RENTERS' RIGHTS BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Renters' Rights Bill as brought from the House of Commons on 15 January 2025 (HL Bill 60)

- These Explanatory Notes have been prepared by the Ministry of Housing, Communities and Local Government 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' Rights Bill ("the Bill") delivers the Government's manifesto commitment to transform the experience of private renting, including by abolishing section 21 evictions and introducing a robust Decent Homes Standard in the sector for the first time. The objective of the Bill is to ensure private renters not only have access to a secure and decent home but that they can exercise their rights to challenge poor treatment and bad practice. Landlords should retain the confidence to repossess their properties where they have good reason to but with suitable safeguards for tenants who may lose their home. To this end, the Bill seeks to:

a. Abolish Section 21 'no fault evictions', removing the threat of arbitrary evictions and increasing tenant security. Landlords will also benefit from clear and expanded possession grounds so they can reclaim their properties when they need to.

b. Strengthen tenants' rights and protections to challenge punitive practices such as unreasonable rent rises and rental bidding, empowering tenants to challenge rent increases designed to force them out by the backdoor, ensuring they will not face an even higher rent if they choose to appeal an increase.

c. Prohibit landlords from inviting, encouraging or accepting payments of rent before a tenancy is signed and may require no more than one month's rent ahead of a tenancy beginning. Landlords will also be unable to enforce any terms in a tenancy agreement that require rent to be paid in advance of agreed due dates, once a tenancy starts.

d. Give tenants the right to request a pet, which landlords must consider and cannot unreasonably refuse. Landlords will be able to request insurance to cover potential damage from pets if needed.

e. Apply a Decent Homes Standard to the private rented sector to give renters safer, better value homes and remove the blight of poor-quality homes in local communities. 'Awaab's Law' will also be applied to the sector, which will set clear legal expectations about the timeframes within which PRS landlords must make homes safe where they contain serious hazards.

f. Create a digital private rented sector database to bring together key information for landlords, tenants, and councils. Tenants will be able to access key information to inform choices when entering new tenancies, promoting greater transparency and accountability. It will also support landlords to understand their obligations and demonstrate compliance. In addition, councils will be able to use the database to target enforcement where it is needed most, against the minority of unscrupulous landlords.

g. Provide for the introduction of a new ombudsman service that will provide quick, fair, impartial and binding resolutions for tenants' complaints about their landlord, bringing tenant-landlord complaint resolution on par with established redress practices for tenants in social housing or consumers of property agent services.

h. Make it illegal for landlords to discriminate against tenants in receipt of benefits or with children when choosing to let their property – so no family is discriminated against and denied a home when they need it. Landlords will still retain the final say on who they let to.

i. Strengthen local authorities' enforcement powers, expand financial penalties from which councils can keep the proceeds and use for future enforcement and introduce a new requirement for councils to report on enforcement activity. New investigatory powers will make it easier for councils to identify and fine unscrupulous landlords. Changes to rent repayment orders will make it easier and more appealing for local authorities to pursue them.

j. Significantly expand rent repayment orders, including extending them to new offences, making superior landlords and company directors liable, doubling the maximum penalty, doubling the period in which tenants and local authorities can apply and requiring landlords to pay the maximum penalty when they have reoffended. The aim is to increase the deterrent effect of rent repayment orders and make it easier for tenants and local authorities to take effective action against unscrupulous 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 provisions for requirements relating to rent in advance, making provision for the right to request permission to keep a pet; prohibiting rental bidding practices; making it unlawful for landlords and agents to engage in discriminatory conduct against those in receipt of benefits or who have children; and applying 'Awaabs Law' to the private rented sector.

4 Part 2 makes provisions for the new Ombudsman (landlord redress scheme) and the PRS Database.

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, expanding the use of rent repayment orders 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.

8 The Bill was introduced in the House of Commons on 11 September 2024 and completed its Second Reading on 9 October 2024. It was considered in Public Bill Committee over eight sittings between the 22 October 2024 and 5 November 2024. It completed Report Stage and Third Reading on 14 January 2025. The Bill was brought to the House of Lords on 15 January 2025.

Policy background

Context

9 The Government believes that there is an urgent need to reform the regulation of the private rented sector following over three decades since the last overhaul in the late 1980s. 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.

10 With this historic growth of the sector, both landlords and tenants have become increasingly diverse. Many more tenants, especially families and older renters, rely on the sector for a stable and secure home as well as young professionals and students seeking flexibility.[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.

11 There is clear evidence that there needs to be change in the private rented sector, including that:

a. Section 21 evictions have led 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.

b. The private rented sector has a higher proportion of properties that do not meet standards than other housing tenures. According to the 2022-23 English Housing Survey, 21% of privately rented properties do not meet the Decent Homes Standard (the Government's main metric for decency). This is compared to 10% in the social rented sector. Likewise, hazards that present an imminent risk to health exist in 12% of properties – compared to 5% of local authority rented properties. 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

[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.

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

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]

Detail of individual policies in the Bill

Abolishing section 21

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

13 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

14 The Bill reforms the grounds for possession to make sure that tenants have greater security in their homes but that landlords can regain a property when necessary. In order to use any of the grounds, landlords must give their tenants the required notice period as set out in the Bill and must be prepared to evidence the ground in court. The Bill outlines penalties for misuse of the grounds so that tenants can feel secure that landlords will only be able to rely on the grounds where it is fair to do so.

15 As far as possible, the grounds have been defined unambiguously, to seek to offer tenants clarity and landlords certainty about whether the ground will be met if going to court. Grounds have only been made mandatory where it has been judged reasonable to do so.

16 The Bill contains a new ground for landlords who wish to sell their property and amends the ground for moving in to include close family members. Landlords must be prepared to evidence these grounds and they will not be available to be used in the first 12 months of a new tenancy.

17 The Bill increases the notice period for the rent arrears grounds to four weeks. It also increases the arrears threshold for ground 8 so that eviction will be mandatory in cases where a tenant has three months' arrears (or, if rent is payable weekly or fortnightly, 13 weeks' 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.

18 The Bill also expands the principles that judges must consider when making a decision whether to evict under the discretionary ground for anti-social behaviour, giving weight to the impact on housemates within houses in multiple occupation (HMOs), and whether the tenant has failed to engage with other interventions to manage their behaviour.

19 The Bill introduces a new mandatory ground which will allow landlords renting HMOs 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

[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.

this new ground to gain possession, the tenant must have been given a written statement to that effect before the tenancy is entered into.

20 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.

21 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.

22 The Bill makes consequential changes to Part 7 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

23 Landlords will be able to raise rents annually to market prices 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.

Rent in advance

24 The Bill prohibits landlords from inviting, encouraging or accepting payments of rent before a tenancy agreement is signed and ensures that any breaches may be subject to local authority enforcement action. Between a tenancy agreement being signed and that tenancy beginning, a landlord may require no more than one month's rent (or 28 days' rent for tenancies with rental periods of less than one month). Once the tenancy starts, landlords will be unable to enforce any terms in a tenancy agreement that require rent to be paid in advance of agreed due dates.

Renting with pets

25 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 to obtain, or charge tenants for the cost of, insurance covering pet damage, with the intention of ensuring the costs of any damage to their property is covered.

Rental Discrimination

26 The Bill makes it unlawful for landlords and agents to engage in discriminatory conduct against 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 £7,000 Breaches in Wales and Scotland will be subject to criminal sanctions.

27 This prohibition of rental discrimination will apply in England, Wales and Scotland. However, the enforcement mechanism will vary across the devolved administrations.

Landlord redress schemes

28 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.

29 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.

30 The Bill legislates for a Private Rented Sector Database, which will support the new digital PRS Database 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.

Restriction on gaining possession

31 The Bill will prevent the court from granting a possession order in circumstances where the residential landlord has failed to comply with the duty to ensure there is an active entry in the private rented sector database. This does not apply in cases where possession is sought on grounds of anti-social behaviour (ground 7A and ground 14) given the potential threat posed to both landlords and others in the vicinity.

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 103). 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 £7,000, and powers are also available for local councils to prosecute or impose a fine for non-compliance with such earlier enforcement action Fines of up to £30,000 can be imposed under the relevant provisions in the Housing Act 2004. The Government intends to use secondary legislation to increase this to £40,000 to reflect inflation since this financial penalty was introduced and to be consistent with the fines for similar offences in the Bill.

34 The Bill will allow 'Awaab's Law' to be applied to the private rented sector. It will enable timeframes to be set out in regulations within which PRS landlords and licensors must make homes safe where they contain serious hazards.

Investigatory Powers

35 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.

Rental Bidding

36 The Bill prohibits 'rental bidding' – the inviting, encouraging or accepting of a higher rent when letting a property. Landlords and letting agents will be required to publish an asking rent for their property. They will then be prohibited from inviting, encouraging or accepting offers of rent above this price.

Structure of these notes

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

Effect

38 Details exactly what the Clause is going to do.

Background

39 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".

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

Proposed use of power

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

Examples

42 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

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

a. Agricultural Holdings Act 1986

b. Anti-social Behaviour Act 2003

c. Building Safety Act 2022

d. Capital Allowances Act 2001

e. Consumer Rights Act 2015

f. Criminal Justice and Police Act 2001

g. Deregulation Act 2015

h. Finance Act 2003

i. Housing Act 1985

j. Housing Act 1988

k. Housing Act 1996

l. Housing Act 2004

m. Housing and Planning Act 2016

n. Housing and Regeneration Act 2008

o. Housing (Scotland) Act 1988

p. Immigration Act 2016

q. Land Compensation Act 1973

r. Landlord and Tenant Act 1985

s. Local Government Act 1974

t. Local Government and Housing Act 1989

u. Localism Act 2011

v. Police Reform Act 2002

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

x. Protection from Eviction Act 1977

y. Rent (Scotland) Act 1984

z. Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019

aa. Renting Homes (Wales) Act 2016

bb. Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951

cc. Tenant Fees Act 2019

44 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.

45 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 for tenants of private registered providers of social housing and in the private rented sector.

46 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.

47 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.

48 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.

49 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.

50 The Housing Act 2004 sought to modernise and improve standards and management of private rented sector properties, including by requiring houses in multiple occupation (HMOs) 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 (RROs), alongside the Housing Health and Safety Rating System (HHSRS).

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

52 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, Discrimination etc.) (Wales) Act 2019 introduced similar measures in Wales.

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

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

55 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.

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

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

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

59 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, Housing and Planning Act 2016, Tenant Fees Act 2019, Reserve and Auxiliary Forces (Protection of Civil Interests) Act 195, Landlord and Tenant Act 1985, Agricultural Holdings Act 1986, Capital Allowances Act 2001, Police Reform Act 2002, Finance Act 2003, Anti-social Behaviour Act 2003, Localism Act 2011, Housing Act 1996, Housing Act 2004, Renting Homes (Wales) Act 2016, Homelessness Reduction Act 2017, Local Government Act 1974, Government of Wales Act 1998, Public Services Ombudsman (Wales) Act 2005, Building Safety Act 2022, Leasehold and Freehold Reform Act 2024, Deregulation Act 2015 and Immigration Act 2016.

Territorial extent and application

60 Clause 144 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 provisions in Part 1 Chapters 4 and 5 in relation to rental discrimination against tenants who receive benefits or with children, and a handful of other provisions, will also apply to Wales and Scotland.

61 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.

62 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

63 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.

64 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.

65 Subsections (3) to (8) 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 (7) clarifies that the clause does not restrict landlords and tenants agreeing different terms, but any terms cannot contravene subsections (1) and (3).

Background

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

67 A "fixed term tenancy" is defined in section 45, subsection (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).

68 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 commencement 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.

69 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

70 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

71 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

72 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.

73 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.

74 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.

75 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.

Proposed use of power

76 Under subsection (7), 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 affirmative procedure.

Background

77 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

78 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.

79 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)(e) 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, 6, 6A and 6B, the notice period before the landlord can begin court proceedings is four months. When serving notice under grounds 5, 5A, 5B, 5C, 5D, 5H, 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, 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.

80 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.

81 Subsection (2)(d) inserts a new section (5ZA) into section 7 of the Housing Act 1988. Section 5ZA prevents a court awarding possession under grounds 1-5H or ground 6A where an agricultural tenancy came to an end as a result of a notice to quit under Case A in Part 1, Schedule 3 of the Agricultural Holdings Act 1986. The court is prevented from awarding possession where the assured tenancy is granted by the same landlord as the agricultural tenancy, or by a new landlord under a contract or other agreement entered with the former landlord under which it was agreed that the property was to be let as 'suitable alternative accommodation' for the tenant for the purposes of Case A, meaning that the notice to quit

will have effect without the consent of a tribunal, and that this possession restriction was to apply.

82 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 the court considers it just and equitable, new section 8ZA provides that the requirement to commence possession proceedings within a specified period may be disapplied.

83 Subsection (5) inserts a new section 11A into the Housing Act 1988 which allows courts to order landlords to pay compensation to tenants evicted under ground 6B. Ground 6B allows landlords to evict tenants when they are subject to enforcement action and evicting a tenant is the only way to comply with that enforcement action. For example, where a property is overcrowded. Courts may order an amount of compensation that is sufficient to cover the loss sustained by the tenant as a result of the order of possession, for example, the costs of finding and moving into new accommodation. Courts must take into account the circumstances that led to the enforcement action being taken, including any conduct of the tenant which contributed to this.

Background

84 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 protect security for tenants while accepting the legitimate interests of landlords. This includes extending the notice period for the main "no fault" grounds from two months to four months, and rent arrears from two weeks to four weeks. The Bill also reduces the notice period for serious anti-social behaviour (ground 7A) so landlords are able to make a claim for possession immediately.

85 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

86 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).

87 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.

88 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

89 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

90 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

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

Background

92 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

93 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).

94 Subsection (4) provides that the notice period for a rent increase will increase from one month to two months. Subsection (6) provides that 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 or the landlord and tenant can agree that the rent should not be varied. The Tribunal process is set out in section 14 of the Housing Act 1988.

95 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 and tenants to vary other terms in the tenancy by agreement, including those reducing the rent.

96 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.

97 Subsection (8) omits section 13, subsection (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.

98 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.

99 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 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. There is no requirement or power for the Secretary of State to prescribe the form which a tenant must use to make an application to the Tribunal.

Proposed use of power

100 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

101 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

102 Clause 8 amends section 14 of the Housing Act 1988. The amended sections 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.

103 Unlike the previous provisions for challenging a rent increase or the rent amount in the first six months of the tenancy, the amended section does not require the Secretary of State to prescribe by regulations the form which must be used to make an application to the Tribunal.

104 New subsection (A2) of section 14 provides that no application may be made to the Tribunal under new subsection (A1) to challenge the initial 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 nevertheless able to challenge a rent increase undertaken via the section 13 process under new subsection (A3). Tenants of relevant low-cost tenancies are not able to challenge the rent amount in the first 6 months of a tenancy.

105 Subsection (7) 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. The omission results in the removal of the provision for the Tribunal to determine when the new rent will take effect. This is replaced by new section 14ZB (Effect of determination: proposed new rent) as set out below.

106 Subsection (10) 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 is to follow where a tenant has challenged the rent in the first 6 months of the tenancy (new section 14ZA) and where the tenant is challenging a rent increase as set out in section 13 of the 1988 Housing Act (new section 14ZB).

107 Section 14ZA applies when the Tribunal makes a determination of the open-market rent when a tenant has challenged the rent amount in the first six months of the tenancy. The section provides that the new rent amount will be the lower of the determined open-market rent and the rent payable under the tenancy immediately before the Tribunal's determination of the open-market rent. The rent payable will be the new rent plus any appropriate amount for rates and takes effect from the date the Tribunal directs. This must not, however, be earlier than the date of application to 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.

108 Section 14ZB applies when the Tribunal makes a determination of the open-market rent when the tenant is challenging a section 13 rent increase under section 14(A3). The section provides that the new rent amount will be the lower of the determined open-market rent and the proposed rent in the section 13 notice. The rent payable will be the new rent plus any appropriate amount for rates and generally takes effect from the date of the determination, or the start of the next rent period after that if different.

109 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 two months beginning with 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 section 13(4A)(c) the landlord and tenant can agree a lower rent than the new rent amount resulting from the Tribunal's determination (which may be higher than the original rent or proposed rent increase) and this must be agreed in writing.

Background

110 Section 14 (determination of rent by tribunal) 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 the same as or lower than the proposed rent in the section 13 notice. The landlord and tenant can agree in writing to a lower rent than what the Tribunal has determined but higher than the current 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.

111 A tenant can use the forms published by the Tribunal for the purpose of making an application to challenge a section 13 rent increase notice, or to challenge a rent amount in the first six months of the tenancy. The Secretary of State had previously prescribed and published forms for these purposes assured tenancy forms 6 and 7. These will be withdrawn by statutory instrument. This change will support the aim of encouraging applicants to use the Tribunal's forms for making an application to the Tribunal, and all the forms used to make an application to the Tribunal will be published in the same place.

Clause 9: Prohibition of rent in advance after lease entered into (except initial rent)

Effect

112 Clause 9 inserts a new Clause 4B into the Housing Act 1988. This provides that terms of an assured tenancy that provide for rent to be due in advance of the rent due date in the tenancy agreement have no legal effect and are unenforceable. There is an exception for rent paid between the signing of the tenancy agreement and commencement of the tenancy, where a landlord may require rent for the first rent period (of one month, or up to 28 days depending on the length of the rent periods).

113 Subsection (1) provides that terms in an assured tenancy agreement that require the payment of rent before the rent period for which it is due will not be enforceable.

114 Subsection (2) of the clause provides that subsection (1) does not apply to certain excepted tenancies (defined at subsection (12)). This subsection also confirms that subsection (1) does not apply to rent paid between the signing of the tenancy agreement and commencement of the tenancy. During this period a landlord may require rent for the initial rent period(s) (of one month in the case of monthly rent periods, or up to 28 days for rent periods of less than one month) at any point following the tenancy being entered in to and the start of the tenancy.

115 Where a term of the tenancy is of no effect due to it providing that rent is due in advance, subsection (4) and subsection (5) provide that rent should be due on the regular rent day that falls within a rent period when (a) one or more of the periods contain a compliant rent period (as defined at subsection (12)) and (b) the compliant rent periods have a regular pattern (see subsection (6)). New subsection (5) provides that where the conditions of new subsection (4) are not met, the substitute rent day will be the first day of the rent period.

116 Subsections (6) and (7) explain what is meant by compliant rent periods having a regular pattern. Two conditions must be met. Firstly, that all compliant periods are the same length and secondly, that the rent for all compliant periods will be due on the same day during each period. New subsection (7) applies subsection (6) to tenancies where the first rent period of a tenancy is of a different length to the others, and to tenancies where rent for the first period of the tenancy is due on a different day.

117 Subsection (8) signposts the relevant provisions on applying holding deposits towards payment of rent at Schedule 2 of the Tenant Fees Act 2019.

118 Subsections (9) to (11) give a power to the Secretary of State to amend the descriptions of tenancies or rent due in advance that are exempt from subsection (1).

119 New subsection (12) defines the terms 'compliant rent period', 'due in advance', 'excepted tenancy', 'initial rent', 'local housing authority' and 'permitted pre-tenancy period'.

Proposed use of powers

120 The power in this section is intended to allow the Secretary of State to amend by regulations the descriptions of tenancies and rent in advance to which subsection (1) does not apply.

Background

121 This is a new provision.

Clause 10: Prohibition of rent in advance before lease entered into

Effect

122 Subsection (1) states that Schedule 1 to the Tenant Fees Act 2019 (permitted payments) is to be amended by subsections (2) and (3).

123 Subsection (2) inserts sub-paragraphs (1A) and (1B) into Schedule 1 to the Tenant Fees Act 2019 and provides that a payment of rent under an assured tenancy is a prohibited payment where it is payable before a tenancy is entered into.

124 Subsection (3) inserts new paragraph 1A into Schedule 1 to the Tenant Fees Act 2019. This new paragraph ensures that existing provisions at sub-paragraphs (2) to (8) concerning prohibited payments of increased rent continue to apply as intended.

125 Subsection (4) inserts new sections 5A and 5B into the Tenant Fees Act 2019. Section 5A prohibits landlords and letting agents from inviting, encouraging, accepting an offer of, or accepting a payment of rent in advance from tenants or third parties before a tenancy is entered into. Section 5A also gives a power to the Secretary of State to amend the circumstances in which the prohibitions on pre-tenancy rent payments (defined at subsection 5A(8)) at 5A(1) to (4) apply. Section 5B provides that a term of a tenancy agreement that breaches the prohibitions in section 5A is not binding on a tenant but that otherwise the agreement continues to have effect.

126 Subsection (5) makes consequential amendments to the Tenant Fees Act 2019 to ensure that the enforcement provisions in this Act apply to breaches of new section 5A and that landlords will be required to repay payments received in breach of these prohibitions where enforcement action is taken by the local authority.

Proposed use of powers

127 Subsection (5) of new section 5A of the Tenant Fees Act 2019 provides the Secretary of State with a power to amend by regulations the circumstances in which the prohibition of rent in advance set out at subsections (1) to (4) of that new section applies.

Background

128 Schedule 1 of the Tenant Fees Act 2019 sets out an exhaustive list of permitted payments that a landlord or letting agent may require in connection with a tenancy to themselves or a third party. A payment that is not described in Schedule 1 is a prohibited payment. Clause 10 amends Schedule 1 to make a payment of rent under an assured tenancy a prohibited payment where it is payable before a tenancy is entered into. The clause also inserts additional prohibitions on landlords and letting agents to prevent them from being able to require large amounts of rent in advance of the tenancy agreement being signed.

Clause 11: Repayment of rent

Effect

129 Clause 11 inserts new section 14ZC into the Housing Act 1988. This Clause will allow tenants to be repaid rent when the tenancy ends before the period for which they have paid has expired.

Background

130 This Clause entitles tenants to a refund of rent where the tenancy has ended earlier than the period that has already been paid for. This applies regardless of how the tenancy came to an end.

Clause 12: Right to request permission to keep a pet

Effect

131 Clause 12 adds three new sections, 16A, 16B and 16C, to the Housing Act 1988.

132 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 that a landlord must respond to a written request from the tenant within 28 days.

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

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

135 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.

136 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.

137 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.

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

Background

139 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 13: Pet insurance

Effect

140 Clause 13 amends section 1, subsection (4) (permitted contractual arrangements) 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. It also inserts a new permitted payment into Schedule 1 of the Tenant Fees Act 2019 so that landlords can charge tenants reasonable costs incurred by the landlord for having insurance covering pet damage.

Background

141 Under section 1, subsection (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, subsection (4) applies. The Bill amends section 1, subsection (4) to make insurance contracts obtained by the tenant at the landlord's request a further exemption. Currently, pet insurance costs incurred by the landlord are not a permitted payment under Schedule 1 of the Tenant Fees Act 2019. Via clause 11, subsection (3) changes are being made to Schedule 1 to enable such costs to be permitted payments recoverable by the landlord from the tenant.

Clause 14: Duty of landlord and contractor to give statement of terms etc

Effect

142 Clause 14 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 before the tenancy is entered into. This section applies to an assured tenancy other than a tenancy granted by implication, after an implied surrender of a previous tenancy between the same parties, where the implied surrender and grant result from an agreement to vary the terms of the previous tenancy. 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.

143 Where a landlord wishes to use any of the 'prior notice' grounds for possession which are 1B, 2ZA, 2ZB, 2ZC, 2ZD, 4, 5 to 5H, 6A, or 18 in Schedule 2, the landlord is required to have stated that they may wish to use these grounds in the written statement of terms (see sections 16D(3), 16E(1)(f) and 16I(1)(a) of the Housing Act 1988 as inserted by Clauses 13 and 15). Clause 14 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

144 The provision in new section 16D(2) of the Housing Act 1988 will allow the Secretary of State to set out in regulations specified terms or information that must 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

145 This is a new duty 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 15: Other duties

Effect

146 Clause 15 inserts new sections 16E (Other duties), 16F (Exceptions from letting and marketing prohibitions) and 16G (Interpretation of terms related to marketing in section 16E) into the Housing Act 1988. Section 16E prohibits certain actions by a "relevant person" in relation to an assured tenancy, including misuse of possession grounds. (See new section 16M (duties of landlords etc penalties and offences: interpretation) inserted by Clause 19 for meaning of "relevant person", which will usually be a landlord or someone acting for them or purporting to). Section 16F provides where the letting and marketing prohibitions in section 16E do not apply, and section 16G provides an interpretation of terms related to marketing in section 16E. These sections apply to assured tenancies.

147 Section 16E(1) sets out the prohibitions placed on relevant persons (such as landlords, former landlords or letting agents) of an assured tenancy. This includes purporting to let the property for a fixed term and purporting to bring the tenancy to an end, or requiring that it is brought to an end, orally, or via a notice to quit. Relevant persons are also prohibited from: serving a "purported notice of possession" (defined in section 16M to exclude valid section 8 notices and claim forms relating to possession proceedings); specifying a ground that the person does not reasonably believe the landlord will, or may be able to get possession on, for example, relying on grounds 1 (occupation by landlord or family) or 1A (selling) in the first year 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.

148 Subsections 16E(2) and 16E(3) provide that where a relevant person relies on the occupation or selling possession ground (grounds 1 or 1A), the landlord is prohibited from taking certain actions. These are letting or marketing the property on a tenancy with a term of 21 years or less, or from permitting or marketing the property to be occupied under licence in return for money (except as provided for in subsection 16F(1)), within a "restricted period" defined in section 16M which will usually be within 12 months of the date specified in the section 8 notice or purported notice of possession as the earliest date on which possession proceedings can begin.

149 Subsection 16E(4) 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. Subsection 16E(5) provides that if a relevant person has not provided prior notice in the written statement of the landlord's intention to be able to recover possession by relying on one or more of grounds 1B, 2ZA, 2ZB, 2ZC, 2ZD, 4, 5 to 5H, 6A, or 18, the court may still make an order for possession of the property using the ground. In that situation the relevant person may be subject to a financial penalty (see new section 16I (financial penalties) inserted by Clause 17).

150 Section 16F sets out the exceptions to the letting and marketing prohibitions in section 16E. Subsection 16F(1) provides that the letting and marketing prohibitions during the restricted period following the use of ground 1, detailed in subsections 16E(2) and (3), 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. Subsection 16F(1) also provides that the letting and marketing prohibitions during the restricted period following the use of ground 1A, detailed in subsections 16E(2) and (3), do not apply if the letting or marketing is to a licensee who has agreed to purchase the landlord's interest in the dwelling-house, or if they have agreed to lease the property for a term of more than 21 years without a break clause, and the licence to occupy is granted in anticipation of that purchase or lease.

151 Section 16F(2) sets out that the prohibitions in subsection 16E(3) do not apply where the marketing is in connection with letting, or occupation under a licence, which is permitted as a result of subsection 16F(1).

152 Section 16G (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.

153 Subsections 16G(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 16G(3) excludes publication of an advertisement from these definitions provided the publisher is not involved with "lettings agency work" and did not themselves supply the advertisement.

154 Subsection 16G(4) set out the meaning of "lettings agency work" to encompass things like informing another person about available homes to rent. This works together with the meaning of marketing, found in subsection 16G(4). This provides that for the purposes of the prohibition in section 16E informing another person that a residence is available within the course of that work qualifies as 'marketing' for the purposes of this section. Subsection 16G(5) excludes certain activities from the 'lettings agency work' definition, on the condition that no other activities listed in subsection 16G(4) have been carried out. For example, should a landlord advertise a property on Zoopla or Rightmove within twelve months of using the moving or selling grounds, the landlord would be in breach of the rules, rather than the advertising site, because publishing an advertisement in and of itself is an excluded activity.

155 Under subsections 16G(6) and 16G(7) the Secretary of State may make regulations to exclude other activities from coming within the definition of 'lettings agency work'. These regulations will be subject to the negative resolution procedure.

Proposed use of power

156 The power in subsection 16G(6) allows the Secretary of State to specify matters in regulations which are to be excluded from the definition of "letting agency work". This is defined at 16G(4) for the purposes of setting out the types of marketing activities that are prohibited during "the restricted period" (see new section 16M for the meaning of that term) after relying on grounds 1 (occupation by landlord or family) or 1A (selling).

157 This power is needed to give the Secretary of State 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 where, for example, it is used in relation to the private rented sector database and related marketing restrictions. This is also needed to allow Government to narrow the definition by further listing activities that do not fall under "letting agency work" if, in light of experience, it proves too broad, for example, because other elements of the enforcement regime for this Bill change.

158 These Regulations are subject to the negative resolution procedure.

Background

159 New sections 16E, 16F and 16G being inserted into the Housing Act 1988 to 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 16: Landlords acting through others

Effect

160 Clause 16 inserts new section 16H (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 17: Landlords etc: financial penalties and offences

Effect

161 Clause 17 inserts new sections 16I, 16J, 16K and 16L into the Housing Act 1988 to set out the financial penalties and offences for the breach of the prohibitions inserted into the 1988 Act by Clauses 14 and 15, including those relating to the misuse of possession grounds and for not providing a written statement of terms.

162 Section 16I (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 prohibitions inserted into the 1988 Act by Clauses 14 or 15.

163 Subsection 16I(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 16I(3) provides that if certain conditions are met more than one financial penalty may be imposed on the same person in relation to the same conduct for a breach under section 16D. These conditions are where the contravention continues for more than 28 days, either after a final notice for a penalty is given or after the person appeals the penalty and it is determined to be unsuccessful. Subsection 16I(5) provides that a local housing authority cannot, for example, impose two financial penalties on a person both for attempting to end a tenancy by serving a tenant a notice to quit as well as for issuing a purported notice of possession where they arise from the same conduct. In this example, the local housing authority should choose one or the other when imposing a financial penalty.

164 The financial penalty imposed is to be determined by the local authority imposing it but must not be more than £7,000 (subsection 16I(6)). Subsection 16I(7) 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.

165 Subsection 16I(8) provides for circumstances where a financial penalty cannot be imposed, including where a person has been prosecuted for an offence under section 16J in respect of the same conduct and where a financial penalty has been imposed under section 16K as an alternative to prosecution. Subsections 16I(9) and 16I(10) enable the Secretary of State to provide guidance on imposing financial penalties that local housing authorities must have

regard to when they are undertaking enforcement activity under this section. Subsection 16I(11) specifies the date on which a financial penalty is imposed.

166 Section 16J (Offences) sets out the different conduct which will constitute an offence. Under subsection 16J(1), a person commits an offence by using a possession ground knowing that the landlord would not be able to get a court order for possession using that ground, or they are reckless as to whether the landlord would be able to. This only becomes an offence if the tenant surrenders the tenancy within 4 months of the date the ground was relied on and an order for possession is not made at that time.

167 Under subsection 16J(2), a person commits an offence where they contravene subsections 16E(2) or (3) (i.e. seek to rely on possession grounds 1 and 1A) by letting or marketing the property within the restricted period , unless the person, who is not the landlord, can prove that they took all reasonable steps to avoid contravening it.

168 Under subsection 16(3), a person commits an offence relating to a continuing breach, if they have not complied with a requirement, have received a financial penalty for that prohibited conduct (a "relevant penalty") and continue the same conduct for more than 28 days thereafter (assuming the final notice has not been withdrawn and any appeal has been determined or concluded). Under subsection 16I(4), a person commits an offence relating to a repeat breach, if they have not complied with a requirement, have received a financial penalty for prohibited conduct (a "relevant penalty") and within the next five years receive either a relevant penalty for different conduct or a conviction for an offence under section 16J for different conduct.

169 Subsection 16J(5) defines "relevant penalty" for the purposes of subsections 16J(3) and (4). Subsection 16J(6) provides that a person may not be convicted of an offence under subsection 16J(1), (2) or (4) if a financial penalty has been imposed for the same conduct, under s16I or 16K. Subsections 16J(7), (8) and (9) provide that officers and members of body corporates that have committed an offence under section 16J 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.

170 A guilty person is liable on summary conviction to a fine (subsection 16J(10)).

171 Section 16K (Financial penalties as an alternative to prosecution under section 16J) provides that a local housing authority can impose a financial penalty of up to £40,000 if they are satisfied beyond reasonable doubt that a person has committed an offence under section 16J. Subsection 16K(2) provides where a financial penalty cannot be issued, such as if the person has already been convicted of a criminal offence under 16J for the same conduct, if criminal proceedings are ongoing, or if criminal proceedings have taken place and the person has not been found guilty. Subsection 16K(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 the offence. All persons upon whom the penalty is imposed are jointly and severally liable to pay it.

172 Subsections 16K(5) and 16K(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.

173 Section 16L (Financial penalties: supplementary and interpretation) enables the Secretary of State to give financial assistance to local housing authorities to support their enforcement functions in 16I to 16K. It also gives the Secretary of State powers to amend the maximum

penalty levels specified in sections 16I and 16K in regulations to reflect inflation. Regulations made under this power are subject to the negative resolution procedure.

174 Subsection 16L(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.

Proposed use of powers

175 Subsections 16I(9) and 16K(5) allow the Secretary of State to issue guidance on the use of financial penalties that local authorities must have due regard to. Guidance will assist local housing authorities to effectively enforce contraventions of the duties imposed by sections 16D and 16E and to prioritise enforcement appropriately.

176 The power under section 16L(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 due to inflation.

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

Background

178 Sections 16I 16J, 16K, and 16L are all new provisions 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 16I(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 £7,000.

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 four 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 restricted period, where letting and marketing is prohibited, to end to re-let the property at a higher rent (so, the landlord committed an offence under section 16J(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 £40,000 as an alternative to criminal prosecution.

Clause 18: Financial penalties: procedure, appeals and enforcement

Effect

179 Clause 18 inserts Schedule 2ZA (Financial penalties under sections 16I and 16K) 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 16I or 16K 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.

180 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.

181 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.

182 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.

183 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 day after 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 16I and 16K. 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.

184 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.

185 Paragraphs 12, 13 and 14 provide for how local housing authorities may use the proceeds of financial penalties. Local housing authorities may use the proceeds towards costs and expenses associated with carrying out enforcement functions relating to the private rented sector. Any proceeds surplus to this must be paid to the Secretary of State.

Background

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

Clause 19: Duties of landlords etc, penalties and offences: interpretation

Effect

187 This Clause inserts new section 16M into the Housing Act 1988 to provide essential definitions for terminology used in sections 16D to 16L and Schedule 2ZA. These relate to assured tenancies in England, such as "relevant person", "the restricted period" and "purported notice of possession".

188 Subsection 16M(4) defines "the restricted period". This is the total period during which letting and marketing is prohibited following reliance on the moving and selling possession grounds (ground 1 or 1A). This period usually starts when notice is served either via a section 8 notice or a purported notice of possession and ends twelve months after the end of the notice period. For a case where a relevant person is relying on grounds 1 or 1A in a claim

form where there is no notice, the period is twelve months beginning with the date when the claim form was filed. Subsections 16M(5) to (6) provide for what happens to the restricted period when a notice specifies ground 7A or 14 as well as either ground 1 or 1A, or a purported notice of possession either specifies no date or an invalid date for when possession proceedings will begin. When the court makes an order of possession on another ground other than 1 or 1A before the end of an ongoing restricted period, new subsection 16M(7) also provides that that ends that period.

Proposed use of powers

189 The power under subsection 16M(1) allows the Secretary of State to expand the definition of "legal representative" to include other persons, aside from those set out in 16M(1), who would as a consequence be exempt from the definition of "relevant person" and therefore not bound by the duties or enforcement action of local housing authorities as set out in sections 16D to 16L. This allows the Government to exempt other types of legal services where their activities in England are subject to equivalent regulation. Regulations will be subject to the negative procedure.

Background

190 This is a new provision.

Clause 20: No criminal liability of the Crown under Part 1 of the 1988 Act

Effect

191 Clause 20, which amends section 44 of the Housing Act 1988, provides that the offences created under new section 16J are not binding on the Crown. It is possible under new section 16K for a financial penalty of up to £40,000 in lieu of prosecution to be imposed on the Crown for conduct which would usually make a landlord guilty of an offence under 16J. This exemption from criminal liability does not extend to persons acting in service of the Crown.

Background

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

Clause 21: Guarantor not liable for rent payable after tenant's death

Effect

193 Clause 21 inserts two new sections, 16N (Guarantor not liable for rent payable after tenant's death) and 16P (Section 16N: application and interpretation), into the Housing Act 1988. This clause limits the liability of guarantors for rent in the event of a tenant's death in specified circumstances.

194 Section 16N details the circumstances in which a guarantor will not be held liable for guaranteed rent following the death of a tenant (or tenants). Subsection (1) confirms that this section applies where an individual (known as a guarantor) guarantees the rent of a tenant who is renting a property on an assured tenancy and the guarantee started on or after commencement.

195 Subsection (2) deals with sole occupancy tenancies. It provides that where the deceased tenant was the sole occupant, the guarantor cannot be held liable for rent accrued on or after the tenant's death.

196 Subsections (3) to (5) deal with joint tenancies. Subsection (3) provides that where there are two or more tenants, and in the unlikely event all of those tenants die, the guarantor is not liable for rent from the date of their deaths (if they die on the same day) or the date of the last to die (if they do not die on the same day). Subsection (4) provides that where there are two or more tenants and one of the tenants is a family member of the guarantor, if the family member dies then the guarantor will not be liable for rent on or after the date of their death. Subsection (5) provides that where the guarantor is a family member of more than one of the tenants, the guarantor is not liable for rent from the date of their deaths (if they die on the same day) or the date of the last to die (if they do not die on the same day). If the guarantor is not a family member of the deceased tenant(s), the guarantor remains liable for rent under an existing guarantee agreement.

197 Subsection (6) explains guaranteed rent following the death of a tenant (or tenants) and that this is the rent for the remainder of the rent period in which the tenant (or tenants) dies and the rent for any subsequent rent period. Subsection (7) provides a formula to calculate the amount of guaranteed rent attributable to the time after the death of a tenant (or tenants) during the rent period in which death occurs.

198 Section 16P (Section 16N: application and interpretation) confirms how section 16N is to be applied and defines key terms in section 16N.

199 Subsection (1) outlines that section 16N applies to a guarantee whether or not the guarantee is in writing, in the lease or it guarantees sums other than rent.

200 Subsection (2) defines key terms used in section 16N, including "commencement date", "family member" (see also subsections (3) and (4)) and "rent period".

201 Subsection (3) confirms the relationships within the definition of a family member of the guarantor. Subsection (4) confirms that if a person meets the definition of family member when or at any point after the guarantee is entered into, they remain so at all times afterwards, regardless of whether the definition at subsection (3) continues to be met.

202 Subsection (5) provides further explanation of the intended meaning of the terms 'co-habitee', 'niece', 'nephew', 'aunt', 'uncle', 'cousin' and 'sibling', to assist interpretation.

Background

203 Clause 21 is a new provision that inserts sections 16N and 16P into the Housing Act 1988 to limit a guarantor's liability for rent following the death of a tenant. These sections apply to agreements that started on or after the commencement date. Terms of guarantee agreements that purport to hold a guarantor liable for rent in these circumstances will be unenforceable.

Clause 22: Notices to quit by tenants under assured tenancies: timing

Effect

204 Clause 22 amends section 5 of the Protection from Eviction Act 1977. Subsection (1ZA)(a) 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., at the end of a period of the tenancy), unless the landlord and tenant have agreed a shorter notice period in writing.

205 Subsection (1ZA)(b) 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

206 The length of notice that a tenant currently has to provide is set by common law rules or in the tenancy agreement subject to a minimum notice period of four weeks for most tenancies and licences by virtue of section 5 of the Protection from Eviction Act 1977. 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 – that agreement may be set out in the tenancy agreement or in a separate document.

207 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 23: Notices to quit by tenants under assured tenancies: other

Effect

208 Clause 23 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.

209 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

210 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.

211 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 24: Limitation on obligation to pay removal expenses

Effect

212 Clause 24 amends section 11 of the Housing Act 1988 (payment of removal expenses in certain cases) so that only relevant social landlords (as defined by ground 6) are required to pay reasonable removal expenses to tenants when the court awards possession under grounds 6 (redevelopment), ground 6A (decant) or ground 9 (suitable alternative accommodation). This requirement applies where the dwelling house that the tenant is moving from is social housing.

213 In addition, subsection (5) amends section 11 of the Housing Act 1988 so that a relevant social landlord will also be required to pay reasonable expenses likely to be incurred by the tenant in moving them from the alternative accommodation provided temporarily under case B of the "additional RSL condition" in ground 6.

Background

214 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 ground 6 or ground 9. When the Bill takes effect, the extended ground 6 and new ground 6A (decant ground) will become available to registered social landlords. As part of this, this provision is necessary to ensure the requirement to pay expenses is aligned with the wider definition under the new ground 6 of 'relevant social landlord'.

Clause 25: Assured agricultural occupancies: grounds for possession

Effect

215 Clause 25 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

216 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 26: Assured agricultural occupancies: opting out etc.

Effect

217 Clause 26 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, subsection (b) of the Bill.

218 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

219 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 27: Accommodation for homeless people: duties of local authority

Effect

220 Clause 27 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.

221 Subsection (2)(b) repeals section 193, subsection(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.

222 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.

223 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.

224 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 six 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.

225 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

226 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.

227 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 six 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.

228 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.

229 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.

230 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 two-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 28: Tenancy deposit requirements

Effect

231 Clause 28 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 for new assured tenancies and tenancies that were assured shorthold tenancies immediately before the commencement date.

232 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).

233 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, subsection (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, subsection (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, subsection (6)(b) for the provision of this information is not a barrier to obtaining possession).

234 New section 215, subsection (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.

235 New section 215, subsection (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, subsection (1) and has been determined, withdrawn or settled by the parties.

236 New section 215, subsection(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.

237 New section 215, subsection (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

238 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.

239 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 29: Tenant fees

Effect

240 Clause 29 replaces references to an "assured shorthold tenancy" in the Tenant Fees Act 2019 with "assured tenancy" and omits its definition of a 'long lease'.

Background:

241 The Renters' Rights Bill abolishes assured shorthold tenancies so any references in the Tenant Fees Act 2019 must be updated in order that its various financial protections continue to be afforded to the intended cohort of renters.

242 Assured tenancies cannot be granted for periods of over seven years, so protections previously afforded to long-leaseholders of between seven and 21 years are no longer necessary.

Clause 30: Liability of tenants under assured tenancies for council tax

Effect

243 Clause 30 amends section 6, subsection (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

244 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 31: Other amendments

Effect

245 Clause 31 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

246 This is a new provision.

Clause 32: Powers of Secretary of State in connection with Chapter 1

Effect

247 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.

248 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.

249 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.

250 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.

251 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.

252 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

253 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 33: Tenancies of more than 21 years

Effect

254 Clause 33 amends Schedule 1 of the Housing Act 1988 to add fixed-term tenancies of more than 21 years to the list of tenancies that are excluded from the assured tenancy system. This will only apply to leases entered into after this clause has commenced.

255 It also adds existing fixed-term tenancies that are more than seven years but 21 years or less to the list of excluded tenancies in Schedule 1. This will only apply to tenancies of this length that were entered into before clause 33 has commenced or two months thereafter.

256 This Clause also adds regulated home purchase plans to the list of excluded tenancies in Schedule 1. These are defined by the description in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. The Secretary of State has the power to amend the definition in relation to Clause 33, should the 2001 Order change.

257 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 seven years in length that would have been assured, were it not for their exclusion under Schedule 1 of the Housing Act 1988.

258 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.

259 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

260 This section excludes leases of more than 21 years or more from the assured tenancy system. This will allow leases over 21 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. 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.

261 This section will ensure that leases between seven – 21 years that begin before the Bill is commenced are not pulled into the assured tenancy regime, given these leases were drawn up under a different legislative regime.

262 It will also ensure that regulated home purchase plans can continue to function. These enable consumers to purchase property using Islamic Finance, which does not permit the receipt and payment of interest.

Clause 34: Accommodation for homeless people under section 199A of Housing Act 1996

Effect

263 Clause 34 inserts section 199A of the Housing Act 1996, into the list of specified sections already set out in section 209, subsection (1) of that same Act. This will ensure that, as is the case for the sections already stated in section 209, subsection (1), a tenancy granted pursuant to section 199A cannot be an assured tenancy, other than in the circumstances allowed for in section 209, subsection (2).

Background

264 Local authorities have an interim duty to provide temporary accommodation under section 188, subsection (1); 190, subsection (2); 199A, subsection (2); 199A, subsection (4)(c); and 200, subsection (1) of the Housing Act 1996, where the relevant conditions are met. Section 209, subsection (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, subsection (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.

265 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, subsection (1) alongside the other specified sections where local authorities have an interim duty or discretion to provide temporary accommodation.

Chapter 3: Discrimination in the rental market: England

Clause 35: Discrimination relating to children

Effect

266 Clause 35 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, or any conduct which might otherwise effectively constitute such a restriction. This prohibition applies to all assured tenancies other than when in connection with social housing or supported accommodation, and in relation to all relevant discrimination including that which targets a specific subset of 'child', such as those in fostering arrangements.

267 Subsection (1) outlines behaviours in a letting process that will be outlawed and explains that any related discriminatory provisions, criteria or practices are also prohibited.

268 Subsection (2) sets out the exemptions to this prohibited behaviour: 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.

269 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 includes a delegated power under which the Secretary of State may exempt additional conduct from being prohibited via regulations.

Proposed use of power

270 Clause 35, subsection (3)(b) allows the Secretary of State to exempt additional conduct from the 'no children' rental discrimination prohibitions, to make sure the provisions can be adapted to changing market practices and not inadvertently make third party platforms liable for rental discrimination breaches. Regulations laid under Clause 35, subsection (3)(b) are subject to the affirmative procedure.

Background

271 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 section 32, subsection (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.

272 The Property Ombudsman ruled in March 2023 that blanket bans on renting to households with children violated the equalities rules laid out in its Code of Practice, due to their disproportionately affecting women. Clause 35 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 36: Discrimination relating to benefits status

Effect

273 Clause 36 prohibits discriminatory bans and restrictions against the letting of private rented sector properties to persons in receipt of benefits, as well as any practices which might otherwise effectively constitute such bans or restrictions.

274 Subsection (1) outlines behaviours in a letting process that will be prohibited and explains that any related discriminatory provisions, criteria or practices are also outlawed.

275 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.

276 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. This includes a delegated power under which the Secretary of State may exempt additional conduct from being prohibited via regulations.

Proposed use of power

277 Clause 36, subsection (3)(b) allows the Secretary of State to exempt additional conduct from the 'no benefits' rental discrimination prohibitions, to make sure the provisions can be adapted to changing market practices and not inadvertently make third party platforms

liable for rental discrimination breaches. Regulations laid under Clause 36, subsection (3)(b) are subject to the affirmative procedure.

Background

278 This is a new provision.

279 County courts have previously ruled that such behaviours violate the Equality Act 2010, based on sex and disability status. Clause 36 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 37: Discriminatory terms in a tenancy relating to children or benefits status

Effect

280 Clause 37 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 terms which prohibit the tenant from being a benefits claimant.

281 Subsection (1) renders of no effect such terms with regards to children. Subsection (2) provides that the restriction in subsection (1) does not apply to such terms if they are 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.

282 Subsection (3) renders of no effect such terms with regards to benefits status. Subsection (4) provides that the restriction in 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

283 This is a new provision.

284 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 38: Terms in superior leases relating to children or benefits status

Effect

285 Clause 38 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.

286 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.

287 Subsection (5) clarifies that, in addition to the superior lease itself, Clause 38 applies to all other relevant documents and communication from the landlord giving or refusing consent for sub-letting.

Background

288 This is a new provision.

289 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 39: Terms in mortgages relating to children or benefits status

Effect

290 Clause 39 renders of no effect all 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

291 This is a new provision.

292 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 40: Terms in insurance contracts relating to children or benefits status

Effect

293 Clause 40 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.

294 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

295 This is a new provision.

296 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 41: Power of the Secretary of State to protect others

Effect

297 Clause 41 enables the Secretary of State, by way of regulations subject to the affirmative procedure, to extend the protections from rental discrimination given to renters with children or in receipt of benefits in this chapter, to additional cohorts.

298 Subsection (1) provides that before making regulations, the Secretary of State must be satisfied that there is "discriminatory rental practice" against that additional cohort which means that they are significantly less likely to enter into a tenancy than other people.

299 Subsection (2) sets out what "discriminatory rental practice" means and it is defined in the same way as protected provided by Clauses 35 and 36. Subsection (3) defines what being a victim of a discriminatory rental practice means, and regulations made under Cause 41, subsection (1) will set out the detail.

300 Subsection (4) provides that regulations under subsection (1) are limited to "rental discriminatory practice" and describing the new additional cohort being protected. Subsection (6) provides that before making regulations under subsection (1), the Secretary of State must consult persons from a list of relevant sector stakeholders, as considered appropriate.

Proposed use of power

301 This is a new provision.

302 To allow the Secretary of State to make regulations extending rental discrimination provisions to additional groups in England in future, if deemed necessary, for example care leavers or prison leavers and those with a history of offending.

303 Regulations made under this clause would describe the group to be protected under the chapter's existing anti-discrimination framework and whether there would be an exception for conduct which is a proportionate means of achieving a legitimate aim.

Background

304 Alongside the commitment to legislate on rental discrimination against renters with children and in receipt of benefits, this power would facilitate future extensions to additional cohorts if needed.

Clause 42: Financial penalties for breach of anti-discrimination provisions

Effect

305 Clause 42 provides that a local housing authority may impose a financial penalty on a person, if on the balance of probability, it is satisfied that there has been a breach of a rental discrimination measure in Chapter 3 (Prohibition of discrimination relating to children and benefit status).

306 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. A local authority may impose an additional penalty if a fine under the same section was previously issued within the preceding five years (subsection (4)).

307 Subsection (3) provides that a single discriminatory provision, criterion or practice applied multiple times in relation to the same property constitutes the same conduct. Multiple

persons may be found jointly and severally liable for the same offence, as under subsection (7).

308 Subsection (5) sets out the maximum fine amount, which will be £7,000.

309 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.

310 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.

311 Subsection (10) confers upon the Secretary of State the power to amend the maximum financial penalties as set out in subsection (5) to reflect inflation. The regulations are subject to the negative resolution procedure.

Proposed use of power

312 To allow the Secretary of State to give statutory 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

313 This is a new provision.

314 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, those in receipt of benefits or any additional cohort (as provided by regulations made under Clause 41, subsection (1). To do so, the local housing authority must be satisfied on a balance of probability that the person breached the requirements.

Clause 43: No prohibition on taking income into account

Effect

315 Clause 43 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

316 This is a new provision.

317 Clause 43 confirms that income can be considered by landlords or anyone acting on their behalf, to avoid the risk that affordability thresholds may constitute a prohibited criterion under rental discrimination measures.

Clause 44: Interpretation of Chapter 3

Effect

318 Clause 44 provides essential definitions for terminology used in rental discrimination measures for England (Chapter 3), such as “relevant person”, “relevant tenancy”, “child” and “benefits claimant”.

Background

319 This is a new provision.

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

Clause 45: Discrimination relating to children or benefits status: Welsh language

Effect

320 Clause 45 amends the Welsh language text of the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019 and is the Welsh language version of Clause 46.

Clause 46: Discrimination relating to children or benefits status: English language

Effect

321 Clause 46 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 or may live with or visit a person at the dwelling, or on the basis that a person is or may be a benefits claimant. Clause 46 amends the English language text of the Renting Homes (Fees, Discrimination 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, subsection (1) and 8B, subsection (1) is liable on summary conviction to a fine.

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

a. Section 8A is broadly equivalent to Clause 35. 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 (a)(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 36. 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, subsection (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 35 and subsection (3) of Clause 36. It contains provision excepting conduct from constituting an offence under section 8A, subsection (1) or section 8B, subsection (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 42 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 rental discrimination prohibitions under section 8A or 8B.

e. Section 8E is broadly equivalent to subsection (4) of Clause 42. It contains provision allowing for an additional offence for a repeated breach of the rental discrimination 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 38, 39 and 40. They contain provision rendering any term in a superior lease, mortgage or insurance contract which would prohibit the contract-holder from having a child live with or visit them at the dwelling by a child or prohibit a contract-holder from being a benefits claimant not binding.

g. These provisions retrospectively bind mortgages and superior leases entered before commencement of Chapter 4 of Part 1 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 the requirement 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 43. 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 rental discrimination prohibitions.

i. 8J can be considered the Welsh equivalent of new Clause 44. It contains definitions of the terminology used in new Part 2A.

Proposed use of power

323 To allow the Welsh Ministers to exempt additional conduct from the rental discrimination prohibitions, to make sure the provisions can adapt to changing market practices and not inadvertently make third party platforms liable for rental discrimination breaches. Regulations made via this power are subject to the affirmative procedure.

Background

324 This is a new provision.

325 Chapter 4 inserts the substantive rental discrimination provisions for Wales directly into the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019 and Renting Homes (Wales) Act 2016 to align with the existing Welsh housing legislative framework.

Clause 47: Amendment of short title of the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019

Effect

326 Clause 47 updates the short title of the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019 to the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019, reflecting its increased scope.

327 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 Cymru.

328 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 Cymru.

Background

329 This is a new provision.

330 Chapter 4 inserts the substantial provisions for Wales directly into the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019 and Renting Homes (Wales) Act 2016 to align with the existing Welsh housing legislative framework.

Clause 48: Amendments of the Renting Homes (Wales) Act 2016 regarding discrimination

Effect

331 Clause 48 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.

332 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.

333 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.

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

Background

335 This is a new provision.

336 Clause 48 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 49: Power of Welsh Ministers to protect others

Effect

337 Clause 49 enables the Welsh Ministers, 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.

338 Subsection (1) provides that before making regulations, the Welsh Ministers must be satisfied that a discriminatory rental practice exists against that cohort and, because of that practice, they are significantly less likely to obtain the grant, renewal or continuance of an occupation contract than other people.

339 Subsection (2) defines a discriminatory rental practice in same way as Sections 8A, subsection (1) and 8B, subsection (1) of the Renting Homes (Fees etc) (Wales) Act 2019 as amended in both languages by Clauses 45 and 46. Subsection (3) defines what being a "victim" of a discriminatory rental practice means.

340 Subsections (4) and (5) limit the power to creating new provision which directly corresponds to that for renters with children or receiving benefits. Subsection (6) provides that making regulations is contingent upon prior consultation with relevant sector stakeholders.

341 Under subsection (8), this power may amend existing rental discrimination legislation in order that, for example, regulations may make insertions into the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019 alongside other relevant provision.

Proposed use of power

342 To allow the Welsh Ministers to make regulations extending rental discrimination provisions to additional groups in Wales in future, if deemed necessary, for example care leavers or prison leavers and those with a history of offending.

343 Regulations made under this clause would describe the group to be protected under the Chapter's existing anti-discrimination framework and whether there would be an exception for conduct which is a proportionate means of achieving a legitimate aim.

Background

344 This is a new provision.

345 Alongside the commitment to legislate on rental discrimination against renters with children and in receipt of benefits, this power would facilitate future extensions to additional cohorts if needed.

Clause 50: Power of Secretary of State to protect others

Effect

346 Clause 50 grants the Secretary of State the same power as Welsh Ministers in Clause 49, 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

347 To allow the Secretary of State to make regulations extending rental discrimination 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 Clause 50 are subject to the affirmative procedure. and may amend existing legislation

in order that, for example, regulations may make insertions into the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019 alongside other relevant provision.

Background

348 This is a new provision.

349 Clauses 50 grants the Secretary of State the same power as Welsh Ministers in Clause 49, though only in cases where provision would relate to reserved matters and fall outside of the legislative competence of the Senedd Cymru.

Clause 51: Regulations

Effect

350 Clause 51 limits the exercise of new section 8C (inserted by the Bill into the Renting Homes (Fees, Discrimination etc.) (Wales) Act or Clause 49 of this Bill) to within the legislative competence of the Senedd Cymru.

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

Background

352 This is a new provision.

Chapter 5: Discrimination relating to children or benefits status: Scotland

Clause 52: Discrimination relating to children or benefits status

Effect

353 Clause 52 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.

354 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 35. 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 36. 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 37. 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 43. 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 rental discrimination prohibitions.

e. Section 6E can be considered the Scottish equivalent of Clause 44. It contains definitions of the terminology used such as "relevant person", "child" and "benefits claimant".

355 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, subsection (3)(b) and 6B, subsection (3)(b), both of which are subject to the negative procedure.

356 Clause 52 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 36 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

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

Background

358 This is a new provision.

359 Clause 52 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.

360 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 53: Terms in standard securities relating to children or benefits status

Effect

361 Clause 53 can be considered the Scottish equivalent of Clause 39. 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

362 This is a new provision.

363 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 54: Terms in insurance contracts relating to children or benefits status

Effect

364 Clause 54 can be considered the Scottish equivalent of Clause 40. 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

365 This is a new provision.

366 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 55: Power of the Scottish Ministers to protect others

Effect

367 Clause 55 enables the Scottish Ministers, 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.

368 The power is limited to creating new provision which directly corresponds to that for renters with children or receiving benefits and is contingent upon consultation with relevant sector stakeholders.

369 This power may be used to amend existing legislation in relation to relevant tenancies. A relevant tenancy is defined in the bill and includes a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 (asp 19), an assured tenancy under the Housing (Scotland) Act 1988 and a protected or statutory tenancy under the Rent (Scotland) Act 1984.

370 This power is limited in that the Scottish Ministers may only make provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.

Proposed use of power

371 To allow the Scottish Ministers to make regulations extending rental discrimination provisions to additional groups in Scotland in future, if deemed necessary, for example care leavers or prison leavers and those with a history of offending.

372 Regulations made under this clause would describe the group to be protected under the chapter's existing anti-discrimination framework and whether there would be an exception for conduct which is a proportionate means of achieving a legitimate aim.

Background

373 Alongside the commitment to legislate on rental discrimination against renters with children and in receipt of benefits, this power would facilitate future extensions to additional cohorts if needed.

Clause 56: Power of Secretary of State to protect others

Effect

374 Clause 56 grants the Secretary of State the same power as Scottish Ministers in Clause 55, 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:

375 To allow the Secretary of State to make regulations extending rental discrimination provisions to additional groups in Scotland, where provision would fall outside the legislative competence of the Scottish Parliament, if deemed necessary in future.

376 Regulations laid under Clause 56 are subject to the affirmative procedure and may amend primary legislation, in order that insertions can be made into to Private Housing (Tenancies) (Scotland) Act 2016 alongside other rental discrimination provision.

Background

377 New provision made under the power in Clause 55 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 in tandem by the Secretary of State.

Clause 57: Interpretation of Chapter 5

Effect

378 Clause 57 can be considered the Scottish equivalent of Clause 44. It provides essential definitions for terminology used in rental discrimination measures for Scotland (Chapter 5), such as "relevant tenancy", "child" and "benefits claimant".

Background

379 This is a new provision.

Clause 58: Requirement to state rent and avoid rental bidding

Effect

380 Clause 58 requires that a relevant person must include in the advertisement or offer the specific amount of rent that is to be payable under the letting ("the proposed rent"). The Clause also prohibits a relevant person from inviting, encouraging or accepting any offer of rent which exceeds the proposed rent. This requirement and prohibition apply to all assured tenancies other than assured tenancies of social housing or supported accommodation.

381 Subsection (1) outlines the definition of a proposed letting. The provision applies in circumstances where a dwelling is to be let on an agreement which may give rise to an assured tenancy – other than assured tenancies of social housing or supported accommodation.

382 Subsection (2) outlines the circumstances by which a relevant person must publish the rental price of the proposed letting. A specific amount of rent that is to be payable under the letting must be included in any written advertisement or offer for the proposed letting.

383 Subsection (3)(a) prohibits a person from inviting or encouraging any person to offer to pay an amount of rent that exceeds the proposed rent in the advertisement or offer for that proposed letting.

384 Subsection (3)(b) prohibits a person from accepting, from any person, an offer of rent that exceeds the proposed rent in the advertisement or offer of that proposed letting.

385 Subsection (4) provides the definition of a stated rent for the purposes of subsections (3a) and (3b).

386 Subsection (5) sets out exemptions to the requirement for a relevant person to publish the advertised price: that this does not apply to a sign displayed at the dwelling, which merely advertises that the dwelling is to let.

387 Subsection (6) provides that a breach of subsections (2) and (3), that is the requirement to publish a specific amount of rent and not to invite, encourage, or accept offers of rent above this, does not affect the validity of the letting. It also sets out the definitions of what is meant by a "relevant person". A "relevant person" (who would be subject to the requirement and prohibition explained above) is the prospective landlord or a person acting or purporting to act on the prospective landlord's behalf, such as a letting agent.

Background

388 Clause 58 aims to provide tenants clarity with respect of expected rent costs during the letting process by requiring a landlord, or person acting on behalf of the landlord, to state a specific and proposed rental amount in any written advertisement or written offer for a proposed letting. Subsection (3)(a) prohibits a landlord, or person acting on their behalf, from asking or encouraging a prospective tenant to offer an amount of rent above that which is stated in the written advertisement or written offer for the proposed letting. This will prevent landlords or letting agents from running auctions or encouraging prospective tenants to bid against each other to set the final price. Subsection (3)(b) prohibits a landlord, or person acting on their behalf from accepting an offer of rent above that which the landlord or letting agent has stated in a written advertisement or written offer.

Clause 59: Financial Penalties Effect

Effect

389 Clause 59 allows a Local Housing Authority (or a Weights and Measures Authority) to impose a financial penalty on a person if satisfied that the person has breached the requirement in clause 58. That is to include a specific rent amount in a written advert or offer for the tenancy or he prohibition against inviting, encouraging or accepting higher offers for the rent amount from prospective tenants.

390 Subsection (2) states that a local housing authority may impose additional financial penalties in cases of a repeated breach of the requirements imposed by Clause 58 if such breaches were to happen within 5 years of a previous financial penalty being imposed. Multiple persons may be found jointly and severally liable for the same offence, as under subsection (5).

391 Subsection (3) sets out the maximum fine amount, which will be £7,000 at commencement.

392 Subsection (4) states that subsection (2) does not allow a penalty to be imposed for an offence if a final notice has already been withdrawn or quashed on appeal.

393 Subsection (6) gives 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.

394 Subsection (7) sets out that local authorities must have regard to any guidance given under subsection (6)

395 Subsection (8) 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

396 To allow the Secretary of State to set out guidance that local housing 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

397 Clause 59 gives local housing authorities and Weights and Measures Authorities the power to impose financial penalties on persons who breach the requirement set out in clause 58 for a specific amount of rent to be included in a written advert or offer for a tenancy and the

prohibition against inviting, encouraging or accepting any offer of rent which exceeds the proposed rent.

398 These clauses provide that the Secretary of State can provide guidance to local housing authorities which they must have regard to when exercising their powers to impose financial penalties.

Chapter 6: Miscellaneous

Clause 60: Penalties for unlawful eviction or harassment of occupier

Effect

399 Clause 60 amends the Protection from Eviction Act 1977.

400 Subsection (2) inserts section 1 of the Protection from Eviction Act 1977, new subsection (7), 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.

401 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 £40,000.

402 New section 1A, subsections (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.

403 New Schedule A1 makes provision about procedures, appeals, enforcement and proceeds of financial penalties. Schedule A1 is inserted into the Protection from Eviction Act 1977 by Clause 60, subsection (4).

404 New section 1A, subsections (7), (8) and (9) gives the Secretary of State powers to amend the maximum penalty amount via regulations inline with inflation. Such regulations are subject to the negative procedure.

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

Proposed use of power

406 New section 1A(4) and (5) 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

407 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 £40,000 in lieu of prosecution for an offence under section 1 of that Act.

Clause 61: Abandoned premises under assured shorthold tenancies

Effect

408 Clause 61 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

409 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.

Clause 62: Remedying of hazards occurring in dwellings in England

Effect

410 Clause 62 amends the Landlord and Tenant Act 1985 to bring certain private rented sector tenancies in England within the scope of sections 10A and 10B, principally tenancies for a term of less than seven years (including periodic tenancies). The amendments will have the effect of implying a new term into any tenancy relating to the remedying of hazards and extends the Secretary of State's duty in section 10A to prescribe the detail of those requirements for remedying hazards to any tenancy that is covered by amended section 10A(1).

Proposed use of power

411 Under section 10A (remedying of hazards occurring in dwellings let on social housing leases) of the Landlord and Tenant Act 1985, the Secretary of State must make regulations to require registered providers of social housing to take action in relation to prescribed hazards which affect, or may affect, a relevant property within a time period (or periods) specified in the regulations.

412 Clause 62 broadens that power by removing the reference to social housing leases to allow for regulations to be made in relation to all relevant tenancies of accommodation. This will allow requirements to be set in regulations specifying how landlords of privately rented accommodation must deal with hazards in their properties. Section 10B, subsection (5)(b) of the Landlord and Tenant Act 1985 provides for divergence in the requirements set in regulations for accommodation within the private and social rented sectors. This will allow, if required, requirements to differ to reflect the differences between the two tenure types of housing.

Background

413 The Social Housing (Regulation) Act 2023 introduced "Awaab's Law" into the social rented sector. It amended the Landlord and Tenant Act 1985 to require the Secretary of State to make regulations that will set time limits in which landlords must take action in relation to prescribed hazards. It also implied into leases a covenant by the landlord that the landlord must comply with all prescribed requirements set out in the regulations that are applicable to the lease. The covenant implied forms part of the tenancy agreement and is enforceable by tenants through the courts.

Clause 63: Remedying of hazards occurring in accommodation in England occupied under licence

Effect

414 Clause 63 inserts new sections 10C (Remedying of hazards occurring in accommodation in England occupied under licence) and 10D (Regulations under section 10C: supplementary provision) into the Landlord and Tenant Act 1985. These new sections imply a term in specified licences to occupy residential accommodation that the licensor will comply with requirements set out in regulations in respect of hazards. They also provide for three new powers - one to prescribe the requirements, one to prescribe what descriptions of licence will contain a term requiring the licensor to meet these requirements, and one to make provision in relation to the implied term corresponding to any provision made in relation to the implied covenant relating to fitness for human habitation by section 9A, subsections (4) to (8) of the Landlord and Tenant Act 1985. Clause 63, subsection (2) ensures that the "residential premises" to which the powers in section 10C apply includes temporary accommodation for the homeless before, as well as after Clause 101, subsection (3) comes into force.

Proposed Use of Powers

415 Clause 63 allows regulations to be made requiring the licensors of residential premises to take action in relation to prescribed hazards which affect, or may affect, those premises within a time period (or periods) specified in the regulations. It also allows the Secretary of State to prescribe which licensors under licences to occupy residential premises must meet the requirements, and make provision corresponding to any provision made under section 9A, subsections (4) to (8) of the Landlord and Tenant Act 1985 (to prevent contracting out of the term implied by section 10C, subsection (2), facilitate an order for specific performance for breach, bring common parts within scope of that implied term and allow inspection by the lessor on reasonable notice).

Background

416 The Social Housing (Regulation) Act 2023 introduced "Awaab's Law" for properties let under tenancies in the social rented sector and Clause 62 extends this to properties let under tenancies in the private rented sector. Clause 63 allows Awaab's law to also be applied to accommodation occupied under licence.

417 Licences to occupy are used rather than tenancies for residential accommodation in specific circumstances, notably when there is no right to exclusive occupation or the occupation is not for a defined period of time.

Part 2: Residential landlord

Chapter 1: Meaning of "Residential Landlord"

Clause 64: Meaning of "residential landlord"

Effect

418 Clause 64 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.

419 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.

420 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 64, subsection (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.

421 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".

422 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 64.

423 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

424 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.

425 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.

426 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

427 This is a new provision.

Chapter 2: Landlord Redress Schemes

Clause 65: Landlord redress schemes

Effect

428 Subsection (1) gives the Secretary of State power, by regulations, to require residential landlords as defined in Clause 64 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.

429 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.

430 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 92. 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.

431 Subsections (5) and (6) enable the Secretary of State to make regulations setting out what information landlords (including prospective landlords) must provide when signing up to the Ombudsman. Regulations may also require landlords to update this information on an ongoing basis.

432 Subsection (7) makes clear that prior to making regulations requiring residential landlords as defined in Clause 64 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.

433 Subsections (8) and (9) 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 64. 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

434 The Government intends to approve or designate one redress scheme under Clause 65 (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 64, 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 66.

435 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 65.

Background

436 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, freeholders of leasehold properties, new homes, and for social housing residents.

Clause 66: Approval and designation of landlord redress schemes

Effect

437 Subsection (1) states that Clause 66 applies when the Secretary of State is seeking to make regulations to require residential landlords to join a landlord redress scheme under Clause 65, subsection (1).

438 Subsection (2) requires the Secretary of State to make regulations setting out the conditions that an approved or designated scheme must meet. Subsection (3) sets out what these conditions must include.

439 Subsections (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.

440 Subsection (3)(c) requires the scheme to make provisions about 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.

441 Subsections (3)(d) and (e) require the scheme to include provision about 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.

442 Subsections (3)(f) and (g) make provisions 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.

443 Subsections (3)(h) and (i) requires the scheme to say if members need to pay a fee for the mandatory redress service and, if so, to make provision about the amount or amounts of those fees.

444 Subsection (3)(j) enables the redress scheme 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.

445 Subsections (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 67 if they continue to meet the criteria for mandatory membership under Clause 64.

446 Subsections (3)(o) and (p) makes provision for the transfer of scheme administration to another body, and the closure of an approved scheme. Subsection (5) allows 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.

447 Subsection (4) clarifies that regulations made under subsection (2) can impose conditions which require an approved or designated redress scheme to continuously meet certain conditions of approval while in operation.

448 Subsection (4A)(a) allows the Secretary of State to set out in regulations how the redress scheme will be able to set compulsory fees with reference to "scheme costs" as defined in Clause 66, subsection (10). It clarifies that "voluntary aspects" of the scheme, as defined in 66, subsection (10), may also be funded through the compulsory fee. Subsection (4A)(b) provides that fees for any voluntary aspects of the redress scheme must be calculated based on the costs of running those aspects and be sufficient to meet those costs.

449 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.

450 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.

451 Subsection (9) provides that regulations made under Clause 66 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.

452 Subsection (10) defines terms for the purposes of distinguishing between compulsory and voluntary aspects of the scheme and between compulsory and voluntary membership. It also clarifies that the "scheme costs" may include: the establishment and administration of a redress scheme; the performance of other functions provided for by the redress clauses in Chapter 2 of Part 2 of this bill; and the performance of any other functions under the scheme. Such costs may include those incurred by the administrator or head of redress in connection with enforcement, but not the costs of the enforcement authorities themselves.

Proposed use of power

453 Regulations under Clause 66 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. Expulsion will be a last resort following repeated or serious non-compliance with membership obligations. Regulations will be subject to the affirmative procedure.

454 The Government intends to use regulations made under 66(4A)(a) to allow the establishment costs of the Private Rented Sector Landlord Ombudsman to be recouped through membership fees.

Background

455 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.

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

Clause 67: Financial penalties

Effect

457 Subsections (1)(a) and (2)(a) provide that a local housing authority may impose a financial penalty of up to £7,000 on a person if it is satisfied beyond reasonable doubt that the person has breached the requirement in Clause 65 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.

458 Subsections (1)(b) and (2)(b) provide that a local housing authority may impose a financial penalty of up to £40,000 on a person as an alternative to prosecution, if it is satisfied beyond reasonable doubt that an offence under Clause 68 has been committed.

459 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 (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.

460 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.

461 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.

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

463 Subsection (9) clarifies that, for the purposes of Clause 68, 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

464 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 £7,000. 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 68: Offences

Effect

465 Clause 68 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 67, may be imposed as an alternative to prosecution.

466 Under subsection (1) a person who has received a financial penalty under Clause 67 commits the offence if the conduct in respect of which the penalty was imposed continues for longer than the specified period thereafter.

467 Under subsection (2) a person who has received a financial penalty for breach of regulations under Clause 65 commits the offence if they commit a different breach within the next five years.

468 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 65 again within five years of the previous conviction, or within five years of receiving the financial penalty in lieu of prosecution.

469 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 5; an appeal has been withdrawn or abandoned; or a penalty was confirmed or amended on appeal.

470 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.

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

472 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 67, as well as prosecution.

Background

473 This is a new provision. Clause 68 provides for when a landlord has committed a breach of regulations or an offence for which financial penalties, as specified in Clause 67, 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 £40,000.

Clause 69: Decision under a landlord redress scheme may be made enforceable as if it were a court order

Effect

474 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 66 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

475 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 66, 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

476 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 70: Landlord redress schemes: no Crown status

Effect

477 Clause 70 clarifies that people exercising functions under a landlord redress scheme do not have Crown status.

Background

478 Clause 66, subsections (3)(a) and (b) give scope to determine, in regulations, how the individual responsible for overseeing and monitoring the determination of complaints – "the Ombudsman" – will be appointed. Clause 70 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 71: Guidance for scheme administrator and local housing authority

Effect

479 Clause 71 allows for an approved or designated redress scheme to 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.

480 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.

481 Subsection (1) allows for official guidance on how local authorities and any approved or designated 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 72, to require an approved scheme to also take into account this guidance, as outlined in subsections (2) and (3).

Background

482 This is a new provision.

Clause 72: Interpretation of Chapter 2

Effect

483 This provides essential definitions for words and phrases used in Chapter 2, namely for "landlord redress scheme" defined under Clause 65, subsections (2), "residential premises" defined under section 1, subsection (4) of the Housing Act 2004, and "residential landlord", "residential tenancy" and "residential tenant" defined under Clause 64.

Background

484 This is a new provision.

Clause 73: Housing activities under social rented sector scheme

Effect

485 Clause 73 amends Schedule 2 of the Housing Act 1996 to prevent residential landlords within the meaning of Clause 64 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 64 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.

486 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.

487 Clause 73 also contains an update to paragraph 10 in Schedule 2 of the Housing Act 1996. Updated paragraphs 10, subparagraph (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 paragraph 10, subparagraph (5), with the Secretary of State specifying the extent to which functions are delegated and any conditions to which it is subject under paragraph 10, subparagraph (6). Where the approved scheme employs the Housing Ombudsman, paragraph 10, subparagraph (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).

488 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

489 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.

490 The Government does not intend to bring Clause 73 into force before the new private rented sector Ombudsman service is established. The provisions in Clause 73 can be brought into force separately, at different times, if this is deemed necessary.

491 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 67 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' Rights Bill.

492 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 74: Other amendments in connection with landlord redress schemes

Effect

493 Clause 74 introduces Schedule 3.

Background

494 This is a new provision.

Clause 75: Local Commissioners' investigation of complaints by persons who are not tenants

Effect

495 Clause 75 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, subsection (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

496 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 76: The database

Effect

497 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.

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

499 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 78, subsection (4) and 80.

Background

500 This is a new provision. Clause 76 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 PRS Database service.

501 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 77: The database operator

Effect

502 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.

503 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.

504 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.

505 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.

506 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

507 The intended use of the powers under Clause 77 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.

508 The Government intends to lay regulations for Clause 77 via the negative procedure.

Background

509 This is a new provision. Clause 77 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 78: Making entries in the database

Effect

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

511 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 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.

512 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.

513 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 80.

514 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 87.

Proposed use of power

515 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.

516 The Government intends to lay regulations for Clause 78 via the affirmative procedure.

Background

517 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 79: Requirement to keep active entries up-to-date

Effect

518 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.

519 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.

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

Proposed use of power

521 Clause 79 explains that the Secretary of State will provide regulations that require active entries in the database to be kept up-to-date.

522 The Government intends to lay regulations for Clause 79 via the negative procedure.

Background

523 This is a new provision. Clause 79 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 80: Circumstances in which active entries become inactive and vice versa

Effect

524 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.

525 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.

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

Proposed use of power

527 Clause 80 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.

528 The Government intends to lay regulations for Clause 80 via the negative procedure.

Background

529 This is a new provision. Clause 80 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 five 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 81: Verification, correction and removal of entries

Effect

530 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.

531 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

532 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.

533 The Government intends to lay regulations for Clause 81 via the negative procedure.

Background

534 This is a new provision. Clause 81 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 100 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 82: Fees for landlord and dwelling entries

Effect

535 Subsection (1) provides that this Clause applies where regulations are made under Clauses 78 or 80 requiring the payment of a fee for the creation or renewal of "landlord entries" and "dwelling entries".

536 Subsection (2) provides that regulations must (a) specify the amounts of any fees, or (b) if the regulations state that fees are to be determined by the database operator, the regulations may outline "relevant costs" which fees must be calculated with reference to There may be different fee amounts for different landlords/circumstances. Subsection (3) provides that fee amounts specified in regulations (as permitted under subsection (2)(a)) are to be calculated by reference to the "relevant costs".

537 For the purposes of regulations made relying on subsection (2), what is meant by "relevant costs" is set out in subsection (3A). These are costs incurred in or associated with, or likely to be incurred or associated with (a) the establishment and operation of the database, such as setting up the database, testing and integration, the maintenance of technology and the provision of administrative support to users, (b) the enforcement of requirements in respect of the database under this chapter, such as verifying information submitted (c) the performance of other functions of the database operator under this chapter, like the provision of guidance to residential landlords, (d) the enforcement of any other requirements imposed under this Act or otherwise "in relation to the private rented sector". Fees can be set at a level that covers relevant costs not directly connected to services provided to the particular fee-payer.

538 Subsection (3B) provides that the fee charged for a database entry to become active again after becoming inactive under Clause 80, subsection (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.

539 Subsection (4) provides that regulations may be used to set out that fees are to be paid to the database operator and who is required to pay any particular fee and in what circumstances.

540 Under subsection (5) 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.

541 Subsection (6) makes provisions about the situation where the Secretary of State is the database operator. Namely, subsection (5) does not apply if the Secretary of State is the database operator (subsection (6)(a)) and that the Secretary of State may pass onto local housing authorities monies collected through fees.

542 Subsection (7) sets out important definitions used in this clause, including what is meant by "in relation to private rented sector". This is used in subclause (3A)(d) which provides for relevant costs to encompass wider enforcement costs incurred by local authorities.

Proposed use of power

543 The enabling powers at Clause 82, subsections (1) and (4) will be used to set fees, with fee amounts determined by reference to "relevant costs" which include the establishment, operation and enforcement of the database and wider private renter sector enforcement. Clause 82, subsection (5) is a direction making power

544 Regulations made under clause 82, subsection (1) and (4) will be subject to the negative procedure.

Background

545 This is a new provision. The Government intends to charge a fee to landlords for registration on the database. This includes an enabling power to set fee amounts by reference to "relevant costs". The "relevant costs" are the costs that can be recovered via database fees. These costs can include the cost of setting up and running the database and wider enforcement costs arising in the private rented sector. The fee amounts will be set out in the regulations. Or, if regulations provide that the database operator determine fee amounts these amounts must also be set up reference to "relevant costs", meaning they 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 82, subsection (3B).

Clause 83: Restrictions on marketing, advertising and letting dwellings

Effect

546 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 100 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 85.

547 Subsection (3) establishes that all properties being privately let under the criteria set out in Clause 64 must be registered on the database. Sub-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.

548 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.

549 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

550 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.

551 The Government intends to lay regulations for Clause 83 via the affirmative procedure.

Background

552 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 83 (subsections (1) and (2)) and could be subject to a penalty under Clause 92.

Clause 84: Entries in the database relating to banning orders, offences, financial penalties, etc.

Effect

553 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.

554 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.

555 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).

556 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.

557 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.

558 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.

559 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.

560 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.

561 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.

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

563 Subsection (11) signposts to the regulation-making power in Clause 87 which will enable entries under this Clause to be made available to the public.

564 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 2016") that a) was made on or after the date Clause 84 comes into force, b) bans a person from letting housing (within the meaning of Part 2 of the HPA 2016) in England and c) relates to an offence which was committed when the person was a residential landlord (as defined under Clause 64), 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 2016) committed a) on or after the day on which Clause 84 comes into force and b) at a time when the person who committed the offence was a residential landlord (as defined under Clause 64).

Proposed use of power

565 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 78, subsection (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.

566 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 87, subsection (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.

567 Subsection (8)(c) prescribes that the Secretary of State may make regulations which determine what information must be included in an entry under Clause 78. 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

568 Clause 84 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 HPA 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.

569 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 85: Allocation of unique identifiers

Effect

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

571 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.

572 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

573 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 86: Other duties

Effect

574 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 83 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.

575 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.

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

Background

577 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 PRS Database 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 87: Access to the database

Effect

578 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.

579 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.

580 Subsection (1)(c)(i) clarifies that regulations may be introduced that set out when an entry made under Clause 84 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.

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

582 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.

583 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

584 Regulations will be made to enable certain information contained in active entries, and in entries made under Clause 84, to be made available to the public. 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.

585 The Government intends to lay regulations for Clause 87 via the negative procedure.

Background

586 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 88: Disclosure by database operator etc

Effect

587 Subsection (1) states that the database operator must not divulge private restricted information collected for the database unless in accordance with Clause 87 or if authorised by regulations under this Clause.

588 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.

589 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.

590 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.

591 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.

592 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.

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

594 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 87(1) and (b) relates to and identifies a specific person including a corporate body.

595 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

596 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.

597 The Government intends to lay regulations for Clause 88 via the affirmative procedure.

Background

598 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 89: Use of information from the database

Effect

599 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.

600 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.

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

602 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

603 This is a new provision.

Clause 90: Removal of entries from database

Effect

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

605 Subsection (2) explains that entries under Clause 84 must be removed from the database 10 years after being made.

606 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

607 This is a new provision. Clause 90 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 91: Restriction on gaining possession

Effect

608 Clause 91 inserts new subsection 5ZA into Section 7 of the Housing Act 1988. This will prevent the court from granting a possession order in circumstances where the residential landlord has failed to comply with the duty under Clause 83, subsection (3)(a) to ensure there is an active entry in the private rented sector database in respect of both the landlord and the dwelling. This does not apply if the ground under which possession is sought is ground 7A or ground 14 (tenant anti-social behaviour).

609 Subsection (2) clarifies that regulations may make changes to the persons whom or circumstances in which a breach of Clause 83, subsection (3)(a) prevents the making of an order for possession.

Proposed use of power

610 The power in this section will allow the Secretary of State to make changes to section 7 of the Housing Act 1988. Through regulations, the Secretary of State will be able to amend the persons to whom or the circumstances in which the restriction on granting a possession order applies. The contents of the database have not been fully established as it is still in the prototype stage of development, and delegated powers will therefore set out technical details later. As a result, this power is required to provide requisite flexibility, to ensure the possession restriction targets the right type of landlord and does not place unintended burdens on others as a result of decisions about the database.

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

Background

612 This is a new provision. Clause 91 introduces a restriction on the ability of the court to grant an order for possession of a dwelling-house if the residential landlord does not have an active landlord and dwelling registration in the database. The aim of this clause is to encourage landlords to register on the database by restricting possession for non-compliance

Clause 92: Financial penalties

Effect

613 Subsection (1) provides that a local authority can impose a financial penalty for breach of a requirement imposed by Clause 83 (restrictions on marketing, advertising and letting dwellings) or committed an offence under Clause 93. Subsection (2) sets out the maximum fine amounts.

614 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.

615 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.

616 Subsection (5) sets out that no financial penalty can be imposed in relation to an offence under Clause 93 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.

617 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.

618 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 92 and 93, 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.

Proposed use of power

619 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

620 Clause 92 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 83, or commit an offence related to the database, as set out in Clause 93.

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 93: Offences

Effect

621 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.

622 Under subsection (2) a person who has received a financial penalty for a breach of a requirement imposed by Clause 83, subsections (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, as long as the final notice imposing the penalty has not been withdrawn.

623 Under subsection (3) a person who has received a financial penalty for breach of a requirement imposed by Clause 83, subsections (1), (2) or (3) commits an offence if they commit a different breach within the next five years.

624 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 83, subsections (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.

625 Subsection (5) describes what is meant by a relevant penalty in subsections (2) to (4). A relevant penalty means a financial penalty imposed under Clause 92 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.

626 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.

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

628 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.

629 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.

Background

630 Clause 93 defines the offences of continuing and repeat breaches of requirements imposed by Clause 83, subsections (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 £40,000.

Clause 94: Power to direct database operator and local housing authorities

Effect

631 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.

632 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.

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

Proposed use of power

634 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

635 This is a new provision. Clause 94 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 95: Entries under section 84: minor and consequential amendments

Effect

636 Clause 95 amends the Housing and Planning Act 2016.

637 Subsection (2) inserts a new subsection into section 28 of the HPA 2016 which signposts those referring to rogue landlords in the HPA 2016 to the new database to be established under the Renters' Rights Act.

638 Subsection (3) inserts new subsections (3) and (4) into section 29 of the HPA 2016 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' Rights Act comes into force; or b) banning orders made on or after the date the Renters' Rights Act comes into force where the order does not ban a person from letting a house in England or c) where the order relates to an offence which was committed by a person who, at the time, was neither a residential landlord nor were they marketing a dwelling for the purpose of creating a residential tenancy (as defined in Part 2 of the Renters' Rights Act)

639 Subsection (4) inserts a new subsection (8) and (9) into section 30 of the HPA 2016 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' Rights Act comes into force; or b) banning order offences committed on or after the date the Renters' Rights Act comes into force where the order relates to an offence which was committed by a person who, at the time, was neither a residential landlord nor were they marketing a dwelling for the purpose of creating a residential tenancy (as defined in Part 2 of the Renters' Rights Act)

Background

640 Clause 95 sets out amendments made to the Housing and Planning Act 2016 (HPA), in relation to Clause 84. 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 96: Different provisions for different purposes: joint landlords

Effect

641 Clause 96 clarifies that regulations made under Chapter 3 may include different provision for joint landlords, and provides an example that provision may be made to allow for a single landlord entry in respect of joint landlords.

Background

642 Clause 96 clarifies that specific provisions may be made for joint landlords.

Clause 97: Interpretation of Chapter 3

Effect

643 The meaning of "database" is the database established under Clause 76.

644 The definition of "lead enforcement authority" is taken from Clause 111, and the definition of "the landlord legislation" is taken from Clause 107.

645 The definition of "relevant banning order" is derived from Chapter 2 of Part 2 of the Housing and Planning Act 2016. A banning order is made by the First-tier Tribunal and prohibits a person from letting housing in England, engaging in English letting agency work, engaging in English property management work, or undertaking two or more of these activities. A banning order is a relevant banning order for the purposes of the database if: it is made on or after the day Clause 84 comes into force; bans a person from letting housing in England; and, relates to an offence committed when the person was a residential landlord or marketing the property to let on a residential tenancy.

646 The definition of "relevant banning order offence" is derived from Chapter 2 of Part 2 of the Housing and Planning Act 2016. A banning order offence refers to an offence specified by regulations made by the Secretary of State under section 14 of the Housing and Planning Act

2016. A banning order offence is a relevant banning order offence for the purposes of the database if it is committed: on or after the day Clause 84 comes into force; and, at a time when the person who committed the offence was a residential landlord or marketing the property to let on a residential tenancy.

647 The meaning of "unique identifier" is given in Clause 85, subsection (1).

648 Subsection (2) provides that, for the purposes of Chapter 3, a lead enforcement authority is "responsible" for the provisions of the landlord legislation for the purposes of which it is such an authority under arrangements made by the Secretary of State.

Background

649 Clause 97 provides a definition of "database", "lead enforcement authority", "the landlord legislation", "relevant banning order", "relevant banning order offence" and "unique identifier" for the purposes of Chapter 3 (The Private Rented Sector Database).

Chapter 4 – Part 2: Supplementary Provision

Clause 98: Financial assistance by Secretary of State

Effect

650 Clause 98 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.

651 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.

652 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 67 and 92 are insufficient to meet the costs of enforcement action required.

Background

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

Clause 99: Rent repayment orders for offences under the Housing Act 1988 and sections 68 and 93 of this Act

Effect

654 Clause 99 amends sections of Chapter 4 of Part 2 of the Housing and Planning Act 2016 ("the 2016 Act") which make provision for rent repayment orders.

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

a. knowingly or recklessly misusing a possession ground (under section 16J, subsection (1) of the Housing Act 1988)

b. breach of restriction on letting or marketing a dwelling-house (under section 16J, subsection (2) of the Housing Act 1988)

c. continuing breaches in relation to tenancy reform (under section 16J, subsection (3) of the Housing Act 1988)

d. continuing breaches in relation to the landlord redress scheme,

e. continuing breaches of the requirement for a residential landlord to have an active landlord and dwelling entry on the private rented sector database which complies with the requirements set by regulations under clause 79 (Requirement to keep active entries up to date), and

f. knowing or reckless provision of false or misleading information to the private rented sector database.

656 Subsection (3)(b) provides that where a tenant is seeking a rent repayment order for an offence under section 16J, subsections (1) or (2) of the HA 1988, the property does not have to have been let to the tenant when the offence occurred.

657 Subsection (4) extends the period in which a rent repayment order can be sought from 12 months to two years beginning with the date the offence was committed. The purpose of this is to widen eligibility and make it easier for tenants to recover more rent, up to the two-year maximum, in circumstances where an offence has not been continuous, for example because a property has fallen in and out of the requirement to hold an HMO licence.

658 Subsections (5)(a) and (6)(a) include these offences in the tables in sections 44 (amount of order: tenants) and 45 (amount of order: local housing authorities) of the 2016 Act setting out the periods of rent or universal credit paid to which the rent repayment order must relate.

659 Subsections (5)(b) and (6)(b) provide that, when determining the amount of the award under section 44 or 45 of the 2016 Act, in addition to convictions, the Tribunal must now take into account whether the landlord has at any time received a financial penalty for any of the offences to which Chapter 4 of the Act applies and whether the landlord has at any time had a rent repayment order made against them.

660 The combined effect of subsection (7)(a) and the deletion of the previous Condition 2 in section 46, subsection (3) of the 2016 Act is that, where a landlord has been convicted of or received a financial penalty for any offence to which Chapter 4 of the Act applies, the Tribunal must award the maximum amount. The purpose is to ensure that the deterrent effect of rent repayment orders is equally strong across all offences to which the rent repayment order regime applies, and to increase the deterrent effect for the offences to which this provision did not previously apply.

661 Subsection (7)(b) creates a new Condition 2 in section 46, subsection (3) the 2016 Act. New Condition 2 provides that where a rent repayment order is made against a landlord for an offence ("the relevant offence") and the landlord has at any time been convicted of, received a financial penalty for or had a rent repayment order made against them in respect of another offence, the Tribunal must award the maximum amount that can be awarded, provided the two offences are the same. The intention is to ensure that the deterrent effect is increased against landlords who repeat the criminal behaviour that they have previously been subject to enforcement action for.

662 Subsection (7)(c) provides that the two offences relating to failure to hold the correct licence for a property are treated as the same offence for the purpose of section 46, subsection (3) of the 2016 Act.

Background

663 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 and extend the period in which a rent repayment order can be sought after the offence. The provisions also include measures to increase the deterrent effect of rent repayment orders and to treat instances of repeat offending more harshly

Clause 100: Interpretation of Part 2

Effect

664 Subsection (1) defines what a "dwelling" is for the purposes of Part 2.

665 Subsection (2) clarifies that "Residential landlord", "residential tenancy" and "dwelling" are defined in Clause 64, subsections (1) and (2).

666 Subsection (3) 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 64, 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.

667 Subsection (4) explains that subsection (3)(a) will not apply to a person who facilitates an advertisement regarding letting a residential property as part of that business if the business does not involve lettings agency work and the advert was supplied by another person. 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.

668 Subsection (5) defines "lettings 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.

669 Subsection (6) 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 they have not carried out 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 (b) provide methods for tenants and landlords to establish communication regarding renting a residential property in response to an advert, or (c) provide methods for a prospective landlord to communicate with a prospective tenant they will not be considered as conducting lettings agency work.

670 Subsection (7) confirms that lettings agency work does not include things of a description, or things done by a person of a description specified in regulations made by the Secretary of State.

Proposed use of power

671 Clause 100 clarifies how certain definitions contained in Part 2 of the Bill are to be interpreted.

Background

672 Subsections (5), (6) and (7) of this Clause outlining the definition of lettings agency work echo the legislation laid out in Section 83 (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 101: Decent Homes Standard

Effect

673 Subsection (2) amends section 1 (new system for assessing housing conditions and enforcing housing standards) of the Housing Act 2004 to specify that Part 1 of the 2004 Act allows Decent Homes Standard (DHS) requirements to be set and enforced.

674 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 (5)), 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.

675 Subsection (4) provides that, before introducing regulations under subsection (3), the Secretary of State must consult such persons as the Secretary of State considers appropriate.

676 Subsection (5) inserts two new sections, 2A (Power to set standards for qualifying residential premises) and 2B (Qualifying residential premises), 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 (and buildings or parts of buildings

constructed or adapted for use as HMOs that are occupied by single households) 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. Subsection 2B(4) provides that, before making regulations under subsection 2B(3), the Secretary of State must consult such persons as the Secretary of State considers appropriate.

Proposed use of powers

677 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. The Government must also consult such persons as the Secretary of State considers appropriate before exercising this power.

678 The provision inserted into subsection 2A(1) of the Housing Act 2004 by subsection (4) will allow DHS requirements to be set in regulations 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.

679 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. The Government must also consult such persons as the Secretary of State considers appropriate before using this power.

Background

680 Clause 101 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.

681 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

Chapter 1 – Sanctions

Clause 102: Financial penalties

Effect

682 Clause 102 applies the procedure for imposing, appealing and recovering a financial penalty set out under Schedule 4 to financial penalties imposed under Clauses 42, 67 and 92.

Background

683 This is a new provision.

Clause 103: Rent repayment orders: liability of landlords and superior landlords

Effect

684 Clause 103 amends sections of Chapter 4 of Part 2 of the Housing and Planning Act 2016 which make provision for rent repayment orders.

685 Subsection (2) replaces section 40, subsections (1) and (2) of the Housing and Planning Act 2016 ("HPA 2016") 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. Subsection (2) clarifies that a rent repayment order can be made against a landlord or any superior landlord in favour of a tenant regardless of who the tenant, or the person paying rent on behalf of the tenant, paid the rent to. Rent repayment orders can also be awarded to local housing authorities in respect of a relevant award of Universal Credit made by the authority.

686 Subsection (2) inserts new subsection (2A) into section 40 of the HPA 2016. This ensures that references to the "landlord" in Chapter 4 of the HPA 2016 are in appropriate cases to be read as references to the "superior landlord". Subsection (2A) provides that "person" is to be replaced with "landlord" in section 41 (application for rent repayment order) to ensure that a rent repayment order is available against both landlords and superior landlords.

687 Subsection (3) inserts new section 46A into the list of provisions in accordance with which the decision on amount of the rent repayment order must be determined.

688 Subsections (4) and (5) amend sections 44 (amount of order: tenants) and 45 (amount of order: local housing authorities) of the HPA 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:

a. the value to be paid 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;

b. the maximum amount payable is doubled from 12 months to two years rent;

c. the amount to be paid does not have to have been paid directly to the landlord against whom the rent repayment order is sought.

d. the amount the landlord is ordered to pay can relate to rent paid by the tenant and rent paid on behalf of the tenant in respect of the relevant period.

689 Subsection (6) inserts new section 46A into the HPA 2016. Section 46A, subsection (1) provides that, where a rent repayment order is made against more than one landlord, those landlords must be held jointly and severally liable for the amount due under that order. Section 46A, subsection (2) provides that, where a rent repayment order is made under a tenancy and then a subsequent rent repayment order is made in respect of the same tenancy, the new order may not require payment to be made in respect of any period in which the original order was made.

690 Section 44, subsection (4) of the HPA 2016 lists the factors which must in particular be taken into account by the First-tier Tribunal when determining the amount of a rent repayment order. Clause 103, subsection (4) provides that, in addition to those already listed, the First-tier Tribunal must also take into account any rent received by the tenant in respect of the period covered by the order in relation to the housing let to the tenant. The purpose of this is to ensure that where a tenant is letting all or part of a property to subtenants (and therefore acting as a landlord), the First-tier Tribunal must take into account the rent they have received from their subtenants.

Background

691 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 HPA 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 to account for longer periods of non-compliance and to ensure that rent repayment orders have a stronger deterrent effect. 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 leaves the property and seeks 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 104: Rent repayment orders: liability of directors etc

Effect

692 Clause 104 inserts a new section into Chapter 4 of Part 2 of the Housing and Planning Act 2016 which makes provision for rent repayment orders.

693 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.

694 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

695 Individual officers of landlord companies can be prosecuted or, with the exception of offences under section 32, subsection (1) of the Housing Act 2004 and section 6, subsection (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 105: Unlicensed HMOs and houses: offences

Effect

696 Clause 105 amends sections 72 (offences in relation to licensing of HMOs) and 95 (offences in relation to licensing of houses under Part 3) of the Housing Act 2004 which, respectively, concern offences in relation to the licensing of Houses in Multiple Occupation (HMOs) and properties subject to selective licensing.

697 Subsection (2) replaces section 72, subsection (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.

698 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 for having control of or managing an HMO that is required to be licensed but is not, or for being an immediate landlord or licensor of such an HMO, it is a defence for them to prove that they had a reasonable excuse for managing or having control of an unlicensed HMO, or for being an immediate landlord or licensor of a person occupying an unlicensed HMO. 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 for failing to ensure that it was licensed.

699 New subsection (4C) provides that a term in a tenancy agreement between a superior and an immediate landlord relating to the occupation of the building or part of the building as an HMO will not by itself establish any of the defences listed in subsection (4B). The purpose is to ensure that the First-tier Tribunal does not refuse an rent repayment order application against a superior landlord solely based on the existence of a term in their tenancy agreement with the immediate landlord, and instead considers the wider circumstances – for example, whether the superior landlord has taken proactive steps to make sure the term in the agreement has been complied with.

700 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.

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

Background

702 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 106: Service of improvement notices on landlords and licensors

Effect

703 Clause 106 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

704 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 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.

Chapter 2 – Enforcement Authorities

Clause 107: Enforcement by local housing authorities: general duty

Effect

705 Subsection (1) of Clause 107 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 Clause 134 (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.

706 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.

707 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

708 This is a new provision.

709 This Clause provides that enforcement of the prohibitions of the landlord legislation will be the duty of local housing authorities in England.

Clause 108: Enforcement by local housing authorities: duty to notify

Effect

710 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).

711 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

712 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 109: Enforcement by county councils: duty to notify

Effect

713 Clause 109 replicates the notification requirements that Clause 108 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

714 Clause 107 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 110: Duty to Report

Effect

715 Clause 110 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

716 "The landlord legislation" is defined in Clause 104, subsection (5).

Clause 111: Lead enforcement authority

Effect

717 Subsection (1) of Clause 111 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".

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

719 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.

720 Subsections (5) and (6) define various terms used in the lead enforcement authority provisions including "relevant person" which is defined in subsection (5) as a combined authority, the Greater London Authority, or a local housing authority. "The landlord legislation" is defined in Clause 107, subsection (5).

Background

721 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 Bill clause 107, subsection (5). Only a "relevant person" can be appointed a lead enforcement authority.

722 The approach is similar to that taken in existing estate and letting agent legislation. The Estate Agents Act 1979 (EAA 1979) and the Tenant Fees Act 2019 (TFA 2017) each provide the Secretary of State with a power to act as or appoint a lead enforcement authority for the purposes of the EAA 1979 and the relevant letting agency legislation (as defined in section 24 of the TFA 2019) respectively. Powys Council was appointed the lead enforcement authority under the EAA 1979 (across the UK), and Bristol City Council was appointed the lead enforcement authority under the TFA 2019 (which applies to England only).

Clause 112: General duties and powers of lead enforcement authority

Effect

723 Subsection (1) of Clause 112 gives a lead enforcement authority the duty to oversee the operation of the landlord provisions for which it is responsible.

724 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.

725 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 for which it is responsible. Subsection (5) provides that local housing authorities must have regard to that guidance.

726 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. A lead enforcement authority's advisory remit does not extend to social housing.

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

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

Background

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

730 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 113: Enforcement by the lead enforcement authority

Effect

731 Subsection (1) of Clause 113 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 Clause 126 (suspected residential tenancy: entry without warrant) applies for a lead enforcement authority.

732 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.

733 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

734 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.

735 Some local housing authorities may lack the capacity and capability to enforce these measures in particularly complex 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.

Chapter 3 – Investigatory Powers

Clause 114: Power of local housing authority to require information from relevant person

Effect

736 Clause 114 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.

737 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

738 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 115: Power of local housing authority to require information from any person

Effect

739 Clause 115 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.

740 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.

741 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

742 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 114, 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 115 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 116: Enforcement of power to require information from any person

Effect

743 Clause 116 provides for enforcement by the local housing authority if a person fails to comply with a notice to provide certain information under Clause 115. 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.

744 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

745 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 117: Limitation on use of information provided under section 115

Effect

746 Clause 117 introduces limitations on the use of information obtained under Clause 115. 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.

747 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

748 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 118: Business premises: entry without warrant

Effect

749 Clause 118 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 115, subsection (3)).

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

751 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.

752 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

753 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 119: Duties where occupiers are on business premises entered without warrant

Effect

754 Clause 119 imposes duties on officers of local housing authorities that apply if one or more occupiers are found when entering business premises without a warrant.

755 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 114, subsections (1) and (2)).

756 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 118 will not be invalidated by reason of that failure alone.

Background

757 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 120: Business premises: warrant authorising entry

Effect

758 Clause 120 gives justices of the peace the power to issue a warrant authorising an officer of a local housing authority to enter business premises.

759 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 122 or could seize under Clause 123.

760 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

761 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 121: Business premises: entry under warrant

Effect

762 Clause 121 authorises the officer named in a warrant issued under Clause 120 to enter premises specified in the warrant at any reasonable time and, if needed, using reasonable force. A warrant issued under Clause 120 does not permit entry into premises that are used wholly or mainly as residential accommodation.

763 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.

764 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.

765 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

766 This Clause makes provision about what a warrant issued under Clause 120 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 122: Power to require production of documents following entry

Effect

767 The powers under Clause 122 are available to an officer of a local housing authority who has entered business premises either without a warrant under Clause 118, subsection (1) or with a warrant under Clause 120. 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.

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

769 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.

770 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

771 This Clause gives a power to an officer of a local housing authority who has entered premises without a warrant under Clause 118, subsection (1) or with a warrant under Clause 120 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 123: Power to seize documents following entry

Effect

772 Clause 123 gives an officer of a local housing authority the power to seize and detain documents after entering a property under Clause 118 (power to enter business premises without a warrant) and Clause 120 (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".

773 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.

774 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.

775 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.

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

Background

777 This Clause provides officers of local housing authorities with the power to seize documents after exercising either of the powers of entry under Clause 118 and Clause 120. 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 124: Access to seized documents

Effect

778 Clause 124 sets out how and by whom documents seized under Chapter 3 (Investigatory Powers) can be accessed.

779 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.

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

Background

781 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 125: Appeal against detention of documents

Effect

782 Clause 125 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.

783 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.

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

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

Background

786 This Clause provides an appeal mechanism against the detention of documents seized under Clause 123. This means persons with an interest in documents seized under Clause 123 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 126: Suspected residential tenancy: entry without warrant

Effect

787 Clause 126 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.

788 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 64); 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.

789 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.

790 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.

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

Background

792 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).

793 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 127: Duties where occupiers are on residential premises entered without warrant

Effect

794 Clause 126 sets out the requirements when exercising the power of entry without warrant to suspected residential tenancies under clause 126 and there are occupiers on the premises.

795 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)).

796 Subsection (3) provides that proceedings resulting from the use of the power under Clause 126, subsection (1) do not become invalid solely because an officer failed to produce evidence of their identity and special authorisation to an occupier.

797 Subsection (4) provides that "special authorisation" has the same meaning as in Clause 126.

Background

798 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 128: Suspected residential tenancy: warrant authorising entry

Effect

799 Clause 128 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.

800 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 64); 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 118, subsection (1)(b) has occurred.

801 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 126, subsection (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

802 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 129: Suspected residential tenancy: entry under warrant

Effect

803 Clause 129 authorises the officer named in the warrant issued under Clause 128 to enter the premises specified in the warrant at any reasonable time and, if needed, using reasonable force.

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

805 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.

806 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.

807 Subsections (6) and (7) provide what an officer must do if there are no occupiers present when the premises are entered.

Background

808 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 130: Powers of accompanying persons

Effect

809 Clause 130 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

810 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 131: Offences

Effect

811 Clause 131 creates new offences in relation to the new investigatory powers in Chapter 3 of this Bill and provides the penalties for those offences.

812 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 115 (power of local housing authority to require information from any person).

813 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).

814 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).

815 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

816 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 132: Investigatory powers: interpretation

Effect

817 Clause 132 provides essential definitions for words and key terms used in the investigatory powers chapter.

818 Subsection (1) defines "document", "give", "occupier", "premises", "relevant person" and "the rented accommodation legislation".

819 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.

820 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.

821 Subsection (5) defines "the data protection legislation".

Background

822 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 133: Additional powers of seizure under Criminal Justice and Police Act 2001

Effect

823 Clause 133 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 122, subsection (1)(b) and Clause 123 of the Renters' Rights 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 122, subsection (1)(b) and 123 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

824 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 122, subsection (1)(b) and 123 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 134: Use by local housing authority of certain information

Effect

825 Clause 134 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

826 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.

827 The new provisions that are brought into scope include rental discrimination, 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.

828 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 135: Investigatory powers under the Housing Act 2004

Effect

829 Clause 135 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 Decent Homes Standard (DHS) within the private rented sector.

830 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.

831 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

832 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.

833 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 136: Client Money Protection schemes: investigatory powers of local authorities

Effect

834 Clause 136 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

835 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 137: Interpretation

Effect

836 Clause 137 provides a definition for "local housing authority" and "the 1988 Act" where used throughout this Bill.

Clause 138: Crown application

Effect

837 Clause 138 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 Clauses 68 and 93, and parts of Part 4 Chapter 3. The Crown cannot be prosecuted for offences committed under Clauses 68 or 93, but it is possible for a financial penalty of up to £40,000 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 138, subsection (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

838 This is a new provision.

Clause 139: Application to Parliament

Effect

839 Clause 64 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 64 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.

840 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 68 and 93.

841 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

842 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 140: Regulations

Effect

843 Clause 140 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.

844 It allows regulations to be made in a different way for different purposes or geographical areas to provide, for example, for staged implementation.

845 The Clause provides that all regulations made under the following Clauses are to be made by statutory instrument using the affirmative procedure: Clauses 3, subsection (7); 32; 41; 50; 56; 64; 65; 66; 83, subsection (4); 91, subsection(2); 84, subsection (6); 87; or 88, subsection(2). All other regulations made are subject to the negative resolution procedure.

846 Regulations made by Welsh Ministers under Clause 49 must also follow the affirmative procedure in the Senedd Cymru.

847 The Clause does not apply to regulations made under Part 5 itself, nor by Welsh Ministers under Clause 141.

848 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.

849 Subsection (9) provides that any statutory instruments laid under the powers provided for in Clause 65 will not be treated by Parliament as hybrid instruments.

Background

850 This is a new provision.

851 In relation to subsection (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.

852 If the Ombudsman is delivered through a phased rollout, the statutory instruments used under Clause 65 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 141: Power of Welsh Ministers to make consequential provision

Effect

853 Clauses 141 allows the Welsh Ministers to make provision that is consequential on Part 1 of the Renters' Rights Bill.

854 The regulation-making power is conferred by subsection (1). Subsection (2) provides that regulations under Clause 136 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.

855 Regulations must be made under the affirmative procedure if amending primary legislation subsection (6), negative if otherwise subsection (7), and are constrained by the legislative competence of the Senedd (subsection (5)).

Proposed use of powers

856 The power will allow the Welsh Ministers to make consequential amendments arising from the Bill.

Background

857 Part 1 of the Renters' Rights 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 142: Power of Scottish Ministers to make consequential provision

Effect

858 Clause 142 allows the Scottish Ministers to make provision that is consequential on Chapter 5 of Part 1 of the Bill.

859 The regulation-making power is conferred by subsection (1). Subsection (2) provides that regulations under Clause 142 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.

860 Regulations must be made under the affirmative procedure if amending primary legislation (subsection (6)), negative if otherwise (subsection (7)), and are constrained by the legislative competence of the Scottish Parliament (subsection (5)).

Proposed use of powers

861 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

862 This is a new provision.

Clause 143: Power of Secretary of State to make consequential provision

Effect

863 Clause 143 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.

864 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

865 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 144: Extent

Effect

866 Clause 144 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 145: Commencement

Effect

867 Subsection (1) provides that this Bill, once it receives Royal Assent, comes into force on such day as the Secretary of State may by regulations appoint, subject to subsections (3)-(6) which make specific provision in relation to the coming into force of certain sections, Chapters or Parts. In relation to Part 1 Chapter 1 of the Bill, the day that comes into force in relation to a particular tenancy is known as “the commencement date" (please see Clause 146, subsection(3)).

868 Subsection (2) provides that this Bill comes into force for the purpose of making regulations on the day which it is passed.

869 Subsection (3) of Chapter 4 of Part 1 (Discrimination in the rental market: Wales) comes into force on such day as the Welsh Ministers by order made by statutory instrument appoint.

870 Subsection (4) of Chapter 5 of Part 1 (Discrimination in the rental market: Scotland) comes into force on such day as the Scottish Ministers by regulations appoint.

871 Subsection (5) provides that Chapter 2 of Part 1 (which outlines tenancies that cannot be assured tenancies), Clause 61 (which omits Part 3 from the Housing and Planning Act 2016), Clause 111 (Duty to report), and Chapter 3 of Part 4 (Investigatory Powers) of the Bill come into force two months after the day the Bill is passed.

872 Subsection (6) provides that clause 111 (Lead enforcement authority) and Part 5 (General) comes into force on the day in which this Bill is passed.

873 Subsection (7) provides that different days may be appointed under this clause for different purposes, subject to subsection (8).

874 Subsection (8) provides a limitation to subsection (7) in relation to the commencement of Chapter 1 of Part 1. It provides that different days may be appointed for different purposes in relation to that Chapter only to the extent that one day is appointed for the purposes of all assured tenancies that are not social housing assured tenancies (defined in subsection (8)). For assured tenancies that are not social housing assured tenancies the Act will come into force on the same day. This means that there will be one "commencement date" where the Act applies to both new and existing tenancies. Whilst one or more different days may be appointed to commence Chapter 1 Part 1 in relation to social housing assured tenancies.

Background

875 This provision provides for how different provisions of the Bill will be commenced.

Clause 146 Existing assured tenancies to continue as section 4A assured tenancies

Effect

876 Subsection (1) provides that the commencement of Chapter 1 of Part 1 (where an existing tenancy becomes a section 4A assured tenancy) does not affect the continuation of an existing tenancy on and after the commencement date (as a section 4A assured tenancy that is subject to the other provisions of that Chapter). This is to prevent any interpretation that the transition of an existing tenancy into a section 4A assured tenancy is such a significant change so as to end the tenancy. Subsection (2) introduces Schedule 6 which contains transitional provision relating to the application of Chapter 1 of Part 1 to existing tenancies.

877 Subsection (3) defines "the commencement date", as a date appointed by the Secretary of State by regulations on which Chapter 1 of Part 1 comes into force in accordance with Clause 145 in relation to a particular assured tenancy. In practice this means that the commencement date will be the same day for most assured tenancies. It will be from that date that the changes brought about by Chapter 1 of Part 1 will apply to those tenancies (subject to the transitional provisions in Schedule 6). It is possible that a different commencement date or dates will apply to social housing assured tenancies. Subsection (3) also defines an existing tenancy as an assured tenancy which is entered into before the commencement date and a section 4A assured tenancy as an assured tenancy to which section 4A of the 1988 Act (as inserted by clause 1 of this Bill) applies.

Background

878 This provision provides for how Chapter 1 Part 1 of the Bill (assured tenancies) applies to all existing tenancies and new assured tenancies once Clauses come into force. It also defines

what is meant by "the commencement date" which is an important term used in the Bill as it is the start date from when provisions in Chapter 1 Part 1 apply to particular descriptions of assured tenancies. Clause 142, subsection (8) provides that one day may be appointed to commence Chapter 1 Part 1 in relation to all assured tenancies that are not social housing assured tenancies. In practice, with the possible exception of social housing assured tenancies, the effect of this is that Chapter 1 Part 1 of the Bill will come into force in relation to assured tenancies on the same day.

Clause 147: Fixed term assured tenancy and statutory periodic tenancy to be treated as single assured tenancy

Effect

879 Subsection (1) provides that, for the purposes of the relevant provisions (listed in subsection (2)), 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. 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 in the Housing Act 1988 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 14. 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.

880 Subsections (3) to (6) provide an affirmative procedure power so that the Secretary of State can amend the definition of "relevant provisions" in subsection (2) via regulations.

Background

881 This provision provides that when a fixed term assured tenancy expires and it becomes a periodic tenancy according to section 5 of the Housing Act 1988, it is to be treated as a single assured tenancy for the purpose of certain provisions – called "relevant provisions" in the clause. 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.

Clause 148: Transitional provision

Effect

882 Clause 148 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 (12)), 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 commencement 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).

883 Subsection (8) ensures that, when regulations under subsection (6)(b) change the effect of private legal instruments made before changes to legislation under Clause 140 regulations

come into force, the parties to those documents can agree a different result instead of the default one provided by the legislation.

884 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.

885 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 discrimination in the rental market 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 149: Short title

Effect

886 This Clause is self-explanatory.

Schedules

Schedule 1: Changes to grounds for possession

Introductory

887 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

888 Paragraph 2 amends ground 1 of Schedule 2 of the Housing Act 1988. Ground 1 cannot be used unless the tenancy began at least one year (the "protected period") before the "relevant date" (as defined in paragraph 12, Part 5 (interpretation) of Schedule 2 to the Housing Act 1988 and in this situation means the date specified in the section 8 notice).

889 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

890 Under existing ground 1, a court is required to award possession if the landlord requires the property to live in as their only or principal home. The amendments expand the category of who may live in the vacated property as their home to include close family.

891 Under existing ground 1 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 requirement is now removed.

892 Under existing ground 1, landlords are required to have provided prior notice to the tenant that the ground may be used. This requirement is now removed from the revised ground 1.

New ground for sale of dwelling-house (1A)

Effect

893 Paragraph 3 inserts a new mandatory possession ground (1A) that is available where 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 be used unless the tenancy began at least one year (the "protected period") before the "relevant date" (ground 1A(c)(i)).

894 Ground 1A(b) provides that the ground cannot be used to obtain possession where 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.

895 Sub-paragraph (c)(ii) provides an alternative to the one-year protected period and provides that the ground can be used where a notice of a compulsory acquisition has been published or served and 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).

896 Sub-paragraph (d) specifies that this ground is not available to certain social landlords.

Background

897 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.

898 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. The exception to the minimum one year protected period 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 possession after rent-to-buy agreement (1B)

Effect

899 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 tenant under an assured tenancy.

900 Sub-paragraph (e) specifies that landlords may only use the ground where the defined period stated in the rent-to-buy agreement has expired.

901 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

902 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.

903 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. The ground will provide them with a mechanism to gain possession to either sell the property or re-let to a different tenant on an assured tenancy (whether on rent-to-buy terms or not) at the end of the scheme, in line with the terms of the agreement.

Amendments of Ground 2: sale by mortgagee

Effect

904 Paragraph 5 amends ground 2 of Schedule 2 of the Housing Act 1988.

905 Sub-paragraph (a) removes the requirement for the mortgage to have started prior to the beginning of the tenancy.

906 Sub-paragraph (b) removes the requirement for prior notice to have been provided to the tenant that the ground may be used.

Background

907 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

908 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%). The ground will apply where the fixed term of the superior lease has ended but the landlord has held over, either under a tenancy at will or on a periodic lease, or where the superior lease ends on or before the end of the fixed term.

Background

909 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

910 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

911 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

912 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%). Superior landlords will also be able to rely upon a section 8 notice served by the intermediate landlord under ground 2ZA to bring a possession claim under this ground by virtue of section 8, subsection (5A) (added by clause 4, subsection (3)(f)).

Background

913 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

914 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. Superior landlords will also be able to rely upon a section 8 notice served by the intermediate landlord under ground 2ZB to bring a possession claim under this ground by virtue of section 8, subsection (5B) (added by clause 4, subsection (3)(f)).

Background

915 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

916 Paragraph 8 removes ground 3 from Schedule 2 of the Housing Act 1988.

Background

917 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.

918 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.

919 Under Schedule 1 of the Housing Act 1988, a holiday letting is excluded from being an assured tenancy 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

920 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 14. 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 3, has been fulfilled.

Background

921 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.

922 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 14 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

923 Paragraph 10 inserts a new ground for possession (ground 4A) that will allow landlords to recover possession of an HMO or dwelling-house in an HMO let to full-time students, if the relevant date (the date specified in the section 8 notice) 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. If the property is let on a joint tenancy, each tenant must be a full-time student when the tenancy is entered into, or, the landlord must reasonably believe they will become full-time students during the tenancy at that point for the ground to be relied upon. If there are individual tenancies between the landlord and each tenant within an HMO, only tenants who meet= the student criteria can be evicted.

924 Landlords will be required to provide written notice before the tenancy is entered into of their intention to use the ground on the basis that the current tenants are full-time students (or the landlord reasonably believes they will become so during the tenancy), 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.

925 Landlords will not be able to use the ground if the tenancy was agreed more than six months in advance of the date on which the tenant has a right to occupy the dwelling.

Background

926 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. The ground being unavailable for tenancies agreed more than six months in advance will disincentivise tenancies being agreed very early in the academic year, which students can feel pressured into and can lead to them making rushed decisions about who they live with.

Amendment of Ground 5: ministers of religion

Effect

927 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 14. 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

928 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.

929 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 14 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

930 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

931 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.

932 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

933 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.

934 The tenant subject to eviction cannot be a person who already fulfils the specified employment-related eligibility criteria.

Background

935 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

936 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.

937 The landlord must be the tenant's employer, or someone acting on behalf of the employer.

Background

938 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

939 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

940 This is a new ground.

941 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.

942 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

943 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

944 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.

945 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

946 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).

947 Paragraph 17, sub-paragraph (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.

948 Sub-paragraph (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.

949 Paragraph 17 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

950 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

951 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.

952 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.

953 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

954 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.

955 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

956 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 supports tenants who meet specified eligibility criteria and who would otherwise struggle to access the private rented sector.

957 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 conditions". Eligibility conditions can include:

a. The tenant being in work for which they are paid

b. The tenant actively seeking work for which they are paid

c. The tenant is either a particular age or within a particular range of ages, which must be in the condition in the tenancy agreement.

958 Sub-paragraph (b) stipulates that the eligibility conditions must be set out in a written tenancy agreement. If a tenancy agreement mentions more than one eligibility condition, then it can stipulate how many conditions a tenant needs to fail to meet before possession can be sought using this ground. However, if the tenancy agreement does not set this out, then the tenant only needs to have failed to meet one of the mentioned eligibility conditions for the ground to be used.

959 Sub-paragraph (c) provides that the ground applies where the tenant no longer meets the eligibility condition(s) or where the tenancy was granted for a period of time to help the tenant transition to independent living and that period has ended.

960 Sub-paragraph (d) provides that the rent must be no higher than 80% of market rent (and here "rent" and "market rent" includes service charges).

961 Sub-paragraph (e) specifies the types of tenancies where the ground cannot be used.

962 Where landlords specify eligibility conditions relating to work in tenancy agreements, paragraph 19 clarifies that this can include (but is not limited to) references to working for a particular employer or sector, to the salary being paid for the work or to the duration of the contract. It also clarifies that a reference to 'work' includes self-employment.

963 The Secretary of State has the power to change the eligibility conditions included in the legislation, remove them or add new ones in, through regulations made subject to the affirmative resolution procedure. He can also make regulations about the meaning of any eligibility condition.

Proposed use of the power

964 The power to modify, remove or add eligibility conditions is necessary to ensure the ground is only used in relation to the right types of schemes and is not available for use by landlords to gain possession of other types of housing.

965 The enabling power in sub-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.

966 These regulations are to be made subject to the affirmative resolution procedure.

Background

967 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 enable them to continue operating these schemes.

Amendments of Ground 6: redevelopment

Effect

968 Paragraph 20 of Schedule 1 to the Renters' Rights Bill 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.

969 Sub-paragraph (6) inserts new paragraphs (a-c) which set out when ground 6 will be available for use, depending on what conditions are met – general redevelopment conditions, the landlord's acquisition condition, and introduces a new additional RSL condition in paragraph (c) which expands when relevant social landlords may use ground 6 where intended work cannot reasonable be carried out without the tenant giving up possession of the dwelling-house.

970 Sub-paragraph (6) inserts new paragraphs (a-f) which specify the general redevelopment conditions that need to be met to comply with the ground.

971 Sub-paragraph 6 (2)(e) specifies that ground 6 cannot be used unless the tenancy began at least 6 months before the relevant date, unless notice of a compulsory acquisition of the land by that acquiring authority was given in respect of the dwelling-house within the previous year, as set out in (2)(e)(ii). An acquiring authority and what constitutes giving notice of a compulsory acquisition is defined in Part 5 of Schedule 2 to the Housing Act 1988 (as inserted by paragraph 24 in Schedule 1 to this Act).

972 Sub-paragraph 6 (3) specifies the landlord's acquisition conditions to be met.

973 Sub-paragraph 6 (4) outlines how the "additional RSL condition" may be met in case A (where alternative accommodation that meets the specified conditions (security of tenure, affordable, appropriate location, and not overcrowded) is available for the tenant or will be available for the tenant when the order for possession takes effect), case B (where alternative accommodation that meets the specified conditions in case B (affordable, appropriate location, not overcrowded) is being provided temporarily until alternative accommodation which meets the conditions in Case A becomes available), or case C (where landlords are accommodating tenants temporarily in properties that are earmarked for redevelopment).

974 Paragraph 20 also inserts a table into ground 6 which sets out when it 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. The table specifies where a "relevant social landlord" can use the ground, including by the landlord seeking possession or a superior landlord for any relevant tenancy. 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,

975 A relevant social landlord must meet the "additional RSL condition" to be able to use Ground 6, and there are three routes (Case A, B and C) in which a relevant social landlord may meet the condition. To meet Case C, the landlord must have notified the tenant in writing before the tenancy began that they may wish to use the ground. If this is not provided, the landlord cannot meet the "additional RSL condition" via the Case C route.

Background

976 Previously social landlords could only use ground 6 of the Housing Act 1988 if the superior landlord intended to carry out redevelopment work. The amendments to ground 6 will enable social landlords to take possession where redevelopment work cannot reasonably be carried out without the tenant giving up possession of the dwelling-house. Under the "additional RSL condition" relevant social landlords will be required to provide alternative accommodation which meets certain criteria specified in case A or B, depending on which case applies.

977 Clause 24 amends section 11 of the Housing Act 1988 (payment of removal expenses in certain cases) so that social landlords are required to pay removal expenses to tenants when the court awards possession under ground 6 (redevelopment). Landlords are also required to pay reasonable expenses in moving the tenant from alternative accommodation provided temporarily under case B of the "additional RSL condition" in ground 6.

978 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.

979 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.

New ground for possession of alternative accommodation provided during redevelopment (6A)

Effect

980 New ground 6A is available where a tenant has been provided with alternative accommodation by a relevant social landlord while redevelopment affecting the tenant's original home is carried out.

981 Paragraph 21, subparagraph 1 (c) requires alternative accommodation to be available or will be available for the tenant when the order for possession takes effect that consists of either the previous home and is affordable, or other premises and meets the conditions of being affordable, in an appropriate location and not overcrowded. The alternative accommodation must be provided as a separate dwelling with adequate security of tenure.

Background

982 Ground 6A is a new mandatory ground for possession for relevant social landlords if the court is satisfied that the conditions in ground 6A are met, notably the provision of alternative accommodation in sub-paragraph 1(c). This supports social landlords to continue to be able to move tenants into alternative accommodation and maximise their use of "decant" accommodation, following the removal of section 21 of the Housing Act 1988.

983 Clause 14 and Clause 15 of the Renters' Rights Bill require prior notice in the written statement of the landlord's intention to be able to recover possession under ground 6A. If the landlord has not provided prior notice in the written statement, the court may still make an order for possession of the property using ground 6A, but in that situation the landlord (or someone acting for or purporting to act for them) may be subject to a financial penalty (see new section 16I (financial penalties) inserted by Clause 17). Clause 24 also amends section 11 of the Housing Act 1988 (payment of removal expenses in certain cases) so that social landlords are required to pay removal expenses to tenants when the court awards possession under ground 6A.

New ground for possession to allow compliance with enforcement action (6B)

Effect

984 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.

985 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 or is in a house which is required to be licensed under s 85 Housing Act 2004 and a licence has been refused or revoked.

f. 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.

g. A Planning enforcement notice or injunction, where compliance with the order or injunction would not be possible if the tenant continues to occupy the dwelling-house

Background

986 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

987 Paragraph 23 amends the existing ground 7 of Schedule 2 of the Housing Act 1988. Sub-paragraph (aa) provides that ground 7 cannot be used where the inheriting person lived in the property as their principal home, immediately before the deceased tenant passed away,

apart from two exceptions. Ground 7 will remain available where the deceased tenant had inherited the tenancy via will or intestacy, or where the tenancy is a 'special tenancy'. 'Special tenancy' is defined as a tenancy of social housing, a rent-to-buy agreement, supported accommodation, temporary accommodation for those who have been deemed statutorily homeless and tenancies that meet some of the criteria for using Ground 5H. The power that will be inserted into the Housing Act 1988 by paragraph 24 of Schedule 1 allows the Secretary of State to amend the definition of 'special tenancy'. The amendment also removes references to fixed term tenancies.

988 Sub-paragraph (b) removes the provision related to long leases, which will now be exempt from being assured tenancies.

Background

989 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). These provisions will prevent it from being used where the inheriting tenant lived in the property immediately prior to the deceased tenant's death, apart from in defined circumstances.

990 Clause 33 of this Bill excludes tenancies of more than 21 years from the assured tenancy regime, so the provision referring to leases granted for a premium (i.e. long leases) within ground 7 is no longer required.

Amendments of Ground 8: rent arrears

Effect

991 Paragraph 24 amends ground 8 of Schedule 2 of the Housing Act 1988. It increases the threshold for mandatory eviction so that tenants must be in at least three months' arrears at the time notice is served and at the court hearing. As payment periods cannot be longer than monthly, it removes references to quarterly and yearly rent arrears. It also introduces a condition 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

992 Ground 8 of Schedule 2 of the Housing Act 1988 currently requires a court to award possession if a tenant owes over two months' rent at the time the landlord initiates possession proceedings and at the time of the court hearing. The universal credit condition 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 a small amount of existing arrears loses their job and applies for Universal Credit (UC). 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 five 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 five 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.

Part 5: Interpretation

Effect

993 Paragraph 25 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

994 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 one year- restriction on use of grounds 1A and 6 month restriction on use of ground 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 6B 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.

995 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".

996 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 6B and definition

Effect

997 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 provide for the use of ground 6B in respect of other enforcement action etc

e. To amend the definition of "supported accommodation" or "managed accommodation" as established in paragraph 12 of Part 5.

f. To amend the definition of 'special tenancy' in Ground 7.

Proposed use of power

998 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.

999 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.

1000 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.

1001 6B: 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.

1002 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.

1003 Ground 7: The power allows the Secretary of State to ensure that landlords under certain tenancies can recover possession where those tenancies have been inherited under a will or the intestacy rules and the new tenant was living there immediately before the former tenant's death. The Government believes it isn't always appropriate or fair for tenants to succeed to certain tenancies, as the property may be reserved, funded or adapted for particular usages (e.g. housing which is provided as supported accommodation for those with particular needs). This power is required to ensure that new types of specialist tenancy can continue to operate effectively in future.

Background

1004 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.

1005 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.

1006 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.

1007 Ground 6B 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.

1008 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.

1009 Ground 7 allows landlords to take possession of a tenancy that has been passed to someone else by will or intestacy (where there is no will). The Bill amends this to prevent it being used where the inheriting person lived in the property immediately before the deceased tenant died, unless the tenancy is a 'special tenancy'.

1010 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 to Chapter 1 of Part 1

Effect

1011 Schedule 2 contains amendments to various enactments that are consequential to Part 1 of the Bill. These include amendments to the Greater London Council (General Powers) Act 1973, Housing Act 1988, the Local Government and Housing Act 1989, 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, the Reserve and Auxiliary Forces (protection of Civil Interest) Act 1951, the Housing Act 1985, the Homelessness Act 2002, the Finance Act 2003, the Housing Act 2004, the Housing and Regeneration Act 2008, the Immigration Act 2016, the Homelessness Reduction Act 2017 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 connected with landlord redress schemes

1012 Introductory 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' Rights Bill.

1013 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 or designated now or in the future – which may only be one.

Local Government Act 1974

1014 Paragraph 2 amends section 33 of the Local Government Act (LGA) 1974.

1015 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.

1016 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.

1017 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.

1018 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.

1019 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.

1020 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.

1021 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.

1022 Paragraph 5 amends section 34 by adding definitions of 'head of landlord redress' and 'landlord redress scheme'.

Housing Act 1996

1023 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.

1024 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.

1025 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

1026 Paragraph 10 amends Schedule 3 of the Building Safety Act 2022. This adds a landlord redress scheme operating under the provisions of the Renters' Rights 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

1027 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 a private landlord Ombudsman service, established under the Renters' Rights 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 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

1028 Paragraph 2 amends section 1 of the Housing Act 2004 to specify that Decent Homes Standard (DHS) requirements only apply to unoccupied HMO accommodation if such accommodation is occupied by persons who form a single household, is either let under a relevant tenancy or is supported exempt accommodation, and is not social housing let by a registered provider of social housing.

1029 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 cover how to assess compliance with DHS requirements.

1030 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.

1031 Paragraph 6 inserts Clause 6A into the Housing Act 2004 to make provision for a new financial penalty of up to £7,000 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.

1032 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.

1033 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.

1034 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.

1035 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.

1036 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.

1037 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. Sub-paragraph (4) of Paragraph A1 specifies who must be served with enforcement notices for supported housing where sub-paragraph (3) does not apply. Paragraph 35 also inserts Paragraph B1 to specify who must be served with enforcement notices in respect of both hazards and failures to meet DHS requirements for temporary homelessness accommodation.

1038 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. Paragraph 36 also inserts provisions to specify that prohibition orders in respect of hazards must be served on landlords of temporary homelessness accommodation, if not covered by other provisions in Schedule 2.

1039 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

1040 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.

1041 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.

1042 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.

1043 Regulations made and guidance issued under the provisions in this Schedule will be subject to the negative procedure.

Background

1044 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.

1045 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 £7,000 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 as an alternative to prosecution. Fines of up to £30,000 can be imposed under the relevant provisions in the Housing Act 2004. The Government intends to use secondary legislation to increase this to £40,000 to reflect inflation since this financial penalty was introduced and be consistent with the fines for similar offences in the Bill.

Part 2: Amendment of other Acts

Effect

1046 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

1047 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 42, 59, 67 or 92, 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

1048 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

1049 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

1050 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

1051 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

1052 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

1053 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

1054 This schedule sets out the process for a local housing authority to impose a financial penalty on a person and applies to Clauses 42, 59, 67 or 92. 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

1055 This schedule provides for how the provisions in Chapter 1 of Part 1 (Assured Tenancies) apply in relation to existing tenancies.

Tenancies which become periodic on the commencement date

Effect

1056 Paragraph 1 provides that where the fixed term of an existing tenancy expires immediately before the commencement date, the amendments made by Chapter 1 of Part 1 do not apply in relation to the tenancy until immediately after the first periodic term has begun.

Section 1: start of deemed rent period for existing tenancies

Effect

1057 Paragraph 2 provides for how section 4A of the 1988 Act (inserted by Clause 1), which deals with rent periods, should be read for existing tenancies.

1058 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 commencement date as applicable.

1059 This paragraph also provides that in subsection (6) "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 commencement date

Effect

1060 Paragraph 3 provides that where a valid section 21 notice has been issued before the commencement 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.

1061 In relation to possession proceedings that have not been commenced immediately before the commencement date, section 21 of the 1988 Act has effect as if it were substituted for subsections (4D) to (4EB). The result of this is that after the commencement date landlords have, at most, 3 months to commence possession proceedings in the court.

Section 4(2)(g): saving of section 7(7) in relation to tenancies where fixed term ends before commencement date

Effect

1062 Paragraph 4 provides that section 7(7) of the Housing Act 1988 continues to apply after the commencement date, despite it being omitted by section 4(2)(g) 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 commencement date.

Section 7: no effect on rent increases before commencement date

Effect

1063 Paragraph 5 provides that the amendments made by clause 7 do not affect the validity of any rent increase for an existing tenancy before the commencement 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 13, 15 and 17: provision of information in writing

Effect

1064 Paragraph 6 provides for how provision of information in writing is to be treated for existing tenancies (those entered into before the commencement 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. This must be done within a month of the commencement date.

1065 Where an existing tenancy agreement is wholly oral, the obligation to provide a written statement of terms needs to be met within a month of the commencement date.

1066 Regulations in this paragraph may make different provision for different purposes, will be made via statutory instrument and are subject to the negative procedure.

Section 17: no liability in respect of conduct before commencement date

Effect

1067 Paragraph 7 means that any conduct engaged in before the commencement date will not result in a financial penalty under sections 16I or 16K of the 1988 Act (inserted by Clause 17) and will not count as an offence under section 16J.

Section 22: no effect on notice to quit given before commencement date

Effect

1068 Paragraph 8 provides that the amendment made by Clause 22 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 commencement date.

Section 26: existing opt-out notices for assured agricultural occupancies

Effect

1069 Paragraph 9 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 commencement date.

Section 28: tenancy deposits

Effect

1070 Paragraph 10 states the amendments made by Clause 28 do not apply to existing assured tenancies that were not assured shorthold tenancies immediately before the commencement date.

Section 29: tenant fees

Effect

1071 Paragraph 11 provides for existing tenancies that were previously assured tenancies (and not assured shorthold tenancies) to continue to remain out of scope of the Tenant Fees Act 2019, until the date at which the Renters' Rights Act applies to them.

Background

1072 Prior to amendments that will be made to it by the Renters' Rights Bill, the Tenant Fees Act 2019 does not currently apply to assured tenancies that are not assured shorthold tenancies.

Schedule 1: student accommodation ground

Effect

1073 Paragraph 12 provides that where existing tenancies transition to the new system, landlords can provide "prior notice" of their intention to rely on ground 4A within one month of the commencement date. This can be done either on the basis that the tenant met the test the provision sets out for student status (the "student test") when the existing tenancy was originally entered into; or that the tenant meets that test at the point at which the landlord provides that "prior notice" via a written statement, or both.

Schedule 1: stepping stone accommodation ground

Effect

1074 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 commencement date.

Schedule 1: redevelopment ground

Effect

1075 Paragraph 14 makes provision for landlords with existing tenancies who wish to use Ground 6. It stipulates that the landlord must provide notice within one month after the "commencement date" rather than before the tenancy was entered into. Without this, social landlords would not be able to comply with the requirement in case C, paragraph (c) of the "additional RSL condition" in ground 6.

Existing tenancies subject to possession notice

Effect

1076 This provision ensures that valid section 8 notices issued prior to the commencement date, where the proceedings had been commenced but not concluded or had not been commenced but have not become time-barred, continue to be valid after the commencement 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. Possession proceeding may not be begun after the end of the applicable period. Applicable period is defined as the period of twelve months included in the notice under section 8 of the 1988 Act in accordance with subsection (3)(c) of that section, or the period of three months beginning with the commencement date, if this three month period ends before the twelve month period mentioned in paragraph (a). 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.

1077 This is a similar provision to the transitional provision for section 21 notices, found in Schedule 6, paragraph 3.

Interpretation

1078 Paragraph 16 defines the terms used in the Schedule.

Commencement

1079 Commencement is provided for by Clause 145. 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 61, 110 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, Clause 111, and Part 5 come into force on the day of Royal Assent.

Financial implications of the Bill

1080 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.

Parliamentary approval for financial costs or for charges imposed

1081 The Bill requires a money resolution because it gives rise to charges on the public revenue. The money resolution will cover—

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 any 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).

1082 The Bill also requires a ways and means resolution because it authorises new charges on the people. The ways and means resolution covered the charging of fees (for 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 18 provides for civil penalties in relation to offences to be paid to the Secretary of State).

1083 The House of Commons approved the money resolution and ways and means resolution at Second Reading on 9 October 2024.

Compatibility with the European Convention on Human Rights

1084 The Minister for Housing and Local Government, Baroness Taylor of Stevenage, has made a statement under section 19, subsection (1)(a) of the Human Rights Act 1998 that, in her view, the provisions of the Bill are compatible with the Convention rights.

Compatibility with the Environment Act 2021

1085 The Minister for Housing and Local Government, Baroness Taylor of Stevenage, is of the view that the Renters' Rights 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

1086 The Minister for Housing and Local Government, Baroness Taylor of Stevenage, is of the view that the Bill 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.

Subject matter and legislative competence of devolved legislatures

1087 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.

1088 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 discrimination against renting to tenants who receive benefits or with children in Part 1 Chapters 4 and 5 will also apply to Wales and Scotland, as will certain provisions within Part 5 (General). Clause 32 (Powers of Secretary of State in connection with Chapter 1), Clause 105 (Unlicensed HMOs and houses: offences), Clause 106 (Service of improvement notices on landlords and licensors), and Clause 144 (Power of the Welsh Ministers to make consequential provision) apply to Wales, but not to Scotland. There are also a handful of consequential and saving provisions within Part 2 which apply there, as do certain provisions relating to redress schemes (Clause 76 and Schedule 3).

1089 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

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 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
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	Yes	No	No	No	No	No	No
Clause 25	Yes	No	No	No	No	No	No
Clause 26	Yes	No	No	No	No	No	No
Clause 27	Yes	No	No	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

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 31	Yes	In Part	No	No	No	No	No
Clause 32	Yes	In Part	In Part	No	No	No	No
Clause 33	Yes	No	No	No	No	No	No
Schedule 2	Yes	In Part	No	No	No	No	No
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
Clause40	Yes	No	No	No	No	No	No
Clause 41	Yes	No	No	No	No	No	No
Clause 42	Yes	No	No	No	No	No	No
Clause 43	Yes	No	No	No	No	No	No
Clause 44	Yes	No	No	No	No	No	No
Clause 45	No	Yes	In Part	No	No	No	No
Clause 46	No	Yes	In Part	No	No	No	No
Clause 47	No	Yes	Yes	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 48	No	Yes	Yes	No	No	No	No
Clause 49	No	Yes	Yes	No	No	No	No
Clause 50	No	Yes	No	No	No	No	No
Clause 51	No	Yes	Yes	No	No	No	No
Clause 52	No	No	No	Yes	Yes	No	No
Clause 53	No	No	No	Yes	No	No	No
Clause 54	No	No	No	Yes	No	No	No
Clause 55	No	No	No	Yes	Yes	No	No
Clause 56	No	No	No	Yes	No	No	No
Clause 57	No	No	No	Yes	Yes	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
2 (Residential Landlords)							

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 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
Clause 67	Yes	No	No	No	No	No	No
Clause 68	Yes	No	No	No	No	No	No
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	Yes	No	No	No	No	No
Clause 74	Yes	Yes	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
Schedule 3	Yes	Yes	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 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
Clause 88	Yes	No	No	No	No	No	No
Clause 89	Yes	No	No	No	No	No	No
Clause 90	Yes	No	No	No	No	No	No
Clause 91	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	No	No	No	No	No	No
Clause 95	Yes	No	No	No	No	No	No
Clause 96	Yes	No	No	No	No	No	No
Clause 97	Yes	No	No	No	No	No	No
Clause 98	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 99	Yes	No	No	No	No	No	No
Clause 100	Yes	No	No	No	No	No	No
Part 3 (Decent Homes Standard)							
Clause 101	Yes	No	No	No	No	No	No
Schedule 4	Yes	No	No	No	No	No	No
Part 4 (enforcement)							
Clause 102	Yes	No	No	No	No	No	No
Schedule 5	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	Yes	Yes	No	No	No	No
Clause 106	Yes	Yes	Yes	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

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 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
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
Clause 126	Yes	No	No	No	No	No	No
Clause 127	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 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	No	No	No	No	No	No
Clause 132	Yes	No	No	No	No	No	No
Clause 133	Yes	No	No	No	No	No	No
Clause 134	Yes	No	No	No	No	No	No
Clause 135	Yes	No	No	No	No	No	No
Clause 136	Yes	No	No	No	No	No	No
Part 5 (General)							
Clause 137	Yes	Yes	No	No	No	No	No
Clause 138	Yes	Yes	No	Yes	No	No	No
Clause 139	Yes	No	No	No	No	No	No
Clause 140	Yes	Yes	No	Yes	No	No	No
Clause 141	No	Yes	No	No	No	No	No
Clause 142	No	No	No	Yes	No	No	No
Clause 143	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 144	Yes	Yes	No	Yes	No	No	No
Clause 145	In Part	In Part	In Part	In Part	In Part	No	No
Clause 146	Yes	No	No	No	No	No	No
Schedule 6	Yes	No	No	No	No	No	No
Clause 147	Yes	No	No	No	No	No	No
Clause 148	In Part	In Part	In Part	In Part	In Part	No	No
Clause 149	Yes	Yes	No	Yes	No	No	No

Annex B – Grounds for possession

1090 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.

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 12 months of a new tenancy.	4 months
1A	Sale of dwelling-house	The landlord wishes to sell the property. Cannot be used for the first 12 months of a new tenancy.	4 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.	4 months
2	Sale by mortgagee	The property is subject to a mortgage and the lender exercises a power of sale requiring vacant possession.	4 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, agricultural landlords, a person who held the dwelling for the purposes of making it supported accommodation or a company majority owned by a local authority.	4 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 term of over 21 years.	4 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, agricultural landlord, a person who held the dwelling for the purposes of making it supported accommodation or a company majority owned by a local authority.	4 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 has expired, or within a 12 month period of the fixed term expiry date, if the fixed term has been ended early. Or if the superior tenancy comes to an end after the expiry of the fixed term as a result of a valid notice.	4 months
4	Student accommodation	In the 12 months prior to the start of the tenancy, the property was let to students. Can only be used by specified educational establishments.	2 weeks

Ground		Summary	Notice Period
4A	Properties rented to students for occupation by new students	A HMO is let to full-time students and is required for a new group of students in line with the academic year. Cannot be used if the tenancy was agreed more than six months in advance of the tenancy starting (i.e. the tenant moving in).	4 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 private registered provider of social housing holds the property for use by tenants meeting requirements connected with their employment and it is required for that purpose (and the current tenant does not fulfil those requirements).	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 private registered provider of social housing, included an employment requirement in the tenancy agreement that the tenant no longer fulfils (e.g., key worker).	2 months
5E	Occupation as supported accommodation	The property is held for use as supported accommodation and the current tenant did not enter the tenancy for the purpose of receiving care, support or supervision.	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, making the accommodation no longer viable or suitable for that tenant, has occurred.	4 weeks
5G	Tenancy granted for homelessness duty	The property has been used as temporary accommodation for a homeless household, under s193 of the Housing Act 1996, and a local housing authority has notified the landlord that the tenancy is no longer required for that purpose. The landlord can only use this ground if within 12 months of the date of the notice from the local housing authority.	4 weeks
5H	Occupation as 'stepping stone accommodation'	A registered provider of social housing or a charity lets to a tenant meeting eligibility criteria (e.g., under a certain age) at "affordable rent", to help them access the private rented sector and/or transition to living independently, and the tenant no longer meets the eligibility criteria, or a limited period has come to an end.	2 months

Ground		Summary	Notice Period
6	Redevelopment	The landlord wishes to demolish or substantially redevelop the property which cannot be done with the tenant in situ. Various time limits and/or notice requirements exist for this ground depending on the circumstances. The landlord and tenancy must be of the kind listed in the table. A relevant social landlord who intends to carry out redevelopment work and seeks possession on Ground 6 either through case A or B will need to provide alternative accommodation that meets specific conditions set out in case A or B and is either available or will be available when an order for possession takes effect.	4 months
6A	Decant Accommodation	The tenant has been provided with alternative accommodation by a relevant social landlord while redevelopment affecting the tenant's original home is carried out.	4 months
6B	Compliance with enforcement action	The landlord is subject to enforcement action and needs to regain possession to become compliant. Under this ground, the court will be allowed to require the landlord to pay compensation to the tenant when ordering possession.	4 months
7	Death of tenant	The tenancy was passed on by will or intestacy, and proceedings began within the requisite period of 12 months. The ground can only be used if the new tenant wasn't living in the property immediately before the previous tenant died, the previous tenant also inherited the tenancy or it is a "special tenancy", e.g. supported accommodation.	2 months
7A	Severe ASB/Criminal Behaviour	The tenant has been convicted of a type of offence listed in the ground, has breached a relevant order put in place to prevent anti-social behaviour or there is a closure order in place prohibiting access for a continuous period of more than 48 hours.	Landlords can begin proceedings immediately
7B	No right to rent	At least one of the tenants has no right to rent under immigration law as a result of their immigration status and the Secretary of State has given notice to the landlord of this.	2 weeks
8	Rent arrears	The tenant has at least 3 months' (or 13 weeks' if rent is paid weekly or fortnightly) rent arrears both at the time notice is served and at the time of the possession hearing.	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

Ground		Summary	Notice Period
12	Breach of tenancy	The tenant is guilty of breaching one of the terms of their tenancy agreement (other than the paying of rent).	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 likely to cause, nuisance or annoyance to the landlord, a person employed in connection with housing management functions, or anyone living in, visiting or in the locality of the property. Or the tenant or a person living or visiting the property 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 and is unlikely to return.	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 in the UK.	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 made knowingly or recklessly by the tenant or someone acting on their instigation.	2 weeks
18	Supported accommodation	The tenancy is for supported accommodation and the tenant is refusing to engage with the support.	4 weeks

This is a revised version to correct an error in Annex A

RENTERS' RIGHTS BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Renters' Rights Bill as brought from the House of Commons on 15 January 2025 (HL Bill 60).

Ordered by House of Lords to be printed, 15 January 2025

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