RENTERS' RIGHTS BILL

Memorandum from the Ministry of Housing, Communities and Local Government to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Renters' Rights Bill ("the Bill"). The Bill was introduced in the House of Commons on 11 September 2024. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. 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 have access to a secure and decent home and that landlords retain the confidence to repossess their properties where they have good reason to. To this end, the Bill seeks to:

   a. Abolish Section 21 '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, 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 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.

   d. 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.

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

f. 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.

g. Extend 'Awaab's Law' to private rented sector tenancies, and allow it to be applied to accommodation occupied under licence, which will require landlords and licensors to remedy serious hazards within timeframes set out in regulations.

h. 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 quickly 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

i. 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.

j. 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.

k. Strengthen local councils' enforcement powers 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.

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

   a. 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 'Awaab's Law' to the private rented sector.

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

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

   d. Part 4 deals with enforcement of the reforms introduced by the Bill including establishing a Lead Enforcement Authority, significantly expanding the use of rent repayment orders and giving new investigatory powers to local housing authorities.

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

C. DELEGATED POWERS

4. The delegated powers in the Bill are:

   a. Part 1: Tenancy reform

      i. **Clause 3(8): Sections 1 and 2: effect of superior leases:** This power allows the Secretary of State to disapply or change the effects of this clause in relation to existing leases of "specified descriptions".

      ii. **Clause 6: Form of notice of proceedings (amending section 8 of the Housing Act 1988):** This power will allow the Secretary of State to prescribe the forms which landlords use when they are

seeking possession on one of the grounds in Schedule 2 to the Housing Act 1988, as amended by Schedule 1 of this Bill.

iii. **Clause 7(7): Statutory procedure for increases of rent (amending section 13 (increases in rent) of the Housing Act 1988):** New section 13(4C)(b) allows the Secretary of State to change the definition of a "relevant low-cost tenancy".

iv. **Clause 9: New Section 4B of the Housing Act 1988, subsection (9): prohibition of rent in advance after lease entered into (except initial rent):** This power allows the Secretary of State to amend section 4B by regulations, to provide for the descriptions of "rent due in advance" that are exempt from the prohibition on rent being due in advance within a tenancy, detailed at subsection (1).

v. **Clause 10: Prohibition of rent in advance before lease entered into:** This power allows the Secretary of State to amend section 5A by regulations, to provide for the descriptions of "rent due in advance" to which the prohibitions on rent in advance before a tenancy is entered into at subsections (1) to (4) apply.

vi. **Clause 14: Duty of landlord and contractor to give statement of terms and other information (inserting new section 16D into the Housing Act 1988):** Under new section 16D(2), the Secretary of State may prescribe by regulation such terms and information relating to the tenancy that landlords must include in the written statement.

vii. **Clause 15: Other duties (inserting new section 16F into the Housing Act 1988):** Section 16F(6) provides for the Secretary of State to narrow the definition of "lettings agency work" used in new section 16E of the 1988 Act.

viii. **Clause 17: Landlords etc: financial penalties and offences (inserting new section, 16H into the Housing Act 1988):** Under new sections 16H(8) and (9) the Secretary of State may issue statutory guidance to local housing authorities about their functions relating to financial penalties, which they must consider when determining what level of fine to issue.

ix. **Clause 17: Landlords etc: financial penalties and offences (inserting new sections 16I and 16J, into the Housing Act 1988)** Under new sections 16J(5) and 16J(6) the Secretary of State may issue statutory guidance to local housing authorities about use of financial penalties as an alternative to prosecution, which they must consider when exercising this functions under this provision.

x. **Clause 17: Landlords etc: financial penalties and offences (inserting new section 16K into the Housing Act 1988):** New section 16K(2) allows the Secretary of State to amend the maximum penalties a landlord can be fined by a local housing authority to reflect inflation.

xi. **Clause 19: Duties of landlords etc, penalties and offences: interpretation (inserting new section 16M into the Housing Act 1988):** New section 16M(1) allows the Secretary of State to widen the definition of "legal representative" via regulations to exempt other types of legal professionals who are separately regulated for their practice in England from the duties under new section 16E and the related enforcement action (under new sections 16I and 16J or K).

xii. **Clause 32(1): Powers of Secretary of State in connection with Chapter 1**: This power is required to facilitate a smooth transition to the new tenancy system and will allow the Secretary of State to make sure relevant legislation can continue to function. Where legislation is framed by reference to fixed term assured tenancies or assured shorthold tenancies, the Secretary of State can make regulations to ensure existing rights and duties are not jeopardised as a result of transition to the new system.

xiii. **Clause 32 (2): Powers of Secretary of State in connection with Chapter 1:** This power will ensure that the Secretary of State can amend existing legislation so that it operates in respect of the reformed Schedule 2 to the Housing Act 1988 grounds of possession in ways similar or correspondent to the way it applies to the current assured tenancy possession system.

xiv. **Clause 32(4): Powers of Secretary of State in connection with Chapter 1:** This power will allow the Government to make sure that pre-existing private legal instruments (e.g. mortgage agreements) appropriately reflect amendments to legislation made by virtue of the regulation-making power in clause 30(1) and 30(2).

xv. **Clause 33: Powers of Secretary of State in relation to regulated home purchase plans**: This power will allow the Secretary of State to make regulations relating to the definition of home purchase plans, for the purpose of excluding them from the assured tenancy regime. This power is only available in the event HM Treasury amend the existing Order that currently contains the definition. This will enable the Department to ensure the right definition continues to apply, for the purpose of clause 33.

xvi. **Clause 35(3)(b): Conduct exempt from Clause 35 (1) (discrimination relating to children):** This power allows the Secretary of State to define additional activities or things done by a defined person which would not constitute discrimination against persons with children beyond those activities explicitly listed in clause 35(3)(a).

xvii. **Clause 36 (3)(b): Conduct exempt from Clause 36 (1) (discrimination relating to benefit status):** This power allows the Secretary of State to define additional activities or things done by a defined person which would not constitute discrimination against persons in receipt of benefits beyond those explicitly listed in Clause 36(3)(a).

xviii. **Clause 41: Power of the Secretary of State to protect others:** This power allows the Secretary of State, by way of regulations, to provide for rental discrimination provisions to apply to additional cohorts of renters, as they apply to benefit claimants and persons who would have a child live with or visit them.

xix. **Clause 42(8): Financial penalties:** This power allows the Secretary of State to issue statutory guidance to enforcement authorities in England on how to exercise their functions under rental

discrimination enforcement provisions (to which they must have regard (Clause 42(9)).

xx. **Clause 42(10): Financial penalties:** This power allows the Secretary of State, by way of regulations, to amend the maximum financial penalty which local authorities may impose under this section in relation to breaches of Clauses 35 and 36 (discrimination relating to children and benefits status), to reflect inflation.

xxi. **Clause 46 (3): inserts new section 8C (Exception for publication of advertisements etc) into Part 2A of the Renting Homes (Fees etc.) (Wales) Act 2019:** This power allows the Welsh Ministers to define additional things of a description or things done by a person of a description, specified for the purposes of section 8C, which do not constitute an offence within the scope of the discrimination against persons with children provisions in section 8A(1) or the benefits status discrimination provisions in section 8B(1) beyond those already listed in section 8C(a).

xxii. **Clause 49 (1): Power of Welsh Ministers to protect others:** This power allows the Welsh Ministers, by way of regulations, to make provision in relation to occupation contracts, in relation to additional cohorts of renters, corresponding to provision made by this Chapter in relation to persons who would have a child live with or visit them or are benefits claimants. Regulations may amend, repeal or revoke provision in the "relevant anti-discrimination legislation". New provision must be within the legislative competence of Senedd Cymru.

xxiii. **Clause 50: Power of Secretary of State to protect others:** This power allows the Secretary of State, by way of regulations, to make provision to extend protections against rental discrimination in Wales, that Welsh Ministers cannot make because it is outside the legislative competence of Senedd Cymru.

xxiv. **Clause 52(2): Inserts section 6A (Offence of discriminating in relation to children) into the Private Housing (Tenancies) (Scotland) Act 2016, of which inserted subsection (3)(b) is a power to extend the exemptions:** This power allows the Scottish

Ministers to define additional activities which do not fall within the scope of the discrimination against renters with children living with or visiting them provisions (inserted section 6A, subsection (1)), beyond those explicitly listed in inserted subsection (3)(a) of the same section.

xxv. **Clause 52(2): Inserts section 6B (Offence of discriminating in relation to benefits status) into the Private Housing (Tenancies) (Scotland) Act 2016, of which inserted subsection (3)(b) is a power to extend the exemptions:** This power allows the Scottish Ministers to define additional activities which do not fall within the scope of the benefits status discrimination provisions (inserted section 6B, subsection (1)), beyond those explicitly listed in inserted subsection (3)(a) of the same section.

xxvi. **Clause 55: Power of the Scottish Ministers to protect others:** This power allows the Scottish Ministers, by way of regulations, to provide for rental discrimination provisions, corresponding to the provisions in Chapter 5 of the Bill relating to persons who would have a child live with or visit them, and benefits claimants, in respect of persons of another description.

xxvii. **Clause 56: Power of Secretary of State to protect others:** This power allows the Secretary of State, by way of regulations, to make provision to extend protections against discrimination in Scotland that the Scottish Ministers could make under Clause 55(1) where it would relate to reserved matters.

xxviii. **Clause 59(6): Financial Penalties:** This power provides for the Secretary of State to give statutory guidance to local housing authorities about the way in which they should impose fines, to which they must have regard (Clause 59(7)).

xxix. **Clause 59(8): Financial Penalties:** This power enables the Secretary of State to set out regulations which alter the maximum financial penalty amount in Clause 59(3) to reflect inflation.

xxx. **Clause 60: Penalties for unlawful eviction or harassment of occupier (inserting new section 1A into the Protection from Eviction Act 1977):** Sections 1A(4) and (5) allow 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.

xxxi. **Clause 60(3): Penalties for unlawful eviction or harassment of occupier (inserting new section 1A into the Protection from Eviction Act 1977):** Under section 1A(7) the Secretary of State may amend the maximum penalties a landlord can be fined by a local housing authority to reflect changes in inflation.

xxxii. **Clause 62: Remedying of hazards occurring in dwellings in England (amending sections 10A and 10B of the Landlord and Tenant Act 1985):** The amendments to section 10A operate to impose a duty on the Secretary of State to set requirements on private landlords under relevant leases relating to remedying hazards in their rented properties.

xxxiii. **Clause 63(1): Remedying of hazards occurring in accommodation in England occupied under licence (inserting new sections 10C and 10D into the Landlord and Tenant Act 1985):** These powers allow the Secretary of State to impose requirements relating to the remedying of hazards on licensors of residential premises.

b. Part 2: Residential landlord

xxxiv. **Clause 64(4): Meaning of "residential landlord":** This power gives the Secretary of State the ability to amend the definitions of "residential landlord", "relevant tenancy" and "dwelling" in Chapter 1 of Part 2 of the Bill.

xxxv. **Clause 65(1): Landlord redress schemes:** This power allows the Secretary of State to make regulations requiring a "residential landlord" to be a member of a landlord redress scheme.

xxxvi. **Clause 66(2) and (8): Approval and designation of landlord redress schemes:** This power allows the Secretary of State to make regulations about the approval or designation of one or more landlord redress schemes. Regulations under this clause apply where the Secretary of State has made regulations under Clause 65(1).

xxxvii. **Clause 67(6): Financial penalties for breach of regulations:** This power provides for the Secretary of State to give statutory guidance to local housing authorities about the way in which they should impose fines, to which they must have regard.

xxxviii. **Clause 67(8): Financial penalties for breach of regulations:** This power allows the Secretary of State to amend the maximum penalties a landlord can be fined by a local housing authority to reflect changes in the value of money.

xxxix. **Clause 69(1): Decision under a landlord redress scheme may be made enforceable as if it were a court order:** This power allows the Secretary of State, via regulations, to authorise the administrator of a landlord redress scheme to apply to court or tribunal for a relevant order to be enforced as if it were a court order.

xl. **Clause 71: Guidance for scheme administrator and local housing authority:** This provides for the Secretary of State to issue or approve statutory guidance on how cooperation between a redress scheme and local housing authorities should work. Local housing authorities must have regard to any such guidance.

xli. **Clause 73(5): Substitutes new paragraph 10 into Schedule 2 to the Housing Act 1996 – Direction to a social housing redress scheme administrator to cease employing The Housing Ombudsman for social housing redress**: New paragraph 10(3)(b) provides for the Secretary of State to direct a social redress scheme administrator to cease employing the Housing Ombudsman should the Secretary of State wish to remove them from office.

xlii. **Clause 73(5): Substitutes new paragraph 10 into Schedule 2 to the Housing Act 1996 – The power to make the Housing Ombudsman a corporation sole to administer a social housing redress scheme:** This replicates and replaces 10(2) of Schedule 2 of the *Housing Act 1996* to allow the Housing Ombudsman to be made a corporation sole.

xliii. **Clause 77(3)(a) to (c): The database operator:** This clause contains powers for the Secretary of State to make regulations that require the database operator to ensure that the database has

certain features and functionalities; confers powers on the database operator to enter into contracts and other agreements that would facilitate the operation of the database; and allows for specified functions to be carried out by lead enforcement authorities, local housing authorities or others instead of, or in addition to, being carried out by the database operator.

xliv. **Clause 77(3)(d) and (4): The database operator:** This power enables the Secretary of State to make transitional and saving provisions in the event of a change of database operator.

xlv. **Clause 78(1) to (4): Making entries in the database:** This power enables the Secretary of State to make regulations about making landlord and dwelling entries on the database.

xlvi. **Clause 79(1) to (3): Requirement to keep active entries up-to-date:** This power enables the Secretary of State to make regulations requiring active landlord and dwelling entries to be kept up to date.

xlvii. **Clause 80(1) and (2): Circumstances in which active entries become inactive and vice versa:** This power enables the Secretary of State to make regulations about the circumstances in which active landlord and dwelling entries become inactive and vice versa.

xlviii. **Clause 81(1) and (2): Verification, correction and removal of entries:** This power enables the Secretary of State to make regulations for the verification, correction and removal of landlord and dwelling entries, including requiring local housing authorities or other persons to verify specified proportions of entries and stipulating the manner in which verifications should be carried out.

xlix. **Clause 82(1) to (4): Fees for landlord and dwelling entries:** This power enables the Secretary of State to make regulations for the specification or determination of fees payable in respect of making landlord and dwelling entries, including by whom and to whom fees are to be paid. “Relevant costs” can include costs relating to enforcement of requirements imposed by or under the Act or otherwise in relation to the private rented sector

l. **Clause 82(5) and (6): Fees for landlord and dwelling entries:** This power enables the Secretary of State to direct the database operator to pay to local housing authorities, or into the Consolidated Fund the amount, or part of the amount, it receives from the fees it charges. The Secretary of State (if not the database operator) may also direct the database operator to pay all or some of the fees received to local housing authorities.

li. **Clause 83(4): Restrictions on marketing, advertising and letting dwellings:** This power enables the Secretary of State to specify in regulations other persons to whom the duty under Clause 73(3) (for a residential landlord to ensure there is an active and compliant landlord and dwelling entry in respect of a property) is to apply in place of the landlord, as well as to specify exemptions (time-limited or otherwise) from this duty.

lii. **Clause 84(4): Entries in the database relating to banning orders, offences, financial penalties, etc:** This power enables the Secretary of State to make regulations to impose a duty on local housing authorities to make entries in the database under Clause 78(2) in circumstances specified in the regulations.

liii. **Clause 84(6): Entries in the database relating to banning orders, offences, financial penalties, etc:** This power enables the Secretary of State to make regulations which authorise or require local housing authorities to make an entry in the database in respect of a person who is convicted of an offence, has had a financial penalty imposed, or is subject to regulatory action of a description to be prescribed by the regulations, provided that the offence, financial penalty or regulatory action in question occurred at a time when the person was a residential landlord, or when the property was marketed for the purposes of creating a residential tenancy.

liv. **Clause 84(8)(c): Entries in the database relating to banning orders offences, financial penalties, etc:** This power enables the Secretary of State to make regulations to prescribe additional information which must be included in a database entry made under Clause 78.

lv. **Clause 86(3)(b): Other duties:** This power enables the Secretary of State to give directions as to intervals and reporting criteria in respect of the database operator's reports under Clause 80(2).

lvi. **Clause 87(1): Access to the database:** This power enables the Secretary of State to make regulations detailing the information contained in landlord and dwelling entries, and entries made under Clause 78, that may be made available to the public.

lvii. **Clause 88(2) to (5): Disclosure by database operator etc:** This power enables the Secretary of State to make regulations which will enable the disclosure of restricted information (information that is not made available to the public via Clause 81) to third parties to enable or facilitate compliance with statutory requirements or rules of law or the exercise of statutory functions set out in such regulations.

lviii. **Clause 91: Restriction on gaining possession:** This power enables the Secretary of State to make changes to the persons who or circumstances in which a breach of Clause 83(1)(a) (failing to ensure there is an active entry in the private rented sector database) prevents the making of an order for possession.

lix. **Clause 92(6): Financial penalties:** The Secretary of State may issue statutory guidance to local housing authorities in respect of their functions in levying financial penalties under this clause. Local housing authorities must have regard to such guidance (Clause 92(7)).

lx. **Clause 92(8): Financial penalties:** The Secretary of State may make regulations under subsection (8) to alter the financial penalties set out in Clause 92(2) to reflect inflation.

lxi. **Clause 94(1) and (2): Power to direct database operator and local housing authorities:** The Secretary of State may give the database operator and local housing authorities directions as to how their functions in relation to the PRS Database are to be exercised**.**

lxii. **Clause 96: Different provision for different purposes: joint landlords**: This clause does not take an additional power but

clarifies that regulations made pursuant to Clause 140(1)(b) in Chapter 3 may include different provision for different purposes – including provision for a single landlord entry to be made in the database in respect of joint landlords.

lxiii. **Clause 100(7): Interpretation of Part 2:** This power provides for the Secretary of State to narrow the definition of “lettings agency work” used in this Part.

c. Part 3: Decent Homes Standard

lxiv. **Clause 101(3): amends section 1 (new system for assessing housing conditions and enforcing housing standards) of the Housing Act 2004 to provide power to apply housing standards to temporary accommodation for the homeless:** This power allows the Secretary of State to make regulations specifying what types of temporary accommodation for the homeless are included within the definition of "residential premises" for the purposes of section 1 of the Housing Act 2004, and therefore required to meet Decent Homes Standard requirements.

lxv. **Clause 101(5): inserts new section 2A (power to set standards for qualifying residential premises) into the Housing Act 2004 to provide power to set Decent Homes Standard requirements:** New section 2A(1) allows the Secretary of State to set minimum quality standards for certain residential premises in England.

lxvi. **Clause 101(5): inserts new section 2B (qualifying residential premises) into the Housing Act 2004 to provide power to amend the definition of ‘relevant tenancy’:** New section 2B(3) allows the Secretary of State to amend the definition of "relevant tenancy" to bring certain types of tenancy and licence within scope of the application of Decent Homes Standard requirements.

d. Part 4: Enforcement

lxvii. **Clause 111(3) and (4): Lead enforcement authority:** This power enables the Secretary of State to make transitional provision that will apply when a new lead enforcement authority is appointed and

lead enforcement authority responsibility moves from one local housing authority to another.

lxviii. **Clause 112(4): General duties and powers of lead enforcement authority:** This power gives a lead enforcement authority the power to issue guidance to which local housing authorities must have regard in relation to the landlord provisions for which they are responsible (Clause 104(5)).

lxix. **Clause 112(7) and (8): General duties and powers of lead enforcement authority:** This power enables the Secretary of State to direct a lead enforcement authority on how it uses its functions.

e. Part 5: General

lxx. **Clause 140(5C): Regulations:** This paragraph prevents the hybrid instruments procedure in Parliament from applying in relation to regulations made under Clause 59, which provides for the Secretary of State to require landlords to be members of a redress scheme.

lxxi. **Clause 141(1): Power of Welsh Ministers to make consequential provision:** This power allows the Welsh Ministers to make provision consequential on Part 1 of the Renters' Rights Bill, including supplementary, incidental, transitional or saving provision (subsection (3)(a)). The power under subsection (3)(a) includes being able to provide for the regulations to apply (with or without modifications) in relation to occupation contracts, granted, renewed or continued, or advertising begun, before the date on which the regulations come into force (subsection (4)). Regulations under this section may only make provision which would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd (subsection (5)).

lxxii. **Clause 142: Power of Scottish Ministers to make consequential provision:** This power allows the Scottish Ministers to make further consequential amendments which arise from this Bill.

lxxiii. **Clause 143: Power of Secretary of State to make consequential provision:** This power allows the Secretary of State to make further consequential amendments which arise from this Bill.

lxxiv. **Clause 143(4)(b): Power of Secretary of State to make consequential provision:** Clause 138 (4)(b) provides the Secretary of State with the power to make transitional provision modifying the effect of instruments (such as leases, mortgage agreements or insurance contracts) that were produced under the law as it stood before new consequential regulations take effect and which, as a result, the Secretary of State considers does not (or will not) operate appropriately.

lxxv. **Clause 145: Commencement:** The Act comes into force for the purposes of making regulations on the day it is passed. Clause 145(1) enables the Secretary of State to bring into force certain provisions of this Bill through regulations. Clause 145 makes provision for certain provisions in the Bill to come into force on the day the Bill is passed or two months from Royal Assent. For remaining purposes, the Act comes into force on such a day as the Secretary of State may by regulations made by statutory instrument appoint, subject to subsections (3) to (8).

lxxvi. **Clause 147: Fixed term assured tenancy and statutory periodic tenancy to be treated as single assured tenancy:** This allows the Secretary of State to amend the meaning of “relevant provisions” in this Clause. Relevant provisions are those for which a ‘statutory’ assured periodic tenancy which arises on the expiry of a fixed term tenancy by virtue of existing section 5 of The Housing Act 1988 between the same parties is treated as the same tenancy as the fixed term tenancy, and starting when that fixed term tenancy is entered into.

lxxvii. **Clause 148(1): Transitional provision:** This power enables Welsh Ministers, by regulations, to make transitional or saving provision in connection with the coming into force of any provision of Chapter 4 of Part 1. This includes power to provide for a provision of Chapter 4 to apply (with or without modifications) in relation to occupation contracts granted, renewed, or advertising begun, before the date on which the provision comes into force.

lxxviii. **Clause 148(2): Transitional provision:** This power enables Scottish Ministers, by regulations, to make transitional or saving provision in connection with the commencement of Chapter 5 of Part 1 of the Bill. This includes power to provide for a provision of Chapter 5 to apply (with or without modifications) in relation to tenancies granted, renewed, or where advertising began, before the date on which the provision comes into force.

lxxix. **Clause 148(3): Transitional Provision:** Clause 148(3) enables the Secretary of State, by regulations, to make transitional or saving provision in connection with the coming into force of any part of the Bill aside from Part 1 Chapters 4 and 5 (in respect of which the relevant powers are held by the Welsh and Scottish Ministers). Schedule 6 of the Bill contains transitional provisions in relation to tenancy reform and how this applies in relation to existing tenancies. Clause 148(6) also provides a power which can also be used in relation to private legal instruments (please see paragraph (6)(b), and subsections (7) to (11)). The Secretary of State may make transitional provision modifying the effect of these instruments (such as leases, mortgage agreements or insurance contracts) if drafted under the law as it stood before the changes made by Chapters 1 and 2 of the Bill to the statute book, so as to operate appropriately alongside those changes.

Schedule 1 makes changes to Schedule 2 (grounds of possession of dwelling-houses let on assured tenancies) to the Housing Act 1988

lxxx. **Paragraph 19, inserting new ground 5H (possession of stepping stone accommodation) into Schedule 2 of the Housing Act 1988:** This power allows Government to add, remove or modify eligibility conditions for the purpose of using ground 5H.

lxxxi. **Paragraph 25, inserting new Part 6: Powers to amend grounds 2ZA, 2ZCB, 5C, 5H and 6B and definition:** New paragraph 13(1) of Schedule 2 enables the Secretary of State, via regulations, to make provisions that change the description of landlord or employer who may make use of specific grounds. It also enables the Secretary of State, by regulations, to change the definition of

supported accommodation and to change the definition of 'special tenancy' for the purposes of using Ground 7**.**

Schedule 4 amends the Housing Act 2004: Decent Homes Standard

lxxxii. **Schedule 4, paragraph 3(4):** Amends section 4 (inspections by the local housing authority) of the Housing Act 2004 to provide power to make regulations about assessing whether premises meet Decent Homes Standard requirements: New section 4(5A) extends an existing power at section 4(4) to enable the Secretary of State to make regulations about how local housing authorities are to inspect premises and assess whether they meet the Decent Homes Standard requirements.

lxxxiii. **Schedule 4, paragraph 6: inserts new section 6A (financial penalties relating to Category 1 hazards or Type 1 requirements) into the Housing Act 2004 to provide power to amend maximum penalty levels**: New section 6A(8) allows the Secretary of State to amend the maximum financial penalty that a local housing authority can impose on a landlord, when a Category 1 hazard exists on the premises or those premises fail to meet a Type 1 Decent Homes Standard requirement (found in section 6A(6)) to reflect inflation.

lxxxiv. **Schedule 4, paragraph 9(3): amends section 9 (guidance about inspections and enforcement action) of the Housing Act 2004 to allow guidance to address Decent Homes Standard** requirements: New section 9(1A) extends a power under which the Secretary of State may issue statutory guidance to local housing authorities to allow it to cover the inspection of premises and enforcement in relation to Decent Homes Standard requirements.

Schedule 6: Application of Chapter 1 of Part 1 to existing tenancies: transitional provision.

lxxxv. **Paragraph 6(2): Sections 14, 15 and 17:** provision of information in writing: This enables the Secretary of State to make regulations setting out what information landlords of existing tenancies must give tenants in writing about the new tenancy system.

D. ANALYSIS OF DELEGATED POWERS BY CLAUSE

Clause 3(8): Sections 1 and 2: effect of superior leases

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and purpose

5. Clause 3 addresses issues that may arise in relation to existing leases before tenancy reforms take effect, that permit a leaseholder to sub-let their dwelling either on an assured tenancy for a fixed or minimum term, or on an assured shorthold tenancy under the current tenancy regime, but not on a periodic assured tenancy governed by the new tenancy reforms. Some elements of clause 4 only apply to certain types of existing leases (e.g. leases granted for 21 years or less or leases granted for more than 21 years). Long leases (for example, where the leaseholder agreement is over 21 years in length) may contain covenants that would be incompatible with measures the Bill introduces. For example, they may require subletting to be on an Assured Shorthold Tenancy or for a fixed term, which are types of tenancy being abolished under the new tenancy reforms. The effect of this clause is to ensure leaseholders can continue to sub-let their dwelling on a periodic assured tenancy without being in breach of their own leases, once the new reforms come into force. This will protect landlords and freeholders from the disruption of needing to resolve this on a lease-by-lease basis.

6. The power in Clause 3(8) allows the Secretary of State to modify or disapply the effects of this clause in relation to existing leases of a specified description. Any modifications or disapplication can only be made to categories of leases, not to all the leases the section has applied to.

Justification for taking the power

7. It is not possible to establish in advance the impacts that this clause will have on the volume and variety of leases affected by them. Parties may face areas of legal uncertainty or become liable in ways that could not have been anticipated.

8. As such, this power will allow the Secretary of State to modify or disapply the effect of parts of this section on certain types of leases that it is not intended to cover, or where a better solution is needed. This will allow the Secretary of State to ensure certain categories of landlord are not unduly affected by these changes and can continue to sublet in the intended way.

Justification for the procedure

9. Regulations made under this power will be subject to the affirmative procedure, which will ensure there is appropriate parliamentary scrutiny of any change made using this power. As this is a Henry VIII power, that enables Government to modify or alter the effect of Clause 3 by delegated legislation, the affirmative procedure is therefore appropriate.

Clause 6: Form of notice of proceedings (amending section 8 of the Housing Act 1988)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: None

Context and Purpose

10. Clause 6 amends existing section 8 of the Housing Act 1988, to expand what regulations under existing sections 8(3) and 45(1) of the 1988 Act may provide. New section 8(7) states that regulations can provide that the "prescribed forms" can be published by the Secretary of State. Subject to such provision being made in regulations (which are not subject to parliamentary procedure), the Secretary of State will be able to publish the forms which landlords must use when they are seeking possession on one of the grounds in Schedule 2 to the Housing Act 1988, as amended by Schedule 1 to this Bill.

11. A form is necessary to help landlords and tenants understand their rights and responsibilities. It also provides an opportunity for landlords to state what possession ground they are using and to provide the relevant evidence. Alongside this, notices must provide how long the notice is valid for and the earliest date when court proceedings can start.

Justification for taking the power

12. This is a modification of an existing power to ensure it is relevant in the new tenancy system. The addition of new section 8(7) is to allow the Secretary of State to publish the form and provide updated versions of the form. A power will enable the Secretary of State to update or change the forms and guidance contained on the forms as required. It is crucial that the information landlords are required to provide reflects current law, and that this can be updated quickly and as needed. For example, the forms were required to be updated quickly to reflect legislative changes to the notice periods made in response to the COVID-19 global emergency. The forms have also been updated previously to reflect the coming into force of the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (SI 2020/1311) which affect the ability to serve notice and make a possession claim under section 8 of the Housing Act 1988 in certain circumstances. The forms were also updated when the Tenant Fees Act 2019 came into force (1 June 2019).

13. The regulations do not give the Secretary of State the power to change the grounds for possession or place new responsibilities on the landlord.

Justification for the procedure

14. Regulations made under sections 8(3) and 45(1) of the 1988 Act are not subject to parliamentary procedure. The forms are likely to be too detailed to be placed in legislation. If such regulation provides the forms can be published by the Secretary of State, the forms will reflect requirements set out in the Housing Act 1988, which will have been subject to parliamentary scrutiny.

Clause 7(7): Statutory procedure for increases of rent (amending section 13 (increases in rent) of the Housing Act 1988)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

15. Clause 7 amends section 13 of the Housing Act 1988 to change how rent may be increased during assured tenancies. It exempts Private Registered Providers of Social Housing (PRPSH) offering low rent tenancies from these changes.

16. Currently, PRPSH can grant secure or assured tenancies and the majority of tenancies are let at social rents (this is low-cost rent, which is substantially discounted in comparison to market rent). Social rents are regulated by the Social Housing Regulator. Due to the differences in how rents are set in the sectors, we are exempting assured tenancies let at a low rent by PRPSH from the changes the Bill makes to rent-setting practices.

17. We have set out a definition of "relevant low-cost tenancy" to be inserted in section 13 of the Housing Act 1988 by Clause 7(7). The addition of new section 13(4C)(b) is to allow the Secretary of State to change the definition of a relevant low-cost tenancy. It is the Government's intention that this power will be exercised where there are changes in the way rent is regulated in the social rented sector or other low-cost tenancy products let on assured tenancies that need to be exempted.

Justification for taking the power

18. If the Government or the social housing sector change the way rent is determined or regulated in the future, more PRPSH assured tenancies may fall outside the definition of a relevant low-cost tenancy and the rent setting procedures in the new private rented sector (PRS) system will apply. The power will allow the Secretary of State to make technical amendments to the definition in response to changing circumstances. The power is set in the context of a relevant low-cost tenancy, meaning the Secretary of State will not be able to change how the legislation agreed by Parliament affects market rent tenancies (the majority of assured tenancies).

Justification for the procedure

19. Regulations made under this power will be subject to the negative procedure. This power will simply update the definition of a relevant low-cost tenancy. We consider the negative resolution procedure provides sufficient scrutiny of regulations made under this power.

Clause 9: New Section 4B of the Housing Act 1988, subsection 9: prohibition of rent in advance after lease entered into (except initial rent)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and purpose

20. Clause 9 introduces a new section 4B of 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).

21. The power in subsection 4B(9) gives a power to the Secretary of State to amend the descriptions of tenancy or "rent due in advance" that would be exempt from the provisions of subsection 4B(1).

Justification for taking the power

22. The existing power to amend Schedule 1 of the Tenant Fees Act 2019 and the list of "permitted payments" does not extend to the amendment of new Clause 4B of the Housing Act 1988 and the exceptions to prohibitions on rent in advance within a tenancy.

23. The power taken at subsection 4B(9) therefore allows the Secretary of State to make regulations about the descriptions of tenancy, or "rent due in advance" to which subsection 4B(1) does not apply, should it be necessary to do so in future.

24. Although the Government currently has no plans to alter the rent in advance measures, future changes within the private rented sector may make it necessary to do so to address issues which may appear as the market adapts.

25. For example, the Secretary of State may decide to take action to maintain the intention of the rent in advance measures, should landlords adopt new practices or avoidance tactics which undermine this intention.

26. This power is also necessary if the Secretary of State is to have the flexibility to adapt the constraints on rent in advance to respond to wider market changes in the private rented sector. Changes in the balance of supply and demand within the private rented sector – which could be driven by, for example, the Government's commitment to building 1.5 million houses over this Parliament – may result in a change in the extent to which affordability is a barrier for prospective tenants entering the sector. In this scenario, the Government may

consider it appropriate to make changes to the constraints on rent in advance. Changes in the market could also be driven by currently unanticipated future legislative changes, such as the introduction of new types of tenancies. In this scenario, this power would allow the Secretary of State to maintain the application of these measures to the intended cohorts of landlords and tenants.

Justification for the procedure

27. Regulations made under this power will be subject to the affirmative procedure, which will ensure there is appropriate parliamentary scrutiny of any change made using this power. As this is a power that enables Government to modify or alter the effect of section 4B of the Housing Act 1988 by delegated legislation, the affirmative procedure is appropriate.

Clause 10: New section 5A of the Tenant Fees Act 2019, subsection 5: prohibition of rent in advance before lease entered into

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and purpose

28. Clause 10 inserts new section 5A (pre-tenancy payments of rent: prohibitions) into the Tenant Fees Act 2019 which 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. Subsection 5A(5) gives a power to the Secretary of State to amend the descriptions of "rent due in advance" to which prohibitions on pre-tenancy rent payments apply.

Justification for taking the power

29. The existing power at section 3 of the Tenant Fees Act 2019 provides for Schedule 1 to be amended to add, repeal or modify the list of permitted payments. This power extends to amending the new provisions, inserted into Schedule 1 by Clause 10, that rent is a prohibited payment if it is payable before an assured tenancy is entered into. As new section 5A is not included in Schedule 1, however, a new power is required for the Secretary of State to amend section 5A by regulations. Subsection 5A(5) of the Tenant Fees Act 2019 therefore provides the

Secretary of State with a power to amend by regulations the descriptions of "rent due in advance" to which the prohibitions on pre-tenancy payments of rent at 5A(1) to (4) apply, should the Secretary of State wish to do so in the future.

30. The circumstances in which the Secretary of State may wish to make use of this power are similar to those detailed for the new power introduced by Clause 9. The power could be used to maintain the intended effect of the Government's policy on rent in advance should landlords adopt new practices or avoidance tactics which undermine the intention of the legislation, or to modify section 5A should wider market changes make it appropriate to change the extent to which pre-tenancy payments of rent are constrained.

Justification for the procedure

31. Regulations made under this power will be subject to the affirmative procedure, which will ensure there is appropriate parliamentary scrutiny of any change made using this power. As this is a power that enables Government to modify or alter the effect of section 5A of the Tenant Fees Act 1988 by delegated legislation, the affirmative procedure is appropriate.

Clause 14: Duty of landlord and contractor to give statement of terms and other information (inserting new section 16D into the Housing Act 1988)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

32. New section 16D inserted into the Housing Act 1988 by Clause 14, requires landlords to provide tenants with a written statement of terms and information relating to the tenancy at the outset. The policy aim is to increase landlord and tenant awareness of their legal rights and responsibilities, and ensure tenants are aware when certain specific grounds may be used by their landlord in future. It is our intention that the written statement of terms will be used to resolve disputes or to evidence a breach of the tenancy agreement. The requirement to provide the written statement, including some mandatory information, is included in new section 16D. We intend to give the Secretary of State the power to prescribe by

regulation other terms and information relating to the tenancy that landlords must include in the written statement (new section 16D(2)).

Justification for taking the power

33. A power will enable the Secretary of State to update or change the terms and information that is mandatory as and when legal requirements on landlords or tenants change. This is appropriate given that the written statement of terms is a tool to increase awareness of existing rights and obligations rather than a mechanism to set new ones. It is crucial that the information that landlords are required to provide reflects current regulatory circumstances, and that this can be updated quickly and as needed.

34. For example, the Secretary of State may wish to change the mandatory statement of terms to reflect changes to the regulation of the private rented sector as a consequence of future primary legislation. The Secretary of State may also want to update the agreement when new issues emerge in the market that tenants and landlords will benefit from having in writing. This approach will also allow for further consultation on the details of which terms stakeholders feel should be included.

35. The power is limited to specifying such terms of the tenancy that the landlord must give to the tenant in a written statement, or to other information to be given in writing relating to: the tenancy; the dwelling house let on the tenancy; the tenant; the landlord; and the rights of the landlord or the tenant in relation to the tenancy or the dwelling house let on it. The regulations do not give the Secretary of State the power to imply new terms of a tenancy or place new responsibilities on the landlord.

Justification for the procedure

36. Regulations made under this power will be subject to the negative procedure. The information in the written statement of terms will either be an existing legal responsibility or relevant information relating to the tenancy, therefore this power is largely administrative. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary, for administrative regulations of this kind.

Clause 15: Other duties (inserting new section 16G into the Housing Act 1988)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

37. Clause 15 inserts new sections 16E (other duties) to 16G (interpretation of terms related to marketing in section 16E) into the Housing Act 1988. New section 16E, amongst other things, prohibits landlords and their representatives (a "relevant person") from reletting or remarketing a property within twelve months of using the grounds for moving or selling. It also prohibits landlords from authorising a letting agent to market the property. New section 16G defines "marketing" and "letting agency work" for the purposes of section 16E. The definition of letting agency work is consistent with section 83(7)-(9) of the Enterprise and Regulatory Reform Act 2013 which defines it for the purpose of property agent redress. In the course of letting agency work, communications about the property's availability to let which do not consist of advertising, such as emailing a potential tenant individually about its availability, should be considered marketing (section 16G(1),(2) and (4)). We are taking a power to amend the definition of "letting agency work".

38. Subsection 16G(6) allows the Secretary of State to specify things in the regulations which do not fall under the definition of "letting agency work". Similar provision can be found in section 83(9)(b) of the Enterprise and Regulatory Reform Act 2013 and Clause 100 (interpretation of Part 2) of this Bill.

Justification for taking the power

39. The power to restrict the definition of "letting agency work" under subsection (6) is necessary to allow the Secretary of State to have discretion over whether there should be a consistent definition of "letting agency work" across legislation, should regulations be laid to narrow the scope under section 83(9)(b) of the Enterprise and Regulatory Reform Act 2013, or under Clause 100 of this Bill.

40. The regulations provide a proportionate level of flexibility in that they enable Government to narrow the definition of "letting agency work", but not to expand the definition to cover more activities or groups. The definition of "letting agency work" as drafted covers a broad range of activities and these regulations allow the

Government to act should the definition prove too wide in certain cases or in light of experience.

41. For instance, at the time of the Enterprise and Regulatory Reform Act 2013, the decision was taken to exclude local authority activities from the scope of letting agent redress schemes (as achieved by section 83(9) of that Act). This was on the basis that complaints about local authorities could be made to the Local Government and Social Care Ombudsman rather than a letting agent redress scheme (see paragraph 570 of the Explanatory Notes to that Act). The Government does not consider that the requirements in relation to tenancy relations under this Bill wholly match that scenario but might want to narrow the scope in the future to exempt local authority activities from the definition of "marketing".

42. This might for instance reflect a desire to achieve consistency with the exclusion under the Enterprise and Regulatory Reform Act 2013 for practicality. The Government may also wish to change the definition if other elements of the enforcement regime for this Bill change. For example, if the roles of local authorities and any lead enforcement authorities change in relation to tenancy reform, the Ombudsman, or the Private Rented Sector Database. Such exclusions would not alter the overarching policy of prohibiting letting agents from marketing properties within three months of a landlord using the moving or selling grounds for possession.

Justification for the procedure

43. Regulations made under this power will be subject to the negative procedure. We do not consider use of this power will be controversial and it has precedent within section 83 of the Enterprise and Regulatory Reform Act 2013. These regulations mean that the scope of letting agent work cannot be expanded to capture additional groups or activities, only that some may be exempt from the requirement. The negative procedure is therefore appropriate.

Clause 17: Landlords etc: Financial penalties and offences (inserting new section 16I into the Housing Act 1988)

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

44. Clause 17 inserts into the Housing Act 1988 new section 16I (financial penalties) to give local housing authorities the power to impose financial penalties on landlords who undertake prohibited activities set out in that section. The intended primary legislation sets out the maximum financial penalty a local authority can issue as £7,000 (new section 16I(6)). Using the powers under section 16I(9) and (10), the Secretary of State will in due course give statutory guidance on factors which local housing authorities must have regard when determining what level of financial penalty to issue under section 16I, within the parameters set out in the provision. This may outline the circumstances in which a contravention should be treated as more or less severe and would be intended to mitigate against the risk of a local housing authority applying a disproportionate financial penalty. This follows the approach taken by section 23(10) of the Housing and Planning Act 2016, which includes provision that local housing authorities must have regard to guidance issued by the Secretary of State when issuing financial penalties for breach of banning order offences.

Justification for taking the power

45. We require guidance as we are setting only maximum financial penalties rather than fixed amounts in primary legislation. This will allow local housing authorities the flexibility to consider the circumstances of each case and determine an appropriate and proportionate financial penalty. Guidance from the Secretary of State cannot set new financial penalties or allow local housing authorities to exceed the levels of financial penalties agreed by Parliament. We wish to produce clear statutory guidance covering the criteria local housing authorities should consider when assessing financial penalties to mitigate the risk of inconsistent or disproportionate enforcement across the country.

46. Local housing authorities' enforcement priorities are likely to change over time according to issues that emerge in the sector, so this allows for a flexible approach.

Priorities may change as new parts of the Bill are brought into force. The system is novel, so allows for small adjustments as the Government and local housing authorities learn from experience or where local housing authorities enforce inconsistently. This will allow the Government to be agile in reflecting best practice and the practical experience of enforcement bodies, without changing the overall level of penalty agreed by Parliament.

Justification for the procedure

47. The guidance is intended to aid policy implementation by supplementing the legal rules laid down in the legislation, rather than adding to them. Similar such powers, such as that under section 23(10) of the Housing and Planning Act 2016, likewise involve no parliamentary procedure.

Clause 17: Landlords etc: Financial penalties and offences (inserting new sections 16J and 16K into the Housing Act 1988)

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

48. Clause 17 inserts into the Housing Act 1988 new sections 16J (offences) and 16K (financial penalties as an alternative to prosecution under section 16J). New section 16K provides powers to local housing authorities to consider financial penalties as an alternative enforcement sanction. The powers in subsections 16K(5) and (6), allow the Secretary of State to issue statutory guidance on the exercise of these functions which local housing authorities must have regard to. Such guidance may outline the circumstances in which a contravention or an offence is to be treated as more or less severe and is intended to mitigate against the risk of a local housing authority applying a disproportionate financial penalty. This follows the approach taken by section 23(10) of the Housing and Planning Act 2016, which includes provision that local housing authorities must have regard to guidance issued by the Secretary of State when issuing financial penalties for breach of banning order offences.

Justification for taking the power

49. We require guidance as a means of providing operations steers to facilitate consistency across areas. This will allow local housing authorities the flexibility to consider the circumstances of each case.

50. Local housing authorities' enforcement priorities are likely to change over time according to issues that emerge in the sector, so this allows for a flexible approach. Priorities may change as new parts of the Bill are brought into force. The system is novel, so allows for small adjustments as the Government and local housing authorities learn from experience or where local housing authorities enforce inconsistently. This will allow the Government to be agile in reflecting best practice and the practical experience of enforcement bodies, without changing the overall level of penalty agreed by Parliament.

Justification for the procedure

51. The guidance is intended to aid policy implementation by supplementing the legal rules laid down in the legislation, rather than adding to them. Similar such powers, such as that under section 23(10) of the Housing and Planning Act 2016, likewise involve no parliamentary procedure.

Clause 17: Landlords etc: financial penalties and offences (inserting new section 16L into the Housing Act 1988)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

52. Clause 17 inserts into the Housing Act 1988 new sections 16I (financial penalties) and 16K (financial penalties as an alternative to prosecution under section 16J) to give local authorities powers to impose new financial penalties on landlords. The power under section 16L(2) allows the Secretary of State to amend the maximum financial penalties a local housing authority can impose on a landlord to reflect inflation. This power mirrors the power in section 23(9) of the Housing and Planning Act 2016 which allows the Secretary of State to change the level of maximum financial penalty to reflect inflation.

Justification for taking the power

53. Our intention is that the financial penalties that local housing authorities issue serve both as an effective deterrent to the landlord on whom they are imposed from committing further breaches or offences, and as a preventative measure. Therefore, the financial penalties may need to be changed to reflect the change in the value of money (e.g. to reflect inflation if the Secretary of State judges it appropriate).

Justification for the procedure

54. This is the usual approach for such powers (e.g. Housing and Planning Act 2016, Housing Act 2004). Regulations made under this power will be subject to the negative procedure. They will amend the financial penalty to reflect inflationary change, so are administrative in nature. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary for administrative regulations of this kind.

Clause 19: Duties of landlords etc, penalties and offences: interpretation (inserting new section 16M into the Housing Act 1988)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

55. Clause 19 inserts new section 16M (Duties of landlords etc, penalties and offences: interpretation) into the Housing Act 1988. New section 16M, amongst defining other terms, provides a definition for “legal representative” for the purposes of sections 16D to 16L, Schedule 2ZA and this new section.

56. It is necessary to define “legal representative” at new section 16M(1) to set out the types of lawyers and legal professionals who are exempt from the definition of “relevant person” (also at 16M(1) and therefore exempt from liability for the duties placed on landlords and their representatives in relation to assured tenancies at section 16E. This also exempts these individuals from the related enforcement action (as set out in new sections 16I, 16J and 16K). It is necessary to exempt authorised lawyers in England in this way because they are

separately regulated, for instance by the Solicitors Regulation Authority. We do not think that it is appropriate for legal professionals to be liable to be penalised for putting forward their clients' case or undertaking their instructions in good faith (e.g., issuing a statutory notice) when they are separately regulated and will be covered by the disciplinary processes of the appropriate regulator, so enforcement under this Bill risks being duplicative and disproportionate.

57. The power at 16M(1) allows the Secretary of State to expand the definition of “legal representative” via regulations to account for other types of legal professionals who are separately regulated for their practice in England, such as employees of “legal representatives” or foreign lawyers, who do not at present fall under the definition but should otherwise be exempted from the relevant duties and enforcement in the same way for the same reasons.

Justification for taking the power

58. The power to expand the definition of “legal representative” via regulations is necessary to allow the Secretary of State to add further types of professionals with an equivalent system of regulation for activity in England to the exemption, the scope of which is highly technical and likely too detailed for primary legislation. Whilst not a direct parallel, the approach is similar to the “letting agency work” definition powers under section 83(9)(b) of the Enterprise and Regulatory Reform Act 2013 in that it gives powers to Secretary of State to widen a definition set out in primary legislation via secondary legislation in order to narrow the category of people who would otherwise be caught be the enforcement of certain duties. Although the types of legal professionals that engage directly in activities related to section 16E duties, e.g., the issuing of a section 8 possession notice, are not likely to be extensive, there are other factors that need to be considered. For example, there may be cases where 16E related activity involves lawyers from other countries, or where the activity is carried out by an employee of a "legal representative” e.g., a paralegal, who will be subject to the same system of regulation as set out in section 21(3)(b) of the Legal Services Act 2007.

59. There are also situations where the power will need to work differently in different circumstances, so the power is needed to give flexibility to the scope of the definition of “legal representatives” so that adaptations can be made. For example, exemptions may be necessary where specific treaties are in place with

countries that allow their separately regulated lawyers to practice in England, and in this case, it may be appropriate to exempt these individuals from the definition of “legal representative”. Other examples would be where the scope and content of regulation of legal professionals in another jurisdiction changes faster than primary legislation can be amended to adapt for.

60. The power provides a proportionate level of flexibility because it does not enable Government to further specify groups who should be brought into scope under the duties at section 16E (and the corresponding enforcement action at sections 16I and 16K). The power only enables Government to expand the definition of “legal representative”, and therefore expand the exemption to other groups of individuals. The power also allows for groups of individuals who were once listed in regulations under 16M(1)(b) to be removed. This might be necessary if, at some point in the future a regulator’s function proved dissatisfactory, at which point it may be appropriate that the individuals no longer benefit from the protection of the exemption as it would be unlikely that disciplinary action would be taken.

Justification for the procedure

61. Regulations made under this power will be subject to the negative procedure. It is not expected that the use of this power will be controversial, and it has similarities with the approach taken by the “letting agency work” definition powers under section 83(9)(b) of the Enterprise and Regulatory Reform Act 2013 in that it gives powers to Secretary of State to widen a definition set out in primary legislation via secondary legislation, which narrows the group of people caught by redress or enforcement action. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary in relation to a matter that is highly technical in nature and has a proportionately narrow scope.

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

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

62. The Renters' Rights Bill will abolish assured shorthold tenancies and fixed-term tenancies – these are currently the predominant tenancy type in the private rented sector. Once the Bill is enacted, all tenancies in the sector will be periodic assured tenancies, including those which were previously assured shorthold tenancies or had fixed terms. Assured shorthold tenancies can be considered a subset of assured tenancies.

63. In existing legislation, a very large volume of rights or obligations are made with reference to assured shorthold and/or fixed-term tenancies. This has, historically, been a convenient legislative mechanism to apply new requirements to only the private or social rented sectors while excluding broader types of tenancy or licence. For example, currently, the Tenant Fees Act 2019 applies only to assured shorthold tenancies, rather than to other forms of assured tenancy. Other legislative provision might only be applied to assured tenancies which are not assured shorthold tenancies, so that the legislation mainly affects only the social sector.

64. This power is required to facilitate a smooth transition to the new tenancy system and will allow the Secretary of State to make sure relevant legislation can continue to function. The power is intended to make sure that, where legislation is framed by reference to fixed term assured tenancies or assured shorthold tenancies, the Secretary of State can make regulations to ensure existing rights and duties are not jeopardised as a result of transition to the new system.

65. However, transposing all existing rights and duties applicable to assured shorthold tenancies and assured fixed term tenancies may not be a suitable solution in all cases. In other cases, it may be more appropriate to ensure that obligations currently applicable to assured shorthold tenancies continue in respect of new-style assured periodic tenancies which used to be assured shorthold tenancies, but are not retrospectively imposed on existing assured periodic tenancies which were not subject to those previous rules. This is what has been done in respect of tenancy deposit requirements under Clause 28 of the Bill. In further categories of cases it may be more appropriate not to reapply legislation designed to reflect the assured shorthold tenancy system (such as in relation to the section 21 eviction process) to the new global category of assured tenancies. The power is designed to allow these choices to be made in the most

appropriate way, dependent on the circumstances. This will also be subject to Parliamentary scrutiny and consent under the affirmative procedure, whilst the key/principal aspects of the relevant changes to the assured tenancy regime are set out in Clauses 1 and 2 of the Bill.

Justification for taking the power

66. This power will help ensure continuity and certainty when existing legislation references assured shorthold tenancies or fixed terms. In general, this power will allow legislation to continue to apply (in a similar or corresponding way) to the parties to whom the legislation already applies, ensuring Parliament's intent in making the original legislation is maintained.

67. The power is in line with the main objectives of the Bill, which abolishes assured shorthold tenancies, and will help provide for a united class of assured periodic tenancies in the new system. This overarching policy is set out in Clauses 1 and 2. The power will be used to deal with consequential and transitional matters arising from Clauses 1 and 2 coming into force, which may be outside the scope of transitional or consequential powers the Bill provides for within Part 5. For example, currently the Tenant Fees Act 2019 only applies to assured shorthold tenancies. The power will ensure that the rules continue to apply in the new system by applying them to assured periodic tenancies, but as we don't want them to cover all assured tenancies (e.g. social housing), provision made must differentiate between the two. Taking this regulation-making power allows for flexibility to adapt the implementation of the Act to specific circumstances in this way.

68. Given the great breadth and complexity of relevant legislation, there are a number of cases potentially within scope of this power. This is the case, for example, where legislation might only apply to particular subsets of assured shorthold or fixed-term tenancies. As such, the legislation may need amending more often or in more detail than is appropriate to include in primary legislation. Establishing general rules for all such provisions would be inappropriate as detailed policy and technical implementation will have to work differently in different cases. Moreover, the wide-ranging implications of the major systemic changes made by Clauses 1 and 2 to the statute book may not be known until those provisions are in force, although many have already been considered by the Department (see for instance Clause 22 in respect of affected parts of the Housing Act 1996,

and Schedule 2). These may also give rise to legal uncertainty or legal lacunas, which would only become clear when the Bill is in force, but which would be imperative to the public interest to resolve at that stage, in a manner still subject to Parliamentary oversight. The Department considers, however, that many of these are likely to be technical and administrative in nature, and that resolving the consequences of a Bill's overarching policy principles for the statute book has precedent in the powers to make consequential and transitional amendments which Parliament regularly consents to in relation to primary legislation (see for instance sections 166-167 Building Safety Act 2022 or sections 212-213 Housing and Planning Act 2016).

69. Finally, the purpose and likely use of the power is clear and its scope is limited to making provision similar or corresponding with existing provision relating to what will be obsolete forms of tenancy, in respect of provision made by or under an Act passed before or later in the same session as the Renters' Rights Bill. The power therefore does not allow any modification to the statute book as Ministers see fit; or any modification to Parliamentary legislation passed in the future.

Justification for the procedure

70. In line with convention and the recommendations of the Delegated Powers and Regulatory Reform Committee (DPRRC), we consider it appropriate that amendments to primary legislation (which may be required via this power) will be subject to the affirmative procedure in both Houses of Parliament. The selection of this procedure will ensure that there is appropriate parliamentary scrutiny of any change to legislation made using this power.

Clause 32 (2): Powers of Secretary of State in connection with Chapter 1

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

71. This power will ensure that the Secretary of State can amend existing legislation so that it operates in respect of the reformed Schedule 2 to the Housing Act 1988 grounds of possession in ways similar or correspondent to the way it

applies to the current assured tenancy possession system. The power is required to facilitate a smooth transition to a new possession system which is similar to, but not exactly the same as, the current system, to make sure that legislation based on the latter can continue to function in a variety of different contexts.

72. The Renters' Rights Bill will amend the possession grounds in Schedule 2 to the Housing Act 1988, removing some grounds (such as Ground 3), amending others (such as Grounds 1 and 6) and inserting new grounds (such as Ground 1A). It will also reform the current 'prior notice' system whereby landlords must give notice to tenants that Grounds 1 – 5 will be available in relation to their tenancy before using them to regain possession (please see Clauses 3 and 14 – 13 and Schedule 1 of the Bill in this respect). For instance, in future, landlords will be required to give notice of the use of some grounds via the initial 'written statement of terms'. This notice will be provided at the start of a tenancy if landlords are to regain possession using the relevant grounds without risking a financial penalty being imposed, but the failure to do so will not make it impossible for the landlord to recover possession at all using them. In other cases, possession will be impossible to recover without prior notice that the ground is available to the landlord being given to the tenant, including in certain circumstances in respect of Ground 6, where this was not previously the case.

73. The wider statute book reflects the current nature of the Schedule 2 to the Housing Act 1988 grounds for possession, and the current prior notice system, in ways which will not be appropriate following the coming into force of Part 1 Chapter 1 of the Bill. Examples include provision made in Schedule 10 to the Local Government and Housing Act 1989. In practice, adapting the statute book to the wholesale changes made by the Bill to the previous assured tenancy possession regime will require a range of subordinate and supplementary policy decisions tailored to specific contexts.

<u>Justification for taking the power</u>

74. This power will help ensure continuity and certainty when existing legislation references Schedule 2 to the Housing Act 1988, as amended by this Bill. The power is in line with the main objectives of the Bill, which amends the possession grounds in Schedule 2 to the Housing Act 1988 and adapts the possession and prior notice systems accordingly. In general, this power will allow legislation to

continue to apply in a similar or corresponding way to the ways in which it does at present. The overarching policy of the Bill in relation to the grounds of possession and prior notice is set out in Clauses 3 and 15 – 20, Clause 26, and Schedule 1. This power is designed to allow the wider statute book to reflect those changes.

75. Given the great breadth and complexity of relevant legislation, there may be a number of cases potentially within scope of this power. As such, the legislation may need amending more often or in more detail than is appropriate to include in primary legislation. Establishing general rules for each provision would be inappropriate as detailed policy and technical implementation will have to work differently in different cases (for instance, what is suitable for leases created by operation of statute at the expiry of a fixed term under Schedule 10 to the Local Government Act 1989 may not be suitable for the current definition of 'Suitable Alternative Accommodation' in Part III of Schedule 2 to the Housing Act 1988, or to section 554 of the Housing Act 1985 ('Grant of tenancy to former owner-occupier').

76. Establishing general rules for all such provisions would be inappropriate as detailed policy and technical implementation will have to work differently in different cases. It is not possible to be certain that all of these cases and their implications will be clear prior to Royal Assent of the Bill. These may also give rise to legal uncertainty or legal lacunas, which would only become clear when the Bill is in force. The Department considers, however, that these are likely to be technical and administrative in nature or require policy decisions subordinate to the Bill's overarching policy as to the application of grounds for possession, but which would be imperative to the public interest to resolve at that stage, in a manner still subject to Parliamentary oversight, and in predictable ways similar to those authorised by Parliament previously.

<u>Justification for the procedure</u>

77. In line with convention and the recommendations of the DPRRC, we consider it appropriate that amendments to primary legislation (which may be required via this power) will be subject to the affirmative procedure. The selection of this procedure will ensure that there is appropriate parliamentary scrutiny of any change to legislation made using this power.

Clause 32 (4): Powers of Secretary of State in connection with Chapter 1

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

78. Clause 32(4) provides that the Secretary of State may make transitional regulations (under Clause 144(1)(a)) to make sure that pre-existing private legal instruments (e.g. mortgage agreements) appropriately reflect amendments to legislation made by virtue of the regulation-making power in Clause 32 (1) and (2).

79. Examples of circumstances in which the Secretary of State may consider that an instrument may not 'operate appropriately' in light of regulations made under Clause 32 (1) and (2) are set out in subsection (5)(b). When the power is used to modify or remove the effect of provision made by an instrument, parties to it may nevertheless replace this default legislative solution by varying the instrument (subsection (6)).

80. Regulations made to change the effect of instruments may also apply retrospectively to instruments as they have effect after the coming into force of Part 1 Chapter 1 of the Bill (Tenancy Reform: Assured Tenancies) but before the coming into force of regulations made under Clause 32(1) and (2). This feature is designed to allow the Government to absolve parties to private legal instruments of liability for breaching them in discrete respects between the point at which key changes to the assured tenancy system come into force for the "commencement date" and any such regulations are intended to provide legal certainty as to how private legal instruments should apply following changes made under Clause 32(1) and (2) as a result of the Bill's key tenancy reforms.

81. Clause 32(4) is required to facilitate a smooth transition to the new tenancy system and will allow the Secretary of State to make sure relevant instruments can continue to function. This power will ensure these critical rules continue in a similar or corresponding way in relation to assured periodic tenancies – thus ensuring a smooth transition to the new system.

Justification for taking the power

82. This power will help ensure continuity and certainty when existing legislation has been updated by virtue of the regulation-making power in Clause 32(1) and Clause 32(2). This will impact private legal instruments drafted to reflect the existing assured tenancy regime, such as mortgages, planning conditions, and insurance contracts, which reference assured shorthold tenancies, fixed term tenancies or the current Schedule 2 to the Housing Act 1988 grounds for possession. For example, were there to be a section 106 planning condition that properties can only let on assured shorthold tenancies in order to comply with statutory conditions which regulations made under Clause 32(1) or (2) will change in light of the Bill, the power will ensure that landlords will be able to let on assured tenancies in the future by updating the effect of the planning condition in light of the statutory changes made by regulations.

83. Although Clause 4 makes specific provision for one such set of circumstances, establishing general rules in advance of the use of regulations under Clause 32 (1) and (2) to make regulations is impracticable, and would be inappropriate at this stage as detailed policy and technical implementation will have to work differently in different cases. This is the case, for example, where the relevant instruments might only apply or refer to particular subsets of assured shorthold or fixed-term tenancies. As such, regulations may need to alter the effect of such instruments more often or in too much detail than is appropriate to include in primary legislation. Changes to primary legislation under Clause 32(1) and (2) are not yet determined, as described elsewhere, and thus it is not possible to make resulting changes to other legal instruments in primary.

84. As with the regulation-making powers under Clause 32(1) and (2) which this power is designed to complement, the power is therefore in line with, and supplements, the main objectives of the Bill, which abolishes assured shorthold tenancies, and will help parties to pre-existing private legal instruments to adapt to a united class of assured periodic tenancies in the new system by providing for legal certainty as to how outdated drafting is to apply in light of legislative change. The power is limited to allowing the Secretary of State to alter the application of instruments created before statutory amendments regulations made under Clause 32(1) and (2) came into force, and only where they operate inappropriately post-transition in the Secretary of State's reasonable opinion. Moreover, under subsection (6) parties to such instruments can agree that their

instruments have a different effect (inclusive of the one legislation replaces) even if such regulations apply to their instrument, preserving their freedom to contract.

85. Finally, the feature of the power set out in subsection (7) , allowing subsection (4) regulations to modify the effect of instruments from the Part 1 Chapter 1 'commencement date' until the coming into force of Clause 32(1) and (2) regulations is designed to provide legal certainty for parties to such instruments. The Government's view is that it would risk unfairness and uncertainty if any such subsection regulations could not apply retrospectively – they could not resolve any existing issues, despite these issues being the very reason regulations were introduced in the first place. It would mean no further changes could be made in respect of the initial period in which problems with the instruments surfaced, even if a more appropriate solution was identified for a particular subset of affected parties and applied for a subsequent period. This might leave parties to instruments operating inappropriately in breach in respect of an earlier period (and parties liable for breaches in consequence during that period), but not in relation to a later one. The Department therefore views subsection (7) as a necessary component of the power to alter the application of private legal instruments which would be created by subsection (4).

Justification for the procedure

86. The power to alter the effect of private legal instruments, albeit subject to variation by the parties to them, is subject to the affirmative resolution procedure as a further procedural safeguard in these specific circumstances.

Clause 33: Powers of Secretary of State in relation to Regulated home purchase plans

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

87. Clause 33 adds regulated home purchase plans to the list of tenancies that cannot be assured in Schedule 1 to the Housing Act 1988. Regulated home purchase plans

enable consumers to purchase property using Islamic Finance, which does not permit the receipt and payment of interest. To ensure the agreement is compliant with Islamic law, typically a bank will co-buy a property with the purchaser, and monthly repayments are then split into part capital and part rent, with the rent reducing as the purchasers share of the property grows.

88. This model is incompatible with the new assured tenancy system for similar reasons to leasehold and shared ownership agreements, which are also being exempted in the future. Leases that contain an ownership element must have a fixed period and the rent level may be unrelated to the market rents being levied on PRS properties. Clause 33 therefore excludes them from the assured tenancy regime in future, to ensure they can continue to function.

Justification for taking the power

89. The definition of regulated home purchase plans in Clause 33 has the same meaning as the one in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. This power will allow the Secretary of State to lay Regulations relating to the definition in Clause 33, in the event that HM Treasury lay Regulations amending the definition in the 2001 Order. This would enable Government to ensure Clause 33 has an operable definition of regulated home purchase plans, to maintain their exclusion from the assured tenancy regime. This power will only be available should the 2001 Order be changed however.

Justification for the procedure

90. The affirmative resolution procedure is the appropriate procedural safeguard for a power that changes the definition of tenancies that are exempt from the assured tenancy regime.

Clause 35 (3)(b): Conduct exempt from Clause 35(1) (discrimination relating to children)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

91. Clause 35 creates civil offences relating to discrimination against prospective tenants with children, for which landlords and anyone acting directly or indirectly on their behalf may be issued with a financial penalty.

92. Clause 35(1) sets out conduct that is prohibited discrimination relating to children and Clause 35(3) provides which conduct does not breach that prohibition. This includes any person who only engages in one or more of the activities explicitly listed in Clause 35(3)(a), or things otherwise described, or things done by persons of a specified description in regulations made under Clause 35(3)(b). This is so third parties who provide intermediate services, such as online platforms that disseminate advertisements, but are not otherwise involved in the letting of a property can continue to operate without fear of enforcement action.

Justification for taking the power

93. The power at Clause 35(3)(b) to exempt additional conduct from the 'no children' rental discrimination prohibitions will make sure the provisions can adapt to changing market practices and not inadvertently make third party platforms liable for breaches. Despite exempting three descriptions of conduct in Clause 35 (3)(a), the possibility remains that the types of conduct may need to change in future.

Justification for the procedure

94. The use of this power is unlikely to be controversial. It broadly aligns with the approach taken by the letting agency work definition powers under section 83(9)(b) of the Enterprise and Regulatory Reform Act 2013.

95. Under the Clause 35(3)(b) power, the scope of prohibited conduct set out at Clause 35(1) cannot be expanded to capture additional activities; the power only provides that more may be exempted from it. The negative procedure is therefore appropriate.

Clause 36(3)(b): Conduct exempt from Clause 36(1) (discrimination relating to benefit status)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

96. Clause 36 creates civil offences relating to discrimination against prospective tenants who receive benefits, for which landlords and anyone acting directly or indirectly on their behalf may be issued with a financial penalty.

97. Clause 36(1) sets out conduct that is prohibited discrimination relating to benefit status and Clause 36(3) provides which conduct does not breach that prohibition. This includes any person who only engages in one or more of the activities explicitly listed in Clause 36(3)(a), or things otherwise described, or things done by persons of a specified description in regulations made under Clause 36(3)(b). This is so third parties who provide intermediate services, such as online platforms that disseminate advertisements, but are not otherwise involved in the letting of a property can continue to operate without fear of enforcement action.

Justification for taking the power

98. The power to exempt additional conduct from the 'benefit status' rental discrimination prohibitions will make sure the provisions can adapt to changing market practices and not inadvertently make third party platforms liable for breaches. Despite exempting three descriptions of conduct in Clause 36(3)(a), the possibility remains that the types of conduct may need to change in future.

Justification for the procedure

99. The use of this power is unlikely to be controversial. It broadly aligns with the approach taken by the letting agency work definition powers under section 83(9)(b) of the Enterprise and Regulatory Reform Act 2013.

100. Under the Clause 36(3)(b) power, the scope of prohibited conduct set out at Clause 36(1) cannot be expanded to capture additional activities; the power only provides that more may be exempted from it. The negative procedure is therefore appropriate.

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

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

101. Clauses 35 and 36 create civil offences related to discrimination against renters with children or in receipt of benefits. Clause 41 grants the Secretary of State the power, by way of regulations, to extend these protections to additional cohorts of people.

102. When considered together, the provisions set out in Chapter 3 form a holistic framework for the prohibition of rental discrimination against specific cohorts of renters in England. If, following consultation, the Secretary of State is satisfied that discrimination against another such cohort is taking place, this clause allows for that cohort to be brought into this framework and afforded the necessary protections.

Justification for taking the power

103. This power allows the rental discrimination provisions to be flexible in response to future developments and changing market practices within the private rented sector. It may become necessary to protect other cohorts, under the provision, if we find landlords or agents are engaging in unlawful discriminatory conduct against cohorts of people, other than those with children or in receipt of benefits.

104. Exercise of the power is contingent on a consultation with relevant sector stakeholders and the Secretary of State being satisfied as to the existence and impact of discrimination, to ensure that any future extension has been subject to a strong evidence base, careful scrutiny, and broad consensus. The type of discriminatory behaviours captured in regulations must mirror the discriminatory behaviours prescribed in relation to those for renters with children and in receipt of benefits.

Justification for the procedure

105. Due to this power widening the purview of rental discrimination protections, the draft affirmative procedure is considered appropriate to ensure adequate scrutiny and consensus, with the opportunity available for debate.

106. The content of any new regulations to add an additional cohort is closely prescribed by this clause – the question for debate being solely whether the additional cohort of renters should be afforded the same protections against discrimination as those with children or on benefits – so we do not consider the fact that it is not possible to amend draft regulations presents a difficulty.

Clause 42 (8): Financial penalties

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: No procedure

Context and Purpose

107. Chapter 3 creates civil offences related to discrimination against prospective tenants with children or who receive benefits. If breached, landlords and anyone acting directly or indirectly on their behalf may be issued with a financial penalty. Local authorities are given the power to impose financial penalties of up to £7,000 upon parties who commit such a breach. Under Clause 42(8) the Secretary of State may issue guidance to relevant local authorities about their functions related to financial penalties. Clause 42(9) provides that local authorities must have regard to that guidance.

108. Guidance will likely outline the circumstances in which a breach should be treated as more or less severe and will mitigate the risk of a local authority issuing a disproportionate financial penalty. Making the guidance statutory follows the approach taken by section 23(10) of the Housing and Planning Act 2016, which includes provision that local housing authorities must have regard to guidance issued by the Secretary of State when issuing financial penalties for breach of banning order offences.

Justification for taking the power

109. Local authorities' enforcement priorities may vary depending on their local priorities, the nature of the private rented sector market in their area, and as new parts of the Bill are implemented. The guidance is intended to aid policy implementation by supplementing the legal rules laid down in the legislation, rather than adding to them.

110. Clause 42(5) sets a maximum financial penalty, rather than fixed amounts in primary legislation. Setting a maximum rather than a fixed amount in primary legislation will allow enforcement authorities the flexibility to consider the circumstances of each case and determine an appropriate and proportionate financial penalty. The guidance cannot set new financial penalties or allow enforcement authorities to exceed the maximum financial penalty agreed by Parliament.

111. Councils' enforcement priorities and practices are likely to change over time as new parts of the Bill are brought into force and councils learn from experience. This approach to issuing guidance will allow the Government to be agile in reflecting best practice and the practical experience of enforcement bodies, without changing the overall severity of penalties agreed by Parliament.

Justification for the procedure

112. Guidance is likely to be too detailed to be placed in legislation. It will need to allow for local authority flexibility and discretion in their enforcement approach. As such, it is appropriate for us to issue guidance rather than create new primary or secondary legislation.

Clause 42 (10): Financial Penalties

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

113. Chapter 3 creates civil offences related to discrimination against families with children and people in receipt of benefits. Local authorities are given the power to impose financial penalties of up to £7,000 upon landlords and anyone acting directly or indirectly on their behalf who commit a breach.

114. Clause 42(10) allows the Secretary of State to amend the maximum financial penalties a local authority can impose on a landlord or anyone acting on their behalf to reflect inflation. This power mirrors the power in section 23(9) of the Housing and Planning Act 2016 which allows the Secretary of State to change the level of maximum financial penalty to reflect inflation.

Justification for taking the power

115. Our intention is that the financial penalties that local authorities issue serve both as an effective deterrent to the landlord or agent on whom they are imposed from committing further breaches, and as a preventative measure. Therefore, the financial penalties may need to be changed to reflect the change in the value of money (e.g. to reflect inflation if the Secretary of State judges it appropriate).

Justification for the procedure

116. This is the usual approach for such powers (e.g. Housing and Planning Act 2016, Housing Act 2004). Regulations made under this power will be subject to the negative procedure. They will amend the financial penalty to reflect inflation, so are administrative in nature. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary for administrative regulations of this kind.

Clause 46 (3): inserts Clause 8C (Exception for publication of advertisements etc) into Part 2A of the Renting Homes (Fees etc.) (Wales) Act 2019

Power conferred on: Welsh Ministers

Power exercised by: Regulations (Statutory Instrument)

Senedd Procedure: Negative

Context and Purpose

117. This clause creates an exception to the criminal offences under section 8A(1) and section 8B(1). The clause provides that it is an offence for a landlord or person acting or purporting to act on a landlord's behalf to discriminate in relation to occupation contracts against persons who would have children live with or visit them or who are benefits claimants and makes other provision about discrimination of that kind. A person guilty of an offence under section 8A(1) or 8B(1) is liable on summary conviction to a fine.

118. Clause 8C exempts from liability any person who only engages in one or more of those things listed in paragraph (a). This is so third parties who provide intermediate services, such as online platforms that disseminate advertisements, but are not otherwise involved in the letting of a property can continue to operate without fear of prosecution.

Justification for taking the power

119. The power to exempt certain conduct from the rental discrimination prohibitions will make sure the provisions can adapt to changing market practices and not inadvertently make third party platforms criminally liable for a breach of the ban.

120. Despite exempting things under paragraph (a), the possibility remains that this list may need to be amended in future so there is flexibility to do so by way of regulations under paragraph (b) of section 8C.

Justification for the procedure

121. The use of this power is unlikely to be controversial. It broadly aligns with the approach by the letting agency work definition powers under section 83(9)(b) of the Enterprise and Regulatory Reform Act 2013, and with the approach taken in the equivalent English clauses for prohibiting rental discrimination.

122. This power means that the scope of liability cannot be expanded to capture additional conduct, only that more may be excepted from the rental discrimination provisions. The negative procedure is therefore appropriate.

Clause 49 (1): Power of Welsh Ministers to protect others

Power conferred on: Welsh Ministers

Power exercised by: Regulations (Statutory Instrument)

Senedd Procedure: Affirmative

Context and Purpose

123. Clause 46 creates criminal offences related to discrimination against renters with children or in receipt of benefits. Clause 49 grants the Welsh Ministers the power, by way of affirmative procedure regulations, to extend these protections to additional cohorts of people (within the legislative competence of Senedd Cymru).

124. When considered together, the provisions set out in Chapter 4 form a holistic framework for the prohibition of rental discrimination against specific cohorts of renters in Wales – mirroring those of Chapter 3 for England. If, following consultation, the Welsh Ministers are satisfied that discrimination against another rental cohort is taking place, this clause allows for that cohort to be brought into this framework and afforded the necessary protections.

Justification for taking the power

125. This power allows the rental discrimination provisions to be flexible in response to future developments and changing market practices within the private rented sector. It may become necessary to protect other cohorts, under the provision, if

we find landlords or agents are engaging in unlawful discriminatory conduct against cohorts of people, other than those with children or in receipt of benefits.

126. Exercise of the power is contingent on a duty to consult with relevant sector stakeholders and Welsh Ministers being satisfied as to the existence and impact of discrimination, to ensure that any future extension has been subject to a strong evidence base, careful scrutiny, and broad consensus. The type of discriminatory behaviours captured in regulations must mirror the discriminatory behaviours prescribed in relation to those for renters with children and in receipt of benefits.

Justification for the procedure

127. Due to this power's ability to widen the purview of rental discrimination protections, the draft affirmative procedure is considered appropriate to ensure adequate scrutiny and consensus, with the opportunity available for debate..

128. The content of any new regulations to add an additional cohort is closely prescribed by this clause – the question for debate being solely whether the additional cohort of renters should be afforded the same protections against discrimination as those with children or on benefits – so we do not consider the fact that it is not possible to amend draft regulations presents a difficulty.

129. This power may amend existing legislation, in order for regulations to be able to make insertions to the Rented Homes (Fees etc.) (Wales) Act 2019 alongside other rental discrimination provisions.

Clause 50: Power of Secretary of State to protect others

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

130. Clause 49 confers upon Welsh Ministers the power to extend the protections from discrimination in Chapter 4 to additional cohorts, where the new provision is within the legislative competence of Senedd Cymru. The power in Clause 50 is required in order that protections against discrimination in Wales relating to occupation contracts can be made by the Secretary of State where these relate to reserved matters.

Justification for taking the power

131. The majority of new protections afforded to renters in Wales by virtue of Chapter 4 relate solely to housing and fall within the legislative competence of Senedd Cymru. Some measures, however, may relate to a reserved matter under the Welsh devolution settlement. In order that protections related to reserved matters be extended to new cohorts, this power enables provisions in regulations to be made by the Secretary of State.

Justification for the procedure:

132. Due to this power's ability to widen the purview of rental discrimination protections alongside regulations made by Welsh Ministers, the draft affirmative procedure is considered appropriate to ensure adequate scrutiny and consensus, with the opportunity available for debate,

133. Regulations may amend the relevant anti-discrimination legislation, that is Part 2A of the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019 and Chapter 6A of Part 3 of the Renting Homes (Wales) Act 2016.

Clause 52(2): Inserts section 6A (Offence of discriminating in relation to children) into the Private Housing (Tenancies) (Scotland) Act 2016, of which inserted subsection (3)(b) is a power to extend the exemptions

Power conferred on: Scottish Ministers

Power exercised by: Regulations (Scottish Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

134. This clause creates a criminal offence relating to discrimination against prospective tenants with children who would live with or visit them, for which landlords and anyone acting directly or indirectly on their behalf may, on summary conviction, be fined.

135. Subsection (3) of inserted section 6A exempts from liability any person who only engages in one or more of the activities explicitly listed in subsection (3)(a), or otherwise defined in subsequent regulations through the power provided in subsection (3)(b). This is so third parties who provide intermediary services, such as online platforms that disseminate advertisements, but are not otherwise

involved in the letting of a property can continue to operate without fear of prosecution.

Justification for taking the power

136. The power to exempt additional conduct from the 'no children' rental discrimination prohibitions will make sure the provisions can adapt to changing market practices and not inadvertently make third party platforms liable for breaches. Despite exempting three functions under subsection (3)(a), the possibility remains that this list may need to be amended in future.

Justification for the procedure

137. The use of this power is unlikely to be controversial. It broadly aligns with the approach taken in the equivalent English and Welsh clauses for prohibiting rental discrimination.

138. The power set out in inserted section 6A(3)(b) means that the scope of liability cannot be expanded to capture additional activities, only that more may be exempted from the 'no children' rental discrimination provisions. The negative procedure is therefore appropriate.

Clause 52(2): Inserts section 6B (Offence of discriminating in relation to benefits status) into the Private Housing (Tenancies) (Scotland) Act 2016, of which inserted subsection (3)(b) is a power to extend the exemptions

Power conferred on: Scottish Ministers

Power exercised by: Regulations (Scottish Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

139. This clause creates a criminal offence relating to discrimination against prospective tenants who receive benefits, for which landlords and anyone acting directly or indirectly on their behalf may, on summary conviction, be fined.

140. Subsection (3) of inserted section 6B exempts from liability any person who only engages in one or more of the activities explicitly listed in subsection (3)(a), or otherwise defined in subsequent regulations through the power provided in subsection (3)(b). This is so third parties who provide intermediary services, such as online platforms that disseminate advertisements, but are not otherwise

involved in the letting of a property can continue to operate without fear of prosecution.

Justification for taking the power

141. The power to exempt additional conduct from the 'benefit status' rental discrimination prohibitions will make sure the provisions can adapt to changing market practices and not inadvertently make third party platforms liable for breaches. Despite exempting three functions under subsection (3)(a), the possibility remains that this list may need to be amended in future.

Justification for the procedure

142. The use of this power is unlikely to be controversial. The power set out in inserted section 6B(3)(b) means that the scope of liability cannot be expanded to capture additional activities, only that more may be exempted from the 'benefit status' rental discrimination provisions. The negative procedure is therefore appropriate.

Clause 55: Power of Scottish Ministers to protect others

Power conferred on: Scottish Ministers

Power exercised by: Regulations (Scottish Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

143. Chapter 5 of Part 1 creates criminal offences related to discrimination against renters with children or in receipt of benefits. Clause 55(1) grants the Scottish Ministers the power, by way of affirmative procedure regulations, to extend these protections to additional cohorts of people (within the legislative competence of the Scottish Parliament).

144. When considered together, the provisions set out in Chapter 5 form a holistic framework for the prohibition of rental discrimination against specific cohorts of renters in Scotland and in general follows that of Chapter 3 for England and Chapter 4 for Wales. Before exercising this power to extend protections from rental discrimination against an additional cohort, Scottish Ministers must first undertake consultation.

Justification for taking the power

145. This power allows the rental discrimination provisions to be flexible in response to future developments and changing market practices within the private rented sector. It may become necessary to protect other cohorts, under the provision, if the Scottish Ministers find landlords or agents are engaging in unlawful discriminatory conduct against cohorts of people, other than those with children or in receipt of benefits.

146. Exercise of the power is contingent on a duty to consult with such persons as the Scottish Ministers consider appropriate, to ensure that any future extension has been subject to a strong evidence base, careful scrutiny, and broad consensus. The type of discriminatory behaviours captured in regulations must mirror the discriminatory behaviours prescribed in relation to those for renters with children and in receipt of benefits.

Justification for the procedure

147. Due to this power's ability to widen the purview of rental discrimination protections, the draft affirmative procedure is considered appropriate to ensure adequate scrutiny and consensus, with the opportunity available for debate.

148. The content of any new regulations to add an additional cohort is closely prescribed by this clause – the question for debate being solely whether the additional cohort of renters should be afforded the same protections against discrimination as those with children or on benefits.

149. This power may amend existing legislation, in order for regulations to function as intended without impediment and to make insertions to the Private Housing (Tenancies) (Scotland) Act 2016 alongside other rental discrimination provision.

Clause 56: Power of Secretary of State to protect others

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

150. Clause 55 confers upon the Scottish Ministers the power to extend the protections from discrimination in Chapter 5 to additional cohorts, where the new provision would be within the legislative competence of the Scottish Parliament to

make. This further power is required in order that provision relating to reserved matters can also be made.

Justification for taking the power

151. The majority of new protections afforded to renters in Scotland by virtue of Chapter 5 relate solely to housing and fall within the legislative competence of the Scottish Parliament. Some measures, however, may relate to a reserved matter under the Scottish devolution settlement. In order that protections related to reserved matters can be extended to new cohorts, power is being given to the Secretary of State to cover these reserved matters.

Justification for the procedure

152. Due to this power's ability to widen the purview of rental discrimination protections alongside regulations made by Scottish Ministers, the affirmative procedure is considered appropriate to ensure adequate scrutiny and consensus, with the opportunity available for debate.

Clause 59(6): Financial penalties

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: No procedure

Context and Purpose

153. Chapter 6 creates civil offences related to the requirement to include a specific rental amount in any written advertisement or offer for the tenancy and the prohibition against encouraging or inviting higher offers of rent. If this requirement or (as the case may be) prohibition is breached, landlords and anyone acting directly or indirectly on their behalf may be issued with a financial penalty. Local housing authorities are given the power to impose financial penalties of up to £7,000 upon persons who commit such a breach. Under Clause 59(6) the Secretary of State may issue guidance to relevant local authorities about their functions related to financial penalties. Clause 59(7) provides that local authorities must have regard to that guidance.

154. Guidance will likely outline the circumstances in which a breach should be treated as more or less severe and will mitigate the risk of a local authority issuing

a disproportionate financial penalty. Making the guidance statutory follows the approach taken by section 23(10) of the Housing and Planning Act 2016, which includes provision that local housing authorities must have regard to guidance issued by the Secretary of State when issuing financial penalties for breach of banning order offences.

Justification for taking the power

155. Local housing authorities' enforcement priorities may vary depending on their local priorities, the nature of the private rented sector market in their area, and as new parts of the Bill are implemented. The guidance is intended to aid policy implementation by supplementing the legal rules laid down in the legislation, rather than adding to them.

156. Clause 59(3) sets a maximum financial penalty, rather than fixed amounts in primary legislation. Setting fine ranges rather than absolute amounts in primary legislation will allow enforcement authorities the flexibility to consider the circumstances of each case and determine an appropriate and proportionate financial penalty. The guidance cannot set new financial penalties or allow enforcement authorities to exceed the maximum financial penalty agreed by Parliament.

157. Councils' enforcement priorities and practices are likely to change over time as new parts of the Bill are brought into force and councils learn from experience. This approach to issuing guidance will allow the Government to be agile in reflecting best practice and the practical experience of enforcement bodies, without changing the overall severity of penalties agreed by Parliament.

Justification for the procedure

158. Guidance is intended to be informative and is likely to be too detailed to be placed in legislation. It will need to allow for local authority flexibility and discretion in their enforcement approach. As such, it is appropriate for us to issue guidance rather than create new primary or secondary legislation.

Clause 59(8): Financial penalties

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

159. This power enables the Secretary of State to set out regulations which alter the maximum financial penalty amount in Clause 59(3) to reflect inflation. This power mirrors the power in section 23(9) of the Housing and Planning Act 2016 which allows the Secretary of State to change the level of financial penalties to reflect the value of money.

Justification for taking the power

160. Our intention is that the financial penalties that local housing authorities issue, serve as both an appropriate penalty for the landlord on whom it is imposed (or a person acting on the landlord's behalf), and as an effective deterrent against non-compliance. Therefore, the financial penalties may need to be changed to reflect the change in the value of money (e.g. to reflect inflation, if the Secretary of State considers it appropriate).

Justification for the procedure

161. Regulations made under this power will be subject to the negative procedure. They will amend the financial penalty to match the value of money, so are administrative in nature. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary for administrative regulations of this kind.

Clause 60(3): Penalties for unlawful eviction or harassment of occupier (inserting new section 1A into the Protection from Eviction Act 1977

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

162. This clause amends the Protection from Eviction Act 1977 to give local housing authorities the power to impose financial penalties of up to £40,000 on landlords who illegally evict tenants, as an alternative to prosecution. Until now, they could only prosecute. Under new section 1A(4) and (5) of the Protection from Eviction

Act 1977 the Secretary of State can issue statutory guidance to local housing authorities on how to exercise the financial penalty function effectively, which they must consider when determining what level of fine to issue.

Justification for taking the power

163. Guidance will be required as we are setting a maximum financial penalty rather than fixed amounts in primary legislation. The guidance will help to ensure that there is effective and consistent enforcement across the country for illegal evictions. Setting fine ranges rather than absolute amounts in primary legislation will allow local housing authorities the flexibility to consider the circumstances of each case and determine an appropriate and proportionate financial penalty. The guidance cannot set new financial penalties or allow local housing authorities to exceed the levels of financial penalties agreed by Parliament.

164. Local housing authorities' enforcement priorities are likely to change over time according to issues that emerge in the sector, so this allows for flexibility of approach. Priorities may change as new parts of the Bill are brought into force. The system is novel, so allows for small adjustments as the Government and councils learn from experience or where councils enforce inconsistently. This will allow the Government to be agile in reflecting best practice and the practical experience of enforcement bodies, without changing the overall level of penalty agreed by Parliament.

Justification for the procedure

165. The guidance is intended to aid policy implementation by supplementing the legal rules laid down in the legislation, rather than adding to them.

Clause 60: Penalties for unlawful eviction or harassment of occupier (inserting new section 1A into the Protection from Eviction Act 1977):

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

166. This clause gives local housing authorities the power to impose new financial penalties on landlords who illegally evict tenants (under the Protection from

Eviction Act 1977). The power under new section 1A(7) of the Protection from Eviction Act 1977 will allow the Secretary of State to amend the maximum financial penalties a local housing authority can impose on a landlord to reflect inflation. This power mirrors the power in section 23(9) of the Housing Act 2016 which allows the Secretary of State to change the level of financial penalties to reflect the value of money.

Justification for taking the power

167. Our intention is that the financial penalties that local housing authorities can issue serve as both an effective deterrent to the landlord on whom it is imposed from committing further breaches or offences, and as a preventative measure. Therefore, the financial penalties may need to be changed to reflect the change in the value of money (e.g. to reflect inflation, if the Secretary of State judges it appropriate).

Justification for the procedure

168. Regulations made under this power will be subject to the negative procedure. They will amend the financial penalty to match the value of money, so are administrative in nature. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary for administrative regulations of this kind.

Clause 62: Remedying of hazards occurring in dwellings in England (amending sections 10A and 10B of the Landlord and Tenant Act 1985)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

169. Sections 10A and 10B of the Landlord and Tenant Act 1985 (inserted by section 42 of the Social Housing (Regulation) Act 2023) imply into relevant social housing leases of dwellings in England a covenant that the landlord will comply with requirements set out in regulations. Section 10A(3) requires the Secretary of State to make regulations specifying timescales within which landlords must

take action to remedy hazards or potential hazards. The regulations may also require the landlord to take other action, such as securing alternative accommodation for the tenant's household.

170. Clause 62 amends sections 10A and 10B of the Landlord and Tenant Act 1985, implying covenants into leases of relevant private rented accommodation and extending the Secretary of State's duty to set requirements for taking action to remedy hazards within specified periods to landlords of privately rented homes.

171. The original provisions, known as 'Awaab's Law', were intended to require social landlords to rectify serious hazards quickly. This aimed to prevent the reoccurrence of a tragic event like the death of two-year-old Awaab Ishak as a result of a severe respiratory condition due to prolonged exposure to mould in his social home. Clause 62 extends these protections to tenants in the private rented sector.

Justification for taking the power

172. Providing for requirements on remedying hazards in privately rented homes to be set out in regulations follows the existing approach in the social rented sector. There are also risks of legislating for time limits without these being carefully considered and tested. Providing for the requirements to be set out in regulations will enable a consultation to take place to inform the detailed content of the requirements for the private rented sector, allow the requirements to be amended in light of practical experience, allow tweaks to the policy in light of practical experience (e.g. by limiting or broadening the scope of application), and accommodate the fact that different requirements might be appropriate for different kinds of landlord (e.g. depending on whether they are a private rented sector landlord or social rented sector landlord). This will ensure that these are appropriate and proportionate and minimise unintended negative consequences for both landlords and tenants.

Justification for the procedure

173. The existing power under section 10A of the Landlord and Tenant Act 1985 is subject to the affirmative procedure. We consider that this level of scrutiny remains appropriate following the extension of this power to privately rented homes.

Clause 63(1): Remedying of hazards occurring in accommodation in England occupied under licence (inserting new sections 10C and 10D into the Landlord and Tenant Act 1985)

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

174. Clause 63 inserts sections 10C and 10D into the Landlord and Tenant Act 1985. New section 10C(2) implies a term into licences to occupy of a description set out in regulations. This term requires the licensors to comply with requirements set out in regulations in relation to hazards.

175. New section 10C(1)(a) allows the Secretary of State to specify a description of licences to occupy residential premises. New section 10C(1)(b) allows the Secretary of State to make regulations specifying timescales within which licensors of these premises must take action to remedy hazards or potential hazards. The regulations may also require the licensor to take other action, such as securing alternative accommodation for the licensee's household. New section 10D(5) allows the Secretary of State to make provision in relation to a term implied by section 10C(2) corresponding to provisions made in relation to the implied covenant relating to fitness for human habitation by section 9A(4) to (8) of the Landlord and Tenant Act 1985, i.e. to void any term in such a licence that purports to (a) exclude or limit obligations of the licensor relating to the implied term to comply with prescribed requirements or (b) authorise any forfeiture or impose on the licensee any penalty, disability or obligation in the event of the licensee enforcing or relying upon those obligations; to enable the court to order specific performance of the prescribed requirements; to ensure that the implied term in the licence includes any common parts of the building in which the licensor has an estate or interest; and to imply in the licence a term that the licensor, or someone authorised in writing by the licensor, may enter the premises (at reasonable times of the day and only if at least 24 hours' notice has been given in writing to the licensee) for the purposes of viewing its condition and state of repair.

Justification for taking the powers

176. Having a power to set requirements that apply to accommodation occupied under licence follows the existing approach for social housing tenancies under section

10A of the Landlord and Tenant Act 1985 (which will also be extended to private rented sector tenancies by Clause 62).

177. There are risks of legislating for timescales without these being carefully considered and tested – for example, this could lead to a reduction in supply of licensed accommodation, the occupants of which can include some groups of people with particular vulnerabilities, such as those in temporary accommodation or supported housing. Taking powers to make regulations will enable a consultation to take place to inform the decisions on how best to apply 'Awaab's Law' requirements to licensors, allow the requirements to be amended in light of practical experience, allow tweaks to the policy in light of practical experience (e.g. by limiting or broadening the scope of application), and accommodate the fact that different requirements might be appropriate for different kinds of licensor (e.g. depending on whether they are in the private rented sector or social rented sector). This will ensure that the approach is appropriate and proportionate and minimises unintended negative consequences for both licensors and licensees.

Justification for the procedure

178. The existing power under section 10A of the Landlord and Tenant Act 1985 (which provides for requirements to be set for landlords of properties let under social housing leases and is being extended to apply to landlords in the private rented sector by Clause 62) is subject to the affirmative procedure. We consider that the same level of scrutiny is appropriate for these powers to apply such requirements to licensed accommodation.

Clause 64(4): Meaning of "residential landlord"

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

179. The Bill requires all private landlords of assured and regulated tenancies in England to be members of a private rented sector (PRS) landlord redress scheme and to register their details, and details of the dwellings for which they are a residential landlord, on the private rented sector database.

180. The introduction of landlord redress and a landlord database to the private rented sector for the first time is a significant undertaking. This clause sets out which private landlords should be members of the scheme and have entries on the database, and the types of tenancies and dwellings that fall within the scope of these requirements.

181. The definition of 'residential landlord' sets out which private landlords in England are captured by the requirements to join the redress scheme and have entries on the database. The type of dwelling to which the redress and database requirements will apply is a building or part of a building which is separately occupied by tenants (Clause 64(2)). A relevant tenancy is defined in Clause 64(3) by reference to existing legislative definitions of assured and regulated tenancies. Landlords of social housing are excluded.

182. Clause 64(4) provides the Secretary of State with the power to amend the definitions of "residential landlord", "relevant tenancy" and "dwelling".

183. The definition of residential landlord has been drafted to capture the majority of typical private tenancies in England. Once the redress scheme and database are operational, it may be beneficial to extend their remits to cover a wider range of tenures in the private rented sector. The private rented sector is also likely to continue to evolve, with different tenures and letting arrangements potentially becoming more prevalent. The power to amend the relevant definitions is necessary so that the Government can adapt to changes in the sector and will be able to extend the benefits of the redress and database provisions to more private tenants where appropriate.

<u>Justification for taking the power</u>

184. Clause 64 sets out that landlords in England with assured (under the Housing Act 1988) or regulated (under the Rent Act 1977) tenancies will be required to join a redress scheme and register on the private rented sector database. This provides Parliament and stakeholders with clarity as to exactly which tenures are in scope of the redress scheme and database. According to the English Housing Survey (EHS) 2021-22, 80% of private rented sector tenancies are assured, meaning that the majority of tenancies will be in scope of the landlord redress requirements and the database.

185. Both private landlord redress and the database are novel services for the private rented sector, which will be made available to over four million households

(based on EHS 2021-22 data). We anticipate that these services will benefit tenants and landlords through increasing awareness of their rights and responsibilities, supporting compliance with standards and safety regulations and providing a route for tenants to raise complaints against landlords who do not act appropriately.

186. It may be appropriate for these services to be available to a wider range of tenures than assured and regulated tenancies, however the Government must ensure that landlord redress and the database can be implemented smoothly. By focusing on the most common tenures at the outset, it will be easier to design and introduce these services effectively and efficiently.

187. Once landlord redress and the database are effectively embedded in the private rented sector, it may be appropriate to expand the remit of these to cover a wider range of tenures. The Government may also need to respond to changes in the sector that lead to certain tenures becoming more prevalent, or to the attempts of unscrupulous landlords to avoid their legal obligations by purposefully using artificial types of letting arrangements.

188. Therefore, a power to amend the definitions of ‘residential landlord’, ‘relevant tenancy’ and ‘dwelling’ is required. One alternative might be for the legislation to give the Secretary of State a broad power to define ‘residential landlords’ through secondary legislation but this would provide Parliament and the sector with less transparency as to which landlords the Government intends to be in scope. Another alternative might be for the legislation to include a wider range of tenures in the definition of 'residential landlord’ in the primary from the outset, but this could risk these new services not being able to effectively deal with the diversity of different types of landlords and tenures in the early stages of their operation.

189. The powers in Clause 64(4) are based on the current understanding of the types of non-traditional tenure that might reasonably be considered part of the private rented sector and therefore could be suitable to bring within the scope of the Part 2 measures in due course. These include supported housing, property guardianship, rent-to-rent and mobile home sites. Because the way in which residential accommodation is rented and occupied is diverse, the power to amend the scope must necessarily be broad, as it needs to be able to take into

account not just different types of tenure, but different types of arrangements within tenures.

190. While Clause 64(4)(b) provides the Secretary of State with the power to amend the definition of ‘relevant tenancy’, the definition is limited to applying only to tenancies that are either periodic or for a fixed term of less than 21 years, as these limitations are considered to set the parameters for what could, from a policy perspective, be considered a private rented sector tenancy.

191. The current requirements to join the landlord redress scheme and register on the database will not apply to landlords who let property on a licence rather than on a tenancy. This includes, for example, owner-occupiers who take in lodgers, and companies that provide ‘property guardians’ for vacant or disused buildings. Whilst the intention is for the requirements under Part 2 to apply, in the first instance, to the most typical tenures in the sector, it is foreseeable that the use of licences to occupy may proliferate if they are seen as a way to circumvent the requirements on landlords imposed under Part 2. The power in this clause will allow the Government to bring licences to occupy within scope of the regulatory measures introduced by Part 2 in the future, if necessary.

192. Evidence obtained from stakeholders suggests that some landlords may seek to avoid or obfuscate their legal responsibilities under Part 2 by creating artificial arrangements which might bring them out of scope of the definition of ‘residential landlord’ and thereby undermine the policy intent of this Bill. The power in Clause 64 will enable the Government to respond to any such developments.

193. Clause 64(4)(a) provides the Secretary of State with the power to amend the definition of ‘residential landlord’ to include or exclude one or more superior landlords as well as, or instead of, the immediate landlord under a relevant tenancy. This is intended to address so-called ‘rent-to-rent’ arrangements, where the owner grants a tenancy to a business (‘the immediate landlord’) which in turn lets the property to the occupiers. The benefit for the owner is that they receive a guaranteed rent from the immediate landlord and pass on most of the management responsibilities to the immediate landlord. The benefit for the immediate landlord is the opportunity to make a profit by letting the property at a higher rent to the occupiers than they pay to the superior landlord. The Supreme Court case of *Rakusen v Jepsen and others [2023] UKSC 9* (see paragraph 43 of the judgment) shows that rent-to-rent arrangements can lead to

unsatisfactory outcomes for tenants and, in the worst cases, may be actively used by the immediate and/or superior landlord to avoid meeting landlord obligations. The intention is therefore to provide for superior landlords to be made subject to the requirements under Part 2 in appropriate circumstances. Collectively, the powers to amend the definitions of 'residential landlord', 'relevant tenancy' and 'dwelling' will allow the Government to discriminate appropriately between superior landlords who should be required to join the Ombudsman and those who should not, for example, because there is no underlying rent-to-rent arrangement. The powers are necessary to amend the scope appropriately and to continue to respond to any further developments in this area of the private rented sector in future.

194. The current requirements under Clause 64 do not apply to landlords who let other types of dwellings such as houseboats or other non-permanent structures. Clause 64(4)(c) provides the Secretary of State with the power to amend the definition of 'dwelling' so that it could include structures other than buildings or parts of buildings. The Government monitors the use of accommodation in non-buildings for residential purposes and anticipates that it may be appropriate in future for such accommodation to be treated as part of the sector and made subject to the measures introduced by Part 2 of this Bill. The most notable example is accommodation on mobile home sites. Whilst mobile homes are normally owned by the occupier, they are usually situated on pitches under licence agreements with the site owner. The power to amend the definition in this section is required should evidence in light of the operation of Part 2 suggest that it would be appropriate for the landlords or licensors in such situations to join the landlord redress scheme or register on the database.

195. Clause 64(5) clarifies that the Secretary of State has the power to amend the types of tenancy or licence in scope of Part 2 of the Bill by reference to any matters connected directly or indirectly to a tenancy or licence, including the characteristics or circumstances of any person who is connected with that category of licence. This would allow, for example, for certain types of licence agreement to be brought into scope, without having to extend the provisions to all licences. For example, bringing licences of temporary or supported accommodation into scope, while excluding other forms of licence, such as lodging arrangements. As such, this gives the Government the ability to make

decisions that are appropriate for the redress needs of specific tenures and types of rented accommodation.

196. Given non-assured tenancies account for around only 20% of the private rented sector, amendments to the definition of residential landlords to affect those without assured tenancies would impact a minority of the sector. The Government will engage with relevant stakeholders to make sure the likely impacts of any proposed changes are fully understood, considered and planned for.

Justification for the procedure

197. In line with convention and the recommendations of the DPRRC, the power to amend the meaning of 'residential landlord', 'relevant tenancy' and 'dwelling' in Clause 64 will be subject to the affirmative procedure in both Houses of Parliament. This will ensure that there is appropriate parliamentary scrutiny of any proposed changes to the scope of the private landlord redress scheme and the new database.

Clause 65(1): Landlord redress schemes

Power conferred on: Secretary of State or on behalf of the Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

198. There are currently three Government-approved redress schemes operating in the housing sector. These are the Housing Ombudsman Service for social tenants, which all social housing providers must be members of, and two agent redress schemes – The Property Redress Scheme and The Property Ombudsman – with all property agents being required to join one of these schemes. Requiring housing providers and professionals to be members of a redress scheme therefore has precedent, and private rented sector residential landlords (as defined in Clause 64) will now be required to be members of a redress scheme.

199. The purpose of the power in Clause 65(1) is to allow the Secretary of State to make regulations requiring all landlords who fall within the Bill's definition of

‘residential landlord’ in Clause 64 to be members of a scheme approved or designated by the Secretary of State under Clause 65. As specified in Clause 65(5) such a scheme must be operational and able to take members before the Secretary of State can require landlords to join.

200. Clause 65(2) sets out that a scheme must allow for the independent investigation and determination of complaints by prospective, current, and former tenants of residential landlords, or their eligible representatives. The definition of a ‘prospective residential tenant’ is provided in subsection (3).

201. Clause 65(4) allows for the regulations requiring landlords to join a landlord redress scheme to include a requirement for prospective landlords to join the redress scheme before marketing a property. They also prohibit a property from being marketed with the intention of creating a relevant tenancy, as defined in Clause 64, unless the prospective landlord is a member of a landlord redress scheme. What constitutes ‘marketing a property’ is defined in Clause 100. Clause 65(4)(c) also allows for regulations to specify how long a person must remain a member of the scheme after they have ceased being a residential landlord.

202. Allowing the regulations to cover prospective landlords is necessary to ensure that landlords do not mistreat tenants, for example, by providing false or misleading information about the property, or discriminating against prospective tenants, when marketing with a view to let. Similarly, tenants who have left the property but have been affected by the actions of their former landlord will be protected. For example, if the landlord misused the grounds for possession set out in Schedule 2 to the Housing Act 1988, any tenant who moved out of the property as a result would be able to complain to the scheme about the wrongful eviction by their former landlord.

203. 65(5) and (6) enable Secretary of state to make regulations setting out what information landlords (including prospective landlords) must provide when signing up to the Ombudsman. Regulations made under subsections (5) and (6) of Clause 65 may also require landlords to update this information on an ongoing basis. The Government intends to use this power to require landlords to register all their properties accurately when signing up to the Ombudsman and to keep this information up to date. This will make sure that landlords pay the correct fee for membership, where this is based on the size of property portfolio.

Requirements introduced by regulations under these provisions will be enforceable under the provisions set out in Clauses 67 and 68.

Justification for taking the power

204. The Bill provides for current, prospective and former private rented sector landlords to become members of an approved redress scheme, regardless of whether they use an agent to provide letting or management services.

205. Provision in the Building Safety Act 2022 (section 140) allows the Secretary of State by regulations to require property developers to be members of a New Homes Ombudsman. There is similar provision in the Enterprise and Regulatory Reform Act 2013 (sections 83 and 84) for the Secretary of State to require letting and managing agents to belong to a redress scheme by order.

206. Before the requirement to be a member of a redress scheme can be imposed on residential landlords, a suitable landlord redress scheme must be established. This means that it is necessary for the power to impose the requirement to be delegated so that it can be exercised at the appropriate time. This same approach has been taken previously in relation to other redress schemes, for example property agent redress schemes and the New Homes Ombudsman.

207. Therefore, Clause 66(2) gives the Secretary of State the power to approve a redress scheme or for one to be administered by, or on behalf of, the Secretary of State and designated as a landlord redress scheme for the purposes of the regulations.

208. Taking a power to provide in regulations for a redress scheme to be approved by, or administered by, or on behalf of, the Secretary of State, has precedent. See, for example, sections 83(1) and 84(1) of the Enterprise and Regulatory Reform Act 2013 and articles 3 and 5 of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 made thereunder.

Justification for the procedure

209. The affirmative procedure will ensure that there is appropriate parliamentary scrutiny of the regulations requiring prospective, existing and former landlords to be members of an approved or designated landlord redress scheme.

Clause 66(2) and (8): Approval and designation of landlord redress schemes

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

210. Applicants who wish to be approved as landlord redress providers must satisfy certain conditions before such approval or designation can be given. Clause 66(2) provides that regulations will specify the conditions which must be met, and subsection (4) notes that the schemes may be required to meet some or all of these conditions on an ongoing basis.

211. As part of these conditions, under 63(3)(a) and 63(3)(b), the scheme will be required to make provision for the appointment and terms and conditions of an individual to oversee and monitor the investigation and determination of complaints, such as an Ombudsman or Head of Redress. This provides flexibility to set out in regulations that either the Secretary of State or scheme administrator will appoint the Ombudsman, depending on the delivery model chosen. Both approaches have precedent amongst other Ombudsman services.

212. The conditions under Clause 63 also outline that the scheme may require fees from landlord members. Fees can be for compulsory aspects of the scheme relating to complaints in relation to which there is a legal duty to be a scheme member, as well as for voluntary services – such as landlord-initiated mediation or services for voluntary members. Clause 66(4A)(a) allows the Secretary of State to set out approval conditions in regulations relating to how a redress scheme will be able to calculate the amount or amounts of compulsory membership fees. These fees may be calculated by reference to specified "scheme costs", which are costs (whether or not connected with a fee-payer) related to: the establishment and administration of a redress scheme; the performance of any other functions under Part 2, Chapter 2 of this Bill; and, the performance of any other functions under the scheme. They include costs incurred by the scheme administrator or Ombudsman in connection with enforcement, but not the costs of enforcement authorities.

213. The conditions also allow schemes to expel landlords who fail to adhere to their obligations and provide checks and balances in relation to a scheme's power to

expel members. The Government decided not to recommend an expulsion approach for private landlord redress in its 2019 response to the 'Consumer Redress in the Housing Market' consultation, noting that 99% and 86-94% of agents complied with decisions of the Property Redress Scheme and Property Ombudsman respectively (2018-19 data). Similarly, 99% of social housing landlords complied with the decisions of the Housing Ombudsman (2019 data). Nevertheless, whilst other redress schemes can rely on public accountability and/or referral to a regulator to enforce decisions, there is no regulator in the private rented sector and not all landlords consider themselves to be professionals. As 46% of private landlords have mixed or low compliance levels with legislation and good practice indicators (English Private Landlord Survey, 2018), their non-compliance with scheme decisions may be much higher compared to lettings agency or property management businesses operating in the private rented sector or landlords in the social housing sector. It is also worth noting that, when agents do not comply with decisions, the agent redress schemes have the power to expel members. On this basis, the Government has decided that expelling non-compliant landlords is appropriate and proportionate, as a last resort.

214. Clause 66(3)(l) and (m) clarify that: the regulations must specify the circumstances in which the scheme could or should expel a member; require the scheme to first take specified steps to ensure compliance before considering expulsion; require the scheme to review a decision to expel by an independent person prior to the expulsion taking place; and require the scheme to provide for an expulsion to be revoked in specified circumstances. These steps taken prior to and after expulsion are designed to assure landlords that the scheme will treat each non-compliance case individually. The scheme will consider the landlord's circumstances before making the final decision on whether to deny them the ability to be compliant with the requirement to be a member of a redress scheme.

215. Clause 66(5) and (6) clarify that regulations made in relation to subsection (3)(o) may provide for the administration of any approved scheme to be transferred to the Secretary of State, or a person acting on their behalf. Any scheme transferred in this way may become a designated rather than an approved scheme.

216. Clause 66(8) provides the power for the Secretary of State to make regulations about the approval or designation of landlord redress schemes. It also specifies

some of the information which may be included in this provision, including (a) the number of redress schemes which may be approved or designated, (b) details of the application process for approval or designation, (c) the duration of the approval or designation, and (d) provision for withdrawal of approval or revocation of designation of a scheme.

217. The conditions of approval and designation set out in Clause 66 are not exhaustive, as clarified under section (7). Under subsection (9)(a) regulations may confer functions on the Secretary of State or authorise or require a scheme to do so, for example, setting a cap on the amount of compensation that may be awarded to a complainant. Subsection (10) provides the definitions for the voluntary and compulsory aspects of the schemes and the definition of a compulsory member.

Justification for taking the power

218. Approval conditions will be used as the benchmark for approving or designating a scheme and monitoring performance. Whilst the list of approval conditions in Clause 66(3) is not exhaustive, it provides Parliament with a good indication of what the Secretary of State will require a scheme to provide to landlords and tenants. Any additions to the approval conditions will be made by regulations subject to the affirmative procedure, providing Parliament with the opportunity to scrutinise the changes. The detailed criteria for approval or designation of a scheme will be set out in the regulations following further engagement with housing and redress experts. Legislating to expand or add to the approval conditions via secondary legislation will also provide necessary flexibility for these approval criteria should conditions in the sector change, and the Secretary of State considers that the scheme must change the way it works to tackle emerging issues. The “scheme costs” set out in section 63 (10) for the purposes of calculating membership fees will make sure the scheme has the legal basis for funding the establishment and delivery of a service for investigating complaints and certain further services that may be deemed beneficial to the private rented sector. Furthermore, should the Secretary of State decide to include other rental arrangements or dwellings in the redress scheme in future, changes to the approval criteria of the scheme may be required. Regulations made under Clause 64, for example, may change the definition of ‘residential landlord’, and as such may require a change to the approval conditions, to

ensure the scheme is expanded to include all landlords captured by the change in definition.

Justification for the procedure

219. The affirmative procedure will ensure that there is appropriate parliamentary scrutiny of the conditions that bidders must meet to be approved or that a scheme must meet to be designated insofar as these may add to what is already set out in Clause 66(3).

Clause 67(6): Financial penalties for breach of regulations

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

220. Residential landlords will be required to be members of a landlord redress scheme, further to regulations made by the Secretary of State under Clause 65(1), which provides for the Secretary of State to make such a requirement on landlords. Given that a prospective landlord will be required to be a member of an approved or designated redress scheme, those marketing a private property on their behalf will also need to be responsible for ensuring that the landlord is compliant with their legal obligations. Therefore, a person (e.g. letting agent or other) will be prohibited from marketing a property where the prospective landlord is not yet a member of a landlord redress scheme. To ensure compliance, financial penalties may be imposed by a local housing authority on persons who breach regulations made under clause 62 or commit an offence under clause 65.

221. Clause 67(2) sets out the maximum possible financial penalties a local housing authority may impose on a non-compliant person, and the circumstances under which a penalty may not be imposed. Since these are maximum penalties rather than fixed amounts, the Secretary of State will in due course give statutory guidance under Clause 67(6) on factors to which local authorities must have regard when determining what level of financial penalty to issue, within the parameters set out in the Bill (Clause 67(7)).

Justification for taking the power

222. We require statutory guidance as we are setting only maximum financial penalties rather than fixed amounts in primary legislation. This will allow local housing authorities the flexibility to consider the circumstances of each case and determine an appropriate and proportionate financial penalty. Guidance from the Secretary of State cannot set new financial penalties or allow councils to exceed the levels of financial penalties agreed by Parliament. We wish to produce clear statutory guidance covering criteria local housing authorities should consider when assessing financial penalties to mitigate the risk of patchy, inconsistent, or disproportionate enforcement across the country.

223. Enforcement authorities' priorities are likely to change over time in response to issues that emerge in the sector, so this allows for a flexible approach. Priorities may change as new parts of the Bill are brought into force. The system is novel, so allows for small adjustments as the Government and local authorities learn from experience or where there is inconsistency in enforcement. This will allow Government to be agile in reflecting best practice and the practical experience of enforcement bodies, without changing the overall level of penalty agreed by Parliament.

Justification for the procedure

224. The guidance is intended to be informative and to aid policy implementation by supplementing the legal rules laid down in legislation, rather than adding to them. As such, it is appropriate for this information to be in guidance rather than primary or secondary legislation.

Clause 67(8): Financial penalties for breach of regulations

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

225. Residential landlords will be required to be members of a landlord redress scheme, further to regulations made by the Secretary of State under Clause 65(1), which provides for the Secretary of State to impose such a requirement

on landlords. Given that a prospective landlord will be required to be a member of an approved or designated redress scheme, those marketing a private property on their behalf will also need to be responsible for ensuring that the landlord is compliant with their legal obligations. Therefore, a person (e.g. letting agent or other) will be prohibited from marketing a property where the prospective landlord is not yet a member of a landlord redress scheme. To ensure compliance, financial penalties may be imposed by a local housing authority on persons who breach these regulations made under Clause 65 or commit an offence under Clause 68.

226. Clause 67(2) sets out the maximum possible financial penalties a local housing authority may impose on a non-compliant person, and the circumstances under which a penalty may not be imposed. Clause 67(8) provides for the Secretary of State to change the maximum amount a local housing authority may impose in relation to a breach of the above requirements to account for inflation. This power mirrors the powers in section 23(9) of the Housing Act 2016 and section 9 of the Tenant Fees Act 2019 which allow the Secretary of State to change the level of financial penalties to reflect the value of money.

Justification for taking the power

227. Our intention is that the financial penalties that local housing authorities issue serve as an effective deterrent to, and penalty for, non-compliance by landlords or others with the mandatory requirement to be a member of a redress scheme, or the prohibition on marketing a property where the landlord is not registered with a redress scheme. Therefore, the financial penalties may need to be changed to reflect the change in the value of money (e.g. to reflect inflation, if the Secretary of State judges it appropriate).

Justification for the procedure

228. Regulations made under this power will be subject to the negative procedure. They will amend the maximum financial penalties to match inflation, so are administrative in nature. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary, for administrative regulations of this kind.

Clause 69(1): Decision under a landlord redress scheme may be made enforceable as if it were a court order

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

229. Approved or designated redress schemes, when considering complaints about businesses, issue decisions that are legally binding. A decision of the landlord redress scheme, if accepted by the tenant, will also be binding on the landlord. It is likely that some landlords will not comply with decisions, but the scale of non-compliance will only become clear once the scheme has been in operation for some time.

230. To increase compliance rates, legislation allows for the decisions of the Financial Ombudsman Service, the Pensions Ombudsman and the Legal Ombudsman to be enforced as if they were a court order. In practice, this is done using a low-burden paper exercise completed by or on behalf of the complainant. Clause 69(1) provides the Secretary of State with the power to make regulations to authorise the administrator of the landlord redress scheme to apply to court or tribunal for a relevant order to be enforced as if it were a court order.

231. The delegated power taken in this clause will be used at the discretion of the Secretary of State. It will only be used as a last resort, should compliance levels among private landlords prove low, and should the expulsion route be deemed ineffective. This power is necessary in order to achieve the objectives of the legislation of improving conditions and landlord behaviour in the private rented sector but will be used only once other measures have proved ineffective. Subsection (2) requires that the Secretary of State must consult with bodies representing landlords and tenants, as well as others who may be appropriate to consult, before using this delegated power.

Justification for taking the power

232. This power is only to be exercised should it prove absolutely necessary to achieve the objectives of providing effective access to justice for tenants through the redress scheme.

233. Legislating from the outset could result in unintended consequences. Tenants could waste court resources by pursuing comparatively small amounts of compensation. The potential burden on courts is difficult to assess given the uncertainty around levels of compliance. It is therefore sensible to wait until the redress scheme has been operational before assessing the implementation of this provision. This will allow compliance data to be collected and a consultation to take place before reaching a decision. The Secretary of State must seek the views of bodies representing landlords and tenants, as well as others chosen by the Secretary of State, before making use of this power.

234. A similar power has been taken in the Housing Act 1996, Schedule 2, paragraph 7D, making provision for the Secretary of State to make an order authorising the Housing Ombudsman to apply to a court or tribunal for an order that a decision made by the Ombudsman may be enforced as if it were an order of the court. This power has not been exercised in relation to redress in the social rented sector, as compliance levels among social housing providers is high. In the private rented sector, however, 46% of private landlords have mixed or low compliance levels with current legislation and good practice indicators (English Private Landlord Survey, 2018). This power is therefore more likely to be an important tool in ensuring that the aims of the redress policy are achieved in the private rented sector.

Justification for the procedure

235. Regulations made under this power will be subject to the negative procedure. The Government does not consider use of this power will be controversial. It is already usual practice in other Ombudsman schemes and is intended to be used as a last resort, where other enforcement levers have proved ineffective in achieving the aim of the legislation. We therefore consider it is appropriate for these regulations to be subject to the negative procedure.

Clause 71: Guidance for scheme administrators and local housing authority

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

236. The landlord redress scheme may from time to time receive complaints from tenants about issues which may require the intervention of a local housing authority. For example, where there is a suspicion that significant hazards may be found in the property, the redress scheme will refer the case to the local housing authority for potential enforcement action. The local housing authority may also be required to take action where a landlord is in breach of the requirement to be a member of a redress scheme, or a property is marketed by a person where the landlord is not a member of an approved redress scheme.

237. Co-operation between the redress scheme and local housing authorities will therefore be needed to make sure that the aims of the policy are achieved.

238. Subsection (1) provides for the Secretary of State to issue or approve guidance on how this cooperation should take place, and for guidance to be updated as needed. Subsection (2) requires local housing authorities to have regard to such guidance.

239. Subsection (3) requires the Secretary of State to exercise the powers in Clause 66 to require the administrator of the redress scheme to have regard to the guidance.

Justification for taking the power

240. It is not intended that the guidance will be issued via legislation. The power in this clause allows for the Secretary of State to issue or approve guidance which will support the co-operation of the landlord redress scheme and local housing authorities. This guidance is necessary to help these bodies understand their respective roles in the context of landlord redress, and how they must work together to achieve desired outcomes.

Clause 73(5): Substitutes new paragraph 10 into Schedule 2 to the Housing Act 1996 - Direction to a social housing redress scheme administrator to cease employing The Housing Ombudsman for social housing redress

Power conferred on: Secretary of State

Power exercised by: Written direction

Parliamentary Procedure: None

Context and Purpose

241. The Bill allows for the Government to approve a scheme delivered by a third party to administer the scheme itself, or to appoint a body to administer a scheme on the Government's behalf. Although no decision has been made, landlord redress could be delivered by the Housing Ombudsman Service (HOS).

242. HOS is currently set up under a ‘corporation sole’ model, with the person known as ‘The Housing Ombudsman’ appointed by the Secretary of State being the corporation sole. HOS may need to operate under a ‘body corporate’ model instead to facilitate the delivery of private landlord redress alongside social housing redress. Under existing paragraph 10 of Schedule 2 to the Housing Act 1996, where a scheme is administered by a body corporate, the board of directors, rather than the Secretary of State, would appoint The Housing Ombudsman (albeit subject to the Secretary of State’s approval).

243. New paragraph 10 of Schedule 2 to the Housing Act 1996 inserted by Clause 73(5) enables the Secretary of State to appoint The Housing Ombudsman under a body corporate arrangement, while offering some discretion should the Secretary of State consider it more prudent or expedient to delegate this function to the board of directors at any time.

244. The clause also gives the Secretary of State the power to remove the Ombudsman at any time, and direct the scheme administrator (e.g. board of directors) to cease employing them. This is necessary for the Secretary of State to maintain control over a prominent public office and is consistent with the current ‘corporation sole’ arrangement where the Secretary of State can remove and replace The Housing Ombudsman as they wish.

<u>Justification for taking the power</u>

245. The Secretary of State’s power to give the scheme administrator a direction to cease employing the Housing Ombudsman provided for in new paragraph 10(3)(b) is ancillary to its power to remove the Housing Ombudsman provided for in subsection (2) which replicates the effect of subsection (3) of existing paragraph 10. Such a direction would only bind the scheme administrator and the Government’s primary position is that it is non-legislative. If, however, it is a delegated power, it is justified by the need to maintain the Secretary of State’s existing control over a high-profile public role, where a different corporate structure is adopted than is currently in place.

Clause 73(5): Substitutes new paragraph 10 into Schedule 2 to the Housing Act 1996 - the power to establish a corporation sole to administer a social housing redress scheme.

Power conferred on: Secretary of State

Power exercised by: Order

Parliamentary Procedure: None

Context and Purpose

246. Clause 73(5) substitutes paragraph 10 of Schedule 2 to the Housing Act 1996. New paragraph 10(4) provides that a Housing Ombudsman scheme can operate as a corporation sole, as is the case now. This may be necessary, for instance, should Ministers decide that it is more prudent for the Housing Ombudsman Service to be run as a corporation sole.

Justification for taking the power

247. Provisions for a social housing redress scheme to be set up as a corporation sole already exist in the Housing Act 1996 and are simply replicated here.

248. The Government considers that no procedure is required to make the Housing Ombudsman a corporation sole as this is a purely administrative matter and maintains what is currently in place under 10(2) of Schedule 2 of the Housing Act 1996.

Clause 77(3)(a) to (c): The database operator

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

249. Clause 77(3)(a) to (c) contains powers for the Secretary of State to make regulations that require the database operator to ensure that the database has certain features and functionality; confers powers on the database operator to enter into contracts and other agreements that would facilitate the operation of the database; and allows for specified functions to be carried out by lead

enforcement authorities, local housing authorities or others instead of, or in addition to, being carried out by the database operator.

250. The key functions and duties of the database operator are envisaged as follows: overseeing the day-to-day operation and administration of the database; maintaining the database technology; taking a prescribed fee; and facilitating the registration process for landlords by establishing a prescribed form, which sets out the prescribed information required. While it is expected that the process of making entries on the database largely will be an automated, self-service process for landlords, it will be possible to submit manuscript requests for entries to be made, which the database operator would be responsible for adding to the database. The database operator would also provide guidance and assistance in the form of a call centre service.

Justification for taking the power

251. The functions of the database operator are clearly established in the Bill provisions. The Government considers that regulations making provisions about features and functionalities of the database are appropriate because the database is at the prototype stage of development and the digital aspects of the database are still being developed. Furthermore, the level of technical detail that will need to be set out is not considered to be appropriate for inclusion within primary legislation. It is also likely that provisions will need to be updated from time to time to accommodate new functionalities made capable by the evolution of the database IT system. The database, and what it is to achieve, are novel and we need to be able to adapt as we learn from initial implementation.

252. Conferring powers to enter into contracts and allowing certain functions to be carried out by others, including lead enforcement authorities and local housing authorities, is useful for specific and specialised tasks. For example, it may be necessary for the database operator to contract out a text alert service for landlords (to remind them to renew their registration) or to agree that a local housing authority reviews paper applications for registration. We have a clear position on who will exercise the various functions but we require flexibility in terms of how this translates into practice. Following initial rollout of the database, it will be necessary to learn from and adapt the processes carried out by those that run and administer, oversee and enforce the database, and how those different functions interact.

Justification for the procedure

253. The Government considers that the negative procedure is proportionate in this instance, as the functions, and on whom they are to fall, are clearly set out in the provision and the regulations will make provision for matters procedural and technical in nature.

Clause 77(3)(d) and (4): The database operator

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

254. These provisions contain a standard power for the Secretary of State to make transitional or saving provision in connection with the change of a database operator and may relate to a specific change of database operator as well as to changes that might arise from time to time.

Justification for taking the power

255. The transitional or saving arrangements may be necessary to facilitate a smooth change from one database operator to another. This may include the continuation of the database's functions following a transition to a new operator, such as the maintenance of database entries. Any such arrangements would only be made on a temporary basis until a new operator is up and running. Similar arrangements exist in the Tenant Fees Act 2019 (section 24(4) and (5) for changes in the lead enforcement authority in the context of enforcement functions under that Act).

Justification for the procedure

256. The Government considers that the negative procedure is proportionate in this instance, as the functions, and on whom they are to fall, are clearly set out in the provision and the regulations will make provision for matters procedural and technical in nature.

Clause 78(1) to (4): Making entries in the database

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

257. Clause 78(1) will enable the Secretary of State to set out 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 needed and the prescribed fee to be paid, as well as the time by which these requirements must be complied with. Clause 78(3) provides for a grace period not exceeding 28 days for compliance with a requirement specified in regulations following the making of an entry.

258. Landlords will be able to register themselves online and enter required information directly onto the database (having paid the prescribed fee). It will also be possible for landlords to complete paper applications (provided they do so on the prescribed form, etc). We also intend to allow for a landlord to delegate authority to a managing agent to complete, on the landlord's behalf, certain prescribed information (for example, to evidence compliance with property standards). Grace periods are intended to enable entries to be made and to be available to the public where not all information or documents required by the regulations have been supplied though are in the process of being obtained. This would be, for example, a gas safety certificate where an appointment to inspect the property has been scheduled but has not yet taken place. This could then allow a landlord to market the property while some requirements are still in the process of being met.

Justification for taking the power

259. This power is needed to enable us to set out the requirements for registration of landlords, including prescribed information in a way that supports the design, build and operation of the digital service that will underpin the PRS Database. It is important that this goes in secondary legislation to provide the flexibility

required to support effective iterative development and user testing required to maximise the value of this service.

260. These requirements are aligned with the Government's Technology Code of Practice and associated Service Standard developed by the Central Digital and Data Office (CDDO) and have been developed to reduce the risk of building overly complex services that provide bad experiences to the users.

261. The Government has a clear policy on type of information that will be prescribed. As well as personal information about the landlord and dwelling, this 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, we expect this will include documents such as gas safety certificates and Electrical Installation Condition Reports, and the Decent Homes Standard as it is implemented. However, given that property standards regulations and their evidentiary requirements change over time, for the database to be effective in meeting its aims, it must be able to adapt to monitor new standards.

262. In some cases, information will need to be supplied by landlords; however, in others, it can be drawn from existing databases – for example, Energy Performance Certificates can be drawn from the Energy Performance of Buildings Register without input from the landlord. Given that, in the future, certification processes and formats may change, it would not be appropriate to be overly prescriptive in requiring information and documentation in particular ways and formats, as this could become unduly burdensome for landlords.

263. Given that we will be using regulations to detail the prescribed information, it is appropriate that we also indicate via regulations who can deal with certain aspects of making entries. We have been working closely with property agents to understand the technical capability we will need for the database to make it as amenable as possible and will continue to develop the technology in consultation with stakeholders. The regulations will need to reflect technical capability, and the database operator will need to learn from implementation. Regulations will also 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.

264. For the reasons outlined in more detail below, concerning the power in Clause 83(4)(a) it would be impractical to try and set out on the face of the Bill all types of delegations and entities that may be involved. As services within the property sector evolve, it would be necessary to amend the Bill.

Justification for the procedure

265. The affirmative procedure will ensure that how landlords register with the database and what information must be supplied as part of that registration will be subject to appropriate parliamentary scrutiny. Registration requirements may place additional administrative burdens on landlords, so it is correct that this is scrutinised more closely.

Clause 79(1) to (3): Requirement to keep active entries up-to-date

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

266. Once entries are registered, the policy intention is for there to be an ongoing duty on landlords to keep all landlord and dwelling entries in the database up to date. They will be required to either update the database themselves or to submit updates to the database operator in writing, within 28 days of any changes to the information provided, including (but not limited to) the following:

    a. any change in the name under which the landlord/corporate entity is registered;

    b. any change in the ownership or management of the property;

    c. any change in the use of the property (i.e. if it is no longer being let); and

    d. any material changes in relation to compliance with property standards or exemptions from having to comply therewith (for example, providing a new Electrical Installation Condition Report once the existing one expires).

267. Landlord and dwelling entries on the database will need to be kept current so that local housing authorities have access to up to date information about private

rented sector properties in their areas, and across England, which will support them to generate comprehensive enforcement strategies and to undertake effective enforcement action. Up to date entries will also mean renters and prospective renters can make informed decisions about renting with a particular landlord or property.

268. No fee will be required to keep entries up to date under regulations in this section, which is separate from re-registration on the database (Clause 80(3)).

Justification for taking the power

269. Regulations made under Clause 79(1) account for details that would need to be updated frequently or may be subject to change at random intervals. For example, a landlord's address or the electrical safety certificate for a dwelling.

270. The level of technical detail required for primary legislation would be extensive and quickly become out of date, as the regulatory requirements for rented properties, in the context of standards and safety, evolve. Given that the required updates will flow from the information prescribed in regulations under Clause 78, the requirement to update entries needs to be made, and revised from time to time, by way of regulations.

Justification for the procedure

271. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary, for administrative regulations of this kind. The substance of what the regulations may specify is narrowed and the overriding policy objective is clear.

Clause 80(1) and (2): Circumstances in which active entries become inactive and vice versa

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

272. This power enables the Secretary of State to set regulations around when an entry on the database may become inactive. This will include where

requirements in the regulations have not been met or the renewal fee has not been paid. For example, where an entry effectively expires and becomes inactive and renewal entries are not made before the registration period has lapsed. Other situations covered will be circumstances in which the landlord can request for their entry to be removed, for example, if they have sold a property or have stopped renting it out. It would also extend to situations when requirements, such as paying a fee, must be met for an entry to become active again, for example, where a renewal entry is made late. Regulations made under Clause 78(1) may include provision for a grace period during which entries can be undated over a period of time and Clause 78(3) provides that this period must be for no longer than 28 days.

273. Active entries are publicly viewable on the database and, subject to compliance with the requirements under the provisions in the Chapter, will provide local housing authorities and tenants or prospective tenants with key information concerning the property that is up to date. It is necessary for there to be provisions as to when entries are active, cease to be active and how they may become active again having become inactive. While we have a detailed understanding of what circumstances we need to make provision for (and subsection (2) has been drafted with these in mind; it is not exhaustive), this is a further area where some minor policy changes may need to be made in response to any unforeseen matters that transpire following the initial implementation of the database.

274. Government intends to streamline the renewal process for entries by requesting re-registration at regular periodic intervals regardless of whether dwellings were added during that period. The Government acknowledges that the database processes, including the payment process, need to work for landlords with static portfolios as well as landlords with large portfolios who frequently acquire new properties. The power is designed to enable the database to evolve in ways to attain maximum functionality to achieve the policy aims underpinning it for landlords, tenants and local housing authorities.

<u>Justification for taking the power</u>

275. There are a range of scenarios in which an entry can become inactive and in which it may become active again and regulations would be more suitable to

make provision for these so as not to clutter the face of the Bill with highly technical detail.

276. Government must be able to adapt to developments in the database technology and any learnings from implementation and be able to revise streamlined processes in this context. For example, for renewals, registrations will be valid for a specified period before they must be renewed. The intention is to merge renewals, so that if a landlord adds new dwelling entries within this period following their initial entry, they can renew all of their dwelling entries at once, rather than having to renew each on a separate cycle. Furthermore, this policy will need to work for different groups such as landlords with a single property and landlords with large portfolios that frequently acquire new rental properties. It will also need to be fairly reflected in the fee policy to be set by regulations, so that landlords are not double charged for adding entries at the renewal time in respect of dwellings that were acquired in the preceding three-year period. How this may translate into the technical functionality of the database is not clear at present and would be far too detailed for inclusion in the Bill. It is also likely that changes may be needed from time to time in response to matters that arise following practical implementation that would be better suited to being dealt with via a new set of regulations, for example, if it materialised that the specified cycle for an entry were too long or too short.

Justification for the procedure

277. We consider that the negative procedure is appropriate in respect of this power on the basis that it will set out largely technical and procedural matters and is not controversial, though with the option of a debate should Parliament consider it necessary.

Clause 81(1) and (2): Verification, correction and removal of entries

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

278. This clause empowers the Secretary of State to make regulations in respect of the verification, correction and removal of landlord and dwelling entries on the database. The power can be used to make provision requiring a proportion of entries and compliance with the requirements of Clauses 78, 79 and 80 to be verified by local authorities, or other persons, including how verifications are to be carried out. 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. It is expected that verification actions will be partially automated, though that a proportion of triaged applications will likely require follow up by those carrying out these functions.

279. The regulations may also authorise the correction of errors in respect of entries and specify by whom such corrections can be made, as well as authorising the removal of entries by a person specified in the regulations where it appears that requirements imposed by Chapter 3 have not been met. Room for manoeuvre is necessary here as, whilst we intend this to be the role of local housing authorities, certain aspects may require action from the database operator or the lead enforcement authority, and we will be able to further develop our policy on this as the PRS Database is rolled out.

280. As the information collected in the database may change or the method for verifying that information may be improved in the future, we require the flexibility to reflect this in the functions carried out by local housing authorities and others. It may be that implementation, for example, suggests that quotas should increase or decrease, and again, this could be achieved by laying new regulations.

Justification for taking the power

281. The operation of the database is designed around an assumption that certain processes can be automated, which means that some of the duties that we expect the database operator and users of the database to carry out will be dependent on successful testing of the technology, which has yet to be completed. 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.

282. Although the database is intended to be a ‘self-service’ system for landlords, there may be circumstances in which entries must be removed because they have been added in error, for instance, by a landlord with a commercial property portfolio.

283. These regulations would assist maintaining the accuracy of the database and therefore enable local housing authorities and tenants and prospective tenants to make informed decisions. It will also ensure that the function played by local housing authorities and others is sensitive to the functionality of the technology, and to the volumes of entries requiring follow up, which will only become clear as the system is rolled out. It is likely that adjustments to quotas will need to be made from time to time and having to make such changes by amending primary legislation would impact on the ability to develop the database dynamically and to maintain its integrity, for example, if there is a significant increase in landlords and properties becoming part of the private rented sector.

284. The ability for local authorities to correct or remove entries is a key protection of landlords’ privacy rights, and these wide regulation-making powers are a key mitigation as part of our ECHR analysis.

Justification for the procedure

285. We take the view, as the regulations made under this power will be largely concerning matters of procedure and administration, that the negative procedure would be suitable. This retains the option of debate in Parliament should this be considered necessary.

Clause 82(1) to (4): Fees for landlord and dwelling entries

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

286. Clause 82 is an enabling power that provides for fees to be charged for making landlord and dwelling entries under Clause 78 (landlord and dwelling entries) or Clause 80 (renewal entries for landlord and dwelling entries) onto the database. The regulations will specify the fees if the power is exercised by the Secretary

of State. Fees are to be calculated by reference to “relevant costs”, set out in Clause 82(4). These are costs incurred, or likely to be incurred in or associated with (a) the establishment and operation of the database, (b) the enforcement of requirements in respect of the database, (c) the performance of any other functions of the database operator under Chapter 3 of the Bill, and (d) the enforcement of any the requirements imposed by this Act or otherwise in relation to the private rented sector. Such costs may include costs unconnected with the fee-payer. Uses of the power include the charging of a higher fee where an inactive entry is to be made active again under Clause 80(2)(a) (where the entry becomes inactive as it has not been renewed). Alternatively, if the regulations provide that fees are to be determined by the database operator the regulations may provide that fees payable are to be determined by the database operator, in reference to certain of the “relevant costs”. If fees are to be payable to the database operator, Clause 82(6) provides that regulations may also specify by whom and in what circumstances fees are to be payable.

Justification for taking the power

287. We have set out in comprehensive terms what charges can be included in fees and how fees are to be calculated. However, the amount of the fees will depend on many variables and will change over time. To enable the fees to be set out in regulations from time to time will achieve the necessary flexibility in practice, rather than having to amend primary legislation if it transpires that, for example, the fee is too low or too high by reference to the costs incurred. The costs of the different cost categories will not be known until further down the line in the implementation process of not just the policy but also the technology and corresponding costs of the database. It is also likely that the costs will change over time, for example, in consequence of inflation.

Justification for the procedure

288. As we have set out a clear structure as to how fees are to be specified or determined in regulations, we consider that the negative procedure is appropriate, the provisions in the regulations not being controversial and essentially setting out the fees that are to apply for entries under Clause 78 and Clause 80 by reference to a circumscribed set of requirements.

Clause 82(5) and (6): Fees for landlord and dwelling entries

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary procedure: None

Context and Purpose

289. If the database operator is someone other than the Secretary of State, the Government intends for them to retain the fees received to pay for the costs of the database operation and then reinvest any surplus into the operation of the database and/or enforcement activities, with future fees being reduced if the costs of operation are less than projected. However, it is prudent to make provision for the Secretary of State to be able to direct the database operator to pay such funds either to local authorities to cover the costs of enforcement actions, or directly into the Consolidated Fund. Correspondingly, where the Secretary of State is the database operator, we wish to empower the Secretary of State to make payments of all or some of the fees received to local housing authorities in respect of their enforcement costs.

Justification for taking the power

290. We have made provision for a direction to be issued as to the payment of funds to local housing authorities or directly into the Consolidated Fund should this be necessary to cater for different circumstances that could arise. We do not consider this to be a legislative measure, rather a power for the Secretary of State to issue an instruction as to the payment of funds. This is a standard power that is used in like situations.

Justification for taking the procedure

291. There is no parliamentary procedure as Parliament will have approved the principle of the provisions in the Bill by enacting them and we do not expect Parliament will want to vote on every individual circumstance where this power may be used.

Clause 83(4): Restrictions on marketing, advertising and letting dwellings

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

292. Clause 83 concerns restrictions in relation to marketing, advertising and letting dwellings. Subsection (3) places a duty on a residential landlord. This is to ensure that there is an active landlord entry in the database in respect of the person and an active dwelling entry in the database in respect of the dwelling, and for any requirements to be complied with relating to the entries imposed by regulations made under Clause 79 (requirements to keep landlord and dwelling entries up to date). Clause 83(4) empowers the Secretary of State to make regulations specifying (a) circumstances in which the duty under subsection (3) is to apply to a person other than the landlord, and (b) where that duty, or any other duty set out in Clause 83 is not to apply at all, or is only to apply for a period specified or determined by the regulations.

Justification for taking the power

293. In many cases landlords, particularly large commercial landlords, will employ lettings or property agents to manage their property portfolio. The extent to which functions are undertaken by such entities will vary. For example, some landlords will deal with certain aspects in-house and outsource others. Landlords may also retain the services of different entities for different functions. Concerning the power in Clause 83(4)(a), it would be impractical to try and set out on the face of the Bill all types of delegations and entities that may be involved. As services within the property sector evolve, it would then be necessary to amend primary legislation. Being able to set out in regulations the circumstances in which a duty falls on another party will provide flexibility in operating the database, though with the safeguard of Parliamentary scrutiny given that this concerns situations where legal duties will fall on third parties in place of the landlord.

294. With regards to Clause 83(4)(b), what is to be achieved here is for flexible provisions or exemptions to be applied to the database to facilitate timely completion of lettings transactions, for example in scenarios where one small

requirement is pending such as a safety certification for which an inspection has already been scheduled. Such provisions would need to be carefully considered and, as health and safety law evolves, are likely to present new and nuanced situations that are best considered in detail as they arise, and ensuing regulations would then be subject to Parliamentary scrutiny. By making provision via regulations, we consider we can be more agile with the rights of all parties involved in a way that we would not be able to if all provisions were to be set out on the face of the Bill.

Justification for the procedure

295. The regulations made under this power will have graver implications for those impacted by them – they will be under a duty to comply with legal obligations in respect of the database. We consider that this warrants the greater scrutiny afforded by the affirmative procedure.

Clause 84(4): Entries in the database relating to banning orders, offences, financial penalties, etc.

Power conferred on: Secretary of State

Power exercised by: Regulations (statutory instrument)

Parliamentary Procedure: Negative

Context and Purpose

296. Clause 84(4) enables the Secretary of State to make regulations which set out the instances in which local housing authorities will be placed under a duty to make an entry on the database for financial penalties or convictions in respect of banning order offences or financial penalties, where proceedings were instigated by a person other than a local housing authority. This is to account for banning order offences (listed in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (SI 2018/216)), which are enforced by a range of other authorities, including the police, Health and Safety Executive and the Fire Service. Regulations made pursuant to Clause 84(4) will need to reflect the varying ways in which the relevant enforcement bodies process work within the different settings. These regulations may also be used to set out the process for notifying local housing authorities of offence information in detail.

297. Clause 84(1)(a) contains a separate regulation making power which enables the Secretary of State to stipulate exactly which offence entries, and which aspects of them, may be made publicly accessible. This means entries made under Clause 84(4) may be made available to the public. As with other offences information, anything published would be subject to a rigorous assessment of its compatibility with landlords' ECHR rights, particularly under Article 8.

Justification for taking the power

298. Regulations made and the duties imposed under this power will work in conjunction with requirements imposed by Clause 78(1) about making entries in the database. The regulations imposed by Clause 84 may be used to describe the technical process for obtaining information about banning order offences enforced by persons other than local housing authorities.

299. Clear articulation of the distribution of responsibilities for communicating banning order offence data will enable the database to be a source of good quality information, aiding local authority enforcement and tenants' rental decisions. These regulations may place a duty on local housing authorities and may inform persons, other than local housing authorities, of the process for notifying local housing authorities that a residential landlord they instigated proceedings against, has received a conviction or financial penalty in relation to a banning order offence. The content and design of the regulations will support local housing authorities in making entries in relation to civil and criminal proceedings which they do not enforce and hence could have limited awareness of. These regulations will deal with the technical processes by which local authorities will become aware of offence information for offences that they have not enforced and as such would be more appropriately dealt with through secondary legislation. Furthermore, the desirable process for notifying local housing authorities of financial penalties and banning order offences may alter in the future, owing to changes in the private rented sector or the enforcing agencies for specific offences.

300. Research and user testing for the database has shown that access to a broad range of offence information would be crucial to tenants when making rental decisions. Banning order offences not enforced by local housing authorities include specified violent and sexual offences, under Schedule 15 to the Criminal Justice Act 2003 and where they are committed by a landlord in relation to their

rented housing or tenants (as set out in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (SI 2018/216)). Any regulations made pursuant to section 81(4) will be made to ensure such offences are recorded on the database and, subject to assessment in relation to landlords' ECHR rights, can be made publicly available to tenants under section 84(1)(a).

301. Such requirements will be subject to protections in Clause 84(5) and reflect the enforcement procedures for any additional offences or regulatory action that are brought in scope in the future. The use of regulations to set out this process will allow for flexibility in accommodating any such changes, which may occur at a greater regularity than it is reasonable, or desirable, to expect Parliament to legislate for in primary legislation.

Justification for the procedure

302. The Government considers the negative procedure to be sufficient for a power of this kind. The regulations under this power may define the technical process for the operation of a power legislated for in primary legislation.

Clause 84(6): Entries in the database relating to banning orders, offences, financial penalties, etc.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

303. This power enables the Secretary of State to make regulations which require local housing authorities to make an entry in the database in respect of a person who is convicted of an offence, has had a financial penalty imposed or is subject to regulatory action of a description to be prescribed by the regulations, provided that the offence or regulatory action in question occurred at a time when the person was a residential landlord, or when the property was being marketed for the purpose of creating a residential tenancy. The regulations will set out the offences, financial penalties and regulatory action for which an entry may or must be made in the database. This power will allow for information about offences, financial penalties and regulatory actions beyond banning orders and

banning order offences (as defined under Chapter 2 of Part 2 of the Housing and Planning Act 2016) to be added to the database. Financial penalties could include those imposed under Clause 92(1) in respect of breaches of Clause 83(1), (2) and (3) (restrictions on marketing, advertising and letting dwellings). Regulatory actions could include enforcement action such as improvement notices, offences enforced with a fixed penalty fine, prohibition orders or compliance notices. The intention is that such information would be restricted access, to support more informed and collaborative enforcement by local authorities. Clause 87(1)(a) contains a separate regulation making power which enables the Secretary of State to stipulate exactly which offence entries, and which aspects of them, may be made publicly accessible.

304. Clause 84(7) provides that regulations made pursuant to subsection (6) may describe the nature of the offence, the characteristics of the offender, the place and the circumstances in which the offence was committed, the sentencing court and the sentence imposed. The intention is that only limited information regarding these offences or breaches would be made publicly viewable. Under Clause 84(7)(b), the regulations may also make provision for local housing authorities to obtain information from another person for the purposes of making a database entry. We require this power as offences prescribed by these regulations may be enforced by agencies other than local housing authorities and as such local authorities may need to request offence data from those relevant agencies. This will enable the entries to be made in the database in respect of a broad range of offences, which meet a strict test of proportionality whilst considering landlords' ECHR rights.

<u>Justification for taking the power</u>

305. This power is needed to record offences and enforcement action on the database. Broadening the scope of offences recorded is a key requirement for local authorities, and one of our aims in addressing the limitations of the obsolete Rogue Landlord Database.

306. Enforcement action, beyond banning orders and banning order offences, are relevant to the objectives of the database, such as improving local housing authorities' ability to enforce their private rented sector and enabling tenants to make informed rental decisions. This information will give local housing authorities a more complete understanding of criminal activity in their jurisdiction

and intelligence to form the basis of proactive enforcement. The offence information to be made publicly viewable will be set out in regulations under Clause 87 but the use of regulations here will allow diligent assessment of the implications for landlords' ECHR rights of including any wider enforcement activity or offences on an individual basis.

307. New offences relating to the private rented sector may be introduced in the future whilst the types of offences, and information, which have value to tenants when making decisions about renting may also change over time. The use of regulations will allow the database flexibility in accommodating future offences or breaches. Taking a power to prescribe by regulations which of these offences, financial penalties and regulatory actions are sufficiently relevant to the database's purposes will allow a case-by-case assessment of the same and enable the database to continue to deliver on its objectives if the context of the private rented sector's regulatory environment were to alter. This power will also allow for the removal of offences from scope in the future, if evidence emerges which suggests that they are insufficiently relevant to the database's objective or fail a test of proportionality in the future.

308. New offence and wider regulatory action may be introduced, or existing relevant regulation may be changed, at a more regular frequency than Parliament could reasonably be expected to legislate for in primary legislation. Use of regulations will allow the pace of any changes to be reflected by the database.

<u>Justification for the procedure</u>

309. We consider the affirmative procedure to be the correct level of scrutiny for this power. The regulations under this power will have a significant impact on local housing authorities, if they are placed under a duty to record any broader offences. The regulations made under this power may have implications for landlords' ECHR rights, if additional offence entries are made and subsequently become publicly accessible through the regulation making power in Clause 87(1)(a). Any offences published in the database under Clause 84(6) would be subject to rigorous assessment for its compatibility with landlords' privacy rights, particularly under Article 8: ECHR.

Clause 84(8)(c): Entries in the database relating to banning orders offences, financial penalties, etc.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

310. Clause 84(8)(c) enables the Secretary of State to make regulations to prescribe additional information which must be included in a database entry made under Clause 84. Regulations made pursuant to this power will define what information must be included in an entry in relation to offence information. Clause 84(8)(a) and (b) already stipulate that any database entry made under Clause 84 must include the name of the person in respect of whom the entry is made and, when the entry is made in relation to a banning order, the date the banning order is made and date on which it ends. The power under subsection (8)(c) will therefore provide for any additional information to be included in database entries made under Clause 84 to be prescribed by regulations.

Justification for taking the power

311. Entries in relation to offences will include information that will be of use to local housing authorities when devising their enforcement strategies, or to tenants when making decisions about where to rent. The use of regulations will enable greater detail and flexibility in the information required to make an entry in respect of regulations. Alterations will be needed due to the changing requirements of local authorities and tenants, as the private rented sector changes. The use of secondary legislation will enable alterations to the information required for entries without the need for Parliament to legislate for primary legislation or amendments to existing legislation at an unreasonable frequency.

312. Clause 87(1)(a) contains a separate regulation making power which enables the Secretary of State to stipulate exactly which offence entries made under Clause 84, and which aspects of them, may be made publicly accessible and hence be of use to tenants making rental decisions. Any information published will be subject to a strict assessment of its compatibility with landlords' privacy rights, most notably under Article 8: ECHR, and must be deemed necessary and

proportionate in meeting Government's policy objectives. The information stipulated in the regulations under this power will form the basis of any information made publicly available.

Justification for the procedure

313. We consider that use of the negative procedure is appropriate for a power of this kind on the grounds that the power will set out the detail of information fields required to by filled when an entry is made to the database.

Clause 86(3)(b): Other duties

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

314. Under Clause 86(2), the database operator is required to report to the Secretary of State on the performance of the database, including any matters or trends relating to the database and information contained within it that are considered appropriate to be brought to the attention of the Secretary of State.

315. It is anticipated that to facilitate the provision of comprehensive and useful reports that setting reporting criteria will be necessary. The intervals of reporting and reporting criteria likely will need to change from time to time as IT and the database's capabilities develop, and to accommodate the type of information that will be contained on the database, to cover new legislative requirements in relation to housing, landlord and tenant law and health and safety. The timing of the report is to be agreed between the database operator and the Secretary of State, if there is no agreement, under Cause 86(3)(b) the Secretary of State may direct the time for the report.

Justification for taking the power

316. As discussed above, the database is at the prototype stage of development and its technical functionalities and capabilities are not fully known. The information and the kinds of criteria in relation to trends that may be relevant in making reports to the Secretary of State are likely to change over time as the database evolves, as well as the wider housing, landlord and tenant and health and safety

legislation. It may be that longer or shorter intervals are appropriate for reporting to the Secretary of State. The use of directions (in the absence of agreement between the Secretary of State and database operator) to set criteria in relation to reporting will enable the database and its performance to be assessed as legislation and IT capabilities of the database change and will enable variations to be implemented flexibly.

Justification for the procedure

317. There is no parliamentary procedure as Parliament will have approved the principle of the provisions in the Bill by enacting them and we do not expect Parliament will want to vote on every individual circumstance where this power may be used.

Clause 87(1): Access to the database

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

318. Clause 87(1) empowers the Secretary of State (per subsection (1)(a)) to make regulations detailing the information contained in landlord and dwelling entries that may be made available to the public. It is intended that only information that is necessary and proportionate to the aim of protecting and informing existing and prospective tenants in relation to their existing or prospective residential tenancies would be made available. To this end, it is important to be able to link banning orders, banning order offence information and details of regulatory action in respect of landlords to their landlord and dwelling entries, which the power enables under subsection (1)(b).

319. The manner and format of information made publicly available is also to be specified by the regulations (per subsection (1)(d)). For entries made under Clause 84 (banning order, banning order offence, regulatory action, etc.), regulations may specify the time period following the making of an entry by which information will be made publicly available, as well as notification requirements and circumstances where such information may not be available to the public.

Justification for taking the power

320. To meet the policy objectives of the database, it is necessary to make publicly available certain categories of information in respect of landlords and the properties. The Government wishes to limit the information to that which is strictly necessary to inform tenants and prospective tenants about their homes or prospective homes. This will include information that is sensitive, in particular in respect of banning orders or relevant banning order offence information. The information that is required will likely change over time. For example, new health and safety measures may be brought in respect of which information needs to be publicly accessible, or it may be that new banning order offences or regulatory enforcement actions are introduced. In order to ensure that tenants are not given false reassurances, publication of certain information (for example, in relation to property standards certification) is likely to be reliant on the capability of the technology to verify information as accurate. The content of the regulations must therefore remain sensitive to the sophistication of the database, to allow for publication of additional information if this is supported by technological advancements, which is expected as the database is rolled out, and iterated.

321. Making provision for the information that is to be publicly available through regulations provides the flexibility needed to adapt to wider regulatory change relevant to residential tenancies, though crucially will enable a careful balancing exercise to be undertaken to ensure only information that is necessary to achieve the policy aim is made publicly available. The Government will be able to exercise the necessary agility with persons' rights under the ECHR (Article 8) and data protection law for each category of information that is to be considered for becoming publicly available.

322. Being able to specify the manner and form in which information is shared, as well as being able to link entries in respect of banning orders, relevant banning order information and details of regulatory action to landlord and dwelling entries, will enable flexibility to accommodate technological changes that are likely to arise in the evolution of the database, as well as facilitating comprehensive functionality within the database. For example, if a landlord is subject to a banning order, the database will link this to the landlord entry, so that this can be seen at a glance without further searches being necessary.

Justification for the procedure

323. The regulations made under this power will bring about a change in the information about landlords that will be accessible by the public. We consider that the affirmative procedure will provide the appropriate level of scrutiny given the implications for landlords Article 8 rights under the ECHR.

Clause 88(2) to (5): Disclosure by database operator etc

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

324. The database operator must not disclose restricted information on the database (defined at Clause 88(8) as being information that is not made available to the public via regulations under Clause 87 and which relates to and identifies a person or corporation) except to lead enforcement authorities, local housing authorities, local weights and measures authorities, mayoral combined authorities and the Greater London Authority (as provided by Clause 87(2)) or in accordance with regulations made by the Secretary of State under Clause 88.

325. Clause 88(2) empowers the Secretary of State to specify in regulations the circumstances in which restricted information held on the database may be disclosed. The disclosure of such information may be authorised only where this is necessary (a) to enable or facilitate the compliance with a statutory requirement specified in the regulations, (b) to enable or facilitate compliance with a rule of law specified in regulations, or (c) to facilitate the exercise of statutory functions specified in the regulations. The intention is to limit and restrict the circumstances in which the sharing of private information is permissible, requiring disclosure not only to be restricted to the purposes set out at (a), (b) and (c) but also requiring the statutory requirements, rules of law and statutory functions themselves to be specified in regulations.

326. We intend for authorisation to be capable of applying to both public and non-public bodies. We consider that the best way to limit authorisation of disclosure is to authorise the sharing of information by reference to specific statutory

requirements, rules of law and statutory functions that are set out in regulations, rather than by reference to particular bodies. In this way, the rights of the persons to whom the information relates are properly safeguarded.

327. Regulations under subsection (3) may also impose restrictions on the use and onward disclosure of information. There is also provision that the regulations will not breach any obligations of confidentiality owed by the database operator, or any other restrictions on disclosure that may apply (in subsection (4)). Any disclosure that would breach data protection legislation is not authorised (per subsection (5)). These measures place further restrictions on how the information authorised to be disclosed under the regulations is to be used and demonstrates the clear intention for information sharing to be proportionate and in compliance with data protection laws and ECHR rights.

Justification for taking the power

328. The Government understands that there will be circumstances where it is appropriate to share restricted information with both public and non-public bodies and wishes to be able to do so, though only where it is appropriate, necessary and proportional to do this given the Article 8 ECHR implications for landlords. As stated above, provision may be made in regulations for the sharing of information where necessary in certain circumstances (Clause 88(2)). However, to further limit and restrict the circumstances in which the sharing of private information is permissible, subsection (2) requires the statutory requirement, rule of law or statutory functions themselves to be specified in regulations. Accordingly, if a statutory requirement, rule of law or a statutory function is not specified in regulations, then no data can be shared for that purpose. This will enable a full assessment of applicable ECHR rights and data protection laws to be undertaken in relation to every circumstance in which authorisation of disclosure is considered by the Government.

329. Statutory requirements, rules of law and statutory functions are likely to change over time, and it is important that obsolete requirements, rules and functions can be superseded by new ones that may be created in the future, in a manner that fully considers ECHR and data protection implications for the persons whose information is to be disclosed. It is important to be able make adjustments to the manner and form in which information is to be disclosed to be able to accommodate the technological changes that are likely to necessitate changes

to how information from the database is shared. As noted above, Clause 88(5) also makes clear that all disclosures under authorisations made via the power must be compliant with data protection legislation. Further, under subsections (7) and (8), disclosing information not authorised by the regulations or breaching the prohibition on onward disclosure in subsection (3)(b) will amount to a criminal offence whereby person will be liable under summary conviction to a fine.

330. The scope of the power means that authorisation for the sharing of information will be capable of applying to both public and non-public bodies. It is considered that the most effective means of limiting authorisation and safeguarding the rights of the persons in respect of whom the information is disclosed, is to authorise the sharing of information by reference to specific legal obligations and statutory functions that are set out in regulations, rather than particular bodies. This will also work towards facilitating a full assessment of applicable ECHR rights and data protection laws to be undertaken in relation to every circumstance in which authorisation of disclosure is considered by Government.

Justification for the procedure

331. The regulations made under this power will bring about a change in the information about landlords that is of a private, sensitive nature which may be shared with third parties. We consider that the affirmative procedure will provide the appropriate level of scrutiny given the implications for landlords' Article 8 rights under the ECHR.

Clause 91: Restriction on gaining possession

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

332. Clause 91(1) inserts new subsection 5ZA into Section 7 (order for possession) 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(1)(a) to ensure there is an active entry in the private

rented sector database in respect of both the landlord and the dwelling. This restriction does not apply if the ground under which possession is sought is Ground 7A or Ground 14 (tenant anti-social behaviour).

333. Subsection (2) provides that the Secretary of State may by regulations make changes to the persons who or circumstances in which a breach of Clause 83(1)(a) prevents the making of an order for possession.

Justification for taking the power

334. All residential landlords of assured tenancies must register on the private rented sector database and a restriction on possession for non-compliance is an effective enforcement mechanism. However, 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 on the database. For example, regulations will be needed to specify what requirements will be placed on landlords and the types of information and documentation they will need to provide in order to have an active registration. Whilst it is important landlords comply with all legal requirements of registration, when this restriction comes into effect they will have no alternative route to possession. This is unlike the current system where a landlord unable to use section 21 could still use section 8 grounds. This possession restriction is therefore a significant measure, and it would likely be disproportionate to introduce it for relatively minor breaches of registration requirements. Alternatively, there may be circumstances where a landlord is legitimately unable to comply with database obligations in a timely manner. For example, if they were required to provide information that could only be ascertained through accessing the property and they are denied access. In this scenario they may lose their active registration on the database, and therefore be refused possession of their property, despite taking reasonable action to ensure they are signed up.

335. Given the database has not been fully developed, and as the requirements for registration are likely to continue to evolve in the future to map the regulatory landscape, it would be impractical to attempt to predict and account for all these circumstances in primary legislation. This power will ensure the clause operates

as an effective enforcement mechanism without unreasonably burdening landlords by providing the court with the power to dispense with the restriction in defined circumstances.

Justification for the procedure

336. Requirements of the database may also change over time, and this power will ensure that Ministers can ensure the possession restriction reflects future policy, ensuring possession is not unduly restricted. Regulations made under this power will be subject to the affirmative procedure, providing an appropriate degree of parliamentary scrutiny of any change made using this power.

Clause 92(6): Financial penalties

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

337. The power will allow the Secretary of State to issue guidance to local housing authorities about the operation of their functions in relation to the imposing of financial penalties arising from the database's rules. Local housing authorities will be under a duty to have regard to any guidance the Secretary of State issues using this power (Clause 92(7)).

Justification for taking the power

338. This guidance will help local housing authorities to use the power to impose financial penalties in relation to the database effectively. It will aid consistent application of financial penalties across local housing authorities. This guidance could, for instance, describe circumstances in which a local housing authority may exercise discretion in imposing a penalty or instances where it is appropriate to escalate their enforcement approach. It could also set out factors to which a local housing authority should have regard in deciding the amount of a financial penalty.

339. The guidance may also need to be updated at regular intervals, owing to changing circumstances in the private rented sector or operation of local housing authority enforcement teams.

340. Section 25 of the Tenant Fees Act 2019 offers a similar precedent to the power proposed here, where the Secretary of State may direct a lead enforcement authority to issue guidance to local housing authorities and set out the content of that guidance.

Justification for the procedure

341. The guidance is intended to aid policy implementation by supplementing the legal rules laid down in the legislation, rather than adding to them.

Clause 92(8): Financial penalties

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

342. This power enables the Secretary of State to set out regulations which alter the maximum financial penalty amounts in Clause 92(2) to reflect inflation. This power mirrors the power in section 23(9) of the Housing Act 2016 which allows the Secretary of State to change the level of financial penalties to reflect the value of money.

Justification for taking the power

343. Our intention is that the financial penalties that local housing authorities issue, serve as both an appropriate penalty for the landlord on whom it is imposed, and as an effective deterrent against non-compliance. Therefore, the financial penalties may need to be changed to reflect the change in the value of money (e.g. to reflect inflation, if the Secretary of State considers it appropriate).

Justification for the procedure

344. Regulations made under this power will be subject to the negative procedure. They will amend the financial penalty to match the value of money, so are administrative in nature. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary for administrative regulations of this kind.

Clause 94(1) and (2): Power to direct database operator and local housing authorities

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

345. Powers under this section will be used by the Secretary of State to give direction to the database operator and to local housing authorities about the manner in which they are to exercise their functions as set out in the Bill.

346. The Government may use this power to direct the database operator to issue guidance to landlords/prospective landlords or local housing authorities regarding the discharge of their obligations and functions. For example, the Secretary of State may instruct the database operator to produce and disseminate a set of instructions for landlords as to how to navigate the database and upload documents.

Justification for taking the power

347. Circumstances in relation to the provisions for which the database operator and local housing authorities are responsible may change. This power therefore gives the Secretary of State the flexibility to require the database operator or local housing authorities to adapt their functions to respond to a development in the market or in response to other circumstances to which he considers these entities should have regard.

Justification for the procedure

348. 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.

Clause 96: Different provision for different purposes: joint landlords

Context and purpose:

349. This clause does not take an additional power but clarifies that regulations made pursuant to Clause 140(1)(b) in Chapter 3 may include different provision for different purposes – including provision for a single landlord entry to be made in the database in respect of joint landlords. The purpose behind this provision is to ensure we have the ability to streamline the process for joint landlords in order to avoid duplication of dwelling entries where possible. We anticipate creating a single sign-up process for joint landlords, with one 'lead' landlord registering on the behalf of others.

Justification for taking the power:

350. This clause clarifies the power set out Clause 140(1)(b) and makes clear what different provisions for different purposes means in the context of joint landlords. The justification for taking the powers in Clause 140 are set out in detail later in this memorandum. However, as part of regulations under Cause 78, we will set out how the process will work for joint landlords. These regulations will specify what information is to be supplied about interested parties, such as superior landlords. It is apt that provisions for joint landlords should be detailed alongside this, including specifying what information the lead landlord must specify about other owners. As with wider registration processes, this should be outlined in regulations rather than on the face of the Bill as processes may be amended following rollout.

Clause 100(7): Interpretation of Part 2

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative procedure

Context and Purpose

351. Clauses 65 and 83 provide (via delegated powers) mechanisms by which a person may be prohibited from marketing a property if a residential landlord is not registered on the Private Rented Sector Database or with an approved landlord redress scheme. This will ensure high compliance with the requirement

for prospective landlords to register their properties on the Database and be members of an approved scheme.

352. Clause 100, in addition to providing other definitions, clarifies under subsections (2) and (3) what is meant when a person “markets a dwelling” for the purpose of Clauses 65 and 83. There is a wider definition of “marketing” in the course of “letting agency work”, which is the business practice of sourcing a tenant and securing a tenancy on behalf of a client, usually a residential landlord, or securing a tenancy for a prospective tenant. Subsections (4) and (5) further clarify what is within and outside of scope for “letting agency work”. This is consistent with section 83(7) and (8) of the Enterprise and Regulatory Reform Act 2013 which defines “letting agency work” for the purpose of property agent redress.

353. Clause 100(7) allows the Secretary of State to specify things in the regulations which do not fall under the definition of “letting agency work”. Similar provision can be found in section 83(9)(b) of the Enterprise and Regulatory Reform Act 2013.

Justification for taking the power

354. The power to restrict the definition of “letting agency work” under Clause 92(6) is necessary to allow for Government to achieve a consistent definition of “letting agency work” across legislation, should regulations be laid to narrow the scope under section 83(9)(b) of the Enterprise and Regulatory Reform Act 2013 or under new sections 16E(9)-(10) of the Housing Act 1988 as would be inserted by Clause 15 of the Bill. Alternatively, the power allows the Government to apply bespoke exclusions in different scenarios as appropriate, in a manner which may prove too detailed for primary legislation and which has precedent in respect of the 2013 Act’s definitions of “letting agency work” and “property management work” as narrowed under the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (SI 2014/2359).

355. The regulation making power at Clause 100(6) provides a proportionate level of flexibility in that they enable Government to narrow the definition of “letting agency work”, but not to expand the definition to cover more activities or groups. The definition of “letting agency work" as drafted covers a broad range of activities and these regulations allow the Government to act should the definition

prove too wide in certain cases or in light of experience. For instance, at the time of the Enterprise and Regulatory Reform Act 2013, the decision was taken to exclude local authority activities from the scope of letting agent redress schemes (as achieved by section 83(9) of that Act). This was on the basis that complaints about local authorities could be made to the Local Government Ombudsman rather than a letting agents redress scheme (see paragraph 570 of the Explanatory Notes to that 2013 Act).

356. The Government does not consider that the requirements in relation to the Private Rented Sector Database or landlord redress schemes established or approved under this Bill wholly match that scenario but might want to narrow the scope in the future to exempt local authority activities from the definition of "marketing". This might, for instance, reflect a desire to achieve consistency with the exclusion under the Enterprise and Regulatory Reform Act 2013 for practicality, or reflect subsequent experience of implementing the enforcement regime for these prohibitions through local housing authorities and any lead enforcement authority in the different scenarios the database and Ombudsman schemes present, or in different ways for different local authority activities. Regulations made under this power will be subject to the negative procedure. We do not consider use of this power will be controversial and it has precedent within the Enterprise and Regulatory Reform Act 2013. These regulations mean that the scope of letting agent work cannot be expanded to capture additional groups or activities, only that some may be exempt from the requirement. The negative procedure is therefore appropriate.

Justification for the procedure

357. Regulations made under this power will be subject to the negative procedure. We do not consider use of this power will be controversial and it has precedent within the Enterprise and Regulatory Reform Act 2013. These regulations mean that the scope of letting agent work cannot be expanded to capture additional groups or activities, only that some may be exempt from the requirement. The negative procedure is therefore appropriate.

Clause 101(3): amends section 1 (new system for assessing housing conditions and enforcing housing standards) of the Housing Act 2004 to provide power to apply housing standards to temporary accommodation for the homeless

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

358. Clause 101 amends the Housing Act 2004 to provide for an enforceable Decent Homes Standard to be introduced into the private rented sector.

359. Clause 101(3) amends the definition of "residential premises" in section 1(4) of the Housing Act 2004 to include temporary accommodation for the homeless that is of a description specified in regulations made by the Secretary of State. This amendment operates to provide that types of temporary accommodation specified in regulations will be included within the definition of "qualifying residential premises" and therefore to be made subject to housing standards requirements. The delegated power at new section 1(4)(e)(ii) of the 2004 Act is capable of being exercised to also bring types of temporary accommodation for the homeless specified in the regulations within scope of hazards enforcement under Part 1 of the Housing Act 2004.

360. The purpose of the power at section 1(4)(e)(ii) of the 2004 Act is to allow regulations to be made to bring all, or a subset of, privately rented temporary accommodation for the homeless within scope of application of the Decent Homes Standard.

361. The amendments to section 1 of the HA 2004 by Clause 101(4) provide that, before using this power, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

Justification for taking the power

362. To make sure that those living in privately rented temporary accommodation for the homeless can benefit from the enforceable Decent Homes Standard, the policy aim is that as much as possible of this sector is required to meet the standard. (The social rented sector has had a Decent Homes Standard in place

since 2001.) It is, however, important that the application of new standards requirements to this sector does not have an undue negative impact on local housing authorities' ability to fulfil their statutory duties in respect of the provision of such accommodation. The extent of this impact will be affected both by the content of the Decent Homes Standard, which may be periodically updated, and by the availability of suitable accommodation, which may change over time.

363. A regulation-making power will enable the Secretary of State, taking account of these factors, to apply Decent Homes Standard requirements to privately rented temporary accommodation for the homeless in a manner that strikes the right balance between improving standards and avoiding risks to supply.

Justification for the procedure

364. The Government considers that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary, as this is a limited power to define the detail of what types of temporary accommodation for the homeless are subject to Decent Homes Standard requirements. Before making use of this power, the Secretary of State must seek the views of such persons as the Secretary of State considers appropriate.

Clause 101(5): inserts new section 2A (power to set standards for qualifying residential premises) into the Housing Act 2004 to provide power to set Decent Homes Standard requirements

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

365. The Government intends to introduce an enforceable Decent Homes Standard for private rented sector housing in England. The objective of this policy is to ensure people living in the private rented sector have homes that are safe and decent. A Decent Homes Standard has applied to socially rented homes since 2001.

366. Clause 101(5) inserts sections 2A (power to set standards for qualifying residential premises) and 2B (qualifying residential premises) into the Housing Act 2004 to allow standards requirements to be set that will apply to privately rented homes. Section 2A(1) gives the Secretary of State a power to make regulations specifying minimum quality standards for certain qualifying residential premises (as defined in section 2B) in England. The purpose of this power is to allow the Secretary of State to set, and periodically update as required, clear and enforceable minimum standards requirements relating to safety and decency. The requirements set in such regulations will form part of the Decent Homes Standard. This standard may also include existing statutory requirements, such as homes needing to be free from serious hazards (those assessed as 'Category 1' under the Housing Health and Safety Rating System) under Part 1 of the Housing Act 2004.

367. Section 2A(2) sets out matters the requirements may cover. This aims to provide details of the types of matters we expect to be covered in the Decent Homes Standard. The list is non-exhaustive, and there is no stipulation that requirements relating to any of these matters must be included in regulations. This aims to ensure that the Secretary of State can, through regulations, set out Decent Homes Standard requirements for privately rented homes and then, as required, update these following any potential future reviews of the standard.

368. Section 2A(3) allows the Secretary of State to divide these requirements into 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 aims to allow the regulations to support local housing authorities to prioritise and target enforcement at the most serious failures.

369. Section 2A(4) allows the regulations to contain exceptions from the requirements. This aims to allow, if required, the regulations to specify circumstances in which some qualifying residential premises will not be required to meet certain elements of the standard.

Justification for taking the power

370. A regulation-making power is necessary to enable the detailed content of the Decent Homes Standard to be set out. This will allow, if required, for consultation on the detail of the standard. It is also necessary to ensure that the content of the standard can be periodically reviewed and updated – for example, to make

sure it reflects modern expectations of decency and takes account of technological developments. Furthermore, we expect the content of the standard to provide a level of technical detail that it would be inappropriate to include within primary legislation.

371. It is also our intent that the standards set for private rented homes can be consistent with those that apply to the social rented sector. The Decent Homes Standard for social housing is set out in guidance for registered providers by the Regulator of Social Housing (RSH), under the regulator's power to set standards relating to consumer matters provided for by section 193 of the Housing and Regeneration Act 2008. This power will provide for greater consistency by allowing changes to be made to standards requirements for both sectors at the same time, if required.

372. There are precedents for taking this approach when applying standards requirements to housing. As set out above, the Housing and Regeneration Act 2008 adopts a similar approach by setting the parameters of what standards applying to social housing may include and provides a power for the regulator to set the technical detail of the Decent Homes Standard itself in guidance. In addition, the Housing Act 2004 established the Housing Health and Safety Rating System, which deals with safety hazards in residential premises, and provided the Secretary of State with a power to make regulations setting out the detail of this system by defining the types of hazard and the method for calculating their seriousness.

Justification for the procedure

373. These regulations have the potential to impose significant obligations on owners of qualifying residential premises. We therefore consider that this warrants the greater scrutiny afforded by the affirmative procedure.

Clause 101(5): inserts new section 2B (qualifying residential premises) into the Housing Act 2004 to provide power to amend the definition of 'relevant tenancy'

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

374. Clause 101 inserts provisions into the Housing Act 2004 to provide for Decent Homes Standard requirements, for these to be set via regulations, and which must be met by residential premises in England let under certain tenancies and licences. Sections 2B(1) and (2) of the Housing Act 2004 (inserted by Clause 101(5)) define the "qualifying residential premises" to which these standards requirements apply. This definition will bring the majority of privately rented homes within scope of the Decent Homes Standard, including all privately rented homes let on assured tenancies. The standard will also apply to privately rented supported housing occupied under both tenancies and licences. It is also possible to apply the standard to privately rented temporary accommodation for the homeless occupied under both tenancies and licences, subject to regulations being made under subsection 1(4)(e) of the Housing Act 2004 (inserted by Clause 101(3)).

375. Section 2B(3) of the Housing Act 2004 (inserted by Clause 101(5)) provides the Secretary of State with the power to amend the definition of 'relevant tenancy' in subsection 2B(2). This enables residential premises let under certain types of tenancy or licence to occupy to be added to, and removed from, the list of premises to which the standards requirements apply. Long leases (those granted for 21 years or more) are excluded from the types of tenancy that can be added under the power. This limits the scope of the power, preventing it from being used to bring leasehold properties within scope of the standards requirements. Subsection 2B(4) provides that, before using this power, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

376. This power is necessary because the private rented sector is a dynamic and evolving sector, and new landlord business models or renting arrangements may emerge in the future. This may require other types of tenancy or licence to be brought within scope of application of the Decent Homes Standard to avoid negative consequences for tenants.

Justification for taking the power

377. The "qualifying residential premises" defined by sections 2B(1) and (2) are the types of rented accommodation that the Government has assessed it necessary and proportionate to apply Decent Homes Standard requirements to be based

on the evidence of the current state of the private rented sector. One reason for including the power in section 2B(3) is to provide for a situation where other types of tenancy agreement within the private rented sector, besides assured tenancies, are either created by statute or become widely used.

378. The private rented sector is dynamic. Experience shows that new management or renting arrangements may emerge in the future. A recent example of this is the growth of the 'rent-to-rent' sector. The introduction of the Decent Homes Standard and the wider reforms introduced by the Bill could make the use of certain existing types of tenancy or licence, which are currently used in limited and specific circumstances and in a manner which we do not consider justifies application of these standards requirements, more mainstream. If this happens and there is evidence of a high prevalence of poor housing quality where these tenancies and licences are used, this could mean significant numbers of tenants are faced with unsafe and non-decent living conditions.

379. This delegated power will allow action to be taken to mitigate this risk by making regulations to allow the Decent Homes Standard requirements to apply to such tenancies or licences. It is, however, limited to tenancies that are either periodic or for a fixed term of less than 21 years as these limitations are considered to set the parameters for what could, from a policy perspective, be considered a private rented sector tenancy. It is also important to enable licences to be brought within scope of the Decent Homes Standard requirements in case these become more widespread in the sector in an attempt to circumvent the introduction of the Decent Homes Standard and other provisions in the Bill.

380. The power therefore provides a limited degree of flexibility to allow the scope of the policy to be amended in the light of practical experience and evidence of changes to the private rented sector. This will ensure that the Government's central aim of improving the safety and decency of privately rented homes cannot be circumvented by landlords adopting new rental arrangements and business models to avoid their properties being subject to standards requirements.

<u>Justification for the procedure</u>

381. In line with convention and the recommendations of the Delegated Powers and Regulatory Reform Committee, the power to amend the meaning of "relevant tenancy" in section 2B(3) of the Housing Act 2004 (inserted by Clause 101(5))

will be subject to the affirmative procedure in both Houses of Parliament. This will ensure that there is appropriate parliamentary scrutiny of any proposed changes to the types of premises to which the Decent Homes Standard requirements apply. Before making use of this power, the Secretary of State must seek the views of such persons as the Secretary of State considers appropriate.

Clause 111(3) and (4): Lead enforcement authority

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: None

Context and Purpose

382. Clauses 111, 112 and 113 establish that the Secretary of State may appoint a local housing authority, combined authority or the Greater London Authority as a lead enforcement authority for the purposes of any provisions of "the landlord legislation" (defined in Clause 107(5)) with functions which include issuing guidance, giving information and advice to local housing authorities, and acting as a backstop for enforcement. A lead enforcement authority, with these functions, may deliver efficiencies and help local housing authorities enforce the measures in this legislation in a consistent way.

383. The purpose of the power in Clause 111(3) is to enable the Secretary of State to smooth the transition between host authorities should a lead enforcement authority change at any time. It may be necessary, for example, to make transitional provisions and provide for savings relating to notices issued and other enforcement action taken by a local authority before its appointment as a lead enforcement authority comes to an end.

384. Clause 111(4) provides that the regulations may relate to a specific change in the lead enforcement authority or to changes which may arise from time to time.

Justification for taking the power

385. Circumstances may change after the Secretary of State has arranged for a local authority to be a lead enforcement authority that make it necessary or beneficial for this arrangement to change. This power allows the Secretary of State the

flexibility to provide for an orderly transition between one lead enforcement authority and another in such a scenario.

Justification for the procedure

386. No parliamentary procedure is proposed for regulations made under new Clause 111(3) as any use of these powers would only be for transitional purposes on the transfer of functions from one lead enforcement authority to another.

387. The power is very similar to that in section 24(4) of the Tenant Fees Act 2019, section 24A(4) of the Estate Agents Act 1979 and section 7(5) of the Mesothelioma Act 2014.

Clause 112(4): General duties and powers of lead enforcement authority

Power conferred on: A lead enforcement authority

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

388. Clause 112(4) gives a lead enforcement authority the power to issue guidance to local authorities in relation to the landlord provisions for which it is responsible. 101(5) provides that local authorities must have regard to such guidance when exercising their enforcement functions under the Bill.

389. This guidance may support local authorities in understanding and undertaking their responsibilities under the provisions of this Bill. In particular, the Government would expect that it will provide detail regarding practical aspects of enforcement such as interactions between the lead enforcement authority and local authorities, including the setting out of reporting requirements and/or procedures. The Government would also expect that guidance will be used to promote and provide examples of best practice and to promote consistency in application of the legislation.

Justification for taking the power

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

391. Giving a lead enforcement authority a power, rather than a duty, to issue guidance in this case allows the Secretary of State greater flexibility when interacting with a lead enforcement authority about the guidance. The Secretary of State has a power to direct a lead enforcement authority on how to exercise its functions under Clause 112(7).

Justification for the procedure

392. It is proposed that this power should not be subject to any parliamentary procedure since Parliament has approved the overarching enforcement principles by enacting the legislation.

Clause 112(7) and (8): General duties and powers of lead enforcement authority

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

393. Clause 112(7) gives the Secretary of State the power to direct a lead enforcement authority on how it uses its functions. Clause 104(8) provides that this direction can relate to all or certain types of local housing authorities and county councils which are not local housing authorities and can make different provision for different purposes.

Justification for taking the power

394. Circumstances in relation to the provisions for which a lead enforcement authority is responsible may change. This power therefore gives the Secretary of State the flexibility to require a lead enforcement authority to adapt how it exercises its functions to respond to a development in the market. For example, the Secretary of State may want to direct a lead enforcement authority on what guidance they want it to produce and when, if they consider that there are particular factors to which local enforcement authorities should have regard in the exercise of their functions.

Justification for the procedure

395. 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.

Clause 140 (5): Regulations

Context and purpose

396. Clause 140(5C) provides that a draft of a statutory instrument containing regulations under Clause 59 is to proceed in the House as if it were not a hybrid instrument, if it would, apart from that subsection, be treated as a hybrid instrument.

397. The Government may draft statutory instruments as provided for in Clause 59 for the purposes of phasing the introduction of a landlord redress scheme before introducing it for all relevant landlords in England. This phased introduction could be done, for example, by geographical location or by landlord property portfolio size.

398. Statutory instruments used to phase rollout of the service by landlord location or characteristics could be considered hybrid, as the provisions may affect some landlords differently to others, by requiring some landlords to be members of the Ombudsman before other landlords would have to meet those requirements.

Justification for taking the power

399. Preventing any statutory instruments drafted for the purposes of introducing a landlord redress scheme in a phased way from being treated as hybrid instruments will give the Government flexibility in how the service is rolled out and will prevent delays.

400. The statutory instruments provided for in Clause 59 of the Bill will be subject to the affirmative procedure and therefore be voted on in Parliament.

401. While the interests of different landlords may initially be affected differently through the fact that certain landlords may be required to join the Ombudsman before others, this will be temporary. Therefore, any hybridising instruments would not have a permanent effect, making the hybrid procedures disproportionate to the impact.

402. The Government intends to engage with relevant landlords and tenants who would likely be affected if regulations are proposed to be made that may be otherwise classed as hybrid instruments.

Justification for the procedure

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

Clause 141(1): Power of Welsh Ministers to make consequential provision

Power conferred on: Welsh Ministers

Power exercised by: Regulations (Statutory Instrument)

Senedd Procedure: Negative – unless the power is exercised to modify existing primary legislation, then affirmative

Context and Purpose

404. This clause provides that powers to make regulations regarding Chapter 4 of the Bill include powers to make consequential, supplementary, incidental, transitional or saving provision. This includes, as specified in subclause (4), to make provision that applies in relation to occupation contracts granted before the date on which the regulations came into force. Provision under this section is limited to the legislative competence of Senedd Cymru, as under (5).

Justification for taking the power

405. This power may only be exercised in connection with a provision of the Bill or regulations made under it. Subclause (2), which allows regulations to apply to existing legislation, is necessary so that amendments can be made to, for example, the Rented Homes (Fees, etc.) Wales Act 2019. This is essential to ensure that there are no unforeseen negative interactions between the Bill and existing Welsh legislation. It should be noted that the Renters' Rights Bill inserts provision into the Rented Homes (Fees, etc.) Wales Act 2019, which may require some technical changes by consequential regulations.

406. This consequential amendment power is based on the end provisions in the Office of Parliamentary Counsel's publish drafting guidance. A power is needed to avoid any legal uncertainty or legal gaps after the Act comes into force.

Justification for the procedure

407. It is appropriate that amendments to existing primary legislation follow the affirmative procedure, to reflect the need for increased scrutiny, while others will follow the negative procedure.

Clause 142: Power of Scottish Ministers to make consequential provision

Power conferred on: Scottish Ministers

Power exercised by: Regulations (Scottish Statutory Instrument)

Parliamentary Procedure: Negative – unless the power is exercised to modify primary legislation then affirmative

Context and Purpose

408. This clause confers on the Scottish Ministers a regulation-making power to make further consequential provision arising from Chapter 5 of Part 1 of this Bill. Regulations that make consequential provision may amend, repeal or revoke an enactment or an Act of the Scottish Parliament or an instrument made under an Act of that Parliament, but may only make provision that it would be within the legislative competence of the Scottish Parliament to make in an Act of that Parliament. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations under this clause are subject to the negative procedure.

Justification for taking the power

409. This power may only be exercised in connection with a provision of Chapter 5 of Part 1 of the Bill. It is not possible to establish in advance all consequential provision that may be required. This consequential amendment power is based on the end provisions in the Office of Parliamentary Counsel's published drafting guidance. A power is needed to avoid any legal uncertainty or legal gaps after the Act comes into force.

Justification for the procedure

410. It is conventional, as well as appropriate, that amendments to primary legislation will be subject to the affirmative procedure, and that amendments to secondary legislation will be subject to the negative procedure.

Clause 143: Power to make consequential provision

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative – unless the power is (i) exercised to modify primary legislation; or (ii) used to alter the effect of private legal instruments under Clause 143(4)(b); in cases (i) and (ii) the affirmative applies.

Context and Purpose

411. This Clause confers on the Secretary of State a regulation-making power to make consequential amendments which arise from this Bill. Regulations that make consequential provision may amend, repeal or revoke an enactment passed before this Bill or later in the same Parliamentary session. Please see subsections (1) to (4)(a) in this respect.

412. The Clause also provides the Secretary of State with the power to make transitional provision modifying the effect of particular "pre-application instruments" (such as leases, mortgage agreements or insurance contracts) that were drafted under the law as it stood before new consequential regulations took effect and which, as a result, the Secretary of State considers does not (or will not) operate appropriately. Please see subsections (4)(b) and (4A)-(4C) in this respect.

413. Regulations made under the power to change the effect of instruments may also apply retrospectively to instruments as they have effect after the coming into force of Part 1 Chapter 1 of the Bill but before such consequential regulations themselves come into force. This feature of the power is designed to allow the Government to absolve parties to private legal instruments of liability for breaching them in specific respects between the point at which key changes to the assured tenancy system come into force for new tenancies (the "commencement date"), and the point at which regulations made under this power come into force in respect of the instruments themselves. This will provide legal certainty as to how private legal instruments should apply for the full period following changes to the statute book.

414. By virtue of subsection (5), any regulations that amend or repeal primary legislation are subject to the affirmative procedure, as are regulations altering

the effect of instruments. Any other regulations under this clause are subject to the negative procedure.

Justification for taking the power

415. The Bill already contains key consequential amendments to the statute book in light of its main provisions, and provision modifying the effect of instruments in light of those changes. However, it is not possible to establish with total certainty in advance all consequential provision that may be required, or the impacts that these consequential amendments will have on the very large volume of relevant private legal instruments affected by them. Parties may face areas of legal uncertainty or become liable in ways that could not have been anticipated. This is particularly true where consequential amendments change legislation outside of that referenced in the Bill itself, where instruments will need to be adapted to the relevant legislative changes after Royal Assent. It is likely different provisions will be needed to match a variety of different circumstances given the widespread impacts of the Bill's reforms, both in relation to instruments and legislation. It is not possible to set out this level of detail in primary legislation.

416. A power is therefore needed to avoid any legal uncertainty or legal lacunas after the Act comes into force. It is the Government's intention that this power will be used to deal with the many references on the statute book to assured shorthold tenancies and fixed-term tenancies, which are being abolished by the Bill. The use of the power to amend legislation is naturally limited to changes consequential to the Bill's substantive provisions.

417. The Clause sets out the Government's intention on how the power in Clause 143(4)(b) may be used to alter the effect of private legal instruments, and places limits on the use of the power in subsection (4B). Namely that the regulations do not prevent the variation or revocation of provision modified by the regulations, including alternative arrangements agreed between parties, or the re-making of provision that has ceased to have effect as a result of the regulations. This will allow those parties instruments whose effect is changed by default by the regulations to change the instrument themselves to produce a different effect (or retain the previous wording), preserving their freedom to contract and to react to the application of the regulations in their specific circumstances as appropriate.

418. The power in Clause 143(4)(b) is limited to altering the effect of private legal instruments which pre-date the coming into force of the relevant regulations, and which the Secretary of State considers do not operate appropriately as a result, as clarified in subsection (4A). It can only be used to smooth transition into the new system, therefore, and is not a power to amend any private legal instrument affected by the Bill or the legislation it amends in any way the Government and Parliament sees fit.

419. Finally, the feature of the power set out in section 143(4C) to allow subsection (4)(b) regulations to modify the effect of instruments from the Part 1 Chapter 1 'commencement date' until the coming into force of the regulations is designed to provide legal certainty for parties to such instruments. The Government's view is that it would risk unfairness and uncertainty if any such regulations could not apply retrospectively – they could not resolve any existing issues, despite these issues being the very reason regulations were introduced in the first place. It would mean no further changes could be made in respect of the initial period in which problems with the instruments surfaced, even if a more appropriate solution was identified for a particular subset of affected parties and applied for a subsequent period. This might leave parties to instruments operating inappropriately in breach in respect of an earlier period (and parties liable for breaches in consequence during that period), but not in relation to a later one. Government therefore views subsection (4C) as a necessary component of the power to alter the application of private legal instruments which would be created by subsection (4)(b).

Justification for the procedure

420. It is conventional, as well as appropriate, that amendments to primary legislation will follow the affirmative procedure in both Houses of Parliament, and that amendments to secondary legislation will follow the negative procedure. The power to alter the effect of private legal instruments, albeit subject to variation by the parties to them, is subject to the affirmative resolution procedure as a further procedural safeguard in these specific circumstances.

Clause 145: Commencement

Power conferred on: Secretary of State, Welsh Ministers, Scottish Ministers

Power exercised by: Regulations

Parliamentary Procedure: None

Context and Purpose

421. The Secretary of State is given the power to bring into force the bulk of the provisions of this Bill through regulations. As set out in the clause the Act comes into force for the purposes of making regulations on the day it is passed. Clause 145 also sets out that certain provisions in the Bill will come into force either on Royal Assent or two months from Royal Assent. For the remaining purposes the Act comes into force on such a day as the Secretary of State may by regulations made by statutory instrument appoint, subject to subsections (2) to (6).

422. Subsections (3) to (6) set out that Chapter 4 of Part 1 comes into force on such day as the Welsh Ministers by regulations made by statutory instrument appoint. Chapter 5 of Part 1 comes into force on such day as the Scottish Ministers may by regulations appoint. The subsections also set out that Chapter 2 of Part 1, Clause 61, Clause 110 and Chapter 3 of Part 4 come into force two months after the Act is passed. Subsection (6) sets out that Clause 111 and Part 5 come into force on the day the Act is passed.

423. Subsection (7) allows different days to be appointed under this section for different purposes, subject to subsection (8). Subsection (8) means that Chapter 1 of Part 1 will be commenced on the same date for new and existing assured tenancies, apart from social housing assured tenancies (which are defined in subsection (8).

Justification for taking the power

424. This is a standard clause for commencing the provisions of an Act, and making saving and transitional provisions related to commencement by regulations and it is usual for this not to be subject to a procedure in Parliament. Leaving a subset of provisions in the Bill, other than those for which the Bill itself provides the commencement date (see above), to be brought into force by regulations will afford the necessary flexibility to commence the provisions of the Bill at the appropriate time. This allows the Government to have regard to the need to make any necessary secondary legislation, issue guidance, undertake

appropriate training and put the necessary systems and procedures in place, as the case may be.

Justification for the procedure

425. As is usual with commencement powers, regulations made under Clause 145 are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at the time best suited to the sector.

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

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Context and Purpose

426. Under this clause the Secretary of State may amend the meaning of "relevant provisions". These relate to 'statutory' assured periodic tenancies which arise on the expiry of a fixed term tenancy (by virtue of existing section 5 Housing Act 1988) between the same parties. Clause 147 provides that for the purposes of "the relevant provisions" the periodic tenancy should be treated as the same tenancy as the fixed term tenancy, and starting when that fixed term tenancy is entered into. This has implications for certain timeframes the Bill sets out. For instance, statutory periodic tenancies are deliberately deemed continuous with the prior fixed terms for the purposes of Part 1 of the Housing Act 1988 , as amended by Part 1 of Chapter 1 of the Bill. This is in order to avoid the following situations arising at the point of expiry of the fixed term, despite a longstanding landlord and tenant relationship on essentially similar terms existing between the parties:

a) the restriction on the use of the moving, selling and redevelopment grounds tenancy would apply from the point at which the new statutory periodic tenancy arose;

b) tenants would be able to challenge the rent for a further six-month period under new section 14(4A) of the 1988 Act on expiry of the fixed term;

c) the period after which landlords might serve tenants with notices of a new proposed rent would run from the expiry of the fixed term (see section 13 Housing Act 1988); and

d) landlords would need to serve a fresh written statement of terms on the expiry of the fixed term.

427. Part 1 Chapter 1 of the Bill will require a large number of consequential amendments to the statute book to reflect the new assured tenancy regime, under which statutory periodic tenancies will be treated as continuous with the original fixed term. However, there are other cases where treating statutory periodic tenancies in this way might be inappropriate, such as where current legislation applies to tenancies granted on or after a set date and legal obligations might inadvertently change in consequence. This power therefore reflects the need for flexibility to take account of the different circumstances of different legislative provisions which apply to statutory periodic tenancies and which may be altered in different ways under the powers to make consequential amendments reflecting Part 1 Chapter 1 of the Bill.

Justification for taking the power

428. Treating statutory assured periodic tenancies as continuous with their fixed term, or reflecting their previous fixed-term nature, reflects the wider scheme of the Act which repeals the relevant parts of section 5 Housing Act 1988 and treats these tenancies as such for the purposes of the key statutory regime applicable to them (Part 1 Chapter 1 Housing Act 1988). This power is necessary to reflect those changes for the purposes of consequential and transitional amendments across the wider statute book where appropriate.

Justification for the procedure

429. The Government considers that the affirmative parliamentary procedure is appropriate given that the power can be used to alter the application of primary legislation in a range of circumstances, such as where tenancies entered into from a certain date are subject to legislative provisions. Some of these circumstances may be of significant interest to Parliament and in consequence

the Government considers that the active scrutiny guaranteed through the affirmative procedure should be ensured.

Clause 148 (1): Transitional provision

Power conferred on: Welsh Ministers

Power exercised by: Regulations (Statutory Instrument)

Senedd Procedure: No procedure

Context and Purpose

430. These provisions contain a standard power for Welsh Ministers to make transitional or saving provision in connection with the commencement of Chapter 4 of Part 1, regarding discrimination against renters with children or in receipt of benefits in Wales.

Justification for taking the power

431. Whilst the Secretary of State is granted powers to make transitional or saving provision in connection with rental discrimination measures for England, as in Chapter 3 of Part 1, this clause confers those powers to Welsh Ministers where they instead relate to housing in Wales.

Justification for the procedure

432. As is usual with transitional powers, regulations made under Clause 141 are not subject to any parliamentary procedure. The absence of procedure means that where the transitional provision relates to provisions being brought into force by regulations, the transitional provision can be contained in the same instrument.

Clause 148(2): Transitional provision

Power conferred on: Scottish Ministers

Power exercised by: Regulations (Scottish Statutory Instrument)

Parliamentary Procedure: No procedure

Context and Purpose

433. This clause provides for Scottish Ministers to be able to make transitional or saving provision in connection with the commencement of Chapter 5 of Part 1,

regarding discrimination against renters with children or in receipt of benefits in Scotland.

Justification for taking the power

434. Whilst the Secretary of State is granted powers to make transitional or saving provision in connection with rental discrimination measures for England, as set out in Chapter 3 of Part 1, this clause confers those same powers to Scottish Ministers where they instead relate to housing in Scotland.

Justification for the procedure

435. As is usual with transitional powers, regulations made under Clause 142 are not subject to any parliamentary procedure. The absence of procedure means that where the transitional provision relates to provisions being brought into force by regulations, the transitional provision can be contained in the same instrument.

Clause 148(3): Transitional provision

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: None, unless the power is used to alter the effect of private legal instruments under subsection (4)(b), in which case the affirmative applies.

Context and purpose

436. Clause 148(3) gives the Secretary of State the power to make transitional or saving provision in connection with the coming into force of any provision in this Bill. The clause also allows the Welsh and Scottish Ministers to make transitional or saving provision in connection with the coming into force of the new Chapters 4 and 5 of Part 1 (containing prohibitions on discrimination in relation to occupation contracts in Wales, and tenancies in Scotland).

437. The power to make regulations under subsection (3) includes power to make different provision for different purposes and the power to provide for the Bill's provisions to apply to tenancies, licences or advertising which began before the clause came into force. Schedule 6 to the Bill contains transitional provisions in relation to tenancy reform and how this applies in relation to existing tenancies.

438. The power in this clause can also be used in relation to private legal instruments (please see subsections (6)(b), and (7) to (11)). It allows the Secretary of State

to make transitional provision modifying the effect of instruments (such as leases, mortgage agreements or insurance contracts) that were drafted under the law as it stood before the changes made by Chapters 1 and 2 of the Bill to the statute book, and so do not operate appropriately alongside those chapters. Where the power is used in this respect, the affirmative procedure applies.

439. Regulations made under the power to change the effect of instruments may also apply retrospectively to instruments as they have effect after the coming into force of Part 1 Chapter 1 of the Bill (Tenancy Reform: Assured Tenancies) but before the regulations themselves come into force (subsection (9)). This feature of the power is designed to allow the Government to absolve parties to private legal instruments of liability under them between the point at which key changes to the assured tenancy system come into force the "commencement date" and regulations made under this power provide legal certainty as to how private legal instruments should apply following those changes.

Justification for taking the power

440. Clause 148(3) as it applies to legislation is a standard power for making saving and transitional provisions related to the provisions of an Act by regulations. It is appropriate to make transitional provision in connection with the coming into force of the provisions in this Act in order to ensure the orderly implementation of the provisions.

441. In relation to instruments, this power will help ensure continuity and certainty when existing instruments do not operate appropriately as a result of Chapter 1 or 2 of Part 1. The clause sets out a number of examples of where the power may be used (but does not limit its use to these instances).

442. Chapter 1 Part 1 of the Bill will, amongst other changes, transform assured shorthold tenancies and fixed-term assured tenancies into periodic tenancies with rent periods no longer than a month; limit the ways in which landlords can increase the rent under assured tenancies (particularly in respect of rent review clauses); imply terms into tenancies allowing tenants to request to keep pets, subject to reasonable refusal by the landlord; change the current 'grounds of possession' for a landlord to seek eviction orders, and which grounds are only available where 'prior notice' has been given to the tenant that the landlord may seek to rely on them; and exclude tenancies with fixed terms of more than 21 years in length from the assured tenancy system.

443. At present, many private legal instruments, such as leases, mortgages or insurance contracts, are drafted in light of the existing assured tenancy legislative regime. This means that, without further intervention, parties to them may have signed up to obligations referring to concepts (such as the assured shorthold tenancies, or the current 'prior notice' system) which are obsolete, or where legislative change means that the interpretation of the relevant provision is unclear following a change in the law or could be radically different from that envisaged when the instrument was drafted. Parties whose current arrangements (such as subletting on a tenancy converted to an assured periodic tenancy by the Bill) might find themselves in breach of such instruments via the operation of statute in unintended ways. The Government's approach to this scenario is to allow those party to such agreements to resolve these issues themselves, whilst providing a legislative backstop in default of any such resolution where clearly necessary, but which those parties can replace.

444. Clause 3 already makes provision for one such scenario, in which superior leases prohibit subletting except on forms of assured tenancy which will not exist following the application of Part 1 Chapter 1. Where instruments including such terms are not varied by the parties to recognise the change in the law in advance, Clause 3 statute provides for legal certainty as to how such prohibitions will apply in default, without binding the parties' hands to agree a different solution.

445. However, Clause 3 only makes provision for one of a number of actual or potential scenarios of this nature. Given that private legal instruments are by their very nature private, and a significant number of such instruments are likely to be affected by the Bill's changes, it is neither practicable to make provision for all such scenarios via the Bill, nor is it certain that all of them will be evident before the Bill receives Royal Assent. If they cannot be dealt with subsequently via regulations until the passage of fresh primary legislation, these may give rise to legal uncertainty or legal lacunas which are not in the interests of parties to these interests, or the wider public interest.

446. In consequence, the power created by Clause 148 can be used in relation to instruments such as mortgages, planning conditions, and insurance so that where current terms no longer operate appropriately, they can be replaced. For example, if a section 106 planning agreement states that properties can only let on assured shorthold tenancies, the power can be used to ensure that landlords bound by this will be able to let on assured tenancies in the future. Other

examples might include mortgage provisions allowing landlords to sublet only on fixed-term assured tenancies, or covering damage only in those circumstances; or requirements for landlords to increase rents by set proportions or in circumstances where that will not be practicable following the changes the Bill makes to sections 13 and 14 of the Housing Act 1988.

447. Attempting to establish general rules for each provision via primary legislation not only presupposes that all such scenarios are known to the Government and Parliament at this stage, but would also be inappropriate as detailed policy and technical implementation will have to work differently in different cases. As such, regulations may need to alter the application of such instruments in more specific cases or in too much detail than is appropriate to include in primary legislation.

448. This power is subject to significant safeguards. First, the power requires that regulations made under subsection (6)(b) must provide that they do not prevent the variation or revocation of provisions they modify, or for such provision to be remade (see subsection (8)). Secondly, the power may only be used in respect of private legal instruments made before the 'commencement date' on which the changes made by Part 1 Chapters 1 and 2 will come into force in respect of the assured tenancies they relate to. It is therefore not a power to amend any private legal instrument affected by the Bill or the legislation it amends in any way the Government and Parliament sees fit.

449. Finally, the feature of the power set out in subsection (9) to enable subsection (6)(b) regulations to modify the effect of instruments from the Part 1 Chapter 1 'commencement date', until the coming into force of the regulations, is designed to provide legal certainty (for parties to such instruments) for the full period in which problems may arise. The Government's view is that it would risk unfairness and uncertainty if any such regulations could not apply retrospectively – they could not resolve any existing issues, despite these issues being the very reason regulations were introduced in the first place. It would mean no further changes could be made in respect of the initial period in which problems with the instruments surfaced, even if a more appropriate solution was identified for a particular subset of affected parties and applied for a subsequent period. This might leave parties to instruments operating inappropriately in breach in respect of an earlier period (and parties liable for breaches in consequence during that period), but not in relation to a later one. The

Government therefore views subsection (9) as a necessary component of the power to alter the application of private legal instruments which would be created by subsection (6)(b).

Justification for the procedure

450. As is usual with transitional powers, regulations made under Clause 148 in respect of legislation are not subject to any parliamentary procedure. The absence of procedure means that where the transitional provision relates to provisions being brought into force by regulations, the transitional provision can be contained in the same instrument.

451. The power to alter the effect of private legal instruments, albeit subject to variation by the parties to them, is subject to the affirmative resolution procedure as a further procedural safeguard in these specific circumstances.

Schedule 1, paragraph 19, inserting new ground 5H (possession of stepping stone accommodation) into Schedule 2 of the Housing Act 1988

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

452. Paragraph 19 of Schedule 1 inserts into Schedule 2 to the Housing Act 1988 a new ground for possession for landlords who are charities or private registered providers of social housing to take possession where criteria set out in the clause are satisfied.

453. One of these criteria is that the tenant must meet “eligibility conditions” set out in a written tenancy agreement. A landlord can take possession using this ground if the tenant no longer meets one or more of the eligibility conditions. The provision sets out that such eligibility conditions can only include age, or being in or seeking employment. This will ensure the ground remains applicable only to the relevant schemes and is not open to abuse.

454. Ground 5H contains a delegated power under which the Secretary of State can add to, vary or modify in regulations the types of “eligibility conditions”. This will

ensure that this possession ground will only remain available to active and legitimate schemes.

455. It is also not possible to anticipate future housing schemes which operate similarly but rest on different eligibility conditions. This power will therefore allow Government to respond quickly to ensure future schemes can operate and provide housing to critical groups.

Justification for the procedure

456. In line with convention and the recommendations of the Delegated Powers and Regulatory Reform Committee (DPRRC), we consider it appropriate that amendments to primary legislation will be subject to the affirmative procedure in both Houses of Parliament. As this is a Henry VIII power, this will ensure the appropriate level of parliamentary scrutiny of any change to the scope of this ground.

Schedule 1, paragraph 25: inserting new Part 6: Powers to amend grounds 2ZA, 2ZC, 5C, 5H, 6B, and 7 and definition into Schedule 2 of the Housing Act 1988

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and Purpose

457. Schedule 1 amends the grounds for possession in Schedule 2 of the Housing Act 1988. Landlords must use a relevant ground when repossessing their property, with the use of some grounds limited to defined landlords (including, for example, supported accommodation providers). There are a small number of grounds and supporting definitions that may need to be amended or restricted to certain types of landlords without further primary legislation to prevent unintended consequences. This may include if business models change or new models are created so that new types of landlords require access to a ground, or if grounds are misused in ways that haven't been anticipated.

Justification for taking the power

458. New paragraph 13(1), in Part 6 of schedule 2 of the Housing Act 1988 gives the Secretary of State the powers to make changes to specific possession grounds.

Grounds 2ZA and 2ZC should only be used in circumstances where it is reasonable that the superior landlord has vacant possession following the ending of an intermediate tenancy. The Bill restricts the use of 2ZA 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. 2ZC can only be used 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 to the superior landlord seeking possession.

459. Government has considered it necessary to limit these grounds to a narrow set of landlords in order to prevent abuse and stop unscrupulous landlords replicating section 21 evictions through the creation of superior landlord arrangements, such as rent-to-rent schemes. However, it is likely that some small flexibility is needed in future to reflect new business models in, for example, the charity sector or specific commercial sectors. The power will allow Government to adjust the landlords who can use the ground as sectors evolve to ensure it remains available when it is reasonable, while preventing 'backdoor' evictions.

460. Ground 5C permits landlords to end a tenancy when:

    a. a tenant is given the tenancy as a consequence of their employment by the landlord and that employment has ended, or

    b. a tenancy was never meant to last the duration of the employment by the landlord. For example, if the tenancy is granted as an incentive to move to a new area.

461. The power will be used to restrict the use of the ground to certain types of landlord or employer. This is an expanded ground, and the scale of its use cannot be known with certainty. A power to limit it to certain landlords is necessary to prevent future abuse if unscrupulous landlords seek to use the ground beyond the circumstances for which it was intended.

462. Grounds, 5D, 5F and 18 set out the circumstances where providers of supported accommodation can take back possession. The supported accommodation sector is critical to housing some of the most vulnerable people in society. It is crucial that providers can gain possession in specific circumstances, to ensure

tenancies are safe and to maintain the viability of schemes. Definitions of both "supported accommodation" and "managed accommodation" have been established on the face of the Bill to clarify the scope and application of the new grounds for possession for supported accommodation, and ensure the sector has certainty about the new system.

463. We expect that the sector will continue to evolve and adapt over time, in response to changing contexts and demands. A power will enable us to respond quickly and flexibly to changes in the supported accommodation sector, to ensure the definitions remain fit for purpose so the sector can continue to function effectively, and to maintain providers' confidence in operating these services.

464. The power is limited to amending the definitions of supported and managed accommodation found in new paragraph 12 of Schedule 2 of the Housing Act 1988, and the type of landlords eligible to use the relevant grounds. The regulations do not give the Secretary of State the power to change the grounds for possession (other than the descriptions of landlord in ground 2ZA and 2ZC mentioned above) or place new responsibilities on the landlord.

465. Ground 5H allows some types of landlord to gain possession of dwellings that are part of housing schemes that support people to access the PRS and/or to independent living, sometimes known as 'stepping stone' accommodation. The ground is restricted on the face of the Bill to landlords who are private registered providers of social housing and charities.

466. The power at new paragraph 13(1)(d) allows the Secretary of State to amend the types of landlords who can use possession ground 5H. It is necessary to retain a narrow scope for this ground to prevent unscrupulous landlords seeking to use the ground beyond the circumstances for which it was intended. It may also be necessary to change the kinds of landlords to whom ground 5H is available if it transpires there are types of landlord who run legitimate schemes that require use of this ground to operate.

467. 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, where a property is overcrowded, or the landlord has had their house in multiple occupation license

revoked. The power may be used to expand on the offences under the ground so that any additional relevant offences can be added.

468. Ground 7 provides that landlords can regain possession where the tenancy was inherited under a will or the intestacy rules. The Bill will prevent private landlords from using ground 7 where the inheriting tenant lived in the property immediately before the deceased tenant died, unless the deceased tenant had themselves inherited the tenancy, or unless the tenancy is one of the specified 'special tenancies'. It is not always appropriate or fair for tenants to inherit 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 tenants cannot inherit new or future types of specialist tenancies, to ensure they can continue to operate effectively.

Justification for the procedure

469. In line with convention and the recommendations of the Delegated Powers and Regulatory Reform Committee (DPRRC), we consider it appropriate that amendments to primary legislation will be subject to the affirmative procedure in both Houses of Parliament. This will ensure that there is appropriate parliamentary scrutiny of any change to the scope of these grounds.

Schedule 4, paragraph 3(4): amends section 4 (inspections by the local housing authority) of the Housing Act 2004 to provide power to make regulations about assessing whether premises meet Decent Homes Standard requirements

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

470. Paragraph 3 of Schedule 4 to the Bill amends section 4 of the Housing Act 2004 to provide for local housing authorities to inspect "qualifying residential premises" to assess whether there are failures to meet Decent Homes Standard requirements. Sections 4(4) and (5) of the Housing Act 2004 give the Secretary

of State power to make regulations about the manner in which inspections of residential premises are to be carried out and how hazards under the Housing Health and Safety Rating System are to be assessed.

471. Paragraph 3(4) of Schedule 4 inserts section 4(5A) into the 2004 Act to allow regulations made under subsection 4(4) to cover the manner of assessing whether qualifying premises meet Decent Homes Standard requirements. The purpose of this extension of the existing delegated power at section 4(4) of the 2004 Act is to allow regulations to be made that support local housing authorities in carrying out such inspections and assessments and to ensure that there is a consistent approach throughout England.

Justification for taking the power

472. Amendments to the Housing Act 2004 made by Clause 93 and Schedule 4 allow Decent Homes Standard requirements to be introduced to the private rented sector and provide local housing authorities with enforcement powers to deal with failures to meet these requirements. This enforcement system will involve local housing authority officers undertaking inspections of qualifying residential premises to assess whether they meet standards requirements. It will be necessary to specify how local housing authorities should carry out such inspections and assessments to ensure that there is an effective and consistent enforcement system. Provisions about such assessments will include a level of technical detail inappropriate for inclusion within primary legislation.

473. In addition, the content of the Decent Homes Standard is likely to need to be periodically reviewed and updated. It is therefore necessary to allow the detail of assessing compliance with Decent Homes Standard requirements to be provided in regulations to allow these to be set and updated in line with the content of the standard itself.

474. Furthermore, it is likely that many local housing authority inspections of qualifying residential premises will require assessments both of hazards and of compliance with Decent Homes Standard requirements. The Government therefore considers that the best way to support effective enforcement and avoid creating unnecessary complexity is to extend the existing power under section 4(4) of the Housing Act 2004 to allow regulations to cover both matters.

Justification for the procedure

475. The existing regulation-making power in section 4(4) of the Housing Act 2004, which paragraph 3(4) of Schedule 4 extends, is subject to the negative resolution procedure. We consider that this level of scrutiny remains appropriate following the extension of this power, as the matters being brought within scope of the power are procedural and technical in nature.

Schedule 4, paragraph 6: inserts new section 6A (financial penalties relating to Category 1 hazards or Type 1 requirements) into the Housing Act 2004 to provide power to amend maximum penalty levels

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

476. Paragraph 6 of Schedule 4 inserts new section 6A into the Housing Act 2004 to give local housing authorities the power to impose on landlords financial penalties of no more than £7,000 if qualifying residential premises contain a Category 1 hazard (as assessed using the Housing Health and Safety Rating System) and/or fail to meet a Type 1 Decent Homes Standard requirement. The power under section 6A(8) allows the Secretary of State to amend the amount of the maximum penalty to reflect inflation.

Justification for taking the power

477. The ability of local housing authorities to issue this financial penalty will help ensure landlords keep their properties free of Category 1 hazards and failures of Type 1 Decent Homes Standard requirements. To ensure this penalty continues to serve as both an appropriate penalty for the landlord on whom it is imposed and as an effective deterrent against non-compliance, the maximum sum may need to be amended to reflect changes in the value of money (e.g. to reflect inflation, if the Secretary of State considers it appropriate).

Justification for the procedure

478. Regulations made under this power will be subject to the negative procedure. They will amend the maximum financial penalty to match the value of money, so are administrative in nature. We consider that the use of the negative procedure

provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary, for administrative regulations of this kind.

Schedule 4, paragraph 9(3): amends section 9 (guidance about inspections and enforcement action) of the Housing Act 2004 to allow guidance to address Decent Homes Standard requirements

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: Negative

Context and Purpose

479. The Secretary of State already has the power, under section 9 (Guidance about inspections and enforcement action) of the Housing Act 2004, to issue guidance to local housing authorities about inspections and enforcement action relating to hazards. Local housing authorities must have regard to this guidance (existing section 9(2)). Paragraph 9 of Schedule 4 to the Bill inserts section 9 new subsection (1A) to enable guidance issued to address the inspection of premises and the taking of enforcement action in relation to Decent Homes Standard requirements. The purpose of extending this power is to provide detailed, practical information to local housing authorities to ensure that they are clear on how to discharge their new responsibilities. The requirement on local housing authorities to have regard to this guidance also applies to this.

Justification for taking the power

480. The Secretary of State is already able to publish statutory guidance, which local housing authorities must have regard to, in relation to hazards. Extending this power to allow such guidance to also cover Decent Homes Standard requirements will allow clear guidance to be provided to support local housing authorities in carrying out their functions in relation to this area – for example, in relation to the use of different enforcement powers and the issuing of financial penalties. There is benefit in this guidance being statutory to mitigate the risk of inconsistent or disproportionate enforcement across England.

481. Furthermore, it is likely that some qualifying residential premises will contain both hazards and failures to meet Decent Homes Standard requirements. The Government therefore considers the best way to support local housing authorities carrying out their functions and avoid creating unnecessary complexity is to extend the existing power under section 9 of the Housing Act 2004 to allow statutory guidance to cover both matters.

Justification for the procedure

482. The existing power to provide statutory guidance under section 9 of the Housing Act 2004, the scope of which will be extended by paragraph 9 of Schedule 4, is subject to negative resolution (existing section 9(4) to (7)). We consider that this level of scrutiny remains appropriate following the extension of this power.

Schedule 6, paragraph 6(2): Sections 14, 15 and 17: provision of information in writing

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and Purpose

483. Clause 14 (duty to give statement of terms and other information etc) inserts new section 16D into the Housing Act 1988 to require landlords to issue tenants with a written statement of terms and information relating to the tenancy. The types of terms and other information to be provided is to be set out in regulations made by the Secretary of State under new section 16D(2) of the Housing Act 1988. Paragraph 6 of Schedule 6 makes transitional provision in relation to this provision. It provides that, where an existing tenancy is partially or wholly written, landlords must instead give tenants written information about the changes to their rights and obligations as a result of this Bill. This is intended to balance the need to inform tenants with placing only a reasonable burden on landlords. We are taking a power in paragraph 6(2) of schedule 6 of the Bill to specify what information should be required.

Justification for taking the power

484. We will set out what information needs to be provided in secondary legislation. The requirements relating to information given to tenants on existing tenancies must be aligned with the requirements relating to information given to tenants via the new written tenancy statement, which will be made under new section 16D(2) of the Housing Act 1988 inserted by Clause 14 of the Bill. Taking a power in paragraph 6 of Schedule 6 to the Bill to make provision relating to requirements for existing tenancies enables that alignment. It will also allow time to consult with the sector on the detail of the requirements to ensure the information required is proportionate and helpful.

485. The written information power is a tool to increase awareness of existing rights and obligations rather than a mechanism to set new ones. The regulations do not give the Secretary of State the power to imply new terms of a tenancy or place new responsibilities on the landlord.

Justification for the procedure

486. Regulations made under in paragraph 6 of Schedule 6 to the Bill will be subject to the negative procedure. The information provided will only include information on legal obligations, therefore this power is largely administrative. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament, with the option of a debate should Parliament consider it necessary for administrative regulations of this kind.

Department Name: Ministry of Housing, Communities and Local Government

Date: 15 January 2025