibits any practices which might otherwise effectively constitute such bans or restrictions.

217 Subsection (1) outlines behaviours in a letting process which violate this prohibition and explains that any related discriminatory provisions, criteria or practices are also prohibited.

218 Subsection (2) sets out the exemptions to this prohibition: that these behaviours are permissible if the conduct is a proportionate means of achieving a legitimate aim or to fulfil the conditions of an existing insurance contract.

219 Subsection (3) outlines conduct that will not breach the prohibition in subsection (1) where a person or organisation solely provides a platform to host lettings adverts or provide for landlords and tenants to communicate. This Clause also allows the Secretary of State to exempt additional conduct via regulations.

Proposed use of powers

220 To allow the Secretary of State to exempt additional conduct from the 'no children' Blanket Bans prohibitions, to make sure the provisions can adapt to changing market practices and not inadvertently make third party platforms liable for Blanket Bans breaches. Regulations laid under this Clause are subject to the affirmative procedure.

Background

221 This is a new provision.

Example: Proportionate means of achieving a legitimate aim

A letting agent is advertising a small bedroom to rent in a house in multiple occupation (HMO). The agent clearly sets out the size of the bedroom and amenities available in the advert. A prospective tenant with two teenage children comes across the advert online. Although the bedroom is clearly quite small, the tenant believes the space can be managed. During the viewing the prospective tenant mentions that she has two teenage children who would be living in the property with her. The letting agent subsequently informs her that he cannot let to her and her children because the bedroom can legally only be occupied by one adult and a small child. In this case the letting agent could argue under s.27(2)(a) that refusing to enter into a tenancy of the dwelling in order to adhere to overcrowding regulation is a proportionate means of achieving a legitimate aim and as a result the ban is lawful.

222 The Property Ombudsman ruled in March 2023 that Blanket Bans against renters with children violated the equalities rules laid out in its Code of Practice, due to the bans' disproportionately affecting women. This Clause makes it explicit that discrimination relating to children in the private rented sector is illegal, regardless of the sex of the parent or carer.

Clause 31: Discrimination relating to benefits status

Effect

223 This Clause prohibits discriminatory bans and restrictions against the letting of private rented sector properties to persons in receipt of benefits ('Blanket Bans'), as well as any practices which might otherwise effectively constitute such bans or restrictions, via the creation of a second new civil offence.

224 Subsection (1) outlines behaviours in a letting process which violate this prohibition and explains that any related discriminatory provisions, criteria or practices are also prohibited.

225 Subsection (2) sets out an exemption to this prohibition, that these behaviours are permissible where done so to fulfil the conditions of an existing insurance contract.

226 Subsection (3) outlines the conduct that will not breach the prohibition in subsection (1), where a person or organisation solely provides a platform to host lettings adverts or provide for landlords and tenants to communicate. The Clause also allows the Secretary of State to exempt additional conduct via regulations.

Proposed use of powers

227 To allow the Secretary of State to exempt additional conduct from the 'no benefits' Blanket Bans prohibitions, to make sure the provisions can adapt to changing market practices and not inadvertently make third party platforms liable for Blanket Bans breaches. Regulations laid under this Clause are subject to affirmative procedure.

Background

228 This is a new provision.

229 County courts have previously ruled that such behaviours violate the Equality Act 2010, based on sex and disability status. This Clause makes it explicit that discrimination relating to benefit status in the private rented sector, regardless of sex and disability status, is illegal.

Example: Posting a 'No DSS' Advert

A landlord asks a letting agent to post a 'No DSS' advert in relation to a property. A prospective tenant who is in receipt of benefits sees the advert during a search for a new let. The tenant reports the letting agent to the local council on the basis that the advert discriminates against benefit recipients. The local council investigates the claim and is satisfied on the balance of probabilities that the advert discriminated against benefit claimants. The letting agent informs the local council that they were instructed by the landlord to post the advert. Under these provisions the local council can take enforcement action against the letting agent, landlord, or both. In this case the local council notifies the letting agent and the landlord of the breach and takes appropriate enforcement action.

Clause 32: Financial penalties

Effect

230 This Clause allows a local housing authority to impose a financial penalty for breach of a requirement imposed by the Blanket Bans measures in Clause 30 or Clause 31 (Prohibition of discrimination relating to children and benefit status).

231 Subsection (3) states that a single discriminatory provision, criterion or practice applied multiple times in relation to the same property shall only constitute a single offence. Multiple persons may be found jointly and severally liable for the same offence, as under subsection (7)

232 Subsection (2) describes the circumstances in which more than one financial penalty may be imposed for the same conduct, namely if the conduct continues 28 days after either the final notice for the previous penalty was received or its appeal was determined, withdrawn, or abandoned. Subsection (4) allows for local authorities to impose an additional penalty if a fine under the same section was previously issued within the five years preceding.

233 Subsection (5) sets out the maximum fine amount, which will be £5,000 at commencement.

234 Subsection (6) states that subsections (2) and (4) do not allow a penalty to be imposed for an offence if a final notice has already been withdrawn or quashed on appeal.

235 Subsections (8) and (9) give the Secretary of State power to produce guidance which local housing authorities must have regard to when exercising their functions in relation to financial penalties.

236 Subsection (10) confers upon the Secretary of State the power to amend the maximum financial penalties under this section to reflect inflation. The regulations are subject to the negative resolution procedure.

Proposed use of powers

237 To allow the Secretary of State to set out guidance that local authorities must have regard to when exercising their functions in relation to financial penalties and make regulations subject to the negative resolution procedure which amend the maximum financial penalties in line with inflation.

Background

238 This is a new provision.

239 This Clause gives local housing authorities the power to impose financial penalties on persons who breach the prohibition on discrimination against private renters with children or in receipt of benefits, as set out in Clause 30 and Clause 31.

Clause 33: Discriminatory terms in a tenancy relating to children or benefits status

Effect

240 This Clause renders of no effect terms in a tenancy agreement which prohibit children from living at or visiting the property, or otherwise restrict the circumstances under which they may do so, and which prohibit the tenant from being a benefits claimant.

241 Subsection (1) renders of no effect such terms with regards to children. Under subsection (2), subsection (1) as it relates to children living or visiting the dwelling does not apply to such terms which make provision that is a proportionate means of achieving a legitimate aim or fulfils a term in an existing insurance contract which prohibits or restricts occupation or visit by children.

242 Subsection (3) renders of no effect such terms with regards to benefits status. Under subsection (4), subsection (3) does not apply if such a term is required to fulfil a related term in an existing insurance agreement which prohibits occupation by benefits claimants.

Background

243 This is a new provision.

244 These provisions have retrospective effect and will apply to all regulated tenancies entered before commencement or all relevant tenancies whether entered before, on or after commencement.

Clause 34: Terms in superior leases relating to children or benefits status

Effect

245 This Clause renders of no effect all discriminatory terms related to children and benefits status of relevant tenants in the superior lease(s) of a private rented sector property let under a relevant tenancy or regulated tenancy.

246 These provisions are laid out in subsections (1) and (3), and apply to all relevant tenancies or regulated tenancies except, in relation to children, if the term makes provision that is a proportionate means of achieving a legitimate aim as under subsection (2). Under subsections (2) and (4), such terms may also be permitted where required to avoid breach of an existing insurance contract which prohibits occupation by children or benefits claimants.

247 Subsection (5) clarifies that, in addition to the superior lease itself, this Clause applies to all other relevant documents and communication from the landlord giving or refusing consent for sub-letting.

Background

248 This is a new provision.

249 These provisions have retrospective effect and will apply to all regulated tenancies entered before commencement or all relevant tenancies whether entered before, on or after commencement. These provisions prevent a potential breach of contract between landlords and their superior lessors.

Clause 35: Terms in mortgages relating to children or benefits status

Effect

250 This Clause renders of no effect discriminatory terms related to children and benefits status of tenants in the mortgage(s) of a private rented sector property let under a relevant tenancy or regulated tenancy.

Background

251 This is a new provision.

252 These provisions have retrospective effect and will apply to all relevant mortgages whether entered before, on, or after the commencement date. These provisions prevent a potential breach of mortgage contract between landlords, agents and mortgage lenders.

Clause 36: Terms in insurance contracts relating to children or benefits status

Effect

253 This Clause renders of no effect all discriminatory terms related to children and benefits status of tenants in insurance contracts of a private rented sector property let under a relevant tenancy or regulated tenancy.

254 These provisions are laid out in subsections (1) and (2) although, as clarified in subsection (3), they do not have retrospective effect and apply only to relevant insurance contracts entered into or renewed on or after the commencement date.

Background

255 This is a new provision.

256 These provisions do not have retrospective effect and apply only to relevant insurance contracts entered into or renewed on or after the commencement date. These provisions prevent a potential breach of contract between landlords, agents and insurers.

Clause 37: Power of the Secretary of State to protect others

Effect

257 This Clause enables the Secretary of State, by way of regulations subject to the affirmative procedure, to extend the protections from discrimination given to renters with children or in receipt of benefits in this chapter to additional cohorts, either with or without modifications.

Proposed use of power

258 To allow the Secretary of State to make regulations extending 'Blanket Bans' provisions to additional groups in future, if deemed necessary, for example prison leavers and those with a history of offending. Regulations laid under this Clause are subject to the affirmative procedure and may amend any primary or secondary legislation.

Background

259 This is a new provision.

260 Alongside the commitment to legislate against Blanket Bans on renters with children and in receipt of benefits, our white paper '*A Fairer Private Rented Sector*' also committed to "explore if similar action is needed for other vulnerable groups, such as prison leavers and those with a history of offending". This power would facilitate future extensions to additional cohorts if needed.

Clause 38: No prohibition on taking income into account

Effect

261 This Clause clarifies that no provision of Chapter 3 prevents landlords or anyone acting on their behalf from considering the income of a prospective tenant when undertaking affordability checks before letting a property under a relevant tenancy.

Background

262 This is a new provision.

263 This Clause confirms that income can be considered by landlords or anyone acting on their behalf, to avoid the risk that affordability thresholds may have constituted a prohibited criterion under Blanket Bans measures.

Clause 39: Interpretation of Chapter 3

Effect

264 This Clause provides essential definitions for terminology used in Blanket Bans measures for England (Chapter 3), such as "relevant person", "relevant tenancy", "child" and "benefits claimant".

Background

265 This is a new provision.

Chapter 4: Discrimination relating to children or benefits status: Wales

Clause 40: Discrimination relating to children or benefits status: Welsh language

Effect

266 This Clause amends the Welsh language text of the Renting Homes (Fees etc.) (Wales) Act 2019 and is the Welsh language version of Clause 41.

Clause 41: Discrimination relating to children or benefits status: English language

Effect

267 This Clause prohibits discriminatory bans and restrictions in relation to a dwelling that is to be the subject of an occupation contract on the basis that a child would live with or visit a person at the dwelling, or on the basis that a person is or may be a benefits claimant. Clause 41 amends the English language text of the Renting Homes (Fees etc.) (Wales) Act 2019 ("The 2019 Act") and inserts new Part 2A into the 2019 Act which includes sections 8A to 8J. This is achieved via the Clause's creation of new criminal offences and a person found guilty of an offence under section 8A(1) and 8B(1) is liable on summary conviction to a fine.

268 Subsection (3) inserts new sections 8A to 8J into the Renting Homes (Fees etc.) (Wales) Act 2019, as follows:

a. Section 8A is broadly equivalent to Clause 30. It contains new provision which creates an offence in relation to a dwelling that is to be the subject of an occupation contract. A relevant person may not discriminate on the basis that a child would live with or visit a person at the dwelling nor prevent the person from engaging in any conduct listed in paragraphs (i)-(iv). There are two defences in section 8A, detailed in subsections (2) and (3). These are that otherwise prohibited conduct may be permitted if it is a proportionate means of achieving a legitimate aim or to fulfil a term in an

existing insurance contract . Persons found guilty of an offence under subsection (1) are liable on summary conviction to a fine.

b. Section 8B is broadly equivalent to Clause 31 It contains new provision which creates an offence for a relevant person, in relation to a dwelling that is to be the subject of an occupation contract from discriminating on the basis that a person is or may be a benefits claimant. There is no defence for legitimate aim as in section 8A(2) but subsection (2) does allow otherwise prohibited conduct if it is in order to fulfil a term in an existing insurance contract.

c. Section 8C can be considered the Welsh equivalent to subsection (3) of Clause 30 and Clause 31(3). It contains provision excepting conduct from constituting an offence under section 8A(1) or section 8B(1) if it consists of the things mentioned in subsection (a) or described in regulations under subsection (b). This provision prevents platforms which host lettings adverts or provide for landlords and contract-holders to communicate from breaching the discriminatory prohibitions of Chapter 4. The Welsh Ministers may also, by regulations, add additional exceptions.

d. Section 8D is broadly equivalent to subsection (2) of Clause 32 where there is a continuing breach of prohibition after fixed penalty. It contains provision for an additional offence where there is a continued breach of the Blanket Bans prohibitions under section 8A or 8B.

e. Section 8E is broadly equivalent to subsection (4) of Clause 32. It contains provision allowing for an additional offence for a repeated breach of the Blanket Bans prohibitions within the period of 5 years beginning with the date the notice under section 13 of the 2019 Act was given. Persons found guilty of an offence under subsection (1) are liable on summary conviction to a fine.

f. Sections 8F, 8G and 8H are the Welsh equivalents of Clauses 34, 35 and 36. They contain provision rendering any term in a superior lease, mortgage or insurance contract which would prohibit the occupation or visit of a dwelling by a child or occupation by a benefits claimant not binding.

g. These provisions retrospectively bind mortgages and superior leases entered before commencement of Chapter 4 of the Bill. Insurance contracts, however, are only bound if entered into or whose duration was extended on or after the commencement of section 8H. There are exceptions in subsection (2) of section 8F for superior leases where otherwise prohibited conduct is permitted if it is a proportionate means of achieving a legitimate aim or where a requirement in the lease is a means of preventing the insured from breaching an existing insurance contract. Subsection (4) of section 8F provides an exception for superior leases, where otherwise prohibited conduct against benefits claimants is permitted if it is in order to fulfil the same term in an existing insurance contract.

h. Section 8I can be considered the Welsh equivalent of Clause 38. It contains provision which clarifies that landlords can continue to consider a person's income when assessing the affordability of rent payable under an occupation contract without breaching any Blanket Bans prohibitions.

i. 8J can be considered the Welsh equivalent of new Clause 39. It contains definitions of the terminology used in new Part 2A.

Proposed use of powers

269 Section 8C: To allow the Welsh Ministers to exempt additional conduct from the Blanket Bans prohibitions, to make sure the provisions can adapt to changing market practices and not inadvertently make third party platforms liable for Blanket Bans breaches. Regulations made via this power are subject to the affirmative procedure.

Background

270 This is a new provision.

271 Chapter 4 inserts the substantive blanket ban provisions for Wales directly into the Renting Homes (Fees etc.) (Wales) Act 2019 to align with the existing Welsh housing legislative framework.

Clause 42: Amendment of short title of the Renting Homes (Fees etc.) (Wales) Act 2019

Effect

272 This Clause updates the short title of the Renting Homes (Fees etc.) (Wales) Act 2019 to the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019, reflecting its increased scope.

273 Subsections (1), (3), (4) and (6)(a) amend the short title of the Welsh language text version of the 2019 Act, as well as references to it in other Welsh language legislation passed by the Senedd.

274 Subsections (2), (5) and (6)(b) amend the short title of the English language text version of the 2019 Act, as well as references to it in other English language legislation passed by the Senedd.

Background

275 This is a new provision.

276 Chapter 4 inserts the substantial provisions for Wales directly into the Renting Homes (Fees etc.) (Wales) Act 2019 to align with the existing Welsh housing legislative framework.

Clause 43: Amendments of the Renting Homes (Wales) Act 2016 regarding discrimination

Effect

277 This Clause amends the Renting Homes (Wales) Act 2016 regarding new requirements on landlords to include additional fundamental terms in occupation contracts. Subsections (1)–(4) amend the Welsh language text of the 2016 Act and subsections (5)–(8) amend the English language text of the 2016 Act.

278 Subsections (2) and (6) amend the Overview in section 30 in both languages of the 2016 Act to include the prohibition of discrimination against persons with children or claiming benefits as applying to all occupation contracts under the 2016 Act.

279 Subsection (3) and (7) insert new Chapter 6A into the 2016 Act in both languages, comprising the right for children to live at or visit the dwelling as new section 54A and the right to claim benefits as new section 54B. Under both sections, landlords must not interfere with or restrict the exercise of the contract-holder's right under subsection (1) which states the contact holder under an occupation contract may permit a person who has not reached the age of 18 to live in or visit the dwelling. Similarly, new section 54B provides that the landlord under an

occupation contract must not prohibit the contract-holder from being a benefits claimant within the meaning given by section 8J of the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019.

280 Subsections (4) and (8) amend the Tables in Schedule 1 to the 2016 Act to reflect new sections 54A and 54B which are fundamental provisions of all occupation contracts.

Background

281 This is a new provision.

282 This Clause is in relation to the Renting Homes (Wales) Act 2016 which, among other provision, outlines a contract-holders rights and requires landlords to include fundamental terms in all occupation contracts.

Clause 44: Power of Welsh Ministers to protect others

Effect

283 This Clause grants the Welsh Ministers the power to make provision by regulations extending the protection from discrimination in Chapter 4 of Part 1 (with or without modifications), to additional descriptions of persons.

284 Subsections (2) and (3) clarify that regulations under this section may amend, repeal or revoke any enactment set out under subsection (2), and set out the definitions of 'benefits claimant' and 'occupation contract'.

Proposed use of power:

285 To allow the Welsh Ministers to make regulations extending 'Blanket Bans' provisions to additional groups in Wales, if deemed necessary in future, such as prison leavers and those with a history of offending. Regulations laid under this Clause are subject to the affirmative procedure and may amend any primary or secondary legislation.

Background

286 This is a new provision.

287 New provision made under the power in Clause 44 must be within the legislative competence of the Welsh Parliament. Clause 41(3) inserting new sections 8G and 8H into the 2019 Act, for example, however, relate to financial services which is a reserved matter so any regulations may be made by the Secretary of State under the power in Clause 45.

Clause 45: Power of Secretary of State to protect others

Effect

288 This Clause grants the Secretary of State the same power as Welsh Ministers in Clause 44, though only in cases where provision would relate to reserved matters and fall outside of the legislative competence of the Senedd Cymru.

Proposed use of power:

289 To allow the Secretary of State to make regulations extending 'Blanket Bans' provisions to additional groups in Wales, where provision would fall outside of the legislative competence of Senedd Cymru, if deemed necessary in future. Regulations laid under this Clause are subject to the affirmative procedure and may amend any primary or secondary legislation.

Background

290 This is a new provision.

291 This Clauses grants the Secretary of State the same power as Welsh Ministers in Clause 44, though only in cases where provision would relate to reserved matters and fall outside of the legislative competence of the Senedd Cymru.

Clause 46: Regulations

Effect

292 This Clause limits the exercise of new section 8C (inserted by the Bill into the Renting Homes (Fees etc.) (Wales) Act or Clause 44 of this Bill) to within the legislative competence of the Senedd.

293 This amendment explicitly confirms that the regulation-making power can only make provision within the legislative competence of the Senedd.

Background

294 This is a new provision.

Chapter 5: Discrimination Relating to Children or Benefits Status: Scotland

Clause 47: Prohibition of discrimination relating to children or benefits status

Effect

295 This Clause prohibits discriminatory bans on, and restrictions against, the letting of private rented sector properties on the basis that a child would live with or visit a person at the property, or that a person would claim benefits. This applies to the letting of properties which may give rise to a private residential tenancy. A dwelling must be a person's only or main home in order to constitute a private residential tenancy, and it is recognised that it will not be known for certain at the time of advertising whether a person who responds to the advert wants the property for that purpose. This prohibition is accomplished via insertions to the Private Housing (Tenancies) (Scotland) Act 2016, to mirror those in the Bill itself regarding England. However, enforcement differs from England as, like the equivalent Welsh provisions in the Bill, new criminal offences are created. This is in line with the approach taken in various pieces of Scottish housing legislation.

296 Subsection (2) inserts new sections into the Private Housing (Tenancies) (Scotland) Act 2016 as follows:

a. Section 6A can be considered the Scottish equivalent of Clause 30. It contains new provision which covers discrimination against prospective tenants with children. It creates a new offence in subsection (1) of taking certain actions (essentially, actions which would prevent or restrict the letting of properties to such persons) on the basis that the property would be used by children. Two defences to this are detailed in subsection (2): namely, that otherwise prohibited conduct is permitted if it is in proportionate pursuit of a legitimate aim, or if it is done to fulfil a term in an existing insurance agreement for the property. Provision is also made carving out from the offence parties who engage solely in one or more of the functions listed at subsection (3)(a) or described in future regulations made under subsection (3)(b). This provision prevents platforms which are not involved in the transaction beyond hosting lettings

adverts or allowing prospective landlords and prospective tenants to communicate from committing the offence. The Scottish Ministers may also, by regulations, add additional conduct to this exemption.

b. Section 6B can be considered the Scottish equivalent of Clause 31. It contains new provision regarding discrimination against prospective tenants who receive benefits. It creates a new offence in subsection (1) of taking certain actions (which would essentially prevent or restrict the letting of properties to persons who receive benefits). Unlike section 6A, there is no defence for legitimate aims but subsection (2) does allow otherwise prohibited conduct if it is done in order to fulfil a term in an existing insurance contract for the property. As with section 6A, provision is made carving out from the offence action which is taken by platforms which are only involved to a limited extent, and there is a power for the Scottish Ministers to, by regulations, add to this exemption.

c. Section 6C can be considered the Scottish equivalent of Clause 33. It renders of no effect terms in a private residential tenancy agreement which outright prohibit children from living at or visiting the property (or otherwise restrict the circumstances under which they may do so), or which outright prohibit the tenant from claiming, or seeking to claim, state benefits. Under subsection (2), subsection (1) as it relates to the rule about children does not apply to such terms which are applied in proportionate pursuit of a legitimate aim or to fulfil a term in an existing insurance agreement which prohibits or restricts occupation or visit by children. In addition, subsection (1) as it relates to the rule about benefits does not apply to such terms if such a term is required to fulfil a related term in an existing insurance agreement which prohibits occupation by benefits claimants.

d. Section 6D can be considered the Scottish equivalent of Clause 38. It contains provision which clarifies that landlords can continue to consider a prospective tenant's income when assessing the affordability of a tenancy without breaching any Blanket Bans prohibitions.

e. Section 6E can be considered the Scottish equivalent of Clause 39. It contains definitions of the terminology used such as "relevant person", "child" and "benefits claimant".

297 Subsection (3) inserts a further new section into the Private Housing (Tenancies) (Scotland) Act 2016, as a consequential amendment. This provides that the criminal offences inserted at sections 6A and 6B do not apply to the Crown. Subsection (4) is another consequential amendment and makes provision for the level of procedure that is to apply to the powers inserted at sections 6A(3)(b) and 6B(3)(b) (both of which are subject to the negative procedure).

298 This Clause also, at subsections (6) and (8), makes insertions to the Housing (Scotland) Act 1988 and the Rent (Scotland) Act 1984 to mirror provision made in the Bill itself regarding England. Specifically, the equivalent of new section 6C of the Private Housing (Tenancies) (Scotland) Act 2016 (as explained above) is inserted in each of those Acts. This is in line with Clause 33 of the Bill, under which the English provisions cover not just the tenancy type which is created when a new private rented sector tenancy is granted but also continuing types of older private rented sector tenancies. This means that the rule about tenancy terms in relation to children and benefits will apply to older ongoing tenancies as well as new ones.

Proposed use of powers

299 Inserted sections 6A(3)(b) and 6B(3)(b): To allow the Scottish Ministers to exempt additional conduct from the 'no children' or 'no benefits' Blanket Bans prohibitions, to make sure the provisions can adapt to changing market practices and not inadvertently make third party platforms liable for blanket ban breaches. Statutory instruments laid under this Clause are subject to negative procedure.

Background

300 This is a new provision.

301 This Clause inserts the provisions for Scotland which would fall within the competence of the Scottish Parliament directly into the relevant Scottish legislation to align with the existing Scottish housing legislative framework and aid accessibility. The provisions which would touch on reserved matters will remain in the Bill.

302 The provision made in relation to tenancy terms has retrospective effect and will apply to all specified tenancies whether entered before, on or after commencement.

Clause 48: Terms in standard securities relating to children or benefits status

Effect

303 This Clause can be considered the Scottish equivalent of Clause 35. It contains provision rendering of no effect any term in a mortgage deed (known in Scotland as a standard security) which would prohibit or restrict the occupation of, or visit to, a dwelling by a child or which would prohibit occupation by a benefits claimant. It applies to private residential tenancies, assured tenancies and protected and statutory tenancies.

Background

304 This is a new provision.

305 These provisions have retrospective effect and will apply to all relevant mortgages whether entered before, on or after the commencement date. These provisions prevent a potential breach of contract between landlords, agents and mortgage lenders.

Clause 49: Terms in insurance contracts relating to children or benefits status

Effect

306 This Clause can be considered the Scottish equivalent of Clause 36. It contains provision rendering of no effect any term in an insurance contract which would prohibit or restrict the occupation of, or visit to, a dwelling by a child or which would prohibit occupation by a benefits claimant. It applies to private residential tenancies, assured tenancies and protected and statutory tenancies. However, this provision only applies if the contract is entered into or renewed on or after commencement.

Background

307 This is a new provision.

308 This provision does not have retrospective effect and applies only to relevant insurance agreements entered or renewed on or after the commencement date. These provisions prevent a potential breach of contract between landlords, agents and insurers.

Clause 50: Power of the Scottish Ministers to protect others

Effect

309 This Clause can be considered the Scottish equivalent of Clause 37. It grants the power to the Scottish Ministers to extend the protections from discrimination given to those with children or in receipt of benefits by virtue of this Chapter to additional categories of person, such as prison leavers and those with a history of offending. However, this power is limited to things which could be done within the legislative competence of the Scottish Parliament.

Proposed use of powers

310 To allow the Scottish Ministers to make regulations extending 'Blanket Bans' provisions to additional groups in future, if deemed necessary (for example, prison leavers and those with a history of offending). Statutory instruments laid under this Clause are subject to affirmative procedure.

Background

311 This is a new provision.

Clause 51: Power of Secretary of State to protect others

Effect

312 This Clause grants the Secretary of State the same power as Scottish Ministers in Clause 50, though only in cases where provision would relate to reserved matters and fall outside of the legislative competence of the Scottish Parliament.

Proposed use of power:

313 To allow the Secretary of State to make regulations extending 'Blanket Bans' provisions to additional groups in Scotland, where provision would fall outside the legislative competence of the Scottish Parliament, if deemed necessary in future. Regulations laid under this Clause are subject to the affirmative procedure and may amend any primary or secondary legislation.

Background

314 This is a new provision.

315 New provision made under the power in Clause 50 must be within the legislative competence of the Scottish Parliament; this Clause allows provision outside the legislative competence of the Scottish Parliament to be made by the Secretary of State.

Clause 52: Interpretation of Chapter 4A

Effect

316 This Clause can be considered the Scottish equivalent of Clause 39. It contains definitions of the terminology used in the Clauses relating to mortgages, insurance contracts and the power to extend the protection under Scots law to other categories of person.

Background

317 This is a new provision.

Chapter 6: Miscellaneous

Clause 53: Penalties for unlawful eviction or harassment of occupier

Effect

318 Clause 53 amends the Protection from Eviction Act 1977.

319 Subsection (2) inserts a new subsection into section 1 of the Protection from Eviction Act 1977 which provides that a person cannot be convicted of an offence under section 1 for any conduct if a financial penalty has been imposed under section 1A in respect of that conduct.

320 Subsection (3) inserts a new section 1A (Financial penalty for offence under section 1) into the Protection from Eviction Act 1977. It gives local housing authorities the ability to issue a financial penalty if satisfied beyond reasonable doubt that the person has committed an offence under section 1 of the Protection from Eviction Act 1977 in relation to premises in England. The maximum financial penalty that a local housing authority can impose is £30,000.

321 New section 1A(4) and (5) enable the Secretary of State to provide guidance on fines that local authorities must have regard to when they are exercising their functions under this section.

322 New section 1A(6) introduces Schedule A1 which makes provision about procedures, appeals, enforcement and proceeds of financial penalties. Schedule A1 is inserted into the Protection from Eviction Act 1977 by Clause 53(4).

323 New section 1A(7), (8) and (9) gives the Secretary of State powers to amend the maximum penalty amount via regulations (statutory instrument) to which the negative procedure applies.

324 New section 1A(10) defines 'local housing authority' for the purposes of new section 1A and Schedule A1.

Proposed use of power

325 The power in new section 1A allows the Secretary of State to issue guidance on the use of financial penalties that local housing authorities must have due regard to and to ensure the maximum penalty amount keeps pace with inflation. Regulations laid under this Clause are subject to the negative procedure.

Background

326 This section adds new provision to the Protection from Eviction Act 1977 to enable local housing authorities to issue financial 1 penalties of up to £30,000 in lieu of prosecution for an offence under section 1 of that Act.

Clause 54: Abandoned premises under assured shorthold tenancies

Effect

327 Clause 54 repeals Part 3 of the Housing and Planning Act 2016 which permits a landlord to recover abandoned premises let under an assured shorthold tenancy without a court order. Landlords will need to seek possession using one of the grounds listed in Schedule 2 of the Housing Act 1988.

Background

328 Part 3 of the Housing and Planning Act 2016 has never been brought into force. Clause 2 of this Bill removes assured shorthold tenancies and so the Part 3 provisions are no longer relevant.

Part 2: Residential landlord

Chapter 1: meaning of "Residential Landlord"

Clause 55: Meaning of "residential landlord"

Effect

329 Clause 55 sets out the meanings of private "residential landlord", "relevant tenancy" and "dwelling" for the purpose of defining which tenancies fall within scope of the landlord redress schemes and the private rented sector database in Chapters 2 and 3. It also sets out how and to what extent these definitions may be changed through regulations.

330 Subsections (1) and (2) outline that, for the purpose of this Bill, a "residential landlord" must have a "relevant tenancy" in place in England which, as defined in subsection (3), is either an assured tenancy under the Housing Act 1988 or a regulated tenancy under the Rent Act 1977. Subsections (1) and (2) further clarify that, to be considered as a "residential landlord", a relevant tenancy must relate to a "dwelling", being any building or part of a building occupied or intended to be occupied as a separate home. This excludes non-buildings like caravans, tents, houseboats and park homes which do not fit this definition. Subsections (1) and (2) also exclude "social landlords", as defined in Part 2 of the Housing and Regeneration Act 2008, from the definition of "residential landlord" for the purposes of the landlord redress schemes and the private rented sector database.

331 Subsection (4) confers a regulation-making power on the Secretary of State to change the meaning of terms used in this Chapter to include or exclude superior landlords from the definition of "residential landlord". The power allows for superior landlords to be included under the definition of 'residential landlord' in addition to, or instead of, immediate landlords. The power in clause 55(4)(b)(ii) can be exercised to change the meaning of relevant tenancy so as to include licences. As such, it will allow Part 2 to cover superior landlords under rent-to-rent arrangements where the occupier is a licensee as well as where the occupier is a tenant. Subsection (4) also confers a regulation-making power on the Secretary of State to expand or restrict the scope of a "relevant tenancy" and to expand or restrict the meaning of "dwelling". The powers allow for the meaning of dwelling to be changed to include shared accommodation, and to include other structures such as vessels or vehicles if they are occupied under a relevant tenancy.

332 Subsection (5) clarifies that the Secretary of State can make regulations to add or remove kinds of tenancies or licences by reference to any matters connected directly or indirectly to a tenancy or licence. This could include the circumstances or characteristics of persons connected to a tenancy or licence, such as the landlord or tenant. For example, a tenancy granted by a landlord of a specified description could be added to the definition of "relevant tenancy".

333 Subsection (6) clarifies that the power to add or remove tenancies that are periodic or granted for a term of less than 21 years or licences to occupy under subsection (4)(b) includes dwellings occupied for the purposes of either House of Parliament. This means that such tenancies or licences may be brought into scope of the landlord redress schemes or private rented sector database via regulations, but the landlord will be excluded from criminal liability as outlined in Clause 55.

334 Subsections (7) and (8) clarify further information about the Secretary of State's power to change the meaning of a "residential landlord", "relevant tenancy" or "dwelling", including

to allow for divergence between the private rented sector database and landlord redress scheme provisions.

Proposed use of powers

335 The government intends to lay regulations via the affirmative procedure in both Houses of Parliament under subsection (4) to further define the scope of the private rented sector database and landlord redress scheme provisions. The intent is to use these regulations to clarify the position of superior landlords in certain arrangements known as rent-to-rent, and to include, exclude or make special arrangements for niche tenures such as purpose-built student accommodation, temporary accommodation and supported housing.

336 The Government may use the regulations under subsection (4) to change the meaning of residential landlord to provide for the term to cover superior landlords instead of immediate landlords. This is to allow flexibility for immediate landlords to be members of a redress scheme other than the private rented sector Ombudsman, if deemed appropriate. It is Government's intention that both intermediate and superior landlords will be required to be members of a redress scheme.

337 The intent is to lay these regulations as soon as possible following Royal Assent to provide the sector with the greatest amount of prior notice as to the scope of the landlord redress schemes and the private rented sector database ahead of roll-out and implementation. These regulations may also be used again in the future should government decide to expand or reduce those tenancies required to register with a landlord redress scheme and/or the private rented sector database.

Background

338 This is a new provision.

Chapter 2: Landlord Redress Schemes

Clause 56: Landlord redress schemes

Effect

339 Subsection (1) gives the Secretary of State power, by regulations, to require residential landlords as defined in Clause 55 to join a landlord redress scheme. Subsection (2)(b) defines such a scheme as one that is created and administered by a third party and approved by the Secretary of State, or administered by or on behalf of the Secretary of State and designated by the Secretary of State as a landlord redress scheme.

340 Subsection (2)(a) sets out that an approved or designated scheme must provide for the independent investigation and determination of complaints by prospective, current, and former tenants of residential landlords, or their representatives. Subsection (3) defines a prospective tenant as someone who requests information about a home being marketed as a private rented sector property; visits, or requests to visit, a marketed property; or who makes an offer to rent a marketed property. Simply viewing information about a marketed property – e.g., online – is not sufficient for a person to be considered a prospective tenant.

341 To allow for eligible tenants to raise their complaints – as defined under subsection (2)(a) – subsection (4)(a) outlines that regulations made under subsection (1) can require residential landlords to be members of a scheme from the point that they market their property to prospective tenants. Subsection (4)(b) also allows for regulations which may prohibit someone – which may be a letting agent or another person – from marketing a property where the

intention is to create a relevant tenancy, but the landlord is not a member of an approved or designated redress scheme. What constitutes marketing a property for the purpose of creating a residential tenancy is defined in Clause 89. Subsection (4)(c) sets out that the length of time that former residential landlords must remain members of an approved scheme must be in regulations.

342 Subsection (5) makes clear that prior to making regulations requiring residential landlords as defined in Clause 55 to be members of an approved or designated redress scheme, the Secretary of State must make sure that such a scheme is operational and that residential landlords are eligible to join it. This is so the requirement to be a member would only be triggered by regulation once the relevant redress scheme was established.

343 Subsections (6) and (7) clarify and define what activities an approved or designated redress scheme can undertake beyond providing mandatory redress for prospective, current, and former tenants of residential landlords as defined under Clause 55. This includes being able to offer redress to consumers and tenants of those who voluntarily join the scheme but have no legal obligation to do so. These subsections also allow for the scheme to specify types of complaints it will not investigate or determine. It also allows for an approved scheme to offer a mediation service so that the scheme can act as mediator to work toward mutual resolution of complaints that residential landlords may have against their tenants. This mediation service would be different to redress in that tenants would have to voluntarily take part, and the scheme would not seek to, nor could it, issue a binding decision which a tenant would have to adhere to.

Proposed use of power

344 The government intends to approve or designate one redress scheme under Clause 56 (the Private Rented Sector Landlord Ombudsman scheme) and lay regulations via an affirmative procedure in both Houses of Parliament to require prospective, current, and former residential landlords, as defined under Clause 55, to be members of the approved or designated redress scheme. The period in which former landlords are required to remain members of the scheme will be determined in regulations. The conditions of approval of a redress scheme will be set out in regulations made under Clause 57.

345 It is still to be determined if regulations made under this Clause will require all intended prospective, current, and former private residential landlords to be members of the approved scheme at the same time, or whether there will be a staggered approach to enable a phased rollout of the redress provision as provided for by Clause 56.

Background

346 This is a new provision. There is no previous legislative provision for private residential tenants specifically to complain to an Ombudsman or redress scheme about their landlord. In relation to housing, legislative provision for redress schemes already exists for property management, private rental letting and estate agency work, new homes, and for social housing residents.

Clause 57: Approval and designation of landlord redress schemes

Effect

347 Subsection (1) states that this Clause applies when the Secretary of State is seeking to make regulations to require residential landlords to join a landlord redress scheme under Clause 56(1).

348 Subsection (2) requires the Secretary of State to make regulations setting out the conditions that an approved or designated scheme must meet. As set out by Subsection (3), these conditions must include requiring the scheme to:

349 Subsection (3)(a) and (b): provide for, in accordance with regulations, the appointment of an independent individual to be in charge of investigating and determining complaints under a scheme, their terms and conditions and the termination of their appointment. While the Clauses make no explicit reference to an 'Ombudsman' or 'Head of Redress', the intent is that this subsection will allow for this or a similar post to be created and appointed by the Secretary of State or scheme administrator depending on the redress delivery model.

350 Subsection (3)(c): outline the types of complaints that may be made under a scheme, including complaints about the failure to comply with any code of practice approved or issued by the Secretary of State.

351 Subsection (3)(d) and (e): define the length of time a tenant will need to give their landlord to resolve their complaint in the first instance before they can escalate to the scheme, and the circumstances in which a scheme might reject a complaint.

352 Subsection (3)(f) and (g): make provision about co-operation with other organisations involved in complaint handling or enforcement bodies when handling tenants' complaints, including provision for joint investigations where appropriate, and for the sharing of information with the Secretary of State and other bodies to facilitate co-operation.

353 Subsection (3)(h) and (i): state if members need to pay a fee for the mandatory redress service and, if so, make provision about the level of those fees. Where the scheme provides additional voluntary services, the fees charged in respect of these need to meet the full cost of administering them. The fee charged for the mandatory redress service can only be used to fund aspects of the scheme relating to complaints in relation to which there is a duty to be a member.

354 Subsection (3)(j): be able to compel a landlord to award redress to tenants, including but not limited to requiring a landlord to issue an apology or explanation, and / or pay compensation to a tenant, and / or take or cease taking an action.

355 Subsection (3)(k), (l), (m) and (n): provides for a scheme to take action against landlords who do not adhere to their redress membership conditions – to include failing to adhere to an approved scheme's decision. The regulations allow for this to include expelling a member from a scheme, which will bar a landlord from joining any approved scheme unless they take the steps and meet the conditions set out in regulations to be able to re-join the scheme. The regulations must also specify the circumstances under which the scheme can expel a member, require the scheme to take steps to ensure compliance before considering expulsion, and make provision for decisions to expel to be reviewed by an independent person prior to the expulsion taking effect. Expelled landlords will be in breach of the requirement to be a member of an approved scheme, and therefore at risk of enforcement action under Clause 58 if they continue to meet the criteria for mandatory membership under Clause 56.

356 Subsection (3)(o) and (p): make provision for the transfer of scheme administration to another body, and the closure of an approved scheme. Subsections (4) and (5) allow for regulations to be made for the administration of a scheme to be transferred to the Secretary of State or a body acting on behalf of the Secretary of State. Any scheme transferred in this way may become a designated, rather than an approved, scheme.

357 Subsection (4) clarifies that regulations made under subsection (3) can impose conditions which require an approved or designated redress scheme to continuously meet certain conditions of approval while in operation.

358 Subsection (7) clarifies that the conditions listed under subsection (3) to (5) are non-exhaustive, meaning the Secretary of State has discretion to add more conditions in regulations.

359 Subsection (8) allows the Secretary of State to make regulations to determine the number of approved or designated landlord redress schemes, the process for making applications for approval, the time that approval or designation will remain valid once granted, and the conditions and process for approval or designation to be withdrawn or revoked. This subsection also allows for a scheme to set fees by reference to the total administration costs of the compulsory aspects of the scheme and that the calculation of a fee is not limited to the costs referable to the member who pays it.

360 Subsection (9) provides that regulations made under Clause 57 may confer functions on the Secretary of State or authorise or require a scheme to do so. It also provides for the delegation of such functions. For example, the intention is for the Secretary of State to set an initial maximum limit on the level of compensation that may be awarded under a scheme of £25,000.

361 Subsection (10) defines terms for the purposes of distinguishing between compulsory and voluntary aspects of the scheme and between compulsory and voluntary membership.

Proposed use of power

362 Regulations under this Clause will be introduced before the Secretary of State approves or designates a redress scheme for private residential landlords, and include all of the details and conditions of approval required under this Clause. The intent is for the Secretary of State to approve or designate only one Ombudsman scheme for private landlord redress, for the Secretary of State to select the individual investigating and determining complaints under the scheme and set their terms and conditions, for redress provision to be fully funded through proportional and fair landlord membership fees, and for the regulations to include provision for landlords to be expelled from an approved scheme. Expulsion will be a last resort following repeated or serious non-compliance with membership obligations. Regulations will be subject to the affirmative procedure.

Background

363 This is a new provision. Similar provision exists in relation to other redress schemes; for instance, paragraphs 2 and 3 of Schedule 2 to the Housing Act 1996 establishing the Housing Ombudsman service for social landlords.

364 In relation to housing, legislative provision for redress schemes already exists for management, lettings and estate agency work in the private residential sector, new homes, and for social housing residents.

Clause 58: Financial penalties

Effect

365 Subsections (1)(a) and (2)(a) provide that a local housing authority may impose a financial penalty of up to £5,000 on a person if it is satisfied beyond reasonable doubt that the person has breached the requirement in Clause 56 to be a member of an approved or designated redress scheme, or the person (e.g., letting agent or other) has marketed a property where the landlord is not yet a member of a landlord redress scheme.

366 Subsections (1)(b) and (2)(b) provide that a local housing authority may impose a financial penalty of up to £30,000 on a person as an alternative to prosecution, if it is satisfied beyond reasonable doubt that an offence under Clause 59 has been committed.

367 Subsections (3) and (4) provide that more than one penalty may only be imposed for the same conduct if that conduct continues for a minimum of 28 days after a final notice is issued and no appeal is made – e.g., not signing up to a landlord redress scheme but continuing to meet the definition of "residential landlord". "Final notice" – as noted in subsection (5)(9)(b) – is defined in paragraph 6 of Schedule 4. Should a successful appeal be made, no financial penalty can be imposed. Should it be unsuccessful, the 28-day period will commence from the day on which the appeal is determined, withdrawn, or abandoned after which another financial penalty may be imposed.

368 Subsection (5) clarifies that a local housing authority may not impose a financial penalty if criminal proceedings against the person in respect of the same offence are ongoing, or have concluded with a conviction or acquittal.

369 Subsections (6) and (7) provide for the Secretary of State to issue guidance for local housing authorities on how to exercise the powers provided in this section and require local housing authorities to have regard to such guidance.

370 Subsection (8) provides for the Secretary of State to change the maximum amounts of financial penalties specified in this Clause to account for inflation.

371 Subsection (9) clarifies that, for the purposes of Clauses 59, a financial penalty is imposed on the date specified in the final notice as the date on which the notice is given and that 'final notice' is defined in paragraph 6 of Schedule 5.

Background

372 This is a new provision. To ensure that the policy aims are achieved, it is necessary for enforcement action to be effective but proportionate. The imposition of financial penalties for first and subsequent breaches of the requirement for landlords to be members of a redress scheme reflects the approaches taken in section 8 of the Tenant Fees Act 2019 and section 87 of the Consumer Rights Act 2015. Amending the maximum financial penalty to account for inflation will ensure that penalties continue to be an effective and proportionate deterrent.

Example: Where a landlord is not a member of an approved or designated scheme

A tenant of a private residential landlord raises a complaint with the only approved redress scheme – the Ombudsman scheme - and it is found that the landlord is not a member. The scheme takes reasonable steps to contact the landlord, informs them of the requirement to comply and the consequences of non-compliance. The landlord still fails to sign up and the scheme then refers the case to the local housing authority in whose area the dwelling is. The local housing authority investigates the breach and determines, beyond reasonable doubt, that the landlord has not signed up to an approved redress scheme. The local housing authority subsequently issues a civil penalty of up to £5,000. The landlord pays the civil penalty and joins the Ombudsman scheme – no further action is taken by the local housing authority, and the Ombudsman will be able to investigate the original complaint made by the tenant if the issue remains ongoing.

Clause 59: Offences

Effect

373 Clause 59 sets out the offences which may be committed where a person persistently or repeatedly fails to comply with the requirement to be a member of a landlord redress scheme or the prohibition on marketing a dwelling where the landlord is not a member of such a scheme, for which financial penalties, as specified in Clause 58, may be imposed as an alternative to prosecution.

374 Under subsection (1) a person who has received a financial penalty under Clause 58 commits the offence if the conduct in respect of which the penalty was imposed continues for longer than the specified period thereafter.

375 Under subsection (2) a person who has received a financial penalty for breach of regulations under Clause 56 commits the offence if they commit a different breach within the next five years.

376 Subsection (3) provides that a person who has been previously convicted of the offence, or received a financial penalty in lieu of prosecution, commits the offence if they breach regulations under Clause 56 again within five years of the previous conviction, or within five years of receiving the financial penalty in lieu of prosecution.

377 Subsection (4) clarifies that for the purposes of the offences a 'relevant penalty' is one where: an appeal has not been launched within the permitted period provided for in paragraph 10 of Schedule 4; an appeal has been withdrawn or abandoned; or a penalty was confirmed or amended on appeal.

378 Subsection (5) provides that a person cannot be convicted of an offence if a financial penalty has already been imposed in respect of the same conduct, unless that conduct constitutes a continuing breach to which subsection (1) applies.

379 A person found guilty of the offence is liable on summary conviction to a fine as stated in subsection (6).

380 Subsections (7) and (8) provide that when an officer or member of a body corporate, which may include private and public companies or charitable organisations, consents to or colludes in the commission of an offence by the body corporate, both the officer or member and the body corporate have committed an offence and are liable to penalties as specified in Clause 58, as well as prosecution.

Background

381 This is a new provision. This Clause provides for when a landlord has committed a breach of regulations or an offence for which financial penalties, as specified in Clause 58, can be imposed. The definition of the offence mirrors section 12 of the Tenant Fees Act 2019.

Example: Landlord is not a member of a scheme – repeat offence

A private tenant has found that their landlord is not a member of the Ombudsman scheme, as required by law. The tenant reports this to the Ombudsman, who in turn refers the case to the local housing authority for enforcement action. Upon investigation, the local housing authority finds that the landlord has committed an offence because a fine for a similar breach has been imposed within

the last 5 years and has not been appealed. As this is a repeat offence, the local authority issues the landlord with a penalty of up to £30,000.

Clause 60: Decision under a landlord redress scheme may be made enforceable as if it were a court order

Effect

382 If enacted, regulations under subsection (1) would allow a scheme administrator to apply to the relevant court or tribunal for decisions made under the scheme to be enforced as if they were a court order. This measure is intended to be one of last resort to ensure compliance with the decisions of an approved redress scheme, should the threat of expulsion by the scheme provided for under Clause 57 prove insufficient. Before introducing regulations under subsection (1), subsection (2) outlines that the Secretary of State must consult with one or more bodies representing landlords and tenants, as well as having discretion to also consult other relevant people.

Proposed use of power

383 The regulations would be subject to the negative resolution procedure. The government will only introduce this measure if it is necessary to achieve the objectives of the legislation, where there is evidence that non-compliance is high and that the expulsion mechanism, provided for under Clause 57, proves to be ineffective at ensuring compliance in all situations. The government will also consult with at least one landlord and one tenant representative body, and any other persons or organisations the Secretary of State deems relevant, before using this power.

Background

384 This is a new provision, although similar to that provided for in other sectors, including the social housing sector under paragraph 7D of Schedule 2 to the Housing Act 1996, and the legal sector under section 141 of the Legal Services Act 2007.

Clause 61: Landlord redress schemes: no crown status

Effect

385 This Clause clarifies that people exercising functions under a landlord redress scheme do not have Crown status.

Background

386 Clause 57(2A)(a) and (aa) give scope to determine, in regulations, how the individual responsible for overseeing and monitoring the determination of complaints – "the Ombudsman" – will be appointed. Clause 61 makes clear, no matter how the individual is appointed under these regulations, that this individual, or any person exercising functions under the scheme, does not have Crown status. This is consistent with the existing Ombudsman for social housing, who does not have Crown status, as specified in the Housing Act 1996.

Clause 62: Guidance for scheme administrator and local housing authority

Effect

387 An approved redress scheme will be able to investigate complaints from tenants where their landlord fails to address their complaint appropriately or in a timely manner and, where appropriate, compel a landlord to take action to put things right or provide compensation.

388 Where the complaint from a tenant concerns the breach of a regulatory threshold, local housing authorities may take enforcement action to bring the landlord or property into compliance with the regulations, and, using its discretion, to sanction landlords. In these circumstances, tenants will be able to complain to either the local housing authority or an approved redress scheme. To address both the regulatory breach and redress needs of the tenant, the local housing authority and redress scheme each have complementary but separate roles.

389 Subsection (1) allows for official guidance on how local authorities and any approved redress scheme will work together to resolve complaints where both parties have a jurisdictional interest. Approved or designated redress schemes and local housing authorities will need consistent ways of resolving these issues as quickly and efficiently as possible, while ensuring tenants receive redress and non-compliant landlords are sanctioned where necessary. The Government intend for local housing authorities to take into account the guidance and, by regulations under Clause 57, to require an approved scheme to also take into account this guidance, as outlined in subsections (2) and (3).

Background

390 This is a new provision.

Clause 63: Interpretation of Chapter 2

Effect

391 This provides essential definitions for words and phrases used in Chapter 2, namely for "landlord redress scheme" defined under Clause 56(2), "residential premises" defined under section 1(4) of the Housing Act 2004, and "residential landlord", "residential tenancy" and "residential tenant" defined under Clause 55.

Background

392 This is a new provision.

Clause 64: Housing activities under social rented sector scheme

Effect

393 This Clause amends Schedule 2 of the Housing Act 1996 to prevent residential landlords within the meaning of Clause 55 from being voluntary members of a government-approved social landlord redress scheme in relation to their private rented sector activities. It also stops social landlords who let property in the private rented sector from being required to be members of a social redress scheme in respect of their private rented sector housing activities and prevents such a scheme from dealing with complaints about private rented sector activities unless permitted by the Secretary of State. "Private rented sector activities" are defined as activities carried on by a person as a residential landlord within the meaning given by Clause 55 of the Bill. Any approved social landlord redress scheme would still be able to accept persons in respect of non-private rented sector activities as voluntary members, and deal with complaints about these members.

394 Subsection (3)(a) allows for complaints in relation to social landlords' private rented sector activities to be considered under an approved social landlord redress scheme if agreed in writing by the Secretary of State.

395 This Clause also contains an update to paragraph 10 in Schedule 2 of the Housing Act 1996. Updated paragraphs 10(1) and (2) make the Secretary of State responsible by default for appointing the Ombudsman for social housing where the scheme is administered by a body

corporate, as well as deciding their terms of appointment. Some or all of these functions may be delegated to the body corporate under 10(5), with the Secretary of State specifying the extent to which functions are delegated and any conditions to which it is subject under 10(6). Where the approved scheme employs the Housing Ombudsman, 10(3) makes clear that the terms of employment must be consistent with any terms of appointment set by the Secretary of State and that the Secretary of State may remove them from post and instruct the body corporate to cease their employment as the Housing Ombudsman. Existing provisions for the Housing Ombudsman Service to be set up as a corporation sole remain unaffected under subsection (4).

396 Subsection (3)(b) adds a new paragraph 7A to specify that a scheme must provide for enforcement of directions under paragraph 10(3) of the same schedule. This means that, where a Secretary of State has removed the Ombudsman, the scheme administrator must cease to employ them as the Ombudsman, if directed by the Secretary of State to do so.

Background

397 The Housing Ombudsman Service currently administers the only approved redress scheme handling complaints from tenants of social housing providers. The service is provided for under section 51 of, and Schedule 2 to, the Housing Act 1996. The private housing activities of some social housing providers who also let properties in the private rented sector currently fall within the scheme's mandatory jurisdiction. Residential landlords in the private rented sector can also voluntarily join the Housing Ombudsman Service.

398 The government does not intend to bring Clause 64 into force before the new private rented sector Ombudsman service is established. The provisions in Clause 64 can be brought into force separately, at different times, if this is deemed necessary.

399 It is the Government's intention to ensure that all private tenants have equal access to redress and that the new Ombudsman has oversight of the whole private rented sector. To enable this, Clause 64 makes provision to remove the jurisdiction of any approved social landlord redress scheme over private residential landlords and the private rented sector housing activities of social housing providers. This is so that the private rental activities of these landlords will be covered instead under a private rented sector scheme approved under the Renters (Reform) Bill.

400 The updated paragraph 10 makes the Secretary of State responsible by default for appointing the Ombudsman for social housing under a body corporate model. Although the Secretary of State may delegate this function, they will remain the appointing authority and can revoke delegation at any time. This seeks to ensure that Ombudsmen, while independent of Government, are suitably accountable to the department regardless of the corporate structure of the scheme administrator.

Clause 65: Other amendments in connection with landlord redress schemes

Effect

401 This Clause introduces Schedule 3.

Background

402 This is a new provision.

Clause 66: Local Commissioners' investigation of complaints by persons who are not tenants

Effect

403 Clause 66 amends section 26 of the Local Government Act 1974. Section 26(8) prohibits the Commission for Local Administration in England from investigating complaints about the matters set out in Schedule 5 to that Act. This amendment provides a targeted exemption to section 26(8), allowing the Commission to investigate complaints about decisions taken by local authorities in their capacity as registered providers of social housing but where the complainant has no right to make a complaint against that registered provider under a redress scheme approved under Schedule 2 to the Housing Act 1996 (the Housing Ombudsman Service).

Background

404 The Commission for Local Administration in England investigates complaints from members of the public about local authorities and social care providers. The Commission is also known as the Local Government and Social Care Ombudsman. The Housing Ombudsman Service is currently the only scheme approved under Schedule 2 to the Housing Act 1996, and the Service investigates complaints made against its member landlords by those member landlords' tenants, shared owners and leaseholders.

Chapter 3: The Private Rented Sector Database

Clause 67: The database

Effect

405 Subsection (1) sets out that the database established by the operator must contain entries regarding (a) existing or prospective residential landlords, (b) dwellings which are, or intend to be, let under a residential tenancy, and (c) residential landlords that i) have received a banning order or ii) received a conviction or financial penalty in relation to a relevant banning order offence or iii) received a conviction or regulatory action as specified in regulations. This may include, for example, breaches introduced as part of this Bill, or regulatory action such as improvement notices.

406 Subsection (2) provides definitions for different terms used to describe entries in the database as defined in this chapter.

407 Subsection (3) signposts the relevant sections in this chapter that explain when a landlord or dwelling entry in the database is active and inactive, namely Clauses 69 and 71.

Background

408 This is a new provision. This Clause places a duty on the database operator to establish and run a database which contains entries of existing residential landlords, prospective residential landlords and dwellings which are, or intend to be, let under residential tenancies. This new database will provide the basis for the future Privately Rented Property Portal service.

409 The database should also contain entries in respect of persons who are subject to banning orders, who have been convicted of other offences, who have been financially penalised for other specified breaches, or are subject to other regulatory action, as specified in regulations. This is to replace functions relating to private landlords under the existing Database of Rogue Landlords and Property Agents and provisions under the Housing and Planning Act 2016.

Clause 68: The database operator

Effect

410 Subsection (1) sets out the definition of the database operator in this chapter, meaning (a) the Secretary of State or (b) a person the Secretary of State arranges to be the database operator.

411 Subsection (2) outlines that the arrangements with the database operator may include (a) provision for payments by the Secretary of State and (b) stipulations about bringing the arrangements to an end.

412 Subsection (3)(a) sets out that the Secretary of State may pass regulations which make the database operator responsible for ensuring that the database works in the way that the regulations require, subsection (3)(b) allows the database operator to enter into contracts and other agreements in order to implement their role and subsection (3)(c) allows for functions related to the operation of the database to be discharged by other parties, which may include local housing authorities or a lead enforcement authority, either in place of or alongside the database operator. This may include activities related to the verification or correction of entries, or support for users of the database.

413 Subsection (3)(d) enables the Secretary of State to make arrangements necessary to facilitate a smooth transfer from one database operator to another. This may include the continuation of the database's functions in the interim before a new operator takes over, such as the maintenance of database entries. It could also include provisions about how regulations do not apply during this time. Any such arrangements would only be made on a temporary basis until a new operator is fully operational.

414 Subsection (4) adds that the regulations mentioned in subsection (3)(d) may be in relation to a specific change of database operator or to changes that happen from time to time.

Proposed use of power

415 The intended use of the powers under this Clause is to provide further technical detail as to the duties of the operator, local housing authorities and lead enforcement authorities, and to enable the smooth transition where there is a change of database operator.

416 The Government intends to lay regulations for this Clause via the negative procedure.

Background

417 This is a new provision. This Clause sets out a definition of the database operator and the arrangements the Secretary of State may make with a person that they appoint as the database operator.

Example: Transferring data between organisations operating the database

Organisation A was the database operator and Organisation B is going to take over. The Secretary of State is able to make transitional provision as to how the law is to operate during the period of A giving up the function and B taking it over. This could detail matters such as the transfer of data from Organisation A to Organisation B and at what point Organisation A ceases its functions and Organisation B takes over those functions. The Secretary of State could also detail any regulations which do not apply during this period.

Clause 69: Making entries in the database

Effect

418 Subsection (1) gives the Secretary of State the power to make regulations with regard to making entries on the database.

419 Subsection (2) sets out what these regulations may specify. The regulations may outline (a) how registrations on the database are created and which person is required to make that registration and (b) what information and supporting documentation needs to be included as part of the registration. Subsection (2)(c) allows the Secretary of State to specify other requirements, including requiring the payment of a fee for registering on the database. Subsection (2)(d) explains that the regulations may state the time by which requirements must be complied with and (e) indicates that regulations may allow for entries to be made without certain conditions being met, as long as those conditions are subsequently met before the end of a specified grace period. Subsection (3) stipulates that any such grace period provided for by regulations cannot exceed 28 days from the day on which the entry is made. Subsection (4) outlines that entries that meet the requirements as set out in regulations will be considered active. This means that they will be considered 'live' and valid entries for the purposes of advertising, marketing or letting property - unless or until they become inactive according to the regulations laid out in Clause 71.

420 Subsection (5) indicates that information about a landlord and a property contained on the database may be made public according to the regulations contained in Clause 78.

Proposed use of power

421 These regulations will allow the Secretary of State to set out the process and requirements for creating entries on the database. Regulations will be needed from time to time over the life of the database to accommodate changes in property standards and safety requirements, as well as advances in technology, which may also necessitate small tweaks to policy. As well as personal information about the landlord and dwelling, prescribed information will include the details of any other persons involved in the ownership or management of the property, as well as information and evidence relating to property standards. In the immediate term, the Government expect this will include documents such as gas safety certificates and Electrical Installation Condition Reports.

422 The Government intends to lay regulations for this Clause via the negative procedure.

Background

423 This is a new provision. The Clause outlines that the Secretary of State may pass regulations that will outline how, and by whom, landlord and dwelling entries may be made and will prescribe the criteria which will need to be met for a landlord or dwelling entry on the database to be recognised as 'active', or live. These will include the prescribed form a landlord is required to complete, either online or on paper, the prescribed information required and the prescribed fee to be paid, as well as the time by which these requirements must be complied with. The power also extends to the provision for a grace period not exceeding 28 days for compliance with a requirement specified in regulations following the making of an entry.

Example: 28-day grace period

A landlord registers a dwelling but indicates that they will provide certain prescribed information within a 28-day grace period. This could be a gas safety certificate where an appointment to inspect

the property has been scheduled but not yet taken place. Subject to regulations, this could, for instance, allow a landlord to market the property while some areas of requirements are still in the process of being met.

Clause 70: Requirement to keep active entries up-to-date

Effect

424 Subsection (1) states that the regulations, made by the Secretary of State, will require that active entries in the database are kept up-to-date.

425 Subsection (2) clarifies that the regulations may make further specifications about how entries must be updated, including (a) who can make updates to entries, (b) information that must be kept up-to-date, (c) any other requirements that must be met and (d) the time period within which updates must be made.

426 Subsection (3) explains that no fee would be chargeable for keeping entries on the database up-to-date.

Proposed use of power

427 This Clause explains that the Secretary of State will provide regulations that require active entries in the database to be kept up-to-date.

428 The Government intends to lay regulations for this Clause via the negative procedure.

Background

429 This is a new provision. This Clause introduces a requirement for entries to be kept up-to-date so as to ensure that entries in the database are accurate, contain valid information and that evidence relating to housing standards can be consistently monitored.

Example: Keeping entries up to date

The regulations may cover a scenario in which a landlord with an active dwelling entry on the database receives a new gas safety certificate for that dwelling. The gas safety certificate currently on the database is now out of date and must be replaced with the new certificate in order for the landlord to keep the dwelling entry up-to-date. The landlord would be required to upload the new certificate and can do so free of charge.

Clause 71: Circumstances in which active entries become inactive and vice versa

Effect

430 Subsection (1) states that the regulations, made by the Secretary of State, will set out when an active landlord or dwelling entry may become inactive and vice versa.

431 Subsection (2)(a) outlines that the regulations may set out that active landlord or dwelling entries may become inactive - or in effect, expire - after a period of time if requirements specified in the regulations are not met. For example, if a landlord does not renew the entry and pay the re-registration fee after a specified registration period has ended and they have exceeded the 28-day grace period. Subsection (2)(b) outlines that regulations may provide for active entries to be made inactive – for example, if the landlord has sold the property or if it is

no longer being let. Subsection (2)(c) outlines that the regulations may specify requirements that must be met for inactive entries to become active entries again.

432 Subsection (3) stipulates that regulations under this section may require a fee for renewal of entries.

Proposed use of power

433 This Clause sets out that the Secretary of State will provide regulations about when an active landlord or dwelling entry may become inactive and vice versa. This covers, for example, late renewals.

434 The Government intends to lay regulations for this Clause via the negative procedure.

Background

435 This is a new provision. This Clause outlines the power that the Secretary of State will hold to make regulations which will specify circumstances in which an entry may become 'inactive' or vice versa. An entry may become 'inactive' and no longer publicly viewable if it expires without renewal, or, under certain circumstances, if a landlord makes a request – for example, if they have sold the property. Once an entry is inactive, either at the landlord's request or because it has expired, the respective dwelling cannot be marketed, advertised or let unless it is made active again. Inactive entries will be archived for 5 years, after which they will be deleted from the database. Regulations will determine the process for renewals and the procedure applicable to late renewals.

Example: Failing to re-register before the specified deadline

A landlord has failed to re-register on the database before the specified deadline and they have received a letter warning them that they must re-register within the 28-day grace period. The landlord fails to re-register within the 28-day grace period and therefore their database entry is made inactive. For this entry to become active again, the landlord would need to pay a late fee as well as the re-registration fee.

Clause 72: Verification, correction and removal of entries

Effect

436 Subsection (1) outlines that the Secretary of State can make regulations (a) concerning the verification of information provided to the database and (b) the process by which incorrect entries can be rectified. Subsection (1)(c) allows for the removal of entries that do not meet the criteria for entry onto the database.

437 Subsection (2) sets out the areas that these regulations will cover. This may include verification of identity, or of property standards documentation. Subsection (2)(a) indicates that regulations may outline the process for verification of entries, by local housing authorities or other persons, such as the operator. Subsection 2(b) states that the regulations can make provision about how the authentication of entries required by that subsection is carried out. Subsection (2)(c) permits the correction of errors within landlord and dwelling entries by specified persons. Subsection (2)(d) permits the removal by specified persons of landlord or dwelling entries that do not meet the requirements set out in this Chapter.

Proposed use of power

438 The operating model for the database is designed around an assumption that certain processes can be automated. This means that some of the duties the Government expect the database operator, local housing authorities and users of the database to carry out will be dependent on successful testing of the technology, and on applying learnings as the database is rolled out. A regulation-making power that covers verifying, correcting and removing entries means that duties can be tailored to the technological abilities or limitations of the database. For example, spot checks on gas and electrical safety certificates may be necessary if it is found that this cannot be done accurately in a digital format.

439 The Government intends to lay regulations for this Clause via the negative procedure.

Background

440 This is a new provision. This Clause empowers the Secretary of State to make regulations that detail how information collected on the database will be authenticated and outline a process for editing or removing incorrect entries. The power would extend to making provision about how and by whom verifications and corrections may be carried out, including requiring local housing authorities or other bodies such as the operator to undertake these functions. The intent is for a quota of information collected by the database to undergo a form of verification to check whether it is valid, and for corrections to be made where this is not the case. This may be partially automated, but a proportion of triaged applications will likely require follow up by those carrying out these functions.

Example: Removal of landlord entry made in error

A local housing authority identifies a dwelling entry for a houseboat. The owner of the houseboat has misunderstood their obligations and has mistakenly made an entry. This entry is invalid, as it does not meet the definition of 'dwelling' as set out in Clause 89. The local housing authority removes the entry, in line with regulations made under this Clause. The active landlord entry is retained, as the residential landlord also lets out three other properties which meet the requirements under this chapter.

Clause 73: Fees for landlord and dwelling entries

Effect

441 Subsection (1) explains that this Clause applies to regulations set under Clauses 69 and 71 that require the payment of a fee for the creation or renewal of landlord and dwelling entries.

442 Subsection (2) states that the fee amount is either (a) to be specified in the regulations or (b) to be determined by the database operator, if provided for in the regulations.

443 Subsection (3) explains that the fee amount (a) may be calculated by reference to costs incurred, or likely to be incurred in (i) the establishment and operation of the database, such as the maintenance of technology and the provision of administrative support to users, (ii) the enforcement of requirements in respect of the database and (iii) other functions of the database operator under this chapter, like the provision of guidance to residential landlords, and can be used for costs unconnected to the fee-payer. Subsection (3)(b) allows that the fee charged for a database entry to become active again after becoming inactive under Clause 71(2)(a) may be higher than the fee that would have been charged had the entry remained active, this being the sum of the re-registration fee and an additional late fee.

444 Subsection (4) establishes that the fee is to be payable to the database operator by persons and in circumstances stipulated in the regulations.

445 Subsection (5) states that the Secretary of State may direct the database operator to pay all, or part, of the amount it receives in fees to local housing authorities or into the Consolidated Fund.

446 Subsection (6)(a) explains that subsection (5) does not apply if the Secretary of State is the database operator. Subsection (6)(b) authorises the Secretary of State to pass onto local housing authorities monies collected through fees.

Proposed use of power

447 The powers under this Clause will be used to set fees.

448 The Government intends to lay regulations for this Clause via the negative procedure.

Background

449 This is a new provision. The Government intends to charge a fee to landlords for registration on the database. This Clause outlines the criteria which apply to setting the fee for registration. The fee is either to be specified through regulations or set by the database operator so that it can be amended to reflect the costs involved in operating the database and provide flexibility for the fee to account for other factors such as inflation.

Example: Charging an additional late fee

A landlord has failed to re-register on the database before the specified deadline and they have received a letter warning them that they must re-register within the 28-day grace period. The landlord does not re-register within the 28-day grace period and is therefore eligible to be charged an additional late fee as well as the re-registration fee as stated in Clause 73(3)(b).

Clause 74: Restrictions on marketing, advertising and letting dwellings

Effect

450 Subsection (1) sets out that anybody who is marketing a property as available for rent must not do so unless there are active, publicly viewable entries on the database, both (a) for the landlord or prospective landlord of that property, and (b) for the property that is being advertised. Clause 89 defines what is meant by 'marketing' and provides a definition of letting agents for the purposes of these restrictions. Subsection (2) adds that any written advertisement for a property as available for rent must include the unique identifiers which are allocated to the landlord and property upon registration as set out in Clause 76.

451 Subsection (3) establishes that all properties being privately let under the criteria set out in Clause 55 must be registered on the database. Paragraphs (a) and (b) put a duty on residential landlords to ensure that there are active entries both for themselves as landlord and for each dwelling they are letting out, and that the entries meet all requirements.

452 Subsection (4)(a) gives the Secretary of State the power to pass regulations which specify circumstances in which the duty under subsection (3) can apply to specified persons other than the landlord, and in which (4)(b) a landlord may be relieved of the duty in general or for a period specified in accordance with regulations. This may allow for the delegation by landlords, to managing agents, of certain aspects of registrations, such as supplying compliance information, and in these instances, the duty may be placed on the agent.

453 Subsection (5) makes clear that any breaches in relation to this Clause have no impact on the validity or enforceability of a residential tenancy or other contracts where other laws would render them invalid or unenforceable for reasons of illegality.

Proposed use of power

454 Subsection (4) sets out that the Secretary of State may provide regulations which (a) outline persons other than landlords who are allowed to complete parts of the registration process on the database and (b) absolves a landlord from the duty of registering for a certain period.

455 The Government intends to lay regulations for this Clause via the affirmative procedure.

Background

456 This is a new provision. This Clause introduces a requirement for dwellings and the associated private landlords to be registered on the database before they can be let, or before they are advertised or marketed for let. These restrictions will apply to landlords, letting agents and to anybody who advertises a dwelling as available to let. The effect of these restrictions is that prospective tenants will be able to view and confirm whether a dwelling they are considering renting is registered before they make a decision on renting.

Example: Marketing a property that is not registered on the database

A letting agent has listed a property on their website as available for let. The letting agent also calls a prospective tenant to let them know that the property is available for rent. However, neither the property nor the landlord has an active entry on the database, and the listing does not contain unique identifiers. The letting agent is in breach of requirements under Clause 75 (subsections 1 and 2) and could be subject to a penalty under Clause 82.

Clause 75: Entries in the database relating to banning orders, offences, financial penalties, etc.

Effect

457 Subsection (1) places local housing authorities under a duty to make entries on the database for a person that has (a) received a relevant banning order from the local authority, (b) been convicted of a relevant banning order offence following proceedings instituted by the local authority or (c) has received a financial penalty from the local authority in relation to a relevant banning order offence.

458 Subsection (2) grants local housing authorities a power to make entries on the database if a person has (a) been convicted of, or (b) received a financial penalty in relation to, a banning order offence where proceedings were instituted by a person other than a local authority.

459 Subsection (3) places a duty on the person that instituted the criminal proceedings or imposed the financial penalty to provide local housing authorities with any information they request in relation to offences under subsection (2).

460 Subsection (4) grants the Secretary of the State the power to make regulations which impose a duty on local housing authorities to make entries under subsection (2), in circumstances specified in the regulations.

461 Subsection (5) set outs that the duty in subsection (1) or subsection (2) only applies if (a) the period for the person to appeal a banning order, conviction or fine has ended or (b) any appeal has been concluded, withdrawn or abandoned.

462 Subsection (6) grants the Secretary of State the power to make regulations that place local housing authorities under a duty, or grant them a power, to make entries on the database where a person has committed an offence, has received a financial penalty, or is subject to regulatory action described in the regulations, provided that the offence or regulatory action relates to conduct which occurred when they were a residential landlord or when they were marketing a property for let in the private rented sector.

463 Subsection (7) sets out what may form part of regulations made under subsection (6) in relation to an offence (such as the nature of the offence, the circumstances and court details etc.) and also permits the regulations to contain provisions for local housing authorities to request information from others to make an entry.

464 Subsection (8) puts local housing authorities under a duty to include certain information in an entry made under this Clause, such as the name of the person it relates to, and, in relation to banning orders, the date a banning order starts and finishes. Subsection (8)(c) provides a regulation-making power for the Secretary of State to stipulate such other information which will be contained in an entry made under this Clause.

465 Subsection (9) sets out what provisions may be prescribed by any regulations made under subsection (8), including a person's name and address, details of any dwellings for which they are a residential landlord and details of the offences, financial penalty or regulatory action.

466 Subsection (10) places local housing authorities under a duty to take reasonable steps to keep any entries made under this Clause up-to-date.

467 Subsection (11) signposts to the regulation-making power in Clause 78 which will enable entries under this Clause to be made available to the public.

468 Subsection (12) defines a 'relevant banning order', in this chapter, as a banning order under Chapter 2 of Part 2 of the Housing and Planning Act 2016 ("the HPA") that a) was made on or after the date Clause 75 comes into force, b) bans a person from letting housing (within the meaning of Part 2 of the HPA) in England and c) relates to an offence which was committed when the person was a residential landlord (as defined under Clause 55), or when they were marketing a property as available for let in the private rented sector. Subsection (12) also defines a relevant banning order offence, in this chapter, as a banning order offence (as defined in Part 2 of the HPA) committed a) on or after the day on which Clause 75 comes into force and b) at a time when the person who committed the offence was a residential landlord (as defined under Clause 55).

Proposed use of power

469 Subsection (4) sets out a power for the Secretary of State to make regulations which may place a duty on local housing authorities to make entries in relation to banning order offences instituted, or financial penalties imposed, by persons other than local authorities. Regulations made by the Secretary of State under subsection (4) will reinforce the power set out on the face of the Bill at Clause 75(2) and may elucidate the means for local authorities to obtain information about banning order offences they do not enforce and the process for other persons to notify local housing authorities. The government intends to lay regulations for this power using the negative procedure.

470 Subsection (6) prescribes that the Secretary of State may make regulations that grant local housing authorities a power, or place them under a duty, to make entries on the database in relation to convictions or regulatory enforcement, provided they relate to conduct which occurred when the person was a residential landlord. An expansion of the database to include a wider range of offences and regulatory enforcement action, beyond banning order and banning order offence information, would help achieve the database's objective of enhancing intelligence available to local authorities to improve standards and providing information to tenants to allow them to make informed rental decisions. The use of regulations to define these additional offences and enforcement actions will allow the database to remain relevant, if new relevant offences are introduced or if the private rented sector changes. Any offence information made publicly available via regulation under Clause 78(1)(a) would be subject to a rigorous assessment to determine its compatibility with landlords' privacy rights, most notably under Article 8 ECHR. The government intends to lay regulations for this power using the affirmative procedure.

471 Subsection (8)(c) prescribes that the Secretary of State may make regulations which determine what information must be included in an entry under Clause 75. Subsection (9) describes that this may include information such as a person's address, dwellings they are the residential landlord of and the offence, financial penalty, or regulatory action the entry is in relation to. The government intends to lay regulations for this power using the negative procedure.

Background

472 This Clause places local housing authorities under a duty to make an entry in the database in respect of a) a relevant banning order made by that authority, b) a relevant banning order offence following institution of criminal proceedings by that authority and c) a financial penalty in relation to a relevant banning order offence imposed by that authority. This duty only applies if the period for appealing against any order, conviction, or penalty has expired and any such appeal has been finally determined, withdrawn or abandoned. This is to replace the similar function on the existing Database of Rogue Landlords and Property Agents, under the Housing and Planning Act 2016. A further power is given to local housing authorities to make entries in respect of a person who has received a conviction or financial penalty in relation to a relevant banning order offence imposed by person other than a local housing authority. The Clause also grants the Secretary of the State the power to make regulations which impose a duty on local housing authorities to make entries in respect of persons that have received a financial penalty or a conviction where proceedings were instituted by a person other than a local authority. This provides for banning order offence entries to be made on the database in respect of offences a local housing authority does not themselves enforce. There is also a correlating duty placed upon these other relevant authorities to provide local housing authorities with information requested. This Clause also gives the Secretary of State the power to make regulations which would permit or require database entries in respect of additional offences or regulatory action, other than banning order offences.

473 Detail is also provided, within the Clause, on the information that must and may form part of an entry in the database made under this Clause.

Example: Banning order offence information

A local housing authority contacts a relevant agency which enforces banning order offences. The relevant agency complies with the duty it is under by providing the local housing authority with offence information about residential landlords who have been convicted or received a financial penalty for a banning order offence. The local housing authority then makes entries on the database in relation to the banning order offence information it has received from the other agency, including all the information required as set out by regulations.

Clause 76: Allocation of unique identifiers

Effect

474 Subsection (1) requires the database operator to allocate a unique identifier to each person and dwelling with an entry on the database.

475 Subsection (2) outlines that the unique identifier must be made up of a sequence of letters and/or numbers that allows entries to be distinguishable from one another.

476 Subsection (3) clarifies that the database operator is not required to allocate a unique identifier to a person or dwelling that already has a unique identifier on the database.

Background

477 This is a new provision. This section requires the database operator to allocate a unique identifier – a sequence of letters and/or numbers – to each landlord and dwelling with an entry on the database. The purpose of utilising unique identifiers is to enable ease of navigation for local housing authorities within the database and provide a way of distinguishing different entries on the database.

Example: Registering multiple properties

A landlord may create a registration entry for themselves and then make 50 registration entries for each property in their portfolio. The landlord would have their unique landlord identifier and 50 unique dwelling identifiers, each distinguishable from one another and other entries on the database.

Clause 77: Other duties

Effect

478 Subsection (1) places the following duties on the operator: they must (a) make available a non-digital method of registration for persons who are unable or do not wish to register online; (b) ensure that local housing authorities are able to edit the database in the ways required of them by this Chapter; (c) make available a means by which persons can report breaches imposed by Clause 74 and ensure these reports are accessible by local housing authorities who will be able to investigate or enforce them; and (d) provide guidance for residential landlords and tenants about their rights and obligations regarding the database.

479 Subsection (2) requires that the database operator must report to the Secretary of State on the performance of the database, including on trends related to the database, and subsection (3) allows for the Secretary of State to agree or direct reporting intervals and criteria.

480 Subsection (4) clarifies that subsection (2) does not apply if the Secretary of State is the database operator.

Background

481 This is a new provision. This Clause sets out the general duties of the database operator to enable a smooth and effective running of the database. These are in addition to those established throughout the chapter.

Example: A tenant identifying a property that is not registered on the database

A tenant living in the private rented sector hears about the Privately Rented Property Portal and reviews it to search for their landlord. However, they cannot find an entry for their landlord or for the dwelling they are renting. They report this on the database via a form made available by the database operator. The relevant local housing authority receives a notification about this and is able to follow up with the tenant and with the landlord to edit the database accordingly, and to take enforcement action if they deem appropriate.

Clause 78: Access to the database

Effect

482 Subsection (1)(a) indicates that regulations may require the operator to make certain information contained in active entries, and in entries related to penalties, convictions or regulatory action, available to the public.

483 Subsection (1)(b) states that regulations may require that entries relating to offences, penalties or regulatory action must be linked to corresponding landlord entries. This is to enable someone searching the publicly available information on the database to see which landlord entries are associated with offences and/or financial penalties or regulatory action, and to avoid any confusion where there may be landlords with similar names.

484 Subsection (1)(c)(i) clarifies that regulations may be introduced that set out when an entry made under Clause 75 must be accessible to the public, which must not be before 21 days after the initial entry was created. Subsection 1(c)(ii) provides that at the start of this period, the local authority is under a duty to notify the landlord that such an entry has been made in order to give the landlord an opportunity to make the local housing authority aware of any errors in the entry, before it is made public. Subsection (1)(c)(iii) indicates that regulations may also specify when such entries are to cease being publicly viewable. Subsection (d) states that regulations may specify the form in which information must be made available by the database operator.

485 Subsection (1)(d) indicates that regulations may stipulate the manner and form in which database information must be made available to the public.

486 Subsection (2) requires the database operator to grant database access to all lead enforcement authorities, local housing authorities, local weights and measures authorities in England, mayoral combined authorities (as defined by section 107A(8) of the Local Democracy, Economic Development and Construction Act 2009) and the Greater London Authority.

487 Subsection (3) requires the database operator to grant access to database information to the Secretary of State, where the Secretary of State is not themselves the operator.

Proposed use of power

488 Regulations will be made to enable certain information contained in active entries, and in entries made under Clause 75, to be published online. This will be limited to information that is necessary and proportionate for the tenant or prospective tenant to make an informed decision about renting. It is expected that this will include the landlord name, details of others involved in the ownership or management of the property, details of any relevant unspent offences, financial penalties or regulatory notices or decisions held by the landlord, and details relating to the dwelling, including the address and information relating to property standards.

489 The government intends to lay regulations for this Clause via the negative procedure.

Background

490 This is a new provision. The Clause indicates that the Secretary of State may by regulations specify that certain information contained in active landlord and dwelling entries must be made public, that entries pertaining to offences must be linked to that person's entry and the timescale for this information to be made publicly available.

Example: Banning order offence

A local housing authority's application for a banning order against a landlord in their area has been approved and the local housing authority subsequently makes an entry on the database for this particular landlord and associated offence. The local housing authority also links this entry to the active entry on the database for the same landlord. Certain details, specified in the regulations, about these entries are then made publicly viewable after 21 days to make sure that renters and prospective renters have access to accurate information to help them in deciding where to rent and from whom.

Clause 79: Disclosure by database operator etc

Effect

491 Subsection (1) states that the database operator must not divulge private restricted information collected for the database unless in accordance with Clause 78 or if authorised by regulations under this Clause.

492 Subsection (2) indicates that the Secretary of State may introduce regulations which allow for disclosure of restricted information from the database to third parties if that information is required (a) to enable or facilitate compliance with a statutory requirement, (b) to enable or facilitate compliance with a requirement under a rule of law or (c) to facilitate the exercise of a statutory function, specified in the regulations.

493 Subsection (3) outlines that the regulations may (a) specify the manner and form in which the information may be shared and (b) outline restrictions as to how the information disclosed is used and as to the further disclosure of information shared under the regulations.

494 Subsection (4) clarifies that a disclosure sanctioned within the regulations will not (a) violate an obligation of confidence owed by the database operator or (b) breach any other prohibition on sharing information collected on the database.

495 Subsection (5) states that nothing in this section or within the regulations allows disclosures which would violate data protection legislation, having had regard for the powers conferred by this Clause and any regulations laid under it.

496 Subsection (6) states that it is an offence to knowingly or recklessly disclose restricted information on the database, either in contravention of subsection (1) or in associated regulations.

497 Subsection (7) indicates that the penalty for a person convicted of such an offence is a fine.

498 Subsection (8) clarifies that data protection legislation is defined within section (3) of the Data Protection Act 2018 and private information refers to any information in the database that is not made publicly available through (a) the regulations under Clause 78(1) and (b) relates to and identifies a specific person including a corporate body.

499 Subsection (9) clarifies that for subsection (8) the information would identify a particular person if the identity of that person is specified in the information, can be deduced from the information or can be deduced when taken together with any other information.

Proposed use of power

500 This Clause allows the Secretary of State to create regulations which specify how information on the database can be shared with third parties that are not local housing authorities or lead enforcement authorities, and the restrictions that are to be placed on why and how this information is released as well as its further use.

501 The Government intends to lay regulations for this Clause via the affirmative procedure.

Background

502 This is a new provision. This Clause outlines under what circumstances information on the database can be shared with third parties other than local housing authorities and lead enforcement authorities and specifies that regulations may be made that clarify what private information can or cannot be disclosed. The intent of this Clause is to provide regulations which will govern how data collected by the database can be shared or circumstances in which access to this data is limited.

Example: Fire safety investigation

A fire service has been alerted to an obstructed fire escape at a block of four flats. The flats are occupied by private renters, each with a different landlord, and it is not clear who is responsible - landlord(s), freeholder or managing agent(s) (or if responsibility is shared) - for the non-domestic parts of the premises. To determine who is responsible and must comply with duties under The Regulatory Reform (Fire Safety) Order 2005, the fire service must contact the landlord. To facilitate situations like this, the database regulations may stipulate that the disclosure of private information is necessary for fire services to exercise their statutory functions. The regulations may also specify that landlord addresses may only be shared with fire services under specific data sharing agreements that prohibit the further disclosure of the information.

Clause 80: Use of information from the database

Effect

503 Subsection (1) limits the use of the database by a lead enforcement authority to activities related to the functions given to them under this Part.

504 Subsection (2) stipulates that local housing authorities may use the information contained in the database for activities related to their general functions connected to residential landlords and tenancies, within this Bill and more generally.

505 Subsection (3) limits the use of the database by weights and measures authorities to activities related to their enforcement of housing standards.

506 Subsection (4) limits the use of data by mayoral combined authorities and the Greater London Authority, who may only use information in connection to their housing-related functions.

Background

507 This is a new provision.

Clause 81: Removal of entries from database

Effect

508 Subsection (1) states that entries for landlords or dwellings that have been dormant for five years or longer must be removed from the database.

509 Subsection (2) explains that entries under Clause 75 must be removed from the database 10 years after being made.

510 Subsection (3) clarifies that if the relevant banning order continues after the period mentioned in subsection (2), subsection (2) does not apply and the database operator must remove the entry when the ban expires.

Background

511 This is a new provision. This Clause provides an explanation of when entries on the database should be removed entirely from the database. This Clause provides protection to personal data by ensuring that data is only retained for the period that it is useful and necessary.

Clause 82: Financial penalties

Effect

512 Subsection (1) provides that a local authority can impose a financial penalty for breach of a requirement imposed by Clause 74 (restrictions on marketing, advertising and letting dwellings) or committed an offence under section 83. Subsection (2) sets out the maximum fine amounts.

513 Subsection (3) describes the circumstances in which more than one financial penalty may be imposed for the same conduct, namely, if (a) the conduct continues after 28 days starting the day after the final notice for the previous penalty was given to the person, unless the person appeals against the notice within that period, or (b) if the person appeals within the 28 day period, the conduct continues after 28 days starting from the day after the appeal was finally determined, withdrawn or abandoned.

514 Subsection (4) states that subsection (3) does not allow a penalty to be imposed after the final notice for the previous penalty has been withdrawn or quashed on appeal.

515 Subsection (5) sets out that no financial penalty can be imposed in relation to an offence under Clause 83 if the person has already been convicted of an offence in relation to the relevant behaviour, criminal proceedings have started for the offence but have not finished or criminal proceedings have finished in relation to the offence and the person has not been convicted.

516 Subsections (6) and (7) give the Secretary of State power to produce guidance which local housing authorities must have regard to when exercising their functions in relation to financial penalties.

517 Subsection (8) notes that the Secretary of State may use regulations to amend the amounts in subsection (2) to reflect changes to the value of money. Subsection (9) clarifies that, for the purposes of Clauses 82 and 83, a financial penalty is imposed on the date specified in the final notice as the date on which the notice is given and that 'final notice' is defined in paragraph 6 of Schedule 4.

Proposed use of power

518 To allow the Secretary of State to set out guidance that local authorities must have regard to when exercising their functions in relation to financial penalties and make regulations which amend the maximum financial penalties under subsection (2) in line with changes in the value of money.

Background

519 This Clause gives local housing authorities the power to impose financial penalties on people that do not meet the requirements of the Private Rented Sector Database (the database), as set out in Clause 74, or commit an offence related to the database, as set out in Clause 83.

Example: Failure to register a property on the database

A landlord fails to register a property on the database but advertises the property for let within the private rented sector. The local authority becomes aware that the property is being advertised to let. The local housing authority determines that the responsible landlord has not been penalised for this offence previously and that no proceedings are underway to penalise them for the offence. The local housing authority then decides to issue a notice of intent, followed by a financial penalty, on the responsible landlord for the property, due to a breach of the requirements relating to the database.

Clause 83: Offences

Effect

520 Subsection (1) states that it is an offence to knowingly or recklessly provide false or misleading information which, in a material respect, falsely indicates compliance with requirements imposed by regulations made under Chapter 3.

521 Under subsection (2) a person who has received a financial penalty for a breach of a requirement imposed by Clause 74(1), (2) or (3) (restrictions on marketing, advertising and letting dwellings), or in lieu of prosecution for any offence under this Clause, commits an offence if the conduct in respect of which the penalty was imposed continues for longer than the specified period thereafter.

522 Under subsection (3) a person who has received a financial penalty for breach of a requirement imposed by Clause 74(1), (2) or (3) commits an offence if they commit a different breach within the next five years.

523 Subsection (4) provides that a person who has been previously convicted of an offence under this Clause, or received a financial penalty in lieu of prosecution, commits an offence if they breach a requirement imposed by Clause 74(1), (2) or (3) again within five years of the previous conviction, or within five years of receiving the financial penalty in lieu of prosecution.

524 Subsection (5) describes what is meant by a relevant penalty in subsections (2) to (4). A relevant penalty means a financial penalty where (a) no appeal has been made during the allowed period, (b) an appeal against the penalty was withdrawn or abandoned or (c) the final notice imposing the penalty has been confirmed or altered on appeal.

525 Subsection (6) provides that a person cannot be convicted of an offence under this Clause if the conduct which resulted in the offence has already been penalised by way of a financial penalty, unless the conduct constitutes a continuing breach to which subsection (2) applies.

526 Subsection (7) notes that a person convicted of an offence under this Clause is liable to a fine.

527 Subsection (8) states that if a body corporate commits an offence under this section and it can be proved to have been committed with the consent or connivance of, or is attributable to the neglect, of one of its officers, then the officer has also committed the offence and is liable to punishment.

528 Subsection (9) clarifies that, where a body corporate is managed by its members, subsection (8) applies to the conduct of members in relation to the functions of management, as if they were an officer.

529 Subsection (10) shows the addition of the provision of false and misleading information and continuing and repeat breaches offences to section 40 of the Housing and Planning Act 2016 (HPA), meaning that a tenant or local housing authority may apply for a rent repayment order against the landlord under Chapter 4, Part 2 of the HPA 2016.

Background

530 This Clause defines the offences of continuing and repeat breaches of requirements imposed by Clause 74(1), (2) or (3) and of knowingly or recklessly providing false or misleading information in relation to meeting a requirement relating to the database.

Example: Failure to register a property on the database – offence

A landlord is found to have let a property whilst it is unregistered on the database. The enforcing local housing authority finds evidence that the same landlord was convicted for knowingly or recklessly providing false information three years earlier. The previous offence was not appealed by the landlord. The local housing authority then prosecutes the landlord for a repeated breach of the database's requirements and serves the landlord with a civil penalty notice of up to £30,000.

Clause 84: Power to direct database operator and local housing authorities

531 Subsection (1) states that the Secretary of State may give instructions (a) to the database operator and (b) to local housing authorities about how to carry out their functions.

532 Subsection (2) sets out that regulations may require that directions given by the Secretary of State may only be exercised (a) after consulting with the Secretary of State or (b) with the consent of the Secretary of State.

533 Subsection (3) explains that subsection (1)(a) does not apply if the Secretary of State is the database operator.

Proposed use of power

534 A power to allow the Secretary of State to instruct the database operator and local housing authorities on how to carry out functions imposed on them by the Bill. As usual with such powers, it is not subject to any parliamentary procedure. Parliament has approved the principle of the provisions in the Bill by enacting them.

Background

535 This is a new provision. This Clause states that the Secretary of State may give instructions to the database operator about how to carry out its functions, and instructions to local housing authorities about the manner in which they exercise their functions. The intent behind this Clause is to allow the Secretary of State to provide direction to the database operator in how it oversees and runs the database, and to local housing authorities on investigation and enforcement.

Clause 85: Entries under section 75: minor and consequential amendments

Effect

536 This Clause amends the Housing and Planning Act 2016.

537 Subsection (2) inserts a new subsection into section 28 of the HPA which signposts those referring to rogue landlords in the HPA to the new database to be established under the Renters (Reform) Act.

538 Subsection (3) inserts a new subsection (3) into section 29 of the HPA which defines "a banning order" for the purposes of section 29. The effect of this means that a local housing authority in England is only under a duty to make an entry onto the Database of Rogue Landlords and Property Agents for: banning orders made before the Renters (Reform) Act comes into force; or b) banning orders made on or after the date the Renters (Reform) Act comes into force where the order does not ban a person from letting a house in England or where the order relates to an offence which was not committed by a residential landlord (as defined in Part 2 of the Renters (Reform) Act).

539 Subsection (4) inserts a new subsection (8) into section 30 of the HPA which defines a banning order offence for the purposes of section 30. The effect of this means that a local housing authority in England only has power to make an entry onto the Database of Rogue Landlords and Property Agents for: a) a banning order offence committed before the Renters (Reform) Act comes into force; or b) banning order offences committed on or after the day the Renters (Reform) Act comes into force if the offence was not committed by a residential landlord (as defined in Part 2 of the Renters (Reform) Act).

Background

540 This Clause sets out amendments made to the Housing and Planning Act 2016 (HPA), in relation to Clause 75. Functions relating to residential landlords are carried across to the new Private Rented Sector Database established under this chapter. Entries relating to property agents and others will remain on the Database of Rogue Landlords and Property Agents.

Clause 86: Interpretation of Chapter 3

Effect

541 The definition of database is established in Clause 67.

542 The definition of lead enforcement authority is drawn from Clause 100.

543 The definition of relevant banning order is drawn from Chapter 2 of Part 2 of the Housing and Planning Act 2016. A banning order must be made by the Tribunal and prohibits a person from letting housing in England, engaging in English letting agency work, engaging in English property management work or two or more of these activities. For the relevant banning order to apply to the database, the banning order must be made on the day or after the day this chapter comes into force.

544 The definition of relevant banning order offence is taken from Chapter 2 of Part 2 of the Housing and Planning Act 2016. A banning order offence refers to an offence outlined by regulations created by the Secretary of State for the Housing and Planning Act 2016. For the relevant banning order offence to apply to the database the banning order must be made on the day or after the day this chapter comes into force at a time when the person committing the banning order offence was a residential landlord.

545 The definition of unique identifier is described in Clause 76.

Background

546 This Clause provides a definition of database, lead enforcement authority, relevant banning order, relevant banning order offence and the unique identifier for the purposes of chapter 3 and the Private Rented Sector Database.

Chapter 4 – Part 2: Supplementary Provision

Clause 87: Financial assistance by Secretary of State

Effect

547 This enables the government to provide financial assistance in whatever form necessary to a person carrying out functions under or by virtue of the provisions of Part 2 of the Bill.

548 This provision is intended to be used, only if necessary, to support the setup of an approved redress scheme by providing funding to an approved scheme administrator, or in the event of an emergency or other unforeseen circumstances where intervention is needed for the continued or effective operation of the scheme. As standard practice, the intent is for any approved redress scheme to be self-funding through membership fees.

549 This power might also be used to fund enforcement by local housing authorities, for example, in circumstances where sums recovered from financial penalties that have been imposed under Clauses 58 and 82 are insufficient to meet the costs of enforcement action required.

Background

550 This is a new provision. Similar provisions exist in relation to other redress schemes.

Clause 88: Rent repayment orders for offences under sections 48 and 69

Effect

551 This Clause amends sections of Chapter 4 of Part 2 of the Housing and Planning Act 2016 ("the Act") which make provision for rent repayment orders.

552 Subsection (2) provides that the following offences committed by a landlord can be subject to a rent repayment order:

- continuing or repeat breaches in relation to the landlord redress scheme,
- continuing or repeat breaches in relation to the private rented sector database, and
- provision of false or misleading information to the private rented sector database.

553 Subsections (3) and (4) includes these offences in the tables in sections 44 (amount if order: tenants) and 45 (amount of order: local housing authorities) of the Act setting out the periods of rent or universal credit paid to which the rent repayment order must relate.

Background

554 The Housing Act 2004 introduced rent repayment orders for licensing offences under that Act. The Housing and Planning Act 2016 extended rent repayment orders to cover: violence for securing entry; eviction or harassment of occupiers; failure to comply with an improvement notice or prohibition under the Housing Act 2004; and breach of a banning order. These provisions further extend the list of offences for which a rent repayment order can be sought.

Clause 89: Interpretation of Part 2

Effect

555 Subsection (1) defines what a "dwelling", and "residential landlord" are for the purposes of Part 2. "Residential landlord", "residential tenancy" and "dwelling" are defined in Clause 55 subsections (1) and (2).

556 Subsection (2) provides an explanation for the activities which can be considered as marketing a property with the intention of creating a residential tenancy. A person who (a) advertises a property for rent under a residential tenancy as defined by Clause 55, or (b) informs another person that a property is available to let under a residential tenancy in the course of letting agency work, will be considered to be marketing a residential property.

557 Subsection (3) explains that subsection (2)(a) will not apply to a person who facilitates an advertisement regarding letting a residential property as part of that business if the business is not doing lettings agency work and the advert was supplied by another entity. This is to avoid businesses or third parties that are not conducting letting agency activities being held responsible for disseminating adverts for residential lets that are not registered on the database.

558 Subsection (4) defines letting agency work. A person is conducting lettings agency work when they conduct activities in the course of business to (a) help a prospective landlord find another person to let a private residential property to; or (b) help a prospective residential tenant find a private residential property to rent, as instructed by those persons.

559 Subsection (5) provides examples of activities that should not be considered lettings agency work. If a person receives no instruction from another person to find a prospective tenant for a residential property or a residential property for a prospective tenant but they (a) share information or adverts about residential lets or (b) provide methods for tenants and landlords to establish communication regarding renting a residential property, they will not be considered as conducting lettings agency work.

560 Subsection (6) outlines further circumstances which should not be regarded as lettings agency work. This subsection states that other activities, or things done by particular persons, will not be held to be conducting lettings agency work as outlined via statutory instrument.

Proposed use of power

561 This Clause will be adapted to provide clarification of marketing a residential property and what letting agency work refers to. It contains the potential for certain activities or persons from being exempt from being considered to be conducting lettings agency work in the future if supplemented by secondary legislation.

Background

562 Clause 75 introduces a requirement for privately rented residential property and the landlord of that property to be registered on the database before the dwelling is marketed for let. Clause 56 provides that regulations may require a prospective landlord to become a member of a landlord redress scheme before a tenancy under them is marketed and prohibits such marketing if that is not yet the case. Clause 89 outlines the circumstances in which a person can be considered to be marketing a property with the intention of establishing a residential tenancy and provides a definition of letting agents.

563 Subsections (4), (5) and (6) of this Clause outlining the definition of lettings agency work echo the legislation laid out in S83 (7), (8) and (9) of the Enterprise and Regulatory Reform Act 2013, which requires letting agents to be members of a redress scheme.

Example: Marketing a property that is not registered

Letting agents will be expected to check if a landlord and property are correctly registered on the database before they market a property for let. Property agents will face penalties if they advertise or market residential properties for rent which are not registered. A newspaper or an online platform, which are not letting agents, disseminate an advert provided by another person and/or provide methods for tenants and landlords to communicate regarding a residential let that is not registered on the database. As it is unreasonable for these information providers to ascertain if a property is registered on the database, they are not penalised for disseminating information or providing communication about letting residential properties nor are they considered to be engaging in lettings agency work.

Part 3: Decent Homes Standard

Clause 90: Decent Homes Standard

Effect

564 Subsection (2) amends section 1 of the Housing Act 2004 to specify that Part 1 of the Act allows Decent Homes Standard (DHS) requirements to be set and enforced.

565 Subsection (3) amends the definition of "residential premises" in section 1 of the Housing Act 2004 to include temporary accommodation for the homeless of a description specified in regulations made by the Secretary of State. In conjunction with the definition of "qualifying residential premises" in Clause 2B of the 2004 Act (inserted by subsection (4)), this will allow the Secretary of State to make regulations that can bring either all privately rented temporary accommodation, or a specified subset of the sector, into scope of the DHS requirements.

566 Subsection (4) inserts two new sections, 2A and 2B, into the Housing Act 2004:

a. Subsection 2A(1) gives the Secretary of State a power to make regulations specifying DHS requirements that must be met by qualifying residential premises. Subsection 2A(2) sets out a non-exhaustive list of matters that these requirements may include. Subsection 2A(3) allows the requirements to be split into two categories: Type 1 requirements that a local housing authority has a duty to enforce; and Type 2 requirements that a local housing authority has a power to enforce. This power allows for either category to be empty. Subsection 2A(4) allows the regulations made under the power in 2A(1) to include exceptions from the requirements.

b. Subsection 2B(1) defines the "qualifying residential premises" that are subject to DHS requirements. This will bring the majority of the private rented sector into scope of the DHS by covering dwellings and HMOs let under assured or regulated tenancies, and supported housing let under a tenancy or occupied under licence. Social housing properties let by landlords registered with the Regulator for Social Housing are excluded. Subsection 2B(2) defines terms used in 2B(1). Subsection 2B(3) allows the Secretary of State to make regulations applying and disapplying the requirements to residential premises let under particular kinds of tenancy or licence.

Proposed use of powers

567 The provision in subsection (3) allows the Secretary of State to specify in regulations what types of temporary accommodation for the homeless are covered by the definition of 'residential premises' in Part 1 of the Housing 2004 and within scope of application of the DHS. This will allow, following an assessment of impacts, for the DHS to be applied to all, or a subset of, privately rented temporary accommodation. The regulations will be subject to the negative procedure.

568 The provision inserted into subsection 2A(1) of the Housing Act 2004 by subsection (4) will allow DHS requirements to be set in regulations once the content of the standard has been finalised and, if required, for changes to be made thereafter to ensure that the DHS remains up to date and fit for purpose. The regulations will be subject to the affirmative procedure.

569 The provision inserted into subsection 2B(3) of the Housing Act 2004 by subsection (4) enables the Secretary of State to bring into scope of the DHS, and subsequently remove, some types of tenancy and licence to occupy. This will allow the scope of application of the DHS to be adjusted, if necessary, to take account of the future use of different types of tenancies and licences. The regulations will be made via the affirmative procedure.

Background

570 Clause 90 amends Part 1 of the Housing Act 2004, which provides for the existing housing hazards regime, to allow for DHS requirements to be set in regulations and enforced by local housing authorities. This aims to allow a legally binding DHS, comprising clear minimum standards of safety and decency, to be introduced for private rented sector homes in England.

571 These requirements will apply to the majority of the private rented sector. Social housing let by providers registered with the Regulator of Social Housing (RSH) is excluded from scope, as such properties are already required to meet the DHS, with compliance overseen by the RSH. However, these provisions will apply to the small number of homes let at sub-market rent that may be considered social housing but are let by providers that are not registered with the RSH. These properties are not in scope of the regulatory standards, including compliance with the DHS, set by the RSH.

Part 4: Enforcement

Clause 91: Financial penalties

Effect

572 This Clause applies the procedure for imposing, appealing and recovering a financial penalty set out under Schedule 4 to financial penalties imposed under Clauses 32, 58 and 82.

Background

573 This is a new provision.

Clause 92: Rent repayment orders: liability of landlords and superior landlords

Effect

574 This Clause amends sections of Chapter 4 of Part 2 of the Housing and Planning Act 2016 which make provision for rent repayment orders.

575 Subsection (2) replaces section 40(1) and (2) of the Housing and Planning Act 2016 t to provide that the Tribunal has power to make a rent repayment order against a landlord for certain offences (which was already the case under section 40) and also any superior landlord, under the tenancy in question (which is new). Rent repayment orders can take into account rent paid on behalf of the tenant as well as rent paid by the tenant.

576 Subsections (4) and (5) amend sections 44 (amount of order: tenants) and 45 (amount of order: local housing authorities) of the Housing and Planning Act 2016 which relate, respectively, to the amount of the order when this is sought by a tenant for rent paid and by a local housing authority where rent has been met through Universal Credit. The amendments provide that:

- the value to be repaid can take into account rent paid in respect of the period of the tenancy (so, for example, payments in advance) as well as paid during the tenancy;
- the maximum amount payable is doubled from 12 months to two years rent;
- the rent to be repaid does not have to have been paid directly to the landlord against whom the rent repayment order is sought.

577 Subsection (6) inserts new section 46A into the Housing and Planning Act 2016. It makes provision for situations where a rent repayment order is sought against more than one landlord and where a subsequent rent repayment order is sought against a landlord for a new or continuing offence.

Background

578 Tenants and local authorities (where the rent has been paid by benefits) can apply to the Tribunal for a rent repayment order against the landlord if the landlord has committed certain offences specified in section 40 of the Housing and Planning Act 2016. The Supreme Court in Rakusen v Jepsen [2023] UKSC 9 held that a rent repayment order cannot be made against a superior landlord. The amendments in this Clause mean that superior as well as immediate landlords can be liable for a rent repayment order. The maximum amount payable is doubled from 12 months to two years rent and the amendments in this Clause ensure that rent paid in advance and paid on behalf of the tenant can be included in the Tribunal's assessment of amount due under the rent repayment order.

Example: Rent repayment order against a superior landlord

The owner of a property (O) enters into an agreement to let their property to a company (C) for £2,000 a month. C in turn lets the property to tenants (T), from whom it receives £3,000 a month. After 18 months, following complaints by T to the landlord C about the condition of the property, O sends a series of messages and then makes doorstep appearances demanding that T leave and threatening violence if T do not. T leave the property and seek a rent repayment order against O in relation to an offence under the Protection from Eviction Act 1977. The Tribunal makes a rent repayment order in favour of T for the full 18 months rent they have paid.

Clause 93: Rent repayment orders: liability of directors etc

Effect

579 This Clause inserts a new section into Chapter 4 of Part 2 of the Housing and Planning Act 2016 which makes provision for rent repayment orders.

580 Subsections (1) and (2) provide that where an offence is committed by a landlord which is a body corporate and the offence is committed with the consent or connivance of a relevant person, or is a specified offence attributable to any neglect by that person, they, as well the body corporate, is treated as having committed the offence and consequently may be subject to a rent repayment order.

581 Subsection (4) defines specified offence" and "relevant person". By subsection (3) a relevant person who is treated as having committed the specified offence will be included within the definition of "landlord" for the purposes of rent repayment orders.

Background

582 Individual officers of landlord companies can be prosecuted or, with the exception of offences under section 32(1) of the Housing Act 2004 and section 6(1) of the Criminal Law Act 1977, subject to a civil penalty for the offences to which rent repayment orders apply. This new Clause ensures that individual officers of landlord companies may also be subject to rent repayment orders for those offences.

Clause 94: Unlicensed HMOs and houses: offences

Effect

583 This Clause amends sections 72 and 95 of the Housing Act 2004 which, respectively, concern offences in relation to the licensing of Houses in Multiple Occupation (HMO) and properties subject to selective licensing.

584 Subsection (2) replaces section 72(1) of the Housing Act 2004. In addition to persons having control or managing the HMO, it prescribes that where an HMO is not licensed but is required to be, an offence is also committed by the immediate landlord or licensor of the tenants and any superior landlord or licensor.

585 Subsection (3) adds new subsections (4A) and (4B) into section 72 of the Housing Act 2004. Subsection (4A) provides that where proceedings are commenced against a person having control of or managing the HMO, or an immediate landlord or licensor, a reasonable excuse defence is available to them. Subsection (4B) provides that, in relation to superior landlords and licensors, defences are that: they did not know and had a reasonable excuse for not

knowing that the building was an HMO; that they took all reasonably practicable steps to ensure that the HMO was licensed; or had some other reasonable excuse.

586 Subsection (4) makes a consequential amendment to subsection (5) of section 72 of the Housing Act 2004 to reflect that defences for failing to licence an HMO are now set out in new subsections (4A) and (4B). The defences in subsection (4) also continue to apply.

587 Subsections (5) to (8) mirror subsections (1) to (4) for properties subject to selective licensing.

Background

588 Persons having control of or managing a property that requires a licence but is not so licensed commit an offence. The way that 'persons having control' is defined (in section 263 of the Housing Act 2004) and has been interpreted by the Courts means that in practice superior landlords are unlikely to be caught, even if they are closely involved with the property. Immediate landlords may too, exceptionally, not fall with the definition of a person managing or having control of the property. This new Clause ensures that superior and immediate landlords and licensors, as well as persons having control or managing a property, fall within the scope of the offence.

Clause 95: Service of improvement notices on landlords and licensors

Effect

589 Clause 95 amends paragraph 2 of Schedule 1 to the Housing Act 2004. The Clause will, for certain property types, give local housing authorities the ability to serve improvement notices for hazards on a landlord, licensor, superior landlord or superior licensor if they consider that such a person ought to take the action specified in the notice.

Background

590 The current provisions in the Housing Act 2004 require local housing authorities, for properties that are neither flats nor subject to HMO or selective licensing, to serve improvement notices for hazards on the 'person having control' of or the 'person managing' the property. As a result, it may not always be possible to serve such notices on a certain people with an interest in the property – for example, superior landlords in rent-to-rent arrangements. The intention of this Clause is to allow local housing authorities to serve improvement notices on the person best placed to ensure remedial action is taken in respect of the hazard.

Clause 96: Enforcement by local housing authorities: general duty

Effect

591 Subsection (1) creates a duty on every local housing authority to enforce the landlord legislation in its area. "The landlord legislation" is defined under subsection (5) and "local housing authority" is defined in section 109 (interpretation). Subsection (6) sets out the types of activity that constitute enforcement action. Subsection (3) specifies the other provisions that this duty is subject to.

592 Subsection (2) provides that this duty does not prevent a local housing authority from taking enforcement action for breaches or offences that occur outside its area.

593 Subsection (5) defines "the landlord legislation" as Chapter 3 of Part 1 of this Bill, Part 2 of this Bill, sections 1 and 1A of the Protection from Eviction Act 1977, and Chapter 1 of Part 1 of the Housing Act 1988.

Background

594 This Clause provides that enforcement of the prohibitions of the landlord legislation will be the duty of local housing authorities in England. This is a new provision.

Clause 97: Enforcement by local housing authorities: duty to notify

Effect

595 Subsection (1) creates a duty for a local housing authority that proposes to take enforcement action for a breach of, or an offence under, the landlord legislation that has occurred in a different local housing authority's area to notify that local housing authority that it intends to do so. Subsection (2) requires a local housing authority that has given a notification under subsection (1) and subsequently does not take the action specified to notify the relevant local housing authority of that fact. Subsection (3) provides that if a local housing authority receives a notification under subsection (1), it is relieved of its duty in relation to that breach or offence. The duty is reinstated if a notification is received under subsection (2).

596 Subsections (5) and (7) require a local housing authority that has imposed a financial penalty or secured conviction against a person for a breach or offence that has occurred in a different local housing authority's area to notify that local housing authority as soon as is reasonably practicable. Subsections (4) and (6) specify the circumstances when such notifications must be made.

Background

597 This Clause makes provision for the notification requirements on a local housing authority when it plans to take enforcement action in a different local housing authority's geographical area.

Clause 98: Enforcement by county councils: duty to notify

Effect

598 This Clause replicates the notification requirements that Clause 97 places on local housing authorities for county councils which are not local housing authorities when they propose to take action in respect of a breach or offence under the landlord legislation.

Background

599 Clause 96 places a power (though not a duty) on county councils which are not local housing authorities to take enforcement action. Where they decide to do so, this Clause ensures that any local housing authority covering the same or a different area is notified to avoid duplication.

Clause 99: Duty to Report

Effect

600 This Clause creates a new duty on local housing authorities (and county councils, which are not local housing authorities) to provide reports to the Secretary of State on their enforcement of the landlord legislation as defined in the Bill. The Secretary of State will decide the manner, timing and content of such reports.

Background

601 The 'landlord legislation' is defined in Bill Clause 96(5) as Chapter 3 of Part 1 and Part 2 of the Bill itself, sections 1 and 1A of the Protection from Eviction Act 1977, and Chapter 1 of Part 1 of the Housing Act 1988.

Clause 100: Lead enforcement authority

Effect

602 Subsection (1) provides that the Secretary of State can make arrangements for "a relevant person" to be the lead enforcement authority for the purposes of any relevant provisions of the landlord legislation. "The landlord legislation" is defined in Clause 96(5) and "relevant person" is defined in subsection (5).

603 Subsection (2) provides that the arrangements made by the Secretary of State can include funding the lead enforcement authority and winding it up.

604 Subsections (3) and (4) give the Secretary of State the power, by regulations, to make transitional or saving provisions when there is a change in a lead enforcement authority.

605 Subsections (5) and (6) define various terms used in the lead enforcement authority provisions including "relevant person" which is defined as a combined authority, the Greater London Authority, or a local housing authority.

Background

606 This Clause gives the Secretary of State the power to appoint a lead enforcement authority, or lead enforcement authorities, for the purposes of any provisions of the landlord legislation, which is defined in section 96 (5). Only a "relevant person" can be appointed a lead enforcement authority.

607 The approach is similar to that taken in existing estate and letting agent legislation. The Estate Agents Act 1979 (EAA) and the Tenant Fees Act 2019 (TFA) each provide the Secretary of State with a power to act as or appoint a lead enforcement authority for the purposes of the EAA and the relevant letting agency legislation (as defined in section 24 of the TFA) respectively. Powys Council was appointed the lead enforcement authority under the EAA (across the UK), and Bristol City Council was appointed the lead enforcement authority under the TFA (which applies to England only).

Clause 101: General duties and powers of lead enforcement authority

Effect

608 Subsection (1) gives a lead enforcement authority the duty to oversee the operation of the landlord provisions for which it is responsible.

609 Subsection (2) gives a lead enforcement authority the duty to provide information and advice to local housing authorities and the public about the operation of the provisions for which it is responsible. Subsection (3) gives a lead enforcement authority power to share information with relevant authorities so they can consider whether there has been a breach of, or an offence under, the provisions for which it is responsible.

610 Subsection (4) gives a lead enforcement authority the power to issue guidance to local housing authorities about the exercise of their functions under the provisions of the landlord legislation for which it is responsible. Subsection (5) provides that local housing authorities must have regard to that guidance.

611 Subsection (6) gives a lead enforcement authority the duty to keep under review and, as necessary, advise the Secretary of State about the operation of the provisions for which it is responsible and market developments related to tenancies and licences to occupy if they are relevant to those provisions. The lead enforcement authority's advisory remit does not extend to social housing.

612 Subsections (7) and (8) give the Secretary of State the power to direct a lead enforcement authority on how it uses its functions.

613 Subsection (9) defines "relevant local authority", "social housing" and "tenancies" for the purpose of this section.

Background

614 This Clause sets out the duties and powers of a lead enforcement authority.

615 Nearly 300 local housing authorities will be responsible for enforcing the new measures in the Bill, requiring rapid familiarisation with the law. A lead enforcement authority's functions include issuing guidance, information and advice to local housing authorities in order to help local authorities enforce the measures in a consistent way.

Clause 102: Enforcement by the lead enforcement authority

Effect

616 Subsection (1) gives a lead enforcement authority the power to enforce the provisions for which it is responsible where necessary or expedient to do so. If such action is taken, a lead enforcement authority may exercise the same powers as a local housing authority. Subsection (7) clarifies that those powers include the investigatory powers in this Bill. Subsection (8) sets out how the special authorisation process that is required for entry without warrant into residential premises under section 115 (suspected residential tenancy: entry without warrant) applies for a lead enforcement authority.

617 Subsection (2) gives a lead enforcement authority the duty to notify a local housing authority where it proposes to take enforcement action in that local housing authority's area. Subsection (3) requires a lead enforcement authority that has given a notification under subsection (2) and subsequently does not take the action specified to notify the relevant local housing authority of that fact. Subsection (4) provides that if a local housing authority receives a notification under subsection (2), it is relieved of its duty in relation to that breach. The duty is reinstated if a notification is received under subsection (3). Subsection (5) provides that the relevant local housing authority must assist a lead enforcement authority in taking the steps referred to in subsection (1) if the lead enforcement authority requires such assistance.

618 Subsection (6) provides that a relevant local authority must report on the exercise of its relevant functions to a lead enforcement authority when, in the form and with such particulars as the lead enforcement authority requires.

Background

619 This Clause gives a lead enforcement authority the power to enforce the provisions for which it is responsible, establishes in what circumstances it should do so and sets out the process it must follow. It also sets out the duties of local housing authorities in relation to this process.

620 Some local housing authorities may lack the capacity and capability to enforce these measures in particularly complex or high-profile cases. A lead enforcement authority may provide an opportunity to create a centre of expertise on the relevant legislation and can act as a backstop for enforcement.

Clause 103: Power of local housing authority to require information from relevant person

Effect

621 Clause 103 gives a local housing authority the power to require certain people (defined as a "relevant person" in subsection (2)) to provide information to the local housing authority for the purposes set out in the Clause. This power will apply to specific people, including landlords, licensors and letting agents.

622 The local housing authority must request the information by written notice and the notice must set out the potential consequences for not providing the information requested. A person will not be required to provide information which they could refuse to produce on grounds of legal professional privilege in proceedings before the High Court.

Background

623 This power enables local housing authorities to require information from relevant persons, such as landlords, for the purpose of gathering information in relation to the functions listed in the Clause. This could include gathering evidence for enforcement of certain private rented sector offences. This is a similar power to that provided under section 235 of the Housing Act 2004.

Clause 104: Power of local housing authority to require information from any person

Effect

624 Clause 104 provides a power for local housing authority officers to give written notice requiring information from any person. The officer must reasonably suspect that a breach or offence has been committed under the "rented accommodation legislation", defined in subsection (3). The information can only be required for the purposes of investigating whether there has been a breach or offence under the "rented accommodation legislation" or determining the amount of penalty under the legislation.

625 Subsections (5) to (7) specify the form and content which the notice must or may contain. Subsection (6) provides requirements that a notice may include, such as the creation of specified documents.

626 The "rented accommodation legislation" defined in subsection (3) covers unlawful eviction and harassment (Protection from Eviction Act 1977), assured tenancy (Housing Act 1988), housing conditions, management orders, overcrowding property licensing and fine setting (Housing Act 2004), redress for letting and management agents, banning order offences (Housing and Planning Act 2016), discrimination relating to children or benefits status, landlords redress, the Private Rented Sector Database and its operator (this Bill).

Background

627 This power will enable local housing authorities to receive relevant information from persons such as the landlord's bank, accountant and client money protection scheme when investigating suspected non-compliance with the "rented accommodation legislation." Such information, which in some cases may be withheld by "relevant persons", such as landlords and letting agents as defined in Clause 103, may be an important element of an investigation into whether non-compliance has occurred and for setting appropriate penalties. These provisions are similar to those in Part 3 (powers in relation to the production of information) of Schedule 5 (Investigatory Powers) to the Consumer Rights Act 2015.

Example: Imposing a financial penalty on a landlord for unlawful eviction

A local authority is satisfied beyond reasonable doubt that a landlord has unlawfully evicted a tenant and issues the landlord with a civil penalty notice of £25,000. The landlord appeals the amount of the fine to the Tribunal on the basis that he has insufficient funds and asks for the fine to be reduced. The final penalty is suspended whilst the Tribunal considers the appeal. The local authority uses its power to require information from any person under Clause 87 to serve a notice on the landlord's bank, requesting information about the landlord's rental income and financial position. The information the bank provides demonstrates that the landlord receives market rent for nine other properties. The local authority presents this information to the Tribunal, which is then satisfied that the initial fine amount is reasonable and that the landlord has the means to pay it. The Tribunal confirms the final notice and the local authority is then able to proceed with the original penalty amount of £25,000.

Clause 105: Enforcement of power to require information from any person

Effect

628 Clause 105 provides for enforcement by the local housing authority if a person fails to comply with a notice to provide certain information under Clause 104. Subsection (1) provides that an application may be made to court. Subsection (2) provides that the court may make an order where it is satisfied that there has been non-compliance.

629 A court order operates to compel a person to do what it considers is reasonable in order to provide the local housing authority with the information requested (subsection (3)). The court has the power to require the person against whom the order is made to meet the costs of the court application (subsection (4)).

Background

630 This enforcement mechanism is similar to that provided in paragraph 16 (enforcement of a power to require production of information) of Schedule 5 (Investigatory Powers) to the Consumer Rights Act 2015.

Clause 106: Limitation on use of information provided under section 104

Effect

631 Clause 106 introduces limitations on the use of information obtained under Clause 104. Subsection (1) provides that where information has been provided by a person who has had no part in the potential breach or offence under investigation it cannot be used against them in any criminal proceedings.

632 Subsections (2) and (3) provide that this protection does not apply if the information is brought up by or on behalf of the person, or if the proceedings are for an offence under Section 5 of the Perjury Act 1911 (false statutory declarations and other false statements without oath).

Background

633 These provisions are similar to those under paragraph 17 (limitations on the use of information provided in response to a notice to provide information) of Schedule 5 (Investigatory Powers) to the Consumer Rights Act 2015.

Clause 107: Business premises: entry without warrant

Effect

634 Clause 107 provides that local housing authorities can enter without a warrant, without force and at any reasonable time premises believed to be occupied for the purposes of a "rental sector business" (as defined in subsection (9)). Entry must be to require the production of documents or to seize documents for purposes connected to the "rented accommodation legislation" (defined in Clause 104(3)).

635 This power cannot be used in respect of premises that are used wholly or mainly as residential accommodation (subsection (2)).

636 For routine inspections written notice will need to be given to an occupier at least 24 hours in advance of entry. An occupier may waive the notice requirement. Notice need not be given where the inspection cannot be classified as routine, for example where it is believed that the giving of notice would defeat the reason for entry.

637 An officer may be accompanied by other persons and take necessary equipment with them. Whilst on the premises the officer may make recordings and take photographs.

Background

638 This power enables local housing authorities to enter business premises of landlords at any reasonable time without a warrant. This will help with gathering evidence of suspected non-compliance, such as tenancy agreements, bank statements or letters, which are often held on a landlords' business premises. This is a similar power to that provided in Paragraph 23 (power to enter premises without warrant) of Schedule 5 (Investigatory Powers) to the Consumer Rights Act 2015, which is available for estate and letting agent legislation and other consumer protection legislation.

Example: Overcrowding in unlicensed HMO

A local authority receives a report of overcrowding by a neighbour of a property. The local authority checks its HMO database and finds that there is no licence for the property. The local authority reasonably suspects the property is being illegally let as an HMO.

The local authority tries to build a case with a view of prosecuting the landlord if they find their initial suspicion was correct. The local authority attempts to get information from the tenants demonstrating the property is being let as an HMO. However, the tenants do not cooperate through fear of retaliation from the landlord.

The local authority therefore considers it appropriate to use its new power to enter landlord's business premises without a warrant to require production of or to seize relevant documents. An officer of the local authority enters after giving appropriate notice of the entry to the landlord and finds copies of tenancy agreements demonstrating that the property is being let as an HMO.

The local authority uses this evidence as part of its case to prosecute the landlord for the offence of letting an HMO without a licence and is successful

Clause 108: Duties where occupiers are on business premises entered without warrant

Effect

639 Clause 108 imposes duties on officers of local housing authorities that apply if one or more occupiers are found when entering business premises without a warrant.

640 The officer must produce evidence of their identity and authority to at least one of the occupiers (subsection (1)(a)). Further to subsection (1)(b) where entry is by way of a non routine inspection meaning no prior notice of entry has been given, the officer must provide a document to at least one of the occupiers setting out why the entry is necessary and that obstructing an officer or providing false or misleading information is an offence (as set out in Clause 103(1) and (2)).

641 An officer does not need to comply with the requirements under subsection (1) if it is not reasonably practicable to do so. If an officer does not comply with the duties any proceedings arising out of the local housing authority's entry without warrant under Clause 107 will not be invalidated by reason of that failure alone.

Background

642 The duties are similar to those provided for by the power of entry under paragraph 23 of Schedule 5 (Investigatory Powers) to the Consumer Rights Act 2015, which is available for estate and letting agent legislation and other consumer protection legislation.

Clause 109: Business premises: warrant authorising entry

Effect

643 Clause 109 gives justices of the peace the power to issue a warrant authorising an officer of a local housing authority to enter business premises.

644 To issue a warrant the justice of the peace must be satisfied by written information provided on oath by an officer that certain criteria are met. This includes being satisfied that there are documents on the premises that the officer could require a person to produce under Clause 111 or could seize under Clause 112.

645 Before a warrant is granted the justice the peace must also be satisfied that one of three conditions set out in subsections (2), (3) and (4) are met.

Background

646 This power is similar to that provided in paragraph 32 (power to enter premises with warrant) of Schedule 5 (Investigatory Powers) to the Consumer Rights Act 2015.

Clause 110: Business premises: entry under warrant

Effect

647 Clause 110 authorises the officer named in a warrant issued under Clause 109 to enter premises specified in the warrant at any reasonable time and, if needed, using reasonable force. A warrant issued under Clause 109 does not permit entry into premises that are used wholly or mainly as residential accommodation.

648 Subsection (3) provides that the warrant stops being effective at the end of the period of one month, starting from the day it was issued.

649 Subsection (4) enables the officer to be accompanied by other persons and take equipment onto the premises as necessary. Subsection (5) allows the officer to take photographs or make recordings.

650 Subsection (6) provides that if upon entry the officer finds one or more occupiers on the premises the officer must produce the warrant for inspection to at least one of the occupiers. Subsections (7) and (8) set out what the officer must do if there are no occupiers present when the premises are entered.

Background

651 This Clause makes provision about what a warrant issued under Clause 109 authorises the named officer to do while exercising the warrant and how long the warrant is valid for. This provision is similar to paragraph 33 (entry to premises under warrant) Schedule 5 (Investigatory Powers) to the Consumer Rights Act 2015, which is available for estate and letting agent legislation and other consumer protection legislation.

Clause 111: Power to require production of documents following entry

Effect

652 The powers under Clause 111 are available to an officer of a local housing authority who has entered business premises either without a warrant under Clause 107(1) or with a warrant under Clause 109. It enables the officer at any reasonable time to require the production of documents relating to the relevant business. Subsection (1)(b) enables the officer to take copies of such documents.

653 A request can be made to a relevant person, such as a landlord, or anyone on the premises acting on their behalf.

654 Subsection (2) sets out the purposes for which this power can be used. These are to check whether there has been compliance with the "rented accommodation legislation" where the officer reasonably suspects a breach of or offence under that legislation has occurred; and to ascertain whether these documents may be required as evidence for in proceedings for such a breach or offence.

655 Subsection (7) prevents an officer from requiring the production of information that the person could assert legal professional privilege over in proceedings before the High Court.

Background

656 This Clause gives a power to an officer of a local housing authority who has entered premises without a warrant under Clause 107(1) or with a warrant under Clause 109 to require the production of documents relating to the business for which the premises are occupied. This is a similar power to paragraph 27 (power to require the production of documents) of Schedule 5 to the Consumer Rights Act 2015, which is available for estate and letting agent legislation and other consumer protection legislation.

Clause 112: Power to seize documents following entry

Effect

657 Clause 112 gives an officer of a local housing authority the power to seize and detain documents after entering a property under Clause 107 (power to enter business premises without a warrant) and Clause 109 (power to enter business premises with a warrant). In order to exercise this power the officer must reasonably suspect that such documents may be

needed as evidence in proceedings relating to a breach of, or an offence under, the "rented accommodation legislation".

658 Where occupiers are on the premises, before seizing documents the officer must produce evidence of their identity and authority unless it is not reasonably practicable to do so.

659 Subsection (4) provides that an officer seizing documents must take reasonable steps to inform the person who they seized the documents from that they have been seized and give them a written record of what has been seized.

660 Subsection (6) prevents an officer from seizing any document which the person would be entitled to refuse to produce in proceedings in the High Court on the grounds of legal professional privilege.

661 Subsection (8) limits the length of time that seized documents can be detained for.

Background

662 This Clause provides officers of local housing authorities with the power to seize documents after exercising either of the powers of entry under Clause 107 and Clause 109. This is a similar power to that provided in the Paragraph 29 (power to seize documents required as evidence) to Schedule 5 (Investigatory Powers) of the Consumer Rights Act 2015.

Clause 113: Access to seized documents

Effect

663 Clause 113 sets out how and by whom documents seized under Chapter 3 (Investigatory Powers) can be accessed.

664 Subsection (2) provides that a person must be granted access to a detained document under the supervision of an officer if that person had custody or control of it immediately before it was seized. Subsections (3) and (4) set out what the local housing authority must do if a request is made for a photograph or copy of a seized document. Subsection (5) provides that a local housing authority need not permit access to, or a photograph or copy to be made, of seized documents if it reasonably believes that doing so would prejudice the purpose for which the document had been seized.

665 Subsection (7) makes provision so that a person's representative can also request access to and copies of seized documents.

Background

666 This Clause provides for access to documents seized and detained by an officer of a local housing authority to persons who had custody or control of the document(s) immediately before seizure, or their representative. This is a similar provision to that under paragraph 38 (access to seized goods and documents) to Schedule 5 (Investigatory Powers) of the Consumer Rights Act 2015.

Clause 114: Appeal against detention of documents

Effect

667 Clause 114 allows a person who has an interest in documents that have been detained under Chapter 3 (Investigatory powers) to apply for an order for their release. Subsection (2) sets out to which magistrates' court such an application is to be made. Subsection 2(a) provides that where there are ongoing proceedings in relation to an offence following an investigation in which documents were seized such an application may be made to the same magistrates'

court. Subsection 2(b) provides that where there are no ongoing proceedings an application may be made to any magistrates' court.

668 Subsection (3) provides that the court may only make an order if condition A or B is met. Subsections (4) and (5) set out these conditions.

669 Further to subsection (6), persons who are aggrieved by the court's order or decision may appeal the decision to the Crown Court.

670 Further to subsection (7) the magistrates' court may delay the effect of an order pending the making or determination of any appeal.

Background

671 This Clause provides an appeal mechanism against the detention of documents seized under Clause 95. This means persons with an interest in documents seized under Clause 112 can apply to appeal their detention in the magistrates' court. These provisions are similar to Paragraph 40 (appeals against detention of goods and documents) to Schedule 5 (Investigatory Powers) of the Consumer Rights Act 2015.

Clause 115: Suspected residential tenancy: entry without warrant

Effect

672 Clause 115 provides a power of entry without a warrant at any reasonable time, by notice, by a specially authorised officer of a local housing authority into suspected residential tenancies.

673 Subsection (1)(a) provides that the officer may enter a premises if the officer reasonably suspects the premises is subject to a "residential tenancy" (as defined by Clause 55); subsection (1)(b) provides that the officer must consider entry to the premises necessary for the purpose of investigating whether a breach or offence has occurred under the listed legislation; subsection (1)(c) provides that notice must be given to specified persons in accordance with subsection (2), unless the person has waived the requirement to be given notice under subsection (3). Subsection (2) sets out the requirements of the notice.

674 Subsection (4) enables the officer to be accompanied by other persons and take equipment onto the premises as necessary. Subsection (5) allows the officer to take photographs or make recordings.

675 Subsection (6) provides that the officer must produce the officer's special authorisation for inspection if a person to whom notice was required to be given so requests this.

676 Subsection (7) sets out the meaning of "specially authorised" for the purpose of this Clause.

Background

677 This Clause enables specially authorised officers of local housing authorities to enter premises without a warrant. The officer must reasonably suspect the premises are subject to residential tenancies and considers it necessary to enter in order to gather evidence for the purpose of investigating whether a breach or offence has occurred in relation to the Private Rented Sector Database or under section 1 of the Protection from Eviction Act 1977 (unlawful eviction and harassment).

678 This is a similar power to that provided in section 239 (powers of entry) of the Housing Act 2004, which is available for provisions relating to property conditions and licensing.

Clause 116: Duties where occupiers are on residential premises entered without warrant

Effect

679 Clause 116 sets out the requirements when exercising the power of entry without warrant to suspected residential tenancies under clause 115 and there are occupiers on the premises.

680 Subsection (1) provides that the officer must produce evidence of their identity and special authorisation to the occupier or (if there are more than one) at least one of the occupiers on the premises unless it is not reasonably practicable to do so (subsection (2)).

681 Subsection (3) provides that proceedings resulting from the use of the power under Clause 115(1) do not become invalid solely because an officer failed to produce evidence of their identity and special authorisation to an occupier.

682 Subsection (4) provides that "special authorisation" has the same meaning as in section 115.

Background

683 The requirements set out under this Clause are similar to some of those provided for by the power of entry under paragraph 23 (power to enter premises without warrant) of Schedule 5 (Investigatory Powers) to the Consumer Rights Act 2015. The main distinction is that these requirements relate to a power of entry to premises suspected of being subject to residential tenancies, as opposed to business premises as is the case in the Consumer Rights Act 2015.

Clause 117: Suspected residential tenancy: warrant authorising entry

Effect

684 Clause 117 gives justices of the peace the power to issue a warrant authorising entry by an officer of a local housing authority into suspected residential premises.

685 A justice of the peace may only issue such a warrant to an officer if they are satisfied on written information provided on oath by that officer that in entering the premises the officer would be acting on behalf of the local housing authority; there are reasonable grounds for believing that the premises are subject to a residential tenancy (as defined by Clause 55); and it is necessary for the officer to inspect the premises for the purpose of investigating whether a breach or offence of the legislation listed in clause 115(1)(b) has occurred.

686 In addition, before issuing a warrant the justice of the peace must be satisfied that one of the following apply: admission to the premises has been sought without a warrant under clause 98(1) but refused, no occupier is present and waiting for their return may defeat the purpose of the entry, or applying for a warrant would defeat the purpose of the entry.

Background

687 The power provided to justices of the peace in this Clause is similar to that provided in section 240 (warrant to authorise entry) of the Housing Act 2004. A warrant authorising entry into suspected residential premises can only be obtained for the purposes of investigating whether there has been a breach or offence in relation to the Private Rented Sector Database and section 1 of the Protection from Eviction Act 1977 (unlawful eviction and harassment).

Clause 118: Suspected residential tenancy: entry under warrant

Effect

688 Clause 118 authorises the officer named in the warrant issued under Clause 117 to enter the premises specified in the warrant at any reasonable time and, if needed, using reasonable force.

689 Subsection (2) provides that the warrant stops being effective once the inspection of the premises has been completed.

690 Subsection (3) enables the officer to be accompanied by other persons and take equipment onto the premises as necessary. Subsection (4) allows the officer to take photographs or make recordings.

691 Subsection (5) provides that if upon entry the officer finds one or more occupiers on the premises the officer must produce the warrant for that inspection to the occupier or (if there are more than one) at least one of the occupiers.

692 Subsections (6) and (7) provide what an officer must do if there are no occupiers present when the premises are entered.

Background

693 The requirements set out under this Clause are similar to some of those provided for the power of entry in section 240 (warrant to authorise entry) of the Housing Act 2004.

Clause 119: Powers of accompanying persons

Effect

694 Clause 119 provides that a person who accompanies an officer of a local housing authority when entering a premises either with or without a warrant, under Chapter 3 (Investigatory Powers) has the same powers as the officer in relation to the premises. These powers can only be used in the officer's company and under the officer's supervision.

Background

695 This Clause sets out the nature of the powers of persons accompanying officers when exercising any of the powers of entry under this Chapter.

Clause 120: Offences

Effect

696 Clause 120 creates new offences in relation to the new investigatory powers in Chapter 3 of this Bill and provides the penalties for those offences.

697 Subsections (1) and (2) set out the offences for obstructing an officer, failing to comply with requirements properly imposed by an officer, failing to provide other information or assistance if reasonably required by the officer for the purposes of exercising the investigatory powers and knowingly or recklessly providing false or misleading information. The offences created under subsection (1) will not apply to clause 104 (power of local housing authority to require information from any person).

698 Subsection (4) provides that the penalty on summary conviction for offences under subsection (1) and (2) must not exceed £1,000 (level 3 on the standard scale).

699 Subsections (3) and (5) set an offence with an unlimited fine for anyone falsely purporting to be a housing officer under Chapter 3 (Investigatory Powers).

700 Subsection (6) sets out that a person will not commit an offence if they refuse to answer any question or give any information that might incriminate them.

Background

701 This Clause sets new offences which aim to ensure that use of the investigatory powers in Chapter 3 are effective by penalising uncooperative or misleading behaviour. It also sets the penalty for the offences, which is a fine not exceeding £1,000 (level 3 on the standard scale), except for the more severe offence of falsely purporting to be a housing officer, for which the fine is unlimited.

Clause 121: Investigatory powers: interpretation

Effect

702 Clause 121 provides essential definitions for words and key terms used in the investigatory powers chapter.

703 Subsection (1) defines "document", "give", "occupier", "premises", "relevant person" and "the rented accommodation legislation".

704 Subsection (2) and (3) describe what is meant by references to an officer and the functions of a local housing authority by virtue of particular legislation respectively.

705 Subsection (4) relates to the processing of information and provides that any such processing under Chapter 3 (Investigatory powers) must continue to comply with data protection legislation (as defined in section 3 of the Data Protection Act 2018). Subsection (4) expressly provides that nothing in Chapter 3 authorises the processing of personal data which contravenes data protection legislation or relevant parts of the Investigatory Powers Act 2016.

706 Subsection (5) defines "the data protection legislation".

Background

707 This Clause contains definitions and other interpretive provisions in relation to the other new Clauses in Chapter 3 that create investigatory powers for local housing authorities.

Clause 122: Additional powers of seizure under Criminal Justice and Police Act 2001

Effect

708 Clause 122 adds the powers that provide for copies of documents to be taken and for seizure of documents following entry into business premises with and without a warrant (Clause 111(1)(b) and clause 112 of the Renters (Reform) Bill) to Part 1 of Schedule 1 (powers of seizure) to the Criminal Justice and Police Act 2001. By adding these Clauses to Part 1 of Schedule 1 of that Act an officer of a local housing authority exercising powers under Clauses 111(1)(b) and 112 will be able to exercise the additional powers of seizure from premises provided for by section 50 of the Criminal Justice and Police Act 2021.

Background

709 Part 1 of Schedule 1 (powers of seizure) to the Criminal Justice and Police Act 2001 applies section 50 of that Act to the listed legislative provisions which provides additional powers of seizure from premises. The powers are to seize anything which a person who is lawfully on a premises reasonably needs to seize in order to determine whether it is something the officer is lawfully entitled to seize, and to seize property where it cannot reasonably be separated from something that they are entitled to seize. Adding Clauses 111(1)(b) and 112 to Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001, means these additional powers of

seizure will apply to officers of local housing authorities who are taking copies of documents or seizing documents when entering business premises. The absence of this power would significantly limit officers' powers to seize evidence upon entry into business premises.

Clause 123: Use by local housing authority of certain information

Effect

710 Clause 123 amends the sections 212A (tenancy deposit schemes: provision of information to local authorities) and 237 (use of information obtained for certain other statutory purposes) of the Housing Act 2004 to enable local housing authorities to use the information they already hold or have access to for the additional purposes listed in subsection (2) and (5).

Background

711 This Clause extends two existing powers in the Housing Act 2004 which allow local housing authorities to use council tax, housing benefit and tenancy deposit scheme data information for the purposes connected with exercising their functions under the listed legislation and for the purposes investigating certain housing offences under the same listed legislation.

712 The new provisions that are brought into scope include blanket bans, landlord redress schemes, the Private Rented Sector Database, unlawful eviction and harassment, assured tenancies, redress schemes for letting and property management agents, banning orders, rent repayment orders and client money protection schemes.

713 This information can be used to build local housing authorities' evidence when investigating suspected breaches and offences in relation to the listed legislative provisions.

Clause 124: Investigatory powers under the Housing Act 2004

Effect

714 Clause 124 amends section 235 (power to require documents to be produced) and 239 (powers of entry) of the Housing Act 2004. These relate to enforcement of a DHS within the private rented sector.

715 Amendments to section 235 of the Housing Act 2004 provide that documents can now be also sought from a relevant person for purposes connected with functions under Part 7 (supplementary and final provisions) of that Act in relation to "qualifying residential premises" as defined in new section 2B of that Act.

716 Amendments to section 239 of the Housing Act 2004 provide that the required notice when exercising a power of entry under that section can be waived by a person to whom notice is otherwise due in relation to qualifying residential premises.

Background

717 The amendments to section 235 of the Housing Act 2004 will enable local authorities to require documents from a relevant person, for example bank statements or tenancy agreements, for the purposes of setting fines under Part 7 of that Act. This will support local housing authorities to impose appropriate fines by allowing them to get more information after a breach under Part 1 to 4 of the Housing Act 2004 has been proved. Parts 1 to 4 of the Housing Act 2004 include housing conditions, private rented sector licensing, final and interim orders, and overcrowding. Part 1 of the 2004 Act is being amended by this Bill to introduce a DHS into the private rented sector.

718 The amendment to section 239 of the Housing Act 2004 will enable tenants and landlords to provide a waiver for the otherwise required 24 hours notice prior to a property inspection under that section – should it be convenient for them to waive the notice.

Clause 125: Client Money Protection schemes: investigatory powers of local authorities

Effect

719 Clause 125 gives local authorities powers under Schedule 5 (Investigatory powers) to the Consumer Rights Act 2015 to investigate certain breaches of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019. These investigatory powers will be exercised in relation to the local authorities' existing duty to enforce requirements on property agents to be members of a client money protection scheme for protecting money they hold in connection with letting or managing rented homes.

Background

720 Local authorities are responsible for the enforcement of client money protection schemes regulations. This Clause extends the set of investigatory powers that are already available to local authorities in relation to the Tenant Fees Act 2019 and agent redress requirements so that they can be used to investigate breaches of particular client money protection regulations. These powers include the power to require information from any person, the power to enter business premises, the power to require the production of documents and the power to seize documents. It is important that local authorities have access to these powers as, without them, they have no ability to investigate breaches of these requirements and therefore cannot effectively enforce them.

Part 5: General

Clause 126 Assessment of operation of possession process

Effect

721 Clause 126 requires the Lord Chancellor to assess the operation of the process by which the county court is able to make possession orders for rented property in England, and by which such orders are enforced. The assessment must be published by the Lord Chancellor before the Secretary of State can make regulations appointing a date for "the extended application date" (see Clause 138(3A)).

Background

722 This is a new provision. It introduces a requirement on the on the Lord Chancellor to prepare and publish an assessment of the operation of the county court possession process, following proceedings instigated by the landlord.

Clause 127 Report on certain matters relating to tenancy reform

Effect

723 Clause 127 creates a requirement for the Secretary of State to arrange for an independent person to prepare a report on certain tenancy reform matters.

724 Subsection (1) provides that the report should consider the impact of removing fixed terms (in Clause 1 of the Bill) on the provision of assured tenancies (except social housing) and the extent to which the grounds for possession (in Schedule 2 of the Housing Act 1988, as amended by the Bill) operate effectively, and are comprehensive and fair.

725 Subsection (2) provides that the Secretary of State must lay the report before Parliament alongside his response within 18 months from the earliest date in which the new tenancy system is applied to existing tenancies (described as the "extended application date" in Clause 138(3)(b)).

726 Subsection (3) clarifies that the Secretary of State may specify that the report should cover matters additional to those specified in subsection (1).

Clause 128 Report on provision of residential tenancies

Effect

727 This Clause places a duty on the Secretary of State to lay an annual report before Parliament containing data and analysis relating to the private rented sector.

728 Subsections (1)—(4) outline the frequency of such reports and the nature of the information that may be included. The first report is due within 12 months from the date of Royal Assent, with further reports due every 12 months thereafter.

729 Subsections (5)—(7) clarify the definition of the terms "dwelling" and "residential tenancy". These have the same meaning as given in section 55. In the event regulations are made under that section to expand the meaning of those terms, these subsections provide that a report may include additional data or analysis to reflect those changes.

730 Subsection (8) limits the duty to prepare and lay an annual report to a period of five years following Royal Assent.

Background

731 The data to be included in such reports is statutorily undetermined and may comprise estimates where appropriate.

Clause 129: Interpretation

Effect

732 This Clause provides a definition for 'local housing authority' and 'the 1988 Act' where used throughout this Bill.

Clause 130: Crown application

Effect

733 Clause 130 set out the effect of the Act on the Crown. Measures in the Bill and regulations made under it will generally apply to the Crown, barring exceptions for sections 59 and 83, and parts of Part 4 Chapter 3. The Crown cannot be prosecuted for offences committed under Clauses 59 or 83, but it is possible for a financial penalty of up to £30,000 to be imposed on the Crown in lieu of prosecution. The exemption from criminal liability does not extend to persons acting in service of the Crown. Clause 130(8) provides that measures which amend existing legislation do not bind the Crown unless the legislation being amended also binds the Crown (and in relation to the 1988 Act, this is subject to Clause 16).

Background

734 This is a new provision.

Clause 131: Application to Parliament

Effect

735 Clause 55 defines "residential landlord" for the purposes of the private rented sector database and the landlord redress scheme Clauses in Part 2. Subsections (4)(b) and (5) of Clause 55 enable the Secretary of State to make the landlord under tenancies of dwellings occupied for the purposes of either House of Parliament (that are periodic or granted for a term less than 21 years), or under licences to occupy such dwellings, a "residential landlord" and therefore subject to the requirements imposed on landlords by Part 2.

736 Paragraphs (a), (b) and (c) of this Clause provides that the offences relating to landlord redress schemes and the private rented sector database will not apply to tenancies or licences of dwellings occupied for the purposes of either House of Parliament if such tenancies or licences become subject to Part 2. Relevant persons who breached the regulations in those circumstances would nonetheless still be liable to receive financial penalties as provided for in Clauses 58 and 82.

737 Chapter 3 of Part 1 (Discrimination relating to children or benefits status: England) does not apply in relation to premises that are occupied for the purposes of either House of Parliament.

Background

738 This is a new provision which follows precedent set by other legislation that excludes the Houses of Parliament from criminal liability. See, for example, section 131B of the Building Act 1984 (as inserted by section 60 of the Building Safety Act 2022).

Clause 132: Regulations

Effect

739 This Clause clarifies that regulations made under the Bill can include consequential, supplementary, incidental, transitional or saving provision. The power to make transitional provision includes the power to make provision that applies in relation to tenancies, licences or occupation contracts entered into, or advertising begun, before the date on which the regulations come into force.

740 It allows regulations to be made in a different way for different purposes or geographical areas to provide, for example, for staged implementation.

741 The Clause provides that all regulations made under the following Clauses are to be made by statutory instrument using the affirmative procedure: Clauses 27, 37, 45, 51, 55, 56, 57, 74(4), 75(6), 78 and 79(2). All other regulations made are subject to the negative resolution procedure.

742 Regulations made by Welsh Ministers under 44 must also follow the affirmative procedure in the Senedd Cymru.

743 The Clause does not apply to regulations made under Part 5 itself, nor by Welsh Ministers under Clause 133.

744 Regulations made by the Scottish Ministers under the Bill (i.e. regulations to extend protection under Scots law to persons of other descriptions) are subject to affirmative procedure.

745 Paragraph 9 provides that any statutory instruments laid under the powers provided for in Clause 56 will not be treated by Parliament as hybrid instruments.

Background

746 This is a new provision.

747 In relation paragraph 9, hybrid statutory instruments affect the private interests of some members of a group more than others in the same group. These instruments are subject to a special procedure which gives those who are negatively affected by them the chance to present their arguments against the instrument to the Lords Hybrid Instruments Committee and then, possibly, to a Select Committee charged with reporting on its merits. This results in a longer Parliamentary process than typical for affirmative statutory instruments.

748 If the Ombudsman is delivered through a phased rollout, the statutory instruments used under Clause 55 could be considered hybrid, as some landlords may be required to join the Ombudsman before others. De-hybridising the redress provisions will help to prevent delays if a phased rollout is needed, as it will preclude statutory instruments from going through the hybrid procedures. If the rollout of the Ombudsman is deemed to be hybridising, the Government intends to engage with stakeholders on any approach that affects the interests of landlords or tenants differently. This would likely only apply in relation to certain phased approaches to delivering the Ombudsman.

Clause 133: Power of Welsh Ministers to make consequential provision

Effect

749 This Clauses allows the Welsh Ministers to make provision that is consequential on Part 1 of the Renters (Reform) Bill.

750 The regulation-making power is conferred by subsection (1). Subsection (2) provides that regulations under section 133 may amend, repeal or revoke provision made by or under an Act or Measure of Senedd Cymru passed before this Bill, or an Act passed before this Bill, or later in the same session of Parliament as this Bill.

751 Regulations must be made under the affirmative procedure if amending primary legislation subsection (6), negative if otherwise (7), and are constrained by the legislative competence of the Senedd (5).

Proposed use of powers

752 The power will allow the Welsh Ministers to make consequential amendments arising from the Bill.

Background

753 Part 1 of the Renters (Reform) Bill, containing tenancy reform provision, amends existing UK legislation. This Clause is required to update any references in legislation, to ensure they continue to function following such amendments.

Clause 134: Power of Scottish Ministers to make consequential provision

Effect

754 This Clause allows the Scottish Ministers to make provision that is consequential on Part 1 of the Renters (Reform) Bill.

755 The regulation-making power is conferred by subsection (1). Subsection (2) provides that regulations under section 134 may amend, repeal or revoke provision made by or under an Act of the Scottish Parliament passed before this Bill, or an Act passed before this Bill, or later in the same session of Parliament as this Bill.

756 Regulations must be made under the affirmative procedure if amending primary legislation subsection (6), negative if otherwise (7), and are constrained by the legislative competence of the Scottish Parliament (5).

Proposed use of powers

757 The power will allow the Scottish Ministers to make consequential amendments arising from the Bill, for example removing now-defunct terms from other pieces of legislation.

Background

758 This is a new provision.

Clause 135: Power of Secretary of State to make consequential provision

Effect

759 Clause 135 confers a regulation-making power for the Secretary of State to make consequential amendments which arise from this Bill. Any regulations that make consequential provision may amend, repeal or revoke an enactment. Regulations made using this power that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations made under this Clause are subject to the negative procedure.

760 This power includes power to make supplementary, incidental, transitional or saving provision, including in relation to tenancies or licences entered into, or advertising begun, before the date on which the regulations came into force.

Proposed use of power

761 The power will allow the Secretary of State to make consequential amendments arising from the Bill, for example removing now-defunct terms from other pieces of legislation (an example is given below to further illustrate this). Any such amendments that involve altering primary legislation are subject to the affirmative procedure.

Example: References to section 21 in other legislation

After the Bill has passed into law, a previously un-noticed reference to section 21 (of the Housing Act 1988) is discovered in the Housing Act 2004. Using this power, the Secretary of State is able to remove the reference to section 21 from the legislation and replace it with a suitable alternative to ensure this section of the Housing Act 2004 continues to function as intended. The use of the affirmative procedure means Parliament is given the opportunity to debate whether this change is appropriate to make.

Clause 136: Extent

Effect

762 This Clause details the territorial extent of the provisions in the Bill. See Territorial extent and application in Annex A of these explanatory notes for additional detail.

Clause 137: Commencement

Effect

763 Subsection (1) provides that this Bill comes into force for the purpose of making regulations on the day on which it is passed.

764 Subsection (2) provides that for other purposes the Act comes into force on such day as the Secretary of State may by regulations appoint, except where subsections (3)-(6) apply. In relation to Part 1 Chapter 1 of the Act, this is known as "the commencement date" (please see Clause 138(1)(a)].

765 Subsection (3) – Chapter 4 of Part 1 (Blanket Bans measures for Wales) comes into force on such day as the Welsh Ministers by order made by statutory instrument appoint.

766 Subsection (4) – Chapter 5 of Part 1 (Blanket Bans measures for Scotland) comes into force on such day as the Scottish Ministers by regulations appoint.

767 Subsection (5) provides that Chapter 2 of Part 1 (which outlines tenancies that cannot be assured tenancies), section 54 (which omits recovery of abandoned premises under assured shorthold tenancies from the Housing and Planning Act 2016), section 99 (Duty to report), and Chapter 3 of Part 4 (Investigatory Powers) of the Act come into force two months after the day the Act is passed.

768 Subsection (6) provides that section 100 (Lead enforcement authority) and Part 5 (General) comes into force on the day in which this Bill is passed.

769 Subsection (7) provides that different days may be appointed under this section for different purposes.

Background

770 This provision provides for how different parts of the Act will be commenced.

Clause 138 Application of Chapter 1 of Part 1

771 Subsection (1) provides that Chapter 1 of Part 1 applies in relation to an assured tenancy entered into on or after "the commencement date" set by regulations under Clause 137(2) in relation to that Chapter (subsection 2). It also provides that from the relevant "extended application date" Chapter 1 of Part 1 applies in relation to an assured tenancy (including those created as assured shorthold tenancies), that (i) was entered into before the commencement date and (ii) continues in effect on the extended application date.

772 Subsection (3) defines "the extended application date", as a date appointed by the Secretary of State by regulations (subsection (3)(b)) except where an existing assured tenancy created before "the commencement date" (including those created as assured shorthold tenancies) is converted to a periodic tenancy between "the commencement date" and the date appointed by the Secretary of State, in which case it is the date on which the tenancy converts.

773 In practice this will mean that there is a two-stage transition to the new tenancy system. In the first stage new tenancies will be governed by the new rules from "the commencement date". In the second stage existing tenancies will transition to the new system on the date appointed by the Secretary of State or on the date they convert to a periodic tenancy if that is earlier.

774 Subsection (4) clarifies that a tenancy "converts to a periodic tenancy" when the tenancy becomes a periodic tenancy on the expiry of a fixed term.

775 Subsection (5) provides that regulations under subsection (3)(b) that set out a date for "the extended application date", which is when Chapter 1 of Part 1 will apply to all remaining existing assured tenancies, cannot be made by the Secretary of State until the assessment of county court possession proceedings required by new Clause 126 has been published.

776 Subsection (6) provides that, for the purposes of the relevant provisions (listed in subsection (7)), a fixed term assured tenancy and a periodic tenancy that arises on its expiry by virtue of section 5 of the Housing Act 1988 (a "statutory periodic tenancy") are to be treated as a single assured tenancy which started at the beginning of the fixed term, and then became periodic on the expiry of the fixed term. This has implications for when certain timeframes set out in the Bill run from, including time periods inserted into section 14 of that Act by Clause 8 in respect of challenges to rent amounts and increases, the restrictions on which dates can be specified in section 8 notices using certain possession grounds inserted into the Housing Act 1988 by Clause 13, and whether a landlord must re-issue a statement of terms at the end of a fixed term under new section 16(D) of the Housing Act 1988 inserted by Clause 12. This provision means that the new tenancy system will apply to the tenancy when it becomes a periodic tenancy, but it is not to be treated as a new tenancy starting at the expiry of the fixed term.

777 Subsections (8) and (9) provide an affirmative procedure power so that the Secretary of State can amend the definition of "relevant provisions" in subsection (5) via regulations.

778 Subsection (10) provides that regulations under this section can make different provision for different purposes.

Background

779 This provision provides for how Chapter 1 Part 1 of the Act (assured tenancies) applies to existing tenancies and new assured tenancies once Clauses come into force.

Clause 139: Transitional provision

Effect

780 Clause 139 provides that the Secretary of State may, by regulations made by statutory instrument, make transitional or saving provisions in connection with the coming into force of any provision of the Bill (subsection (3)). This includes the power to make different provisions for different purposes (subsection (7)), and power to provide for the Bill's provisions to apply to tenancies, licences or advertising which began before the Clause came into force (subsection (6)(a)). It also includes the power to modify the effect of private legal instruments (such as leases, mortgage agreements or insurance contracts) that were entered into before the extended application date, where the Secretary of State is satisfied that such an instrument would not operate appropriately as a result of Part 1 Chapters 1 and 2 of the Bill (please see subsections (6)(b) and 7-11.

781 Subsection (8) ensures that, when regulations under subsection (6)(b) change the effect of private legal instruments made before changes to legislation under Clause 132 regulations come into force, the parties to those documents can agree a different result instead of the default one provided by the legislation.

782 Circumstances in which the Secretary of State may consider that a private legal instrument will not operate appropriately in consequence of Part 1 Chapters 1 and 2 of the Bill include if provision within it would be obsolete or impractical, would have an unclear effect, would subject parties to more burdensome obligations than previously, or where it references any enactment as it had effect prior to their amendment by Part 1 Chapters 1 or 2 of the Bill.

783 Subsections (1) and (2) provide the Welsh and Scottish Ministers with powers to make transitional or saving provision by secondary legislation in connection with the commencement of the Blanket Bans provisions for those countries in Part 1 Chapters 4 and 5 (subsections (1) and (2)). As with the equivalent regulation-making power of the Secretary of State, this can be used to provide for those provisions to apply to advertising begun, or

occupation contracts or tenancies entered into, before the date on which Part 1 Chapters 4 or 5 come into force (subsections (4) and (5).

Clause 140: Short title

Effect

784 This Clause is self-explanatory.

Schedules

Schedule 1: Changes to grounds for possession

Introductory

785 Schedule 1 amends Schedule 2 of the Housing Act 1988, which sets out the grounds for possession (set out in annex B) in assured tenancies. These specify the reasons that landlords will be able to seek possession in the new tenancy system.

Amendments of Ground 1: occupation by landlord or family

Effect

786 Paragraph 2 amends ground 1 of Schedule 2 of the Housing Act 1988. Ground 1 cannot be used unless the tenancy has existed for at least six months at the "relevant date" (as defined under Schedule 2 Part 5 Housing Act 1988 as amended by this Act).

787 A court is required to award possession if the landlord requires the property for use as the only or principal home for any of the following:

a. themselves

b. their spouse, civil partner, or person with whom they live with as if they were married or in a civil partnership

c. their close family member i.e. their parent, grandparent, sibling, half-sibling, child, or grandchild

d. the child or grandchild of their spouse, civil partner, or person with whom they live with as if they were married or in a civil partnership

Background

788 Under the existing ground 1 of Schedule 2 to the Housing Act 1988, a court is required to award possession if the landlord requires the property to live in as their only or principal home.

789 A court is also required to award possession if the landlord has previously lived in the property as their only or principal home regardless of whether they intend to do so now. This provision is absent from the new ground 1.

790 Under the previous ground, landlords are required to have provided prior notice to the tenant that the ground may be used. This provision is also absent from the new ground 1.

New ground for sale of dwelling-house (1A)

Effect

791 Paragraph 3 inserts a new ground (1A) so that a court is required to award possession if the landlord intends to sell a freehold or leasehold interest in the dwelling-house, or to grant a

long lease for a term certain over 21 years of the dwelling-house. This ground cannot generally be used unless the tenancy has existed for at least six months at relevant date.

792 Sub-paragraph (b) specifies that ground 1A cannot be used to obtain possession when the assured tenancy arose at the end of a tenancy under either Schedule 1 to the Rent Act 1977 or section 4 of the Rent (Agriculture) Act 1976.

793 Sub-paragraph (c)(ii) provides an exception to the minimum six-month restriction on use of the selling ground, following the start of a tenancy, where a notice of a compulsory acquisition has been published or served in relation to the property and it is being sold to the acquiring authority. An acquiring authority and what constitutes giving notice of a compulsory acquisition is defined in paragraph 12, Part 5 of Schedule 2 to the Housing Act 1988 (as inserted by paragraph 25 in Schedule 1 to this Act).

794 Sub-paragraph (d) specifies that this ground is not available to certain social landlords.

Background

795 There is no existing ground for possession under Schedule 2 of the Housing Act 1988 for use where the landlord intends to sell the property.

796 Public or other authorities may compulsorily acquire property (without the consent of the owner) in circumstances where they have been authorised to do so by Parliament, subject to compliance with statutory procedures, and where there is a compelling case in the public interest. Before exercising powers of compulsory acquisition, the relevant public or other authority must comply with required notification procedures, and publish a notice of its intention to use its powers of compulsory acquisition in a newspaper and, where applicable, on a website. The authority must also serve notices on persons with an interest in the property which is the subject of the acquisition.

797 The exception to the minimum six-month tenancy restriction where the property is being sold to an authority with statutory authorisation to compulsorily acquire it will ensure that landlords can respond quickly and provide vacant possession of a property to the relevant acquiring authority. This is necessary to prevent delays occurring in transferring the ownership of the property to an authority, which might impact their ability to deliver, for example, development, regeneration and infrastructure projects in the public interest.

New ground for sale of dwelling-house (1B)

Effect

798 Paragraph 4 inserts a new ground (1B) so that a court must award possession when private registered providers of social housing are either selling a freehold or leasehold interest in the property, granting a long lease over 21 years or re-letting to a different eligible tenant under a rent-to-buy arrangement.

799 Sub-paragraph (e) specifies that landlords may only use the ground where the defined period stated in the rent-to-buy agreement has expired.

800 Sub-paragraph (f) stipulates that the landlord must have complied with any terms in the rent-to-buy agreement which require them to offer the sitting tenant the opportunity to buy the property and with any required procedures etc. in the agreement about such an offer.

Background

801 Rent-to-buy schemes provide an affordable home ownership route for tenants. Under the terms of the arrangement, relevant landlords will let a property at a discounted rate of rent

(no more than 80% of assessed market rent, inclusive of service charges) for a set period, on the expectation that tenants will use these rent savings to build up a deposit. At the end of the period, the tenant will be offered the opportunity to purchase the property at a price no more than market value before it is offered for general sale.

802 Private registered providers of social housing will be able to use this new selling ground to ensure that rent-to-buy schemes continue to be viable in the new tenancy system, by providing them with a mechanism to gain possession to sell the property or to re-let to a different eligible rent-to-buy tenant at the end of the scheme, in line with the terms of the agreement.

Amendments of Ground 2: sale by mortgagee

Effect

803 Paragraph 5 amends ground 2 of Schedule 2 of the Housing Act 1988.

804 Sub-paragraph (a) removes the requirement for the mortgage to have started prior to the beginning of the tenancy.

805 Sub-paragraph (b) removes the requirement for prior notice to have been provided to the tenant that the ground may be used.

Background

806 Ground 2 of Schedule 2 of the Housing Act 1988 requires a court to award possession where a mortgage lender is entitled to exercise a power of sale when repossessing the property and requires vacant possession.

New ground for possession when superior lease ends (2ZA)

Effect

807 Paragraph 6 inserts a new ground so that a court is required to award possession when the landlord has a superior lease and that superior lease is coming to an end. The ground can only be used by private registered providers of social housing, landlords who themselves have an agricultural tenancy, supported accommodation providers or companies with at least 50% local authority ownership (this includes companies owned by more than one local authority, where the combined local authority ownership amounts to between 50% and 100%).

Background

808 There is no existing ground for possession under Schedule 2 of the Housing Act 1988 for use where a superior lease comes to an end. When a superior lease agreement ends, an intermediate landlord may be required to provide vacant possession of dwellings let on assured tenancies. A ground is needed to ensure these intermediate landlords can comply with the terms of their superior lease.

New ground for possession by superior landlord (2ZB)

Effect

809 Paragraph 7 inserts a new ground so that a court is required to award possession when the landlord has a superior lease and that superior lease is coming to an end. The ground can only be used by landlords where the superior lease is over 21 years in length.

Background

810 This ground will allow landlords, including those who are private companies or individuals, to take possession where they hold a superior lease of over 21 years. This will enable such

landlords, for example those who hold a leaseholder agreement for the property, to comply with the terms of their superior lease to return the dwelling to their own landlord free from subtenancies at the end of their lease.

New ground for possession by superior landlord (2ZC)

Effect

811 Paragraph 7 also inserts a new ground so that a court is required to award possession when the landlord seeking possession was a superior landlord and becomes the direct landlord of the assured tenancy following the ending of a lease superior to the assured tenancy. The ground can only be used where the intermediate landlord prior to the tenancy reverting to the superior landlord was a private registered provider of social housing, had an agricultural tenancy, or was a supported accommodation provider or company with at least 50% local authority ownership (this includes companies owned by more than one local authority, where the combined local authority ownership amounts to between 50% and 100%).

Background

812 When a superior lease agreement ends, an assured tenancy of a dwelling may revert to the superior landlord under section 18 of the Housing Act 1988. There is no existing ground for possession under Schedule 2 of the Housing Act 1988 for use where a superior tenancy has ended. A ground is needed for a superior landlord to end those assured tenancies.

New ground for possession by superior landlord (2ZD)

Effect

813 Paragraph 7 also inserts a new ground so that a court is required to award possession when the landlord seeking possession was a superior landlord and becomes the direct landlord of the assured tenancy following the ending of a lease superior to the assured tenancy. The ground can only be used where the superior lease was over 21 years in length. Superior landlords can regain possession within six months of the tenancy reverting to them.

Background

814 When a superior lease agreement ends, an assured tenancy of a dwelling may revert to the superior landlord under section 18 of the Housing Act 1988. There is no existing ground for possession under Schedule 2 of the Housing Act 1988 for use where a superior tenancy has ended. This ground is available for a superior landlord to end those assured tenancies.

Repeal of Ground 3: holiday accommodation

Effect

815 Paragraph 8 removes ground 3 from Schedule 2 of the Housing Act 1988.

Background

816 Ground 3 of Schedule 2 of the Housing Act 1988 requires the court to award possession if, at some time in the 12 months prior to the tenancy starting, the dwelling-house was used as a holiday let. In practice, this ground facilitated seasonal holiday lets – properties would be let out as a holiday let over summer, and to a private tenant for the rest of the year.

817 The removal of ground 3 means that the court will no longer be required to award possession on the basis that the property was previously used as holiday let in the 12 months before the start of the tenancy. This will prevent landlords evicting tenants in order to let properties out for short periods of high tourist demand.

818 Under Schedule 1 of the Housing Act 1988, a holiday letting is excluded from being assured tenancies and will remain excluded from being periodic tenancies. A holiday letting is a tenancy the purpose of which is to confer on the tenant the right to occupy the dwelling-house for a holiday.

Amendments of Ground 4: student accommodation

Effect

819 Paragraph 9 amends the existing ground 4 to remove the reference to fixed terms and the requirement for landlords to give prior notice to the tenant to use the ground. This has been replaced by new 'prior notice' requirements set out in Clause 12. Prior notice must have been provided to the previous tenant if the current tenancy arose by succession under Case 14 of Schedule 15 to the Rent Act 1977. The ground cannot be used if the tenancy is an assured agricultural occupancy in respect of which the agricultural worker condition, under paragraph 3 of Schedule 4, has been fulfilled.

Background

820 Ground 4 requires a court to award possession when, the tenancy is for a fixed term of not more than 12 months, and during the 12 months prior to the start of the tenancy the accommodation was a student letting that is excluded from being an assured tenancy.

821 Under the Housing Act 1988, the court will not grant possession on ground 4 if the landlord did not give notice in writing to the tenant before the start of the tenancy that possession might be recovered on this ground. Replacement provisions under Clause 12 of this Bill will mean that landlords will be required to include notice in the mandatory written statement of terms that possession might be recovered using this ground, but the court will not be prevented from awarding possession if the landlord failed to comply.

Example: Letting student accommodation to non-students

Some universities let accommodation to non-students during academic holidays, e.g., to conference guests during the summer. The ground allows them to do this whilst guaranteeing that those short-term visitors or tenants can be evicted if needed to house incoming students.

New ground for possession of properties occupied by students (4A)

Effect

822 Paragraph 10 inserts a new ground for possession (Ground 4A) that will allow landlords to recover possession of a property let to full-time students, if the relevant date is between 1 June and 30 September , in order to re-let the property to full-time students again or to people who the landlord reasonably believes will become full-time students during the tenancy. Each tenant must be a full-time student at the start of the tenancy, or, at the beginning of the tenancy, the landlord must reasonably believe they will become full-time students during the tenancy.

823 Landlords will be required to provide written notice on or before the day the tenancy started of their intention to use the ground on the basis that the current tenants are full-time students and the landlord intends to relet the property to new full-time students. Unless this written notice is provided, landlords will not be able to regain possession using the ground.

Background

824 There is no existing ground for possession that would allow landlords to guarantee vacant possession of properties rented to students after the end of the academic year so that new groups of full-time students can move in. This new ground will allow the annual cycle of student letting to continue.

Amendment of Ground 5: ministers of religion

Effect

825 Paragraph 11 amends the existing ground 5 so that the requirement for landlords to have given tenants prior notice before using the ground no longer applies. This has been replaced by new 'prior notice' requirements set out in Clause 11. Prior notice must have been provided to the previous tenant if the current tenancy arose by succession under Case 15 of Schedule 15 of the Rent Act 1977. The ground cannot be used if the tenancy is an assured agricultural occupancy.

Background

826 Ground 5 requires a court to award possession when the property is required to house a minister of religion and the main purpose of the property is to provide a residence for a minister of religion performing the duties of their office.

827 Under the Housing Act 1988, the court will not grant possession on ground 5 if the landlord did not give notice in writing to the tenant before the start of the tenancy that possession might be recovered on this ground. Replacement provisions under clause 9 of this Bill will mean that landlords will be required to include notice in the mandatory written statement of terms that possession might be recovered using this ground, but the court will not be prevented from awarding possession if the landlord failed to comply.

New ground for possession for occupation by agricultural worker (5A)

Effect

828 Paragraph 12 introduces a new ground, which will require the court to award possession when a landlord requires the property to house an agricultural worker. The ground can be used to gain possession to house seasonal or permanent agricultural workers (employed by the landlord or, where there are joint landlords, one of the joint landlords).

Background

829 Properties that are on or near to agricultural land are often used to house workers who need to have fast or round-the-clock access to their work. When not needed for housing agricultural workers, these properties can also contribute to rural rented housing supply for other tenants.

830 This new specialist ground will allow landlords to continue to let such properties to both agricultural workers, or other tenants, depending on business need and housing demand.

Example: Letting to a farm worker

A farmer owns and manages a dairy farm, which comprises a main farmhouse, two cottages, other agricultural buildings and grazing land. They employ someone to help manage the dairy herd and they let one of the farm cottages to the worker. As the farmer owns another cottage on their land but does not currently need it to house workers, they let the cottage to another tenant who is not a farm worker. After 18 months, the farmer decides to expand the dairy herd and needs to hire another

worker to help. They need the new worker to live on site, so use this ground for possession to evict the current tenant so that they can house the incoming worker.

New ground for possession for occupation by person who meets employment requirements (5B)

Effect

831 Paragraph 13 introduces a new ground so that a court is required to award possession when a landlord who is a private registered provider of social housing intends for a property to be let to tenants who meet the employment-related eligibility criteria.

832 The tenant subject to eviction cannot be a person who already fulfils the specified employment-related eligibility criteria.

Background

833 Some private registered providers of social housing offer employment-related tenancies, such as housing for 'key workers', or housing linked to a specific profession or income bracket. These landlords have properties that they generally intend to use for this purpose, but they may also let it to other tenants when it is not needed for that use. Private registered providers will be able to use ground 5B to evict a tenant who does not meet the relevant eligibility criteria in order to house a tenant who does.

Example: Letting a property to NHS workers

Alongside providing housing for typical social housing tenants, a private registered provider lets out flats in one of its blocks of housing to NHS workers employed at a local hospital. If there is low demand for this housing from eligible workers, they will let these flats to other tenants. This ground will allow the provider to gain possession of a property when it is needed again to house eligible NHS workers.

Ground 16 to be renumbered as Ground 5C and to be a mandatory ground for possession

Effect

834 Paragraph 14 amends the existing ground 16 from the Housing Act 1988. A court will be required to award possession when the property was let to the tenant as a consequence of the tenant's employment, and either:

a. the tenant's employment has ended, or

b. the property is needed to house a new employee, and the current tenant's tenancy had not been intended to last for the full duration of the tenant's employment.

835 The landlord must be the tenant's employer, or someone acting on behalf of the employer.

Background

836 This is an expansion of ground 16 of the Housing Act 1988. The existing ground allows a landlord to gain possession when their tenant is also their employee and the tenant's employment has ended.

Example 1: Gaining possession when employment has ended

A shop owner owns both their shop and the flat above it and they let the flat to a person they employ to manage the shop. When this employee's employment ends, the second paragraph (a) of ground 5C allows the employer (and landlord) to gain possession of the flat if they want to.

Example 2: Gaining possession when the property is needed to house a new employee

An organisation is recruiting new employees and as part of their recruitment drive, they offer affordable rented housing in the local area alongside offers of employment. They expect the employees to move on from this housing after their first year in the job so that the homes can be offered to other new employees. The second paragraph (b) of ground 5C allows the landlords to gain possession of the property if the current tenants do not move on after the initially agreed time period.

New ground for possession for end of employment requirements (5D)

Effect

837 Paragraph 15 inserts a new ground requiring a court to grant possession when a tenancy agreement between the tenant and a private registered provider of social housing requires that the tenant meets certain employment-eligibility criteria and the tenant no longer meets those criteria.

Background

838 This is a new ground.

839 Some private registered providers of social housing offer employment-related tenancies, such as housing for 'key workers', or housing linked to a specific profession or income bracket. These landlords have properties that they generally intend to use for this purpose and the ground allows the landlord to evict tenants who previously met the employment-related eligibility criteria but no longer do. This helps to maintain supply for new eligible workers.

840 The landlord does not need to demonstrate that the housing is needed for a different worker in order to gain possession. This is because some of these types of properties may be let subject to the condition that they can only be occupied by tenants meeting the relevant criteria so the landlord needs to gain possession when the tenant no longer meets those criteria.

Example: Tenant no longer meeting employment-related eligibility criteria

An NHS trust works in partnership with a private registered provider to develop and let property on NHS-owned land to employees of the trust. This arrangement is based on an agreement that when tenants no longer meet the employment-related eligibility criteria, the housing provider will gain vacant possession of the property to allow for it to respond flexibly to demand from eligible workers.

New ground for possession for occupation as supported accommodation (5E)

Effect

841 Paragraph 16 inserts a new ground (5E) to provide that a court must grant possession where it is needed to return the property to use as supported accommodation, as defined in paragraph 24. The ground can only be applied in cases where the property is usually intended to be used as supported housing, and the current tenancy was not granted for this purpose.

Background

842 Supported housing is accommodation let for the purpose of providing the tenant with care, support or supervision. When the property is not needed for this purpose, it may be used to contribute to general rented housing supply for other tenants and to maintain the financial viability of supported accommodation providers.

843 This new specialist ground will allow landlords to continue to let such properties either as supported accommodation or to other tenants, depending on business need and housing demand.

Example: Supported accommodation

A supported accommodation provider usually uses a property as supported housing. Due to a temporary reduction in demand, the property was let as a general private rented sector rental without additional support or care services. After eighteen months, the property needs to be returned to use as supported accommodation to house a new tenant with specific support or care needs. The landlord may use this ground for possession to evict the current tenant to make the property available for supported accommodation.

New grounds for possession of dwelling-house as supported accommodation (5F)

Effect

844 Paragraph 17 inserts two new possession grounds (5F and 18) to allow supported accommodation providers to end a tenancy where it is necessary to enable them to continue to operate safely, effectively or otherwise protect the viability of their service. The grounds can only be used by providers of "supported accommodation", as defined in new paragraph 12 of schedule 2 of the Housing Act 1988 (inserted by paragraph 25).

845 Paragraph 17(1) specifies that a court is required to award possession if the tenancy was originally granted as supported accommodation and the landlord can demonstrate that any of the following conditions apply:

a. The accommodation was provided for the purpose of enabling the tenant to transition to alternative accommodation and the period for which that support was intended to be provided (including any agreed extensions to that period) has ended.

b. Support services are or were provided to the tenant by a third party (either directly contracted by the landlord or separately as in managed accommodation settings), and those services have either ended or the service provider is failing to fulfil their obligations to provide the agreed support. Where the landlord is responsible for contracting support services, they should have made reasonable endeavours to secure alternative support services provision before applying for possession on this ground (this will not apply to managed accommodation).

c. The accommodation or support services were wholly or partly funded by someone other than the landlord or tenant and the funding has ended or dropped away, so it is not reasonable for the landlord to continue providing the placement and/or support services. Where the landlord is responsible for contracting support services, they should have made reasonable endeavours to secure alternative support services provision, before applying for possession on this ground (this will not apply to managed accommodation).

d. A court must also award possession if the landlord's overall financial viability, or the financial viability of the supported accommodation or support services, would be threatened by having to continue the supported accommodation scheme the property is a part of. In this situation, the landlord is to have made reasonable endeavours to secure alternative funding before applying for possession under this ground.

e. The support services provided under the supported accommodation arrangement are not appropriate because they exceed the tenant's actual requirements for care, support or supervision. This will encompass various scenarios including where the tenant's needs have decreased or where someone is temporarily placed in particular supported accommodation because it is available until a more appropriate placement is secured.

f. The support services provided under the supported accommodation arrangement are not appropriate because the tenant does not require any additional support. This will encompass various scenarios including where the tenant's needs have decreased or where someone is temporarily placed in particular supported accommodation because it is available until a more appropriate placement is secured.

g. The support services provided under the supported accommodation arrangement are not appropriate because they do not meet the tenant's requirements for care, support or supervision. This will encompass various scenarios including where the tenant's needs have decreased or were undisclosed or undiagnosed at the time of placement.

h. The property has physical features and/or adaptations designed to support individuals with specific support needs to live more independently than they otherwise could and the tenant does not need those features.

i. The property is physically unsuitable for the tenant due to their particular requirements for care, support or supervision.

846 Sub-paragraph 17(2) introduces a discretionary ground (ground 18) in cases where the tenancy was originally granted as supported accommodation and the tenant has unreasonably failed to co-operate with the support services provided.

847 Paragraph 27 inserts a new interpretation paragraph (12) into Schedule 2 of the Housing Act 1988 and includes a definition of "supported accommodation" for the purposes of grounds 5F and 18. This includes accommodation let by housing associations, private registered providers of social housing, registered charities and voluntary organisations, where the tenant receives care, support or supervision. These support services may be provided directly by the landlord, by a third party acting on behalf of the landlord or, in the case of managed accommodation (also defined in newly inserted paragraph 12), procured through arrangements separate to the landlord (for example, support organised by the local authority). The tenant's admittance into occupation of the property must be because they require care,

support, or supervision. However, that care, support and supervision does not need to be provided at the property itself; it may take place at another location.

Background

848 The specialist nature of the services provided in supported accommodation means there are some situations in which providers will need to gain possession of properties that are not covered by the other grounds for possession, to enable them to meet the needs of current or prospective tenants. These include ensuring that tenancies are safe for residents with particular needs, that the support being provided is suitable or to maintain the viability of schemes. Providers currently use section 21 to secure possession in these circumstances.

Examples: Supported Accommodation

Example 1: Ground 5F(a)

The tenancy was granted for a two-year limited period under the Rough Sleeping Accommodation Programme, to someone with a history of rough sleeping, in order to provide support to move on from rough sleeping. This period has now ended.

Example 2: Ground 5F(d)

A care leaver was granted a supported accommodation placement in order to receive structured personal support, including access to mental health specialists. The Local Authority Supported Accommodation Team responsible for organising the placement have found that the tenant's support needs have reduced so that they are now ready to move on to more independent living and do not require the level of support provided at the placement.

Example 3: Ground 5F(f)

A person with learning difficulties was granted a placement in general needs supported accommodation. Over time, it becomes known that the full extent of their support/care and support needs was not disclosed or understood at the time of placement as they had not historically had access to a formal assessment. As a result, the support available at the current placement is inadequate for their needs and the provider is not set up to provide the kind or level of support required.

Example 4: Ground 5F(g)

A person without mobility issues was temporarily placed in supported accommodation which has specific physical adaptations for a wheelchair-user because it was the most suitable property available at the time. The landlord is now seeking to move the tenant on to alternative accommodation which is better suited to the tenant's actual needs so that they can place a tenant with mobility requirements into the adapted property.

New ground for possession for tenancy granted for homelessness duty (5G)

Effect

849 Paragraph 18 inserts a new possession ground into Schedule 2 of the 1988 Housing Act. This provides that a court must award possession when private landlords and private registered providers of social housing are seeking to end a tenancy for a household who, at some point during their occupation of the property, were owed the main housing duty under section 193 of the Housing Act 1996.

850 Sub-paragraph (a) specifies that the ground can only be used when the local authority has notified the landlord that the tenancy is no longer required. The local authority will not be required to provide any reason as to why the tenancy is no longer required.

851 Sub-paragraph (b) places a 12-month limit on the period in which a landlord may use this ground. The 12-month window begins when the local authority informs the landlord they no longer require the tenancy and ends on the relevant date.

Background

852 Local authorities may work with private landlords and private registered providers of social housing to deliver temporary accommodation for households owed the main housing duty. Once the local authority ends the duty (either by an offer of settled accommodation or for another specified reason) or no longer requires the property to provide temporary accommodation for that household (for example because a different property has been identified for the household), landlords may seek to evict tenants. This practice ensures a continued supply of temporary accommodation. Landlords must have a clear mechanism to gain possession in these circumstances to enable this practice to continue.

853 This possession ground is only applicable where the main housing duty as defined under section 193 of the Housing Act 1996 has ever applied. It does not apply to other homelessness duties (which include 'interim' and 'relief').

New ground for possession of stepping stone accommodation (5H)

Effect

854 Paragraph 19 inserts a new ground (5H) for possession that will allow certain landlords of housing schemes, sometimes known as 'stepping stone accommodation', to take possession. Stepping stone accommodation support tenants who meet specified eligibility criteria and who would otherwise struggle to access the private rented sector.

855 To make use of this possession ground a landlord must be a registered provider of social housing or a charity. Sub-paragraph (a) provides that the tenancy must have been granted because the tenant met "eligibility criteria". The types of eligibility criteria permissible will be specified by the Secretary of State in regulations made subject to the affirmative resolution procedure. Sub-paragraph (b) stipulates that the eligibility criteria must be set out in a written tenancy agreement.

856 Sub-paragraph (c) provides that the ground applies where the tenant no longer meets the eligibility criteria, or where the tenancy was granted for a period of time to help the tenant transition to independent living and that period has ended.

857 Sub-paragraph (d) provides that the rent must be no higher than affordable rent levels, as defined in Schedule 2 of the Welfare Reform and Work Act 2016. New paragraph 13(1)(e) of

Schedule 2 to the Housing Act 1988 enables the Secretary of State to give a different meaning of "affordable rent" via regulations, for the purposes of using this ground.

858 Sub-paragraph (e) specifies the types of tenancies where the ground cannot be used.

Proposed use of power

859 The enabling power in sub-paragraph (a) will be used to specify the types of eligibility criteria that a tenant must meet. This power is necessary to ensure the ground is only used in relation to the targeted schemes and is not available for use by landlords to gain possession of other types of housing.

860 The enabling power in paragraph 13(1)(d) allows the Secretary of State using regulations to change the type of landlord to whom Ground 5H is available to use. This power is necessary to ensure the ground is only applicable to the targeted landlords.

861 The power in paragraph 13(1)(e) allows the Secretary of State to set within regulations a meaning of "affordable rent" if the regulations to which "affordable rent" is currently defined are revoked or changed.

862 All of these regulations are to be made subject to the affirmative resolution procedure.

Background

863 Some housing schemes currently provide accommodation to enable tenants to make and/or sustain the transition to independent living in the wider private rented sector or to help groups who may otherwise struggle to find private rental accommodation. They are sometimes known as 'stepping stone accommodation', but can have other names. These tenancies will often be at discounted rent and are granted to tenants who meet certain eligibility criteria. This new ground will allow certain landlords to gain possession where appropriate, to continue operating these schemes.

Amendments of Ground 6: redevelopment

Effect

864 Paragraph 20 amends the existing ground 6 of Schedule 2 of the Housing Act 1988. A court is required to award possession if a relevant landlord wishes to undertake substantial redevelopment of the dwelling-house or a part of a building in which the dwelling-house is located.

865 Sub-paragraph (2) references, and paragraph 21 inserts, a new table which sets out when ground 6 will be available for use, depending on what type of landlord holds the tenancy, what type of tenancy is in place and who wishes to redevelop the property.

866 The table at paragraph 21 (to be inserted in ground 6) specifies situations where a "relevant social landlord" can use the ground. If the tenancy has not been granted pursuant to a nomination under section 159(2)(c) of the Housing Act 1996 the ground may be excised by the landlord seeking possession or a superior landlord. If a tenancy has been granted further to section 159(2)(c) of the Housing Act 1996 it can be exercised by the superior landlord undertaking the substantial redevelopment. If the dwelling-house is situated within a commonhold unit and the landlord is a unitholder, the landlord can seek possession if the commonhold association is undertaking substantial development. Private landlords can use the ground in any circumstances, if they are wishing to undertake the redevelopment themselves.

867 Sub-paragraph (3) inserts a new paragraph (aa) which specifies that ground 6 cannot be used unless the tenancy has existed for at least 6 months at the relevant date. An exception is made where the landlord is a public or other authority, and where notice has been given of the compulsory acquisition of the land by that acquiring authority within the previous year. This includes cases where a property was included in an order or act of Parliament authorising its compulsory acquisition and was voluntarily sold to the acquiring authority, who then became the new landlord. An acquiring authority and what constitutes giving notice of a compulsory acquisition is defined in Part 5, paragraph 12 of Schedule 2 to the Housing Act 1988 (as inserted by paragraph 25 in Schedule 1 to this Act).

868 It also inserts a new paragraph (ab) to ground 6 to make it a condition that relevant social landlords must notify the tenant in writing before the tenancy began that they may wish to use the ground. If this is not provided, the landlord cannot lawfully use the ground.

Background

869 Compulsory purchase is a legal mechanism by which certain bodies (known as 'acquiring authorities') can acquire land without the consent of the owner. To do so, the body must be authorised by statute, meet set statutory criteria, follow a specified statutory process and be able to demonstrate that the acquisition is in the public interest. It is used, for instance, to support the delivery of a range of development, regeneration and infrastructure projects in the public interest.

870 The exception to the six-month initial restriction on the use of the redevelopment ground at subparagraph (3) will enable acquiring authorities to make best use of property that is scheduled to be demolished or significantly redeveloped within one year and which cannot be used for long term tenancies without delaying planned works.

871 Ground 6 will only be available to relevant social landlords in certain circumstances. This will include where the tenancy was not granted to a tenant via a nomination as mentioned in Section 159(2)(c) of the Housing Act 1996. This will allow relevant social landlords to let property they plan to substantially redevelop or demolish but not to social tenants who should be offered a long- term tenancy.

Example: Eviction due to redevelopment

A private landlord wants to invest in their property with the intention of then increasing their rental income from it. To do this, they have obtained planning permission to build a ground floor and first floor extension at the back and side of the house they rent out. Due to the scale of the extension and its interference with the ongoing availability of key amenities such as a functioning kitchen and usable bathroom for a significant period of time, it would not be practical for a tenant to live there while the work is ongoing. Once a contractor has been selected and a start date provisionally agreed, the landlord uses this ground for possession to evict the current tenant.

New ground for possession to allow compliance with enforcement action (6A)

Effect

872 Paragraph 22 inserts a new ground so that the court is required to award possession if the landlord seeking possession needs to end a tenancy because relevant enforcement action has been taken against the landlord and it would be unlawful for them to maintain the tenancy.

873 The relevant enforcement actions are:

a. The landlord has been issued a banning order under section 16 of the Housing and Planning Act 2016

b. The landlord has been served an improvement notice under section 11 or 12 of the Housing Act 2004, which specifies that the dwelling-house requires remedial action and that overcrowding is the reason for the hazard that means remedial action is required

c. A prohibition order under section 20 or 21 of the Housing Act 2004 prohibiting the use of the dwelling-house, the common parts or any parts of the dwelling-house or common parts, means it would not be possible for the tenancy to continue.

d. The landlord has been refused a licence or has had their licence revoked, where the dwelling-house is a HMO requiring a licence under section 61 of the Housing Act 2004 or a house required to be licensed under section 85 of that Act.

e. The dwelling-house is occupied by more than the maximum number of tenants permitted under a licence, where the dwelling-house is an HMO licensed under Part 2 or Part 3 of the Housing 2004.

Background

874 There is no existing ground for possession under Schedule 2 of the Housing Act 1988 for use where the landlord requires possession to comply with enforcement action.

Amendments of Ground 7: death of tenant

Effect

875 Paragraph 23 amends the existing ground 7 of Schedule 2 of the Housing Act 1988. Sub-paragraph (a) gives the landlord 24 months rather than 12 to initiate proceedings. Sub-paragraph (b) removes the provision related to long leases, which will now be exempt from being assured tenancies.

Background

876 Ground 7 of Schedule 2 of the Housing Act 1988 requires a court to award possession if a tenancy has been passed to someone else by will or intestacy (where there is no will) after the death of the previous tenant and the landlord initiates proceedings within 12 months of the death (or 12 months of the landlord learning of the death, if the court agrees to this). Establishing whether succession has taken place can take a significant amount of time. This change will give more time for landlords to use the ground.

877 Clause 28 of this Bill excludes tenancies of more than seven years from the assured tenancy regime, so the provision within ground 7 is no longer required.

Amendments of Ground 8: rent arrears

Effect

878 Paragraph 24 amends ground 8 of Schedule 2 of the Housing Act 1988 so that if a tenant's arrears are only because a Universal Credit payment that they are entitled to has not yet been paid, they cannot be evicted.

Background

879 Ground 8 of Schedule 2 of the Housing Act 1988 requires a court to award possession if a tenant owes over 2 months' rent at the time the landlord initiates possession proceedings and at the time of the court hearing. This change will protect benefit claimants who have met the mandatory ground only in the gap between their entitlement being established at the end of their assessment period and their benefits payment arriving. This may happen on a recurring basis if the timing of their payment does not align with the date rent is due.

Example: Missing rent due to the wait for Universal Credit payments

A tenant with no savings loses their job and applies for Universal Credit (UC) the next day. It will not be established if the claimant will receive an award of UC until the end of their monthly assessment period. Any award will then take up to 5 days to be paid. It is feasible that in this period they could miss two monthly rent payments, becoming at risk of eviction through no fault of their own. This provision means that the rent missed because of the 5 day wait for the UC payment at the end of the monthly assessment period will not be counted when calculating how much arrears the tenant owes, protecting the tenant in this example from mandatory eviction.

New ground for possession for repeated rent arrears (8A)

Effect

880 Paragraph 25 inserts a new ground for repeated serious rent arrears. A court is required to award possession if, over a period of three years:

a. where rent is payable monthly, at least two months' rent was unpaid for at least a day on three separate occasions.

b. where rent is payable for a period shorter than a month, at least eight weeks' rent was unpaid for at least a day on at least three separate occasions.

881 The second unnumbered paragraph specifies that the ground will not be met if the arrears are only because a benefit payment that the tenant is entitled to has not yet been paid, as with the change to ground 8.

Background

882 Tenants could previously avoid eviction by paying a nominal amount under the arrears threshold for ground 8. The repeated arrears ground will allow landlords to evict when tenants are frequently in arrears.

Example: Repeat rent arrears

A tenant falls two months behind on rent and the landlord initiates proceedings under Ground 8. The tenant pays off their arrears so they owe £1 less than two months' rent on the day of their court hearing. As such, possession is not granted. A few months later the tenant misses another rent payment, taking them over the 2 months' arrears limit. The next year, the tenant misses two rent payments and the landlord initiates proceedings for eviction. Possession is granted by the court. Landlords will not be required to have served notice or begin possession proceedings using ground

8 on each of the three occasions to use the ground (although they may have), as long as the tenant has breached the relevant arrears threshold three times within three years.

Amendments of ground 14: anti-social behaviour

Effect

883 Paragraph 26 widens ground 14 of Schedule 2 of the Housing Act 1988 to include behaviours "capable of causing" nuisance or annoyance.

Background

884 Landlords previously had to demonstrate that behaviour was "likely to cause" a nuisance or annoyance. This is being widened to include "capable of causing" so that a wider range of behaviours can be considered by the court. The ground is discretionary, so judges must consider whether eviction is a reasonable and proportionate response to the behaviour in question.

Part 5: Interpretation

Effect

885 Paragraph 27 inserts a new Part 5 into Schedule 2 of the Housing Act 1988. The meanings of "HMO" and "housing association" are to be defined with reference to existing legislation. It defines the following terms: "acquiring authority", "managed accommodation", "support services", "supported accommodation". It also sets out what is to be considered "giving notice of a compulsory acquisition" for the purposes of Schedule 2 to the Housing Act 1988.

Background

886 Definitions for these terms are required because, in some situations, the function and availability of some of the grounds for possession under Schedule 2 are determined by provisions linked to these terms, as set out below:

a. the application of the 6-month restriction on use of grounds 1A and 6 at the start of a tenancy may be determined by whether a "notice of a compulsory acquisition" was given and an "acquiring authority" intends to acquire or redevelop the property.

b. the use of ground 6A may be determined by whether the housing meets "HMO" regulations

c. the use of ground 5F may be determined by whether a tenant lives in "managed accommodation". The application of grounds 2ZA, 2ZB, 5E, 5F and 18 is determined by whether the housing meets the definition of "supported accommodation" (which incorporates "support services", as separately defined).

d. The use of grounds 1, 1A, 2ZA, 2ZB, 4A, 5F, 5G and 6 are linked to a "relevant date". In most cases, this date is the date specified in the section 8 notice, or, for grounds 2ZA, 2ZB or 5F, the date when that notice is served; but where the court uses its power to dispense with the requirement for notice, the "relevant date" will be the date on which proceedings for possession began.

887 A definition for "housing association" is required because the definition of "supported accommodation" in the Bill refers to "housing association". A "housing association" is included on the list of specified landlords that may provide "supported accommodation".

888 The definitions of "HMO" and "housing association" are taken from the Housing Act 2004 and the Housing Associations Act 1985, respectively.

Part 6: power to amend grounds 2ZA, 2ZC, 5C, 5H and 6A and definition

Effect

889 This gives the Secretary of State the power, via affirmative statutory instrument, to amend Schedule 2 of the Housing Act 1988 in the following specified ways:

a. To change the descriptions of landlords who may use grounds 2ZA and 2ZC

b. To restrict the use of ground 5C to where the landlord or employer seeking possession is of a specified description

c. To change the descriptions of landlords who may use ground 5H

d. To change the definition of "affordable rent" for the purposes of using ground 5H

e. To provide for the use of ground 6A in respect of other enforcement action etc

f. To amend the definition of "supported accommodation" or "managed accommodation" as established in paragraph 12 of Part 5.

Proposed use of power

890 2ZA and 2ZC: It is necessary to retain a small amount of flexibility to reflect new business models and legislative commercial arrangements that may also require a ground for possession. The power will allow the government to adjust the scope of landlords who can use the ground as sectors evolve to ensure it is available when it is reasonable while preventing 'backdoor' evictions.

891 5C: This is an expanded ground and the scale of its use cannot be known with certainty. The power will be used to limit its use to certain landlords or in relation to certain types of employer and is necessary to prevent potential future abuse if unscrupulous landlords seek to use the ground beyond the circumstances for which it is intended.

892 5H: this power allows the Secretary of State to use regulations to change the type of landlord to whom Ground 5H is available to use. This is necessary to ensure the ground is only applicable to the targeted landlords who operate legitimate schemes. It also allows the Secretary of State to set within regulations a meaning of "affordable rent" if the regulations to which "affordable rent" is defined are revoked or changed.

893 6A: The power will be used to expand or amend the list of offences under the ground so that landlords are not unnecessarily penalised for failing to comply with enforcement action because they do not have the relevant ground for possession.

894 Definitions (Supported and Managed Accommodation): The power will be used to amend the definition of supported accommodation which is relevant to grounds 2ZA, 2ZC, 5E, 5F and 18. This power will enable the government to respond quickly and flexibly to changes. This is needed to ensure the definition remains fit for purpose so the sector can continue to function effectively and to maintain providers' confidence in operating supported accommodation.

Background

895 Ground 2ZA is restricted to agricultural landlords, private registered providers of social housing, supported accommodation providers and companies where a local authority owns at

least 50% of the issued share capital. Ground 2ZC is restricted to where the intermediate landlord was an agricultural landlord, private registered provider of social housing, supported accommodation provider or company where a local authority owned at least 50% of the issued share capital before the tenancy reverted under section 18 of the Housing Act 1988. The government has considered it necessary to restrict these grounds to a narrow set of landlords in order to prevent abuse by, for example, unscrupulous landlords seeking to replicate section 21 evictions through creating superior landlord arrangements.

896 Ground 5C permits landlords to end a tenancy where the tenant is given a tenancy as a consequence of their employment by the landlord and where that employment has ended or when a tenancy granted in consequence of their employment was never meant to last for the duration of their employment by the landlord.

897 Ground 5E allows landlords to gain possession where it is needed to return the property to use as supported accommodation. The ground can only be applied in cases where the property is usually intended to be used as supported housing and the current tenancy was not granted for that purpose.

898 Ground 6A provides that landlords can regain possession when they are subject to enforcement action and evicting a tenant is the only way to comply with that enforcement action. This includes, for example, when a property is overcrowded or an HMO licence has been revoked.

899 Ground 5F provides for supported accommodation providers to end a tenancy in limited circumstances, including where the tenant's needs have changed, the tenancy was provided as "move-on accommodation" or where it is necessary to enable the provider to continue to operate safely or effectively. Use of these grounds will only be available to landlords who provide supported accommodation or managed accommodation.

900 Ground 18 provides that providers of supported accommodation (as defined in Part 5 of Schedule 2 of the Bill), may end a tenancy where the tenant is unreasonably refusing to cooperate with the support services provided. Use of this ground is subject to the discretion of the courts.

Schedule 2: Consequential amendments relating Chapter 1 of Part 1

901 Schedule 2 contains amendments to various enactments that are consequential to Part 1 of the Bill. These include amendments to the Housing Act 1988, the Housing Act 1996, the Renting Homes (Wales) Act 2016, the Local Government and Housing Act 1989, the Agricultural Holdings Act 1986, the Landlord and Tenant Act 1985, the Capital Allowances Act 2001, the Police Reform Act 2002, the Anti-social Behaviour Act 2003, the Housing and Regeneration Act 2008, the Localism Act 2011, and the Deregulation Act 2015. These are minor and technical in nature, and are consequential upon the abolition of assured shorthold tenancies, or other changes made by Part 1 of the Bill.

Schedule 3: Amendments in connection with landlord redress schemes

Introductory

902 Schedule 3 makes amendments to the Local Government Act 1974, the Housing Act 1996 and the Building Safety Act 2022 to reflect provision for the establishment of a private rented sector landlord redress scheme under Part 2 of the Renters (Reform) Bill.

903 The below wording mirrors the language in Part 2 of the Bill which provides for flexibility as to the number of private rented sector landlord redress schemes that can be approved in the future. The Government intends to only approve one private landlord redress scheme for now, and for the head of redress to be an Ombudsman.

Local Government Act 1974

904 Paragraph 2 amends section 33 of the Local Government Act (LGA) 1974.

905 Sub paragraphs (2) and (3) of paragraph 2 insert references to a landlord redress scheme, so that a Local Commissioner under the LGA 1974 will need to consult the head of landlord redress if the Local Commissioner believes a case under investigation by the Local Government and Social Care Ombudsman (LGSCO) includes matters within the remit of any private sector landlord redress scheme.

906 The Local Commissioner will also need to inform the person who initiated the complaint how to complain to the private rented sector landlord redress scheme, if the Local Commissioner considers this necessary.

907 Sub paragraph (4) inserts subsection (3C). Subsection (3C) provides that the head of landlord redress will need to consult with the appropriate Local Commissioner if the head of landlord redress believes the case under investigation by the private rented sector landlord redress scheme includes matters within the remit of the LGSCO.

908 Sub paragraph (5) inserts a reference to a landlord redress scheme into subsection (4) so that if the landlord redress scheme consults with the Local Commissioner, they may consult on anything relating to the matter under investigation, including the conduct of any investigation and the form, content and publication of any report of the results of the investigation.

909 Paragraph 3 amends section 33ZA of the LGA 1974. The amendments under paragraph 3 to section 33ZA of the LGA 1974 allow for joint investigations and joint reporting by the Local Commissioner and the private rented sector landlord redress scheme, where the Local Commissioner believes that a case would be within the remit of both ombudsmen and the complainant gives their consent.

910 Under paragraph 33ZA, two or more ombudsmen who are listed under these provisions can conduct a joint investigation, where the subject matter of a case comes within the remit of all of them.

911 Paragraph 4 amends subsection (4) of section 33ZB to provide that the Local Commissioner and the administrator of any private landlord redress scheme can share resources for undertaking collaborative work.

912 Paragraph 5 amends section 34 by adding definitions of 'head of landlord redress' and 'landlord redress scheme'.

Housing Act 1996

913 Paragraph 6 amends paragraph 10A to Schedule 2 of the Housing Act 1996. This allows for joint investigations between a social housing Ombudsman operating under the provisions in the Housing Act 1996 and any private rented sector landlord redress scheme, where the social housing Ombudsman believes that a case would be within the remit of both ombudsmen/ redress schemes.

914 Under paragraph 10A, two or more ombudsmen who are listed under these provisions can conduct a joint investigation, where the subject matter of a case comes within the remit of all of them, with the consent of the complainant.

915 Sub paragraph (3) inserts sub paragraph (1A), which sets out the meaning of "within the jurisdiction" as used in sub paragraph (1) in relation to a person who investigates complaints under a landlord redress scheme.

Building Safety Act 2022

916 Paragraph 7 amends Schedule 3 of the Building Safety Act 2022. This adds a landlord redress scheme operating under the provisions of the Renters (Reform) Bill to the list of relevant schemes in paragraph 3(5). The effect of this is that the Building Safety Regulator and the administrator of any landlord redress scheme must cooperate regarding the exercise of any building function of the regulator and any function of the administrator relating to the scheme.

Background

917 The Local Government Act 1974, Housing Act 1996 and Building Safety Act 2022 contain existing provisions to allow for relevant ombudsmen and regulatory bodies to work together. This includes provisions for the sharing of information and resources and conducting of joint investigations as set out in the relevant Clauses and schedules of these Acts.

Example: Private Rented Sector Landlord Ombudsman Service

A tenant complains to the Private Rented Sector Landlord Ombudsman service, established under the Renters (Reform) Act, about their landlord's failure to undertake an urgent repair that is threatening the health and safety of the household. The complainant has also raised the issue several times with their local council and received no response.

The Private Rented Sector Ombudsman forms the opinion that the LGSCO may want to undertake a joint investigation with them to determine both the poor conduct of the private landlord and the maladministration of the local council together. With the complainant's consent, such a joint investigation takes place and case handlers from across the two ombudsmen schemes work together and a joint report is published.

Schedule 4: Decent Homes Standard

Part 1: Amendments of Housing Act 2004

Effect

918 Paragraph 2 amends section 1 of the Housing Act 2004 to specify that Decent Homes Standard (DHS) requirements do not apply to unoccupied HMO accommodation.

919 Paragraph 3 amends section 4 of the Housing Act 2004 to expand the existing provision for inspecting residential premises for hazards to also cover inspections for DHS requirements. This requires local housing authorities, if they consider it appropriate, to inspect qualifying residential premises in their areas to assess whether they meet DHS requirements. Paragraph 3 also amends the 2004 Act to allow regulations made by the Secretary of State about the inspection of residential premises to also how to assess compliance with DHS requirements.

920 Paragraph 4 amends section 5 of the Housing Act 2004 by extending the existing duty on local housing authorities to take enforcement action in respect of Category 1 hazards to also cover failures to meet type 1 DHS requirements.

921 Paragraph 6 inserts Clause 6A into the Housing Act 2004 to make provision for a new financial penalty of up to £5,000 that local housing authorities can issue to landlords if a Category 1 hazard or a failure to meet a type 1 DHS requirement is present in qualifying residential premises. The penalty can be issued if the local housing authority considers that it would have been reasonably practicable for the landlord to secure the removal of the hazard or the meeting of the requirement. This financial penalty can be issued in addition to enforcement action taken by a local housing authority to discharge their duty under section 5 of the Housing Act 2004. This paragraph also gives the Secretary of State power to make regulations amending the maximum penalty level to reflect inflation.

922 Paragraph 7 amends section 7 of the Housing Act 2004 by extending the existing local housing authority power to take enforcement action in respect of Category 2 hazards to also cover failures of type 2 DHS requirements.

923 Paragraph 9 amends the power in section 9 of the Housing Act 2004 that allows the Secretary of State to issue guidance to local housing authorities to provide for this guidance to cover assessment of compliance with DHS requirements and imposition of financial penalties, as well as inspection of premises, assessment of hazards, and enforcement. Local housing authorities must have regard to any such guidance.

924 Paragraphs 10 to 31 amend Chapters 2 and 3 of the Housing Act 2004 to allow existing enforcement tools for hazards and the associated offences to also apply to failures to meet DHS requirements in qualifying residential premises:

a. Paragraphs 11 to 15 amend the provisions in the Housing Act 2004 for serving improvement notices for Category 1 and Category 2 hazards to enable these to also be served for failures to meet Type 1 and Type 2 DHS requirements respectively. An improvement notice is a notice requiring the person on whom it is served to undertake remedial action in relation to hazards or failures to meet DHS requirements within a specified timescale. Paragraph 15 amends section 19 of the Housing Act 2004 to provide for situations where a person upon whom an improvement notice for a DHS failure is served ceases to hold the relevant interest (or fall within the relevant description) that qualified them for service in the first place. If a landlord served with an improvement notice does not retain their interest in the property – for example, if they have sold it – the person who has taken on their interest will become liable instead.

b. Paragraphs 16 to 19 amend the provisions in the Housing Act 2004 for serving prohibition orders for Category 1 and Category 2 hazards to enable these to also be served for failures to meet Type 1 and Type 2 DHS requirements respectively. A prohibition order can prohibit or set restrictions on the use of premises, including

dwellings, HMOs, buildings containing flats or temporary accommodation for the homeless, or the external common parts of such buildings.

c. Paragraphs 20 to 22 amend the provisions in the Housing Act 2004 for serving awareness notices for Category 1 and Category 2 hazards to enable these to also be served for failures to meet Type 1 and Type 2 DHS requirements respectively. Awareness notices advise the person on whom they are served that a hazard or failure to meet a DHS requirement exists in the premises concerned. The schedule amends the Housing Act 2004 to change the name "hazard awareness notice" to "awareness notice". Paragraphs 21 and 22 insert provisions into the 2004 Act to specify that such notices issued in respect of residential premises in Wales are still to be known as "hazard awareness notices".

d. Paragraphs 23 and 24 amend the offences of failing to comply with an improvement notice and failing to comply with a prohibition order in the Housing Act 2004. As a result of the amendments in this schedule, these offences can apply to failures to meet DHS requirements, as well as hazards.

e. Paragraphs 26 to 29 amend the Housing Act 2004 to allow local housing authorities to use types of emergency measures available for Category 1 hazards (emergency remedial action and emergency prohibition orders) for failures to meet type 1 DHS requirements.

925 Paragraph 33 amends section 250 of the Housing Act 2004 to provide that regulations made under sections 2A and 2B of that Act (inserted by 76) to specify DHS requirements and change the meaning of "relevant tenancy" can apply to tenancies or licences entered into before the date on which these regulations came into force.

926 Paragraph 34 inserts Schedule A1 into the Housing Act 2004 to set out the following procedures in respect of financial penalties issued under section 6A (inserted by paragraph 6 of this schedule):

a. Paragraphs 1 and 2 of Schedule A1 impose a requirement that a local housing authority, before imposing a financial penalty on a person under section 6A, must issue a notice of intent within six months of having sufficient evidence. Paragraph 3 lists the information the notice must contain, including the amount of the proposed penalty and information about the person's right to make representations.

b. Paragraph 4 of Schedule A1 provides that a person who is given a notice of intent has the right to make written representations about it to the local housing authority within 28 days.

c. Paragraphs 5, 6, 7 and 8 of Schedule A1 provide for what happens after the end of the period in which the person can make written representations. The local housing authority must decide whether to issue a penalty and the amount. If they decide to issue a penalty, they must give the person a final notice. This must set out information including the reasons for imposing the penalty, how to pay the penalty, information about rights of appeal and the consequences of failure to comply with the notice.

d. Paragraph 9 of Schedule A1 provides for a local housing authority to withdraw a notice of intent or a final notice, or to reduce the amount. This must be communicated to the person in writing.

e. Paragraph 10 of Schedule A1 sets out the appeals process for a person who has been issued with a final notice. They may appeal to the Tribunal within 28 days of being given the final notice. The Tribunal can confirm, vary, or cancel the fine. Varying the fine means the Tribunal can either reduce the fine or increase it up to the statutory maximum fine stipulated Paragraph 6. If a person appeals, the final notice is suspended until the appeal is determined, withdrawn or abandoned. The appeal may take into account additional evidence of which the enforcement authority was unaware.

f. Paragraph 11 of Schedule A1 details the processes local housing authorities should follow to recover unpaid penalties. Should a person fail to pay a penalty, the local housing authority can recover it under a county court order. In county court proceedings, a signed certificate by the chief finance officer of the local housing authority confirming the amount has not been paid is conclusive evidence of that fact.

g. Paragraphs 12, 13 and 14 of Schedule A1 provide that local housing authorities may use the proceeds of financial penalties towards costs and expenses associated with carrying out enforcement functions relating to the private rented sector.

927 Paragraph 35 inserts Paragraph A1 into Schedule 1 of the Housing Act 2004 to specify who will be served with improvement notices and awareness notices in relation to failures to meet DHS requirements. Paragraph A1 specifies that, for properties let under a relevant tenancy, such notices must generally be served on the landlord who has an agreement with the tenant(s) of the property but provides flexibility for local housing authorities to serve notices on superior landlords or licence holders in certain circumstances. Subsection (3) of Paragraph A1 specifies who must be served with enforcement notices for supported housing and temporary accommodation occupied under licence.

928 Paragraph 36 amends Schedule 2 of the Housing Act 2004 to require local housing authorities, for qualifying residential premises let under a relevant tenancy, to serve copies of prohibition orders on any person who is a landlord or superior landlord in relation to the tenancy.

929 Paragraph 37 amends Schedule 3 of the Housing Act 2004 to allow local housing authorities to undertake works to remedy DHS failures and recover costs if a landlord has failed to comply with an improvement notice.

Proposed use of power

930 Paragraph 3 amends the power in subsection 4(4) of the Housing Act 2004 to allow regulations to also make provision about the manner of assessing whether qualifying residential premises meet DHS requirements. This aims to ensure that local housing authorities, who are the bodies that will conduct inspections, are clear about how to carry them out and that there is a consistent approach throughout England.

931 The power under paragraph 6 allows the Secretary of State to amend fine levels. This aims to ensure that the fines continue to serve as a deterrent and that their level reflects changes to the value of money.

932 Paragraph 9 amends the power in section 9 of the Housing Act 2004 to allow statutory guidance for local housing authorities to cover assessment of DHS requirements and financial penalties. This aims to ensure that local authorities will have detailed, practical information on how to discharge their responsibilities.

933 Regulations made and guidance issued under the provisions in this Schedule will be subject to the negative procedure.

Background

934 Part 1 of the Housing Act 2004 provides for a system for assessing hazards in residential premises and for local housing authorities to take enforcement action in respect of properties containing hazards. Part 1 of this Schedule amends Part 1 of the 2004 Act to provide for enforcement of DHS requirements for private rented sector properties in England (those defined as 'qualifying residential premises' in section 2B of the 2004 Act, inserted by 76). This integrates provisions for enforcement of type 1 and type 2 DHS requirements (those specified by regulations made under section 2A of the 2004 Act, inserted by 76) into the enforcement framework for hazards.

935 The effect of the provisions in this schedule will be to place a legally enforceable duty on landlords to ensure their properties meet the DHS. A breach of any element of the DHS can result in sanctions against the landlord – both a fine and enforcement action for the most serious breaches (a Category 1 hazard or the failure to meet a type 1 DHS requirement) and enforcement action for other breaches (the failure to meet a type 2 DHS requirement).

Example: Financial Penalty

A local housing authority inspects a privately rented home after receiving a complaint from the tenant. It identifies a Category 1 hazard in the property and determines that it would have been reasonably practicable for the landlord to have removed the hazard. The local housing authority can fine the landlord up to £5,000 in addition to taking enforcement action such as issuing an improvement notice or prohibition order.

Example: Failure to meet DHS requirement

A local housing authority inspects a privately rented home and identifies a failure to meet a type 2 DHS requirement set out in regulations. The local housing authority will have a power to take enforcement action: it could issue an improvement notice requiring the landlord to remedy the failure within a specified time period, a prohibition order stopping the property from being occupied until the failure is remedied, or an awareness notice to make the landlord and tenants aware of the failure. If the local housing authority issues an improvement notice or prohibition order and the landlord fails to comply, they could be prosecuted or, in the case of an improvement notice, receive a fine of up to £30,000 as an alternative to prosecution.

Part 2: Amendment of other Acts

Effect

936 Part 2 of this Schedule makes consequential amendments to a number of other Acts to reflect the changes made to the Housing Act 2004.

Schedule 5: Financial penalties

Notice of intent

937 Paragraphs 1 and 2 impose a duty on a local housing authority to issue a notice of intent before imposing a financial penalty on a person under Clauses 29, 47 or 68 within specific timeframes: within six months of having sufficient evidence or, if the person is continuing the conduct, at any time during that period or within six months of the conduct ending. Paragraph 3 provides for the information the notice must include, including the amount of the proposed penalty and information about the person's right to make representations.

Right to make representations

938 Paragraph 4 provides that a person who is given a notice of intent has the right to make written representations about it to the local housing authority within 28 days.

Final notice

939 Paragraphs 5, 6, 7 and 8 provide for what happens after the end of the period in which the person can make written representations. The local housing authority must decide whether to issue a penalty and the amount. If they decide to issue a penalty, they must give the person a final notice. This must set out information including the reasons for imposing the penalty, how to pay the penalty, information about rights of appeal and the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

940 Paragraph 9 provides for a local housing authority to withdraw a notice of intent or a final notice, or to reduce the amount. This must be communicated to the person in writing.

Appeals

941 Paragraph 10 sets out the appeals process for a person who has been issued with a final notice. They may appeal to the Tribunal within 28 days of being given the final notice. The Tribunal can confirm, reduce, or cancel the fine. Varying the fine means the Tribunal can either reduce the fine or increase it up to the statutory maximum fine which the local housing authority could have imposed. If a person appeals, the final notice is suspended until the appeal is determined, withdrawn or abandoned. The appeal may take into account additional evidence of which the enforcement authority was unaware.

Recovery of financial penalty

942 Paragraph 11 details the processes local housing authorities should follow to recover unpaid penalties. Should a person fail to pay a penalty, the local housing authority can recover it under a county court order. In county court proceedings, a signed certificate by the chief finance officer of the local housing authority confirming the amount has not been paid is conclusive evidence of that fact.

Proceeds of financial penalties

943 Paragraphs 12, 13 and 14 provide that local housing authorities may use the proceeds of financial penalties towards costs and expenses associated with carrying out enforcement functions relating to the private rented sector.

Background

944 This schedule sets out the process for a local housing authority to impose a financial penalty on a person and applies to Clauses 29, 47 or 68 . This includes the means for a person to

appeal, how an unpaid penalty is recovered and how the income from penalties may be used. This process follows the precedent of Schedule 3 to the Tenant Fees Act 2019 and is similar to the process in Schedule 1 to the Housing and Planning Act 2016.

Schedule 6: Application of Chapter 1 of Part 1 to existing tenancies: transitional provision

Background

945 This schedule provides for how the provisions in Chapter 1 of Part 1 (Assured Tenancies) apply in relation to existing tenancies.

Section 1: Tenancies to which Chapter 1 of Part 1 applies on conversion to a periodic tenancy

Effect

946 Paragraph 1 provides that where an existing tenancy converts to the new tenancy system at the end of the fixed term (when the tenancy becomes periodic, whether that is contractually or by operation of section 5 of the Housing Act 1988, also known as a 'statutory' periodic tenancy) the amendments made by Chapter 1 of Part 1 do not apply in relation to the tenancy until immediately after it coverts.

Section 1: existing tenancies continue as modified

Effect

947 Paragraph 2 provides that that when section 4A of the Housing Act 1988 (inserted by clause 1 of this Bill) applies to an existing tenancy (e.g., by changing a fixed term to a periodic term, or by changing the length of the periodic term) this does not create a new tenancy. Instead, the existing tenancy remains intact, subject to the changes made by section 4A.

Section 1: start of deemed rent period for existing tenancies

Effect

948 Paragraph 3 provides for how section 4A of the 1988 Act (inserted by Clause 1), which deals with rent periods, should be read for existing tenancies.

949 Where a tenancy was created before the commencement date, this section allows any ongoing period of the tenancy to end before the limits on period length in section 4A apply. After the ongoing period ends, the terms of the tenancy cannot provide for periods which are longer than 28 days, unless the tenancy is monthly. If terms contravene this, the tenancy will have monthly periods beginning either on the day after the ongoing period ends or the extended application date as applicable.

950 This section also provides that in subsection (5) "R" is the rent due for the last period of the tenancy before the new provisions apply.

Section 2: tenancy remains an assured shorthold tenancy until disposal of section 21 notice given prior to application date

Effect

951 Paragraph 4 provides that where a valid section 21 notice has been issued before the extended application date, the tenancy will remain an assured shorthold tenancy and the section 21 notice will remain valid until proceedings in reliance on the notice become time-barred or

conclude. Until then, the amendments made by Chapter 1 of Part 1 do not apply in relation to the tenancy. This section defines "time-barred" as prohibited by section 21(4D) or (4E) of the 1988 Act.

Section 4(2)(d): saving of section 7(7) in relation to tenancies where fixed term ends before application date

Effect

952 Paragraph 5 provides that section 7(7) of the Housing Act 1988 continues to apply after the extended application date, despite it being omitted by section 4(2)(d) of this Bill. This means a court order for possession on grounds relating to a fixed term tenancy which has come to an end is applicable to a tenancy that is converted to a periodic tenancy on the extended application date.

Section 7: no effect on rent increases before application date

Effect

953 Paragraph 6 provides that the amendments made by section 5 do not affect the validity of any rent increase for an existing tenancy before the extended application date which was binding for the tenant and under which the rent for a particular period of the tenancy would or might be more than the rent for an earlier period.

Sections 11, 12 and 14: provision of information in writing

Effect

954 Paragraph 7 provides for how provision of information in writing is to be treated for existing tenancies (agreements entered into before the extended application date). If an existing tenancy is wholly or partly in writing, neither landlords nor their contractors will have to issue an updated statement of terms. Instead, under subparagraphs (2) and (3) landlords and their contractors are responsible for providing tenants with information in writing regarding the changes made by this Bill as is required by regulations made by the Secretary of State.

955 Where an existing tenancy agreement is wholly oral, the obligation to provide a written statement of terms will apply from the extended application date.

Section 15: no liability in respect of conduct before application date

Effect

956 Paragraph 8 means that any conduct engaged in before the extended application date will not result in a financial penalty under sections 16H or 16J of the 1988 Act (inserted by section 11) and will not count as an offence under section 16I.

Section 17: no effect on notice to quit given before application date

Effect

957 Paragraph 9 provides that the amendment made by Clause 17 does not affect the validity of any notice given under section 5 of the Protection from Eviction Act 1977 in relation to an existing tenancy before the extended application date.

Section 22: existing opt-out notices for assured agricultural occupancies

Effect

958 Paragraph 10 provides that where tenancies have been 'opted-out' from being an assured agricultural occupancy under the Housing Act 1988, those tenancies continue to be 'opted-out' as assured periodic tenancies on the extended application date.

Section 24: tenancy deposits

Effect

959 Paragraph 11 states the amendments made by Clause 24 do not apply to existing assured tenancies that were not assured shorthold tenancies immediately before the extended application date.

- ## Schedule 1: student accommodation ground

Effect

960 Paragraph 12 provides that where tenancies transition to the new system, landlords can provide "prior notice" of their intention to rely on ground 4A on before the extended application date, rather than on or before the day the tenancy started.

Schedule 1: stepping stone accommodation ground

Effect

961 Paragraph 13 makes provision for landlords with existing tenancies who wish to use Ground 5H. It provides that paragraph (b) of Ground 5H applies to existing tenancies as though it included the stipulation that the written statement was given to the tenant before the extended application date.

Schedule 1: redevelopment ground

Effect

962 Paragraph 14 makes provision for landlords with existing tenancies who wish to use ground 6 as amended by paragraph 19 of Schedule 1. It stipulates that the landlord must provide notice before the "extended application date" (as defined in section 116(4) of this Bill) rather than before the beginning of the tenancy or on the day on which the tenancy began. Without this, social landlords would not be able to comply with the requirement in sub-paragraph (3)(ab) and would therefore be unable to use ground 6 to seek possession.

Existing tenancies subject to possession notice

Effect

963 This provision ensures that valid section 8 notices issued prior to the extended application date, where the proceedings had been commenced but not concluded or had not been commenced but not become time-barred, continue to be valid after the extended application date. This is until proceedings have been concluded or become time-barred. This means that such proceedings would continue to be determined under the provisions of the unamended 1988 Housing Act. Until such proceedings are concluded or become time-barred, the amendments made by Chapter 1 of Part 1 of the Bill would not apply to the tenancy.

Background

964 This amendment creates a transitional provision so that section 8 notices that are served before the extended application date remain valid until proceedings become time-barred or conclude. This means that these possession proceedings would continue to be determined

under the unamended 1988 Housing Act. Where a notice that has been served prior to the extended application date is subsequently deemed invalid, and the proceedings fail, if a landlord issues a new section 8 notice and restarts the court proceedings, the transitional provision would not apply and the proceedings would be determined under the Housing Act 1988 as amended by the Bill.

965 This is a similar provision to the transitional provision for section 21 notices, found in Schedule 6, paragraph 3 in relation to clause 2 of the Bill.

Interpretation

966 Paragraph 16 defines the terms used in the Schedule.

Commencement

967 Commencement is provided for by Clause 137. The Bill will come into force on such day as the Secretary of State may appoint by regulations ((2)), except for the following provisions (5). Chapter 2 of Part 1 (Tenancies that cannot be assured tenancies), Clauses 54, 99 and Chapter 3 of Part 4 (investigatory powers) comes into force two months after Royal Assent. Chapter 4 of Part 1 comes into force on such day as the Welsh Ministers by order made by statutory instrument appoint. Chapter 5 of Part 1 comes into force on such day as the Scottish Ministers may by regulations appoint. Otherwise, the rest of the Bill for the purposes of making regulations, section 100, and Part 5 come into force on the day of Royal Assent.

Financial implications of the Bill

968 The Department has undertaken an Impact Assessment of the economic impacts of the measures in the Bill on those affected by the reforms, including landlords, letting agents and tenants. This has been published on the Parliament website[5].

Parliamentary approval for financial costs or for charges imposed

969 The Bill required and received a money resolution because it gives rise to charges on the public revenue. The money resolution covered—

a. Expenditure incurred by a Minister of the Crown or other public authority by virtue of the Bill (for example, expenditure incurred by the Secretary of State for the purposes of the private rented sector database)

b. Increases in sums payable by virtue of nay other Act where the increase is attributable to the Bill (for example enforcement functions conferred on local housing authorities by the Bill will be taken into account by the Secretary of State in determining the amount of revenue support grant paid to them under Part 5 of the Local Government Finance Act 1988)

970 The Bill also required and received a ways and means resolution because it authorises new charges on the people. The ways and means resolution covered the charging of fees (for

[5] https://publications.parliament.uk/pa/bills/cbill/58-03/0308/2023072023RentersReformBillImpactAssessment.pdf

example those payable under landlord redress schemes) and the making of payments into the Consolidated Fund (for example paragraph 13 of the new Schedule 2ZA in clause 16 provides for civil penalties in relation to offences to be paid to the Secretary of State).

Compatibility with the European Convention on Human Rights

971 The Minister for Housing and Communities, Baroness Swinburne has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights.

Compatibility with the Environment Act 2021

972 The Minister for Housing and Communities, Baroness Swinburne is of the view that the Renters (Reform) Bill as introduced into the House of Lords does not contain provisions which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Compatibility with the European Union (Withdrawal) Act 2018

973 The Minister for Housing and Communities, Baroness Swinburne is of the view that the Bill as introduced into the House of Lords does not contain provision which, if enacted, would affect trade between Northern Ireland and the rest of the United Kingdom. Accordingly, no statement under section 13C of the European Union (Withdrawal) Act 2018 has been made.

Related documents

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

- Renters (Reform) Bill Impact Assessment
- A fairer private rented sector: White Paper
- A new deal for renting: government response
- Overcoming the barriers to longer tenancies in the private rented sector: government responses
- Strengthening consumer redress in the housing market: summary of responses and government's response
- The Levelling Up, Housing and Communities Select Committee report on reforming the private rented sector
- Government response to the Levelling Up, Housing and Communities Select Committee report on reforming the private rented sector

- Consequential changes to the homelessness legislation: government response to consultation

Subject matter and legislative competence of devolved legislatures

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

976 The majority of the Bill's provisions apply only to England. This is because they concern dwellings or tenancies in England. However, the prohibition of blanket bans on renting to tenants who receive benefits or with children will also apply to Wales and Scotland, as will certain provisions within Part 5 (General). Sections 27 (Powers of Secretary of State in connection with Chapter 1) 94 (Unlicensed HMOs and houses: offences) and 95 (Service of improvement notices on landlords and licensors), and Clause 133 (Power of the Welsh Ministers to make consequential provision) apply to Wales, but not to Scotland.

977 A Legislative Consent Motion has been requested from both the Welsh and Scottish Governments.

Annex A: Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
1 (Tenancy Reform)							
Clause 1	Yes	No	No	No	No	No	No
Clause 2	Yes	No	No	No	No	No	No
Clause 3	Yes	No	No	No	No	No	No
Schedule 1	Yes	No	No	No	No	No	No
Clause 4	Yes	No	No	No	No	No	No
Clause 5	Yes	No	No	No	No	No	No
Clause 6	Yes	No	No	No	No	No	No
Clause 7	Yes	No	No	No	No	No	No
Clause 8	Yes	No	No	No	No	No	No
Clause 9	Yes	No	No	No	No	No	No
Clause 10	Yes	No	No	No	No	No	No
Clause 11	Yes	No	No	No	No	No	No
Clause 12	Yes	No	No	No	No	No	No
Clause 13	Yes	No	No	No	No	No	No
Clause 14	Yes	No	No	No	No	No	No
Clause 15	Yes	No	No	No	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 16	Yes	No	No	No	No	No	No
Clause 17	Yes	No	No	No	No	No	No
Clause 18	Yes	No	No	No	No	No	No
Clause 19	Yes	No	No	No	No	No	No
Clause 20	Yes	No	No	No	No	No	No
Clause 21	Yes	No	No	No	No	No	No
Clause 22	Yes	No	No	No	No	No	No
Clause 23	Yes	No	No	No	No	No	No
Clause 24		No	No	No	No	No	No
Clause 25	Yes	No	No	No	No	No	No
Clause 26	Yes	No	No	No	No	No	No
Schedule 2	Yes	In Part	No	No	No	No	No
Clause 27	Yes	In Part	In Part	No	No	No	No
Clause 28	Yes	No	No	No	No	No	No
Clause 29	Yes	No	No	No	No	No	No
Clause 30	Yes	No	No	No	No	No	No
Clause 31	Yes	No	No	No	No	No	No
Clause 32	Yes	No	No	No	No	No	No
Clause 33	Yes	No	No	No	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 34	Yes	No	No	No	No	No	No
Clause 35	Yes	No	No	No	No	No	No
Clause 36	Yes	No	No	No	No	No	No
Clause 37	Yes	No	No	No	No	No	No
Clause 38	Yes	No	No	No	No	No	No
Clause 39	Yes	No	No	No	No	No	No
Clause 40	No	Yes	Yes	No	No	No	No
Clause 41	No	Yes	Yes	No	No	No	No
Clause 42	No	Yes	Yes	No	No	No	No
Clause 43	No	Yes	Yes	No	No	No	No
Clause 44	No	No	No	Yes	Yes	No	No
Clause 45	No	Yes	Yes	No	No	No	No
Clause 46	No	No	No	Yes	Yes	No	No
Clause 47	No	No	No	Yes	Yes	No	No
Clause 48	No	No	No	Yes	Yes	No	No
Clause 49	No	No	No	Yes	Yes	No	No
Clause 50	No	No	No	Yes	Yes	No	No
Clause 51	No	No	No	Yes	Yes	No	No
Clause 52	No	No	No	Yes	Yes	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
2 (Residential Landlords)	Yes	No	No	No	No	No	No
Clause 53	Yes	No	No	No	No	No	No
Clause 54	Yes	No	No	No	No	No	No
Clause 55	Yes	No	No	No	No	No	No
Clause 56	Yes	No	No	No	No	No	No
Clause 57	Yes	No	No	No	No	No	No
Clause 58	Yes	No	No	No	No	No	No
Clause 59	Yes	No	No	No	No	No	No
Clause 60	Yes	No	No	No	No	No	No
Clause 61	Yes	No	No	No	No	No	No
Clause 62	Yes	No	No	No	No	No	No
Clause 63	Yes	No	No	No	No	No	No
Clause 64	Yes	No	No	No	No	No	No
Clause 65	Yes	No	No	No	No	No	No
Clause 66	Yes	No	No	No	No	No	No
Schedule 3	Yes	No	No	No	No	No	No
Clause 67	Yes	No	No	No	No	No	No
Clause 68	Yes	No	No	No	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 69	Yes	No	No	No	No	No	No
Clause 70	Yes	No	No	No	No	No	No
Clause 71	Yes	No	No	No	No	No	No
Clause 72	Yes	No	No	No	No	No	No
Clause 73	Yes	No	No	No	No	No	No
Clause 74	Yes	No	No	No	No	No	No
Clause 75	Yes	No	No	No	No	No	No
Clause 76	Yes	No	No	No	No	No	No
Clause 77	Yes	No	No	No	No	No	No
Clause 78	Yes	No	No	No	No	No	No
Clause 79	Yes	No	No	No	No	No	No
Clause 80	Yes	No	No	No	No	No	No
Clause 81	Yes	No	No	No	No	No	No
Clause 82	Yes	No	No	No	No	No	No
Clause 83	Yes	No	No	No	No	No	No
Clause 84	Yes	No	No	No	No	No	No
Clause 85	Yes	No	No	No	No	No	No
Clause 86	Yes	No	No	No	No	No	No
Clause 87	Yes	No	No	No	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 88	Yes	No	No	No	No	No	No
Clause 89	Yes	No	No	No	No	No	No
Part 3 (Decent Homes Standard)							
Clause 90							
Schedule 4	Yes	No	No	No	No	No	No
	Yes	No	No	No	No	No	No
Part 4 (Enforcement)							
Clause 91	Yes	No	No	No	No	No	No
Schedule 5	Yes	No	No	No	No	No	No
Clause 92	Yes	No	No	No	No	No	No
Clause 93	Yes	No	No	No	No	No	No
Clause 94	Yes	Yes	Yes	No	No	No	No
Clause 95	Yes	Yes	Yes	No	No	No	No
Clause 96	Yes	No	No	No	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 97	Yes	No	No	No	No	No	No
Clause 98	Yes	No	No	No	No	No	No
Clause 99	Yes	No	No	No	No	No	No
Clause 100	Yes	No	No	No	No	No	No
Clause 101	Yes	No	No	No	No	No	No
Clause 102	Yes	No	No	No	No	No	No
Clause 103	Yes	No	No	No	No	No	No
Clause 104	Yes	No	No	No	No	No	No
Clause 105	Yes	No	No	No	No	No	No
Clause 106	Yes	No	No	No	No	No	No
Clause 107	Yes	No	No	No	No	No	No
Clause 108	Yes	No	No	No	No	No	No
Clause 109	Yes	No	No	No	No	No	No
Clause 110	Yes	No	No	No	No	No	No
Clause 111	Yes	No	No	No	No	No	No
Clause 112	Yes	No	No	No	No	No	No
Clause 113	Yes	No	No	No	No	No	No
Clause 114	Yes	No	No	No	No	No	No
Clause 115	Yes	No	No	No	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 116	Yes	No	No	No	No	No	No
Clause 117	Yes	No	No	No	No	No	No
Clause 118	Yes	No	No	No	No	No	No
Clause 119	Yes	No	No	No	No	No	No
Clause 120	Yes	No	No	No	No	No	No
Clause 121	Yes	No	No	No	No	No	No
Clause 122	Yes	No	No	No	No	No	No
Clause 123	Yes	No	No	No	No	No	No
Clause 124	Yes	No	No	No	No	No	No
Clause 125	Yes	No	No	No	No	No	No
Part 5 (General) Clause 126							
Clause 127	Yes	No	No	No	No	No	No
Clause 128	Yes	No	No	No	No	No	No
Clause 129	Yes	No	No	No	No	No	No
Clause 130	Yes	No	No	No	No	No	No
Clause 131	Yes	Yes	No	Yes	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 132	Yes	No	No	No	No	No	No
Clause 133	In part	In part	No	In Part	No	No	No
Clause 134	No	Yes	No	No	No	No	No
Clause 135	No	No	No	Yes	Yes	No	No
Clause 136	Yes	Yes	No	Yes	No	No	No
Clause 137	Yes	Yes	No	Yes	No	No	No
Schedule 6	In Part	In Part	In Part	In Part	In Part	No	No
Clause 138	Yes	No	No	No	No	No	No
Clause 139	Yes	No	No	No	No	No	No
Clause 140	In part	In part	In Part	Yes	In Part	No	No
	Yes	Yes	No	Yes	No	No	No

Annex B: Grounds for possession

979 This table shows the Grounds for possession that a landlord can use to evict a tenant as set out in Schedule 2 of the Housing Act 1988 and amended by this Bill. fct 1988.

Ground		Summary	Notice Period
Mandatory Grounds			
1	Occupation by landlord or family	The landlord or their close family member wishes to move into the property. Cannot be used for the first 6 months of a new tenancy.	2 months
1A	Sale of dwelling-house	The landlord wishes to sell the property. Cannot be used for the first 6 months of a new tenancy.	2 months
1B	Sale of dwelling-house under rent-to-buy	The landlord is a private registered provider of social housing and the tenancy is under a rent-to-buy agreement.	2 months
2	Sale by mortgagee	The property is subject to a mortgage and the lender exercises a power of sale requiring vacant possession.	2 months
2ZA	Possession when superior lease ends	The landlord's lease is under a superior tenancy that is ending. Can only be used by private registered providers of social housing or agricultural landlords.	2 months
2ZB	Possession when superior lease ends	The landlord's lease is under a superior tenancy that is coming to an end or has ended. Can only be used if the superior lease was for a fixed period of over 21 years.	2 months
2ZC	Possession by superior landlord	After a superior tenancy ends, the superior landlord becomes the tenant's direct landlord and seeks to take possession. Can only be used where the intermediate landlord prior to reversion was a private registered provider of social housing or agricultural landlord.	2 months
2ZD	Possession by superior landlord	After a superior tenancy ends, the superior landlord becomes the tenant's direct landlord and seeks to take possession. Can only be used where the superior lease was for a fixed period of over 21 years and within an initial six month period, if the fixed term has not been ended early.	2 months
4	Student accommodation	In the 12 months prior to the start of the tenancy, the property was used to house students. Can only be used by specified exempted educational establishments.	2 weeks

4A	Properties rented to students for occupation by students	A property is let to full-time students and is required for a new group of students in line with the academic year.	2 months
5	Ministers of religion	The property is held for use by a minister of religion to perform the duties of their office and is required for occupation by a minister of religion.	2 months
5A	Occupation by agricultural worker	The landlord requires possession to house someone who will be employed by them as an agricultural worker.	2 months
5B	Occupation by person who meets employment requirements	A social landlord holds the property for use by tenants meeting requirements connected with their employment and it is required for that purpose.	2 months
5C	End of employment by the landlord	Previously ground 16 (expanded). The dwelling was let as a result of the tenant's employment by the landlord and the employment has come to an end OR the tenancy was not meant to last the duration of the employment and the dwelling is required by a new employee	2 months
5D	End of employment requirements	A social landlord must have granted the tenancy because of the tenant's employment eligibility (e.g., key workers) and they no longer meet those criteria.	2 months
5E	Occupation as supported accommodation	The property is held for use as supported accommodation and is required for that purpose.	4 weeks
5F	Dwelling-house occupied as supported accommodation	The tenancy is for supported accommodation and one of the circumstances set out in the ground has occurred.	4 weeks
5G	Tenancy granted for homelessness duty	The property has been used as temporary accommodation for a homeless household, and is no longer required for that purpose.	4 weeks
5H	Occupation as 'stepping stone accommodation'	A social landlord or charity lets to a tenant meeting eligibility criteria (eg under a certain age) at a discounted rent, to help them access the private rented sector and/or transition to living independently.	2 months
6	Redevelopment	The landlord wishes to demolish or substantially redevelop the property which cannot be done with the tenant in situ.	2 months

6A	Compliance with enforcement action	The landlord is subject to enforcement action and needs to regain possession to become compliant.	2 months
7	Death of tenant	The tenancy was passed on by will or intestacy. Possession proceedings must begin no later than 24 months after death.	2 months
7A	Severe ASB/Criminal Behaviour	The tenant has been convicted of a specified criminal offence or has breached a relevant order put in place to prevent anti-social behaviour.	Landlords can begin proceedings immediately
7B	No right to rent	At least one of the tenants (but not all) has no right to rent under immigration law.	2 weeks
8	Rent arrears	The tenant has at least 2 months' rent arrears both at the time notice is served and at the time of the possession hearing.	4 weeks
8A	Repeated rent arrears	The tenant has been in at least 2 months' rent arrears at least three times within the last three years.	4 weeks
Discretionary Grounds			
9	Suitable alternative accommodation	Suitable alternative accommodation is available for the tenant.	2 months
10	Any rent arrears	The tenant is in any amount of arrears.	4 weeks
11	Persistent arrears	The tenant has persistently delayed paying their rent.	4 weeks
12	Breach of tenancy	The tenant is guilty of breaching one of the terms of their tenancy agreement.	2 weeks
13	Deterioration of property	The tenant has caused the condition of the property to deteriorate.	2 weeks
14	Anti-social behaviour	The tenant or anyone living in or visiting the property has been guilty of behaviour causing, or capable of causing, nuisance or annoyance to the landlord or anyone living in, visiting or in the locality of the property, or has been convicted of using the premises for illegal/immoral purposes, or has been convicted of an indictable offence in the locality.	Landlords can begin proceedings immediately
14A	Domestic Abuse	A social landlord wishes to evict the perpetrator of domestic violence if the partner has fled.	2 weeks
14ZA	Rioting	The tenant or another adult living at the property has been convicted of an indictable offence which took place at a riot.	2 weeks

15	Deterioration of furniture	The tenant has caused the condition of the furniture to deteriorate.	2 weeks
17	False statement	The tenancy was granted due to a false statement.	2 weeks
18	Supported accommodation	The tenancy is for supported accommodation and the tenant is refusing to engage with the support.	4 weeks

RENTERS (REFORM) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Renters (Reform) Bill as brought from the Commons on 1 May 2024 (HL Bill 74).

Ordered by the House of Lords to be printed, 1 May 2024

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