

RENTERS' RIGHTS BILL 2024

EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM

Introduction

1. The Renters' Rights Bill ("the Bill") was introduced in the House of Commons on Wednesday 11th September 2024. It was introduced in the House of Lords on Wednesday 15th January, having been amended at both Committee and Report stage in the House of Commons.
2. The Bill gives effect to commitments made by the government in the Labour manifesto published on 13th June 2024. The Bill's objective is to reform the private rented sector (PRS) by abolishing no-fault evictions, strengthening tenant protections, preventing tenants from being exploited and discriminated against, empowering tenants to challenge unreasonable rent increases and raising standards, including extending 'Awaab's Law' to the PRS.
3. This memorandum addresses issues arising under the European Convention on Human Rights (ECHR) in relation to the Bill. It has been prepared by the Ministry of Housing, Communities and Local Government (MHCLG). This ECHR memorandum was first published following the Bill's introduction in the House of Commons. It has been subsequently updated to flag any new/notable ECHR points arising as a result of amendments made during the Bill's passage in the House of Commons.

Summary of the Bill

4. The Bill consists of 5 Parts:

Part 1

5. Part 1 reforms the assured and assured shorthold tenancy framework. Currently the assured shorthold tenancy (AST) is the default tenancy in the PRS – its defining feature being that a landlord can evict a tenant at the end of a

fixed term by serving a “section 21 notice”. This does not require the landlord to provide a reason for the eviction. Part 1 (via amendment to the Housing Act 1988 – HA 1988) abolishes section 21 notices, and in so doing, the AST model. The default type of tenancy for the PRS will become the Assured Tenancy (AT).

6. Part 1 then makes a number of amendments to the AT framework. These include:

- a. Removing fixed terms, making assured tenancies periodic only, with rent periods not exceeding one month (Chapter 1);
- b. Various changes to the grounds of possession in Schedule 2 to the HA 1988, including what those grounds are, when they can be used, and how much notice must be provided in each case (Chapter 1);
- c. Changes to the procedure around increasing rent in the tenancy. This provides the only way a landlord will be able to increase the rent is via the statutory process in section 13 to the HA 1988 (Chapter 1);
- d. Regulating and limiting the circumstances in which a landlord can require rent in advance from the tenant (Chapter 1);
- e. Requiring landlords to provide a statement of terms and other information to the tenant at the beginning of the tenancy (Chapter 1);
- f. Inserting an implied term into AT agreements which provides that where a tenant requests to keep a pet in accordance with the procedure set out, the landlord cannot unreasonably refuse the request. The landlord can require the tenant to take out pet insurance (Chapter 1);
- g. Making provision for financial penalties where a landlord acts in breach of the requirements/prohibitions. Local authorities can impose a civil financial penalty of up to £7,000 for initial breaches/specified more minor breaches. More serious breaches are punishable by a criminal offence or, as an alternative, a civil penalty of up to £40,000 (Chapter 1);

- h. Providing that any clause in a guarantor agreement is unenforceable insofar as it would hold the guarantor liable for rent accruing after the death of the tenant (Chapter 1).
- i. Amending Schedule 1 to the HA 1988 to ensure fixed term leases of over 21 years in length cannot be assured tenancies (Chapter 2);
- j. New measures to tackle rental discrimination in the PRS, which extend to Wales and Scotland (Chapters 3 to 5);
- k. New measures to prohibit the practice of rental bidding (Chapter 6);
- l. Amending the Protection from Eviction Act 1977 to allow Local Housing Authorities (LHAs) to impose financial penalties for offences under section 1 of that Act (Chapter 7); and
- m. Extending Awaab's Law to the PRS. Awaab's Law has been introduced in the social rented sector ("SRS") (see section 42 of the Social Housing (Regulation) Act 2023 ("SHRA 2023")) in response to the tragic death of two-year-old Awaab Ishak from a respiratory illness caused by mould in his rented home which the social landlord failed to address in a timely fashion. The intention is to take the same approach in the PRS by amending the Landlord and Tenant Act 1985 to imply a covenant into leases that the landlord must comply with requirements relating to serious hazards as set out in regulations made by the Secretary of State. The requirements involve taking specified action in relation to the hazard within a specified period (Chapter 7).

Part 2

- 7. Part 2 of the Bill provides for new obligations for landlords under assured or regulated tenancies. The new obligations relate to (a) the creation of a PRS redress scheme(s) to resolve disputes between landlords and tenants out of court; and (b) a new Private Rented Sector Database ("the database") allowing tenants to access information about their landlords, for PRS landlords to better

understand their responsibilities and for local councils to have access to better data to assist with enforcement action.

8. Chapter 2 of Part 2 gives a power to the Secretary of State to make regulations which require residential landlords to be members of a PRS landlord redress scheme approved or designated by the Secretary of State. This will allow prospective, current and former tenants of that landlord to make a complaint to the scheme to be investigated and determined by an independent person. In addition:
 - a. Regulations may require a prospective landlord to be a member of such a scheme before the tenancy is marketed, and require a person to remain a member of a scheme for a specified period after ceasing to be a residential landlord. A scheme must meet certain requirements set out in regulations to be approved or designated.
 - b. LHAs will be responsible for enforcing the requirement to be a member of a landlord redress scheme. For an initial breach of the regulations, a fine of up to £7,000 may be imposed. In the worst cases, where a landlord or letting agent persists in breaching the regulations or does so repeatedly, they will be guilty of an offence, punishable by a fine or a financial penalty in lieu of up to £40,000.
 - c. Decisions under a landlord redress scheme may be made enforceable as a court order by regulations following consultation (cf. Schedule 2 paragraph 7D Housing Act 1996 – “HA 1996”).
9. Chapter 3 of Part 2 provides for the establishment and operation of a PRS database on which residential landlords will be required to register themselves and their rental properties and pay a registration fee before tenancies are marketed and created. A person will be prohibited from marketing a dwelling for the purposes of creating a residential tenancy unless there is an active landlord and dwelling entry in the database. LHAs will be required to make entries on the database relating to relevant banning orders, banning order offences and

financial penalties for banning order offences¹. The Secretary of State will also be able to make regulations which authorise or require LHAs 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 relevant event occurred at a time when the person was a residential landlord, or marketed the property for the purposes of creating a residential tenancy. Please note that:

- a. Not all of the information on the database will be public, with powers for the Secretary of State to adjust what is public and what is restricted to ensure that the accessibility of information about criminal offences such as banning order offences is necessary and proportionate. Regulations will also specify requirements to link banning order and banning order offence information with landlord and dwelling entries and the time period for which such information should be made publicly available.
- b. Mayoral combined authorities (“MCAs”), the GLA, lead enforcement authorities, LHAs and local weights and measures authorities will have access to the information in the database to assist with the performance of their functions relating to housing and enforcement.
- c. There are powers to make regulations authorising the disclosure of restricted information (information which will not otherwise be publicly available and which relates to and identifies a particular person) for the purposes of enabling or facilitating compliance with statutory requirements, rules of law and the exercise of statutory functions set out in such regulations. Regulations may also specify the manner and form in which the information is to be disclosed and may also impose restrictions on the use and onward disclosure of the information. There is also provision that disclosure in accordance with the regulations will

¹ A banning order is an order by the First Tier Tribunal which , among other things, bans a person from letting housing in England. A banning order offence is an offence listed in regulations made under section 14(3) of the Housing and Planning Act 2016 or described in section 12 of the Tenant Fees Act 2019. If a person has been convicted of a banning order offence, a local housing authority may apply for a banning order against that person. For further information , see Chapter 2, Part 2 of the 2016 Act.

not breach any obligations of confidentiality owed by the database operator, or any other restrictions on disclosure that may apply. However, any disclosure that would breach data protection legislation is not authorised. Disclosure of unauthorised restricted information or onward disclosure of such information is to be a summary offence punishable by way of a fine.

10. Provision is made for entries to be kept up to date and for verification, correction and deletion of the information in the database. Provision is made for the publication of advice and information in respect of landlord and tenant rights. Provision is made for enforcement of the requirements of Part 2 Chapter 3 of the Bill by LHAs. This includes provision for fines of up to £7,000 for certain breaches, and up to £40,000 where a criminal offence has been committed.

Part 3

11. Part 3 introduces the Decent Homes Standard (DHS) into the PRS by making amendments to Part 1 of the Housing Act 2004 (“HA 2004”). It creates a power for the Secretary of State to set requirements in regulations for the minimum standards that properties in the PRS must meet. The amendments adopt and add to the enforcement mechanisms in the HA 2004 where properties fail to meet the new requirements.

Part 4

12. Part 4 creates a power for the Secretary of State to make arrangements for a lead enforcement authority in relation to measures in the Bill and the AT framework. The role of the lead enforcement authority will include monitoring the operation of the legislation, providing guidance and support to local authorities and the public and, where necessary, stepping into the shoes of LHAs to take enforcement action itself.

13. Part 4 also makes further provision about the enforcement of measures in the Bill. In particular it makes provision to ensure that where appropriate superior landlords and officers of corporate bodies can be made subject to a rent

repayment order (RRO) (see Chapter 4, Part 2 of the Housing and Planning Act 2016), including by ensuring that superior landlords can be held liable for certain RRO offences.

14. Part 4 also provides a number of investigatory powers to LHAs to ensure they can enforce measures effectively and robustly.

Part 5

15. Part 5 deals with consequential amendments, territorial extent, commencement and transitional provision.

Summary of the government's ECHR analysis

16. The provisions of the Bill engage the following Convention rights:

- a. *Article 1 Protocol 1* – this right provides that persons (both natural and legal) have the right to the peaceful enjoyment of their possessions. A1P1 is engaged by Parts 1-5 of the Bill.
- b. *Article 8* – this right provides that persons have the right to respect for their home and private life. Article 8 is engaged by Parts 2 and 4 of the Bill.
- c. *Article 6* – this right provides that in the determination of a person's civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Article 6 is engaged by Part 2 and by Part 4 of the Bill.

17. As set out on page 167 of the explanatory notes to the Bill, the Secretary of State for Housing, Communities and Local Government is of the view that the provisions of the Bill are compatible with Convention Rights. As such she has made a statement under section 19(1)(a) of the Human Rights Act 1998.

18. All enabling powers in this Bill are capable of being exercised in a way that is compatible with Convention rights and the Secretary of State is required to act compatibly with Convention rights when making secondary legislation.

ECHR analysis by measure

19. References to clauses in this memorandum are to the Bill as introduced.

The general legitimate aim underlying the measures

20. There is a broad legitimate aim which underlies most of the measures in the Bill (this is referred back to in this ECHR memo as the “general legitimate aim”). This relates to the current state of the PRS and the critical need for urgent reform. As the general legitimate aim is frequently referred to for a number of measures in the Bill, the government has set it out here in detail. Where there are particular nuances in the legitimate aim for a particular measure, this is set out separately below.

Size of the PRS

21. The PRS has doubled in size since 2002 and is now the second largest housing tenure. 4.6 million households rent privately, which is equivalent to 11 million people and 19% of the housing market, This compares to 65% of households in the owner-occupied sector and 16% in social housing.ⁱ Whilst the PRS is still an important home for young professionals and students seeking flexibility, over 30% of the households in the sector have children present and a significant number of older people (aged 65-75) live in the PRS.

The problem with security

22. Compared to other forms of housing (home ownership and social housing) the private rented sector offers the lowest amount of security to the tenant. This is due to the landlord’s ability to issue a section 21 notice at the end of the fixed term (or in accordance with a break clause in the tenancy agreement). This allows the landlord to evict the tenant with no reason and with only 2 months’

notice. In 2022-2023 30% of renters who moved in the past three years did not end their previous tenancy by choice². Furthermore, the threat of a section 21 notice is also a reason many households put up with poor conditions or poor landlord behaviour. Research by Citizens Advice in 2018 showed that those who receive a section 21 notice are five times more likely to have recently made a complaint to their council than those who have not³. Further, half of tenants who live in poor quality housing do not complain to their landlord because they are scared of eviction.⁴

23. The use of section 21 notices is also a major cause of homelessness. Between January and March 2024, 6630 households were threatened with homelessness due to a section 21 notice. As well as the impact this has for tenants, this also places significant pressures on local councils who have legal duties to act where a person is under threat of homelessness. **The tenancy reform measures in Part 1 of the Bill (the repeal of section 21 of the 1988 Act and the corresponding reform of the Schedule 2 grounds for possession) are chiefly concerned with addressing this problem of security for tenants.**

The problem with rent/affordability

24. The last two years have **seen unprecedented levels of growth in rental prices**. Whilst the annual growth rate in rents have usually been around 2%, in March 2024 the yearly increase in the average rent of the stock of private tenancies reached 9%,⁵ the highest level since records began in 2015. Where demand has outstripped supply, market rents have increased, which has driven practices such as tenants being pitted against each other in bidding wars. The affordability of rent problem has been a major issue flagged with MHCLG, particularly from families and single people who are increasingly having difficulty keeping up with their rent payments. **The amendments the Bill is**

² MHCLG analysis of the English Housing Survey 2022-23.

³ Touch and go: How to protect private renters from retaliatory eviction in England', Citizens Advice 2018.

⁴ Damp, cold and full of mould: The reality of housing in the private rented sector, Citizens Advice report, February 2023

⁵ ONS 2024, [Private rent and house prices, UK - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/economy/priceindices/articles/private-rent-and-house-prices-uk).

making around the process by which landlords can raise the rent during a tenancy is chiefly concerned with addressing this affordability problem.

25. In addition to this, 44% of landlords are reportedly unwilling to let to tenants who receive housing support or Universal credit. 15% are also unwilling to let to families with children⁶. This again compounds the affordability crisis as it creates a supply and demand problem in the market often for more vulnerable tenants. **The rental discrimination measures in Part 1 of the Bill are aimed at addressing these practices.**

The problem with quality and standards

26. Housing quality in the PRS is the lowest across all the tenures. In 2022-2023, 21% of PRS homes fail to meet the decent homes standard as applied in the social housing sector⁷. This situation has led to 70% of PRS tenants having experienced cold, damp or mould⁸, and 1.6 million children are reportedly struggling with damp, mould or excessive cold in their home⁹. The Decent Homes Standard is currently enforceable in the social housing sector and provisions in the Bill seek to make it enforceable in the PRS, where at the moment it takes the form of non-statutory guidance.

27. As well as the serious (sometimes lethal) consequences of this for tenants, MHCLG figures estimate a total cost of £340 million a year to the NHS due to hazardous conditions in the PRS¹⁰. **The measures in Part 1 and Part 3 of the Bill applying the Decent Homes Standard in the PRS and Awaab's law are both designed to combat this issue.**

The problem with unequal bargaining power for tenants

⁶ English Private Landlord Survey 2021 and English Housing Survey.

⁷ English Housing Survey 2022 to 2023

⁸ Citizens Advice

⁹ Coley, Rebekah Levine, et al. "Poor quality housing is tied to children's emotional and behavioural problems." Policy Research Brief, MacArthur foundation, September 2013.

¹⁰ House of Commons Committee of Public Accounts: Regulation of private renting, April 2022.

28. The situation set out above, particularly the ability of a landlord to evict a tenant by issuing a section 21 notice, all combine to create a situation where tenants have very little bargaining power in relation to their tenancy agreement. At the moment the main route for PRS tenants to seek relief in the event a landlord fails to meet his obligations under the tenancy agreement or regulatory obligations is by recourse to the courts. This process can often prove to be stressful, lengthy and costly to tenants and acts as a barrier (particularly for the most vulnerable) in getting their dispute resolved. The PRS is falling behind other housing tenures and consumer sectors, such as finance, legal, energy and the communications industry, where redress is the norm. **The requirement for landlords to become members of a redress scheme in Part 2 is designed to address this issue.**

The problem of enforcement

29. Variation in enforcement of existing standards across England can also leave tenants and landlords frustrated and allow criminal operators to thrive. Research by Sheffield Hallam University found that most councils operate a largely reactive service with significant variation in the extent to which enforcement tools and powers are used. Reasons for this include low political backing, lack of data, and levels of capacity and capability.¹¹

30. Backing this, a National Audit Office (NAO) report in 2021 found that there was a wide range of approaches across the country, with some councils inspecting almost no properties, while others inspected a large proportion. The same report found low use of some regulatory tools such as Banning Orders and penalty notices, with only 10 landlords and letting agents banned since new powers were introduced in 2016. Similarly, in 2024, the National Residential Landlords Association reported that just over half of councils had used new Civil Penalties introduced in 2017 between 2021 and 2023 with over 60% of all civil penalties issued by only 20 'super-user' councils.¹² Councils sought to tackle

¹¹ Council enforcement in the Private Rented Sector: headline report, June 2022.

¹² The Enforcement Lottery: Local authority enforcement 2021-2023, NRLA Research Observatory, 2024.

the most serious Category 1 hazards in only approximately 2.5% of properties estimated to contain those in 2019.

31. Councils' ability to target rogue landlords is also hampered by a lack of robust data and information on the sector. Unlike in Scotland and Wales, there is no national database of PRS landlords. Instead, there is a 'patchwork of schemes'. A 2021 report by the Centre for Public Data found that just 7.4% of the PRS in England are covered by registration or licensing requirements.¹³ As a result, the majority of councils underestimate the size of their area's PRS. In the absence of a national database, trying to identify PRS properties and pursue criminal landlords can take councils a considerable amount of time.

32. The measures in Part 2 of the Bill which provide for a new landlord Database, alongside the investigatory powers in the Bill (Part 4), are designed to better enable local housing authorities to investigate and enforce regulatory requirements against landlords.

Part 1, Chapter 1 of the Bill - Tenancy Reform

ECHR right engaged: A1P1

33. The following tenancy reform provisions engage A1P1:

- a. Abolition of s.21 notices, ASTs and fixed-term tenancies and the introduction of monthly rent periods.
- b. Amendments to the Schedule 2 possession grounds in the HA 1988;
- c. Amendments to the statutory procedure for increasing rent;
- d. A new duty on landlords to provide tenants with a written statement of terms and

¹³ A national landlord register for England: how to make it work, The Centre for Public Data, October 2021.

- e. A new right for a tenant to request to keep a pet in their rented property.
- f. A provision that renders unenforceable a clause in a guarantor agreement insofar as it would hold the guarantor liable for rent accruing after the death of the tenant.

Interference

34. The government's view is that the tenancy reform measures engage and constitute an interference with a landlord's A1P1 rights as they regulate the way in which the landlord manages a tenancy and how they can bring it to an end. For example, the abolition of the landlord's ability to evict a tenant without cause, alongside the general repeal of ASTs, will to a certain extent make it more difficult for a landlord to evict a tenant as they will now have to establish a particular possession ground. Similarly, the removal of fixed terms and move to periodic rent periods of no more than 1 month constitute an interference in how the landlord manages their property. The way in which a landlord can raise the rent during a tenancy is also changing, limiting the landlord's ability to raise the rent to the formal statutory process in section 13 of the HA 1988. Landlords will no longer be able to use rent review clauses in tenancy agreements, nor will they be able to require rent in advance save for the first month's rent which they will still be allowed to require/accept between the tenancy being entered into and the tenant taking possession). The Bill places more duties on landlords to provide tenants with a written statement of terms and new duties when faced with a request from a tenant for a pet. The provision which renders a clause in a guarantor agreement unenforceable insofar as it holds a guarantor liable for rent accruing after the death of the tenant will make it more difficult for a landlord to recover rent accruing after the death of the tenant. All of these constitute an interference in how a landlord manages their property.

Justification

35. The government considers all of these interferences with A1P1 rights to constitute a "control of use" rather than depriving a landlord of their property rights or asset. There is existing analogous caselaw which has found other

regulatory action in relation to housing to amount to control of use (*Immobiliare Saffi v Italy* – concerned legal limitations on level of rent property owners could demand; *Lindheim and Others v Norway* – concerned the loss of certain exclusive rights over land; *Democracy and Human Rights Resource Centre and Mustafayev v Azerbaijan* – imposed positive obligations on landowner).

36. All of the interferences set out above are in pursuit of the general legitimate aim set out in detail above, in particular dealing with the problem of security and the problem of rent/affordability for tenants renting in the private rented sector. The removal of fixed terms in particular also addresses the risk of tenants being locked in to properties even in circumstances where, for example, those properties fail to meet quality standards. The measures also address the point that due to the growth in size of the PRS, for many tenants, the private rented sector is their permanent home and a person's home should support their wellbeing. The legitimate aim underlying the pets measure in particular is that owning a pet is critical to many people's well-being – both mental and physical. There are a growing number of single people and older people living in the PRS who may depend on a pet for companionship. The provision relating to guarantor agreements has the legitimate aim of preventing unscrupulous landlords from deliberately not ending a tenancy following the tenant's death, instead seeking to pursue a grieving guarantor for, what could be, months of accruing rent.

37. The government considers all of the tenancy reform measures to be proportionate in meeting the general legitimate aim. The Bill reforms the possession grounds in Schedule 2 to the HA 1988 to ensure they are fit for purpose and carefully balance the interests of landlords and tenants, enabling the landlord to regain possession in various circumstances where appropriate. This includes social landlords and charities to ensure they can regain possession to manage their housing stock effectively and to pursue their charitable aims. Moving to a system in which a landlord must establish a reason for eviction, in conjunction with the reforms to the possession grounds, does not create a disproportionate or excessive burden on landlords. Similarly, the removal of fixed terms has been balanced with an increase in the notice period a tenant must provide to the landlord where they wish to serve a notice to quit.

A landlord will still be able to raise the rent during the tenancy but now must do so using the formal statutory process set out in section 13 of the HA 1988. The government considers the Bill achieves the general legitimate aim of regulating the rent increase process in a proportionate way which protects the interests of tenant whilst ensuring landlords can continue to derive value from their asset. In relation to pets, it will still be possible for a landlord to refuse a tenant's request for a pet where it is reasonable to do so, and where a landlord does consent, the Bill allows the landlord to require the tenant to obtain insurance against pet damage or pay the reasonable costs of the landlord procuring such insurance. Finally, the removal of a guarantor's liability for rent accruing after a tenant's death is proportionate to its aim; there are alternative ways in which a landlord can mitigate their losses in this scenario. Further, the provision is clear it only applies to guarantors who are individuals (not corporate guarantors) and, in the case of a joint tenancy in which a tenant has died, the guarantor must be related to the dead tenant to be absolved of liability for rent accruing after the tenant's death.

Part 1, Chapters 3-5: Rental Discrimination

ECHR Right engaged: A1P1

Interference

38. Prohibiting landlords and letting agents from discriminating against individuals with children or those in receipt of benefits engages landlords' A1P1 rights. The measure regulates how a landlord goes about letting the dwelling and therefore, it could be argued, amounts to a control of use of the property.

Justification

39. The rental discrimination measure is in pursuit of the general legitimate aim set out above, in particular in addressing the affordability issues persisting in the private rented sector explained in paragraph 23 above. The government is of the view that it is unacceptable for landlords to refuse to consider someone as a prospective tenant, or refuse to let to them, simply because they are in receipt

of benefits or have children. The government believes that everyone should have access to safe and secure housing, regardless of whether they are in receipt of benefits or their family circumstances.

40. The government's view is that the interference is proportionate given the importance of these objectives. The proposals strike a fair balance between ensuring low-income tenants and tenants with children are able to secure accommodation in the PRS whilst mitigating any potential burden or adverse impact on landlords. Whilst the Bill generally prohibits a landlord from applying a provision, criterion or practice that makes a person who would have a child live with or visit them less likely to enter into a tenancy compared with someone who would not, this is still permitted if provided it is a proportionate means of achieving a legitimate aim – this acts as a defence to a proposed breach. For example the property may not be safe for occupation by a child or the letting may be for the purpose of a retirement community.

41. It is necessary to extend the protections to terms in mortgages, insurance contracts, tenancy agreements and terms in superior leases – by making any terms requiring a rental discriminatory practices ineffective. Otherwise the important protections being introduced could be significantly undermined. Clause 43 allows a landlord to take income into account when considering whether that person would be able to afford to pay the rent under the tenancy – the intention behind this clause is to address one of the key reasons landlords may be reluctant to rent to those in receipt of benefits – namely affordability concerns.

Part 1, Chapter 6: Rental Bidding

ECHR right engaged: A1P1

Interference

42. The rental bidding measure first requires a landlord (or a letting agent acting on their behalf) to state the specific amount of rent requested in any written advertisement or offer for the tenancy. The provision then prohibits a landlord

or letting agent from accepting, encouraging or inviting higher bids for rent from prospective tenants. Breach of either of these requirements is punishable by way of a civil penalty administered by the local housing authority or local weights and measures authority. This measure engages a landlord's A1P1 rights as it concerns the way in which they advertise the availability of a tenancy in relation to their dwelling. Further, it constitutes an interference as it prevents them from taking certain actions which might lead to a higher rent return. This amounts to a control of use of the property.

Justification

43. The objective behind the rental bidding measure is to end an exploitative practice in which tenants are pitted against one another with the consequence of driving up rents – see the general legitimate aim, in particular the problem of affordability in the PRS and tackling social injustice. The government considers it to be proportionate to achieve the aim of outlawing the practice of rental bidding. It does not interfere with the rental price stated by the landlord at the point the property is advertised. Further, a landlord will be able to raise the rent during the tenancy using the statutory procedure under section 13 of the HA 1988.

Part 1, Chapter 7: Awaab's Law

ECHR Right engaged: A1P1

Interference

44. The application of Awaab's Law to the PRS engages A1P1. Depending on how the regulation-making power is exercised, which will be informed by prior consultation, the following aspects of the application of Awaab's Law to the PRS would arguably interfere with a PRS landlord's peaceful enjoyment of their property by controlling the landlord's use of it:

- a. Landlords having to investigate a potential hazard within a specified period;

- b. Landlords having to initiate remedial works within a specified period of the hazard being confirmed;
- c. Landlords having to complete the remedial works within a reasonable time;
- d. Landlords having to carry out emergency remedial works within a specified period;
- e. Landlords having to rehouse or compensate tenants where works cannot be carried out within the specified period.

45. If landlords fail to comply with requirements such as those above, they will be exposed to legal claims by their tenants for injunctive relief and/or damages on the basis of breach of contract. This strengthens the tenant's position under the existing law by giving greater certainty as to what should be considered a reasonable period of time for landlords to take specified action in order to address serious hazards in rented property.

Justification

46. It is the government's view that any interference with landlords' A1P1 rights is in pursuit of the general legitimate aim set out above – in particular to promote tenants' safety and wellbeing and to ensure that another tragedy like that suffered by Awaab Ishak and his family does not happen again.

47. The power to make regulations setting out requirements that a landlord will be obliged to meet is capable of being exercised in a way that introduces a statutory implied landlord covenant which is proportionate relative to the policy aim, given the government's wide margin of appreciation in implementing economic and social policies.

Part 2, Chapter 2: Landlord Redress Scheme

ECHR right engaged: A1P1 and Article 8

48. The provision for a landlord redress scheme in Part 2 of the Bill is likely to constitute an interference with a landlord's A1P1 rights. It will control the landlord's ability to let or market the property by requiring the landlord to first be a member of the landlord redress scheme. A landlord will also have to pay membership fees and may be required to comply with awards of redress. Ultimately a landlord may be expelled from a landlord redress scheme if they fail to comply with scheme requirements which could then result in the landlord being unable to let their property. The government considers any interference to constitute a control of use of the landlord's property.
49. The government's view is that any interference with A1P1 rights is in pursuit of the general legitimate aim set out above, namely addressing the current disparity in bargaining power between landlords and tenants. A tenant should, in line with other types of consumer, be able to seek relief in the event a landlord fails to meet their obligations without being forced into a stressful and costly court process. The measure is also proportionate – it is standard practice for redress schemes to be funded by way of membership fees and the forms of redress that a scheme will award will be subject to the Secretary of State's approval and will be compensatory, not punitive.
50. It is possible the landlord redress measure will also engage and constitute an interference with a landlord's Article 8 rights. The Bill requires the redress scheme rules to make provision for landlord information (which could include personal information) to be shared with other redress, regulatory and enforcement bodies, as well as the Secretary of State. In addition, the requirement for PRS landlords to be members of a landlord redress scheme means that such landlords will be obliged to provide personal information to the scheme. The government considers this interference to be justified as it is in pursuit of a legitimate aim of monitoring and ensuring the efficacy of the redress scheme and to provide the Secretary of State with insight into the PRS. The information will not be in the public domain and there will be procedural safeguards in place to protect personal data. The data protection principles will be applied which include preventing data from being held for any purpose other than those provided for by law and in an appropriate manner.

Part 2, Chapter 3 – the PRS Database

ECHR right engaged: Article 8

51. The PRS database measure will engage and interfere in a landlord's Article 8 rights as it will require landlords to register their personal details and details relating to their property on a public database. In time, this will result in certain criminal offence data pertaining to a landlord (relevant banning orders and relevant banning order offences, related financial penalties and possibly other relevant criminal offences) being publicly accessible on the database.

Justification

52. The policy pursues the legitimate aim of providing tenants access to essential information relating to the landlord and property that they are renting or considering renting, prior to entering into a binding tenancy agreement. This is to enable them to make an informed decision about whether to rent from a particular landlord. The objectives of the PRS reform programme are to contribute to a tenant's physical health and safety, and also their sense of security and feeling comfortable in their home. Part of this is ensuring a tenant knows who their landlord/proposed landlord is and if they are subject to an unspent criminal conviction. Similarly, a tenant should be able to find out that the landlord of a property the tenant rents or is proposing to rent has been issued with a banning order and therefore is not permitted to let the property or has committed a banning order offence relevant to the landlord/tenant relationship. The committal of housing specific offences has a clear link to the decision to enter into a tenancy agreement.

53. The policy will also significantly support LHAs to target enforcement action (as referred to above in the general legitimate aim) across the PRS in England and to cross-reference landlords who operate across multiple local authority areas.

54. The government's position is that the PRS Database measure and powers within Part 2 are proportionate in meeting these legitimate aims, for reasons that include:

- The relevant banning order offences must have been committed in relation to letting property in order to fall into scope.
- Banning order offences will only be publicly accessible where the offence has been committed *after* the commencement of Bill's PRS database provisions. Residential landlords will therefore be on notice that, subject to the exercise of regulation-making powers in the Bill, their relevant criminal offence data is likely to be disclosed for a period of time on a public database. This may act as a deterrent for landlords who otherwise would go on to commit banning order offences.
- It is intended that a person will be able to search the database using search terms like the landlord's name, the landlord's unique registration number, the property address or the dwelling's unique ID number. It will not be possible for tenants to view a landlord's entire rental portfolio or personal contact details. The aim of these limited search capabilities is to promote proportionality.
- In practice, it is envisaged that the PRS database will operate on a self-serve basis, meaning that landlords will have the opportunity to register all relevant details about themselves and their rental properties directly. Subject to regulations made via the Bill, landlords will also be able to demonstrate legal compliance with PRS standards by providing information or documents directly to the Operator. Landlords will be able to access the database and update their registration record at any time. This will enable landlords to directly control the content of their residential landlord and dwelling entries, provided the entries are compliant with the PRS database measures generally. The information contained on the PRS database will be limited to what is necessary to achieve the aims pursued by the Renters' Rights Bill.
- The Operator must ensure LHAs are able to edit the database for the purpose of making entries relating to banning orders, meaning inaccurate, duplicate or incorrect entries about residential landlords and/or their dwellings entered by LHAs can be easily rectified. The database operator will also have a power to edit the database, which will facilitate the correction of inaccurate and/or duplicate landlord and dwelling records.

- The scope of landlord personal information contained in a database entry and the extent to which the information is available to the public will be limited by regulations made under the Bill.
- Only relevant offences which are reasonably likely to have a bearing on a person's decision to enter into a tenancy agreement will be made public.
- The government intends that the regulations will confer a function on the database operator to provide landlords with a reasonable notice period before a banning order database entry is made. During the notice period, landlords will have the opportunity to inform the LHA and Operator of any mistakes before the entry goes live on the database.
- The Bill provides limits the period for which landlord criminal offence data can be recorded on the database.. The database operator must remove an entry made under clause 90 after 10 years from the day on which the entry was made.

Part 3 – Decent Homes Standard

ECHR right engaged: A1P1

55. The proposed amendments to Part 1 of the Housing Act 2004 which will facilitate the introduction of minimum requirements that rented properties must meet constitute an interference with landlords' right to the peaceful enjoyment of their possessions. This is likely to amount to a control of use.

56. Normally it is the immediate landlord of the occupier of the property concerned whose A1P1 rights will be subject to interference as a result of the proposed amendments to Part 1 of the HA 2004. This is because the immediate landlord will, in most cases, be subject to enforcement action by the LHA if the relevant requirements are not met, and the immediate landlord will be responsible for the costs of complying with those requirements. However, there may be some circumstances in which a superior landlord would be responsible for ensuring compliance with those requirements (e.g. where the common parts of a block of flats fail to meet the requirements or a "rent-to-rent" arrangement is in place).

Justification

57. The interference with landlords' A1P1 rights necessitated by the introduction of the Decent Homes Standard into the PRS is in pursuit of the general legitimate interest outlined above – in particular the need to ensure tenants live in a decent home and to protect the health and safety of tenants. Requiring landlords to comply with the DHS is proportionate relative to that aim. Arguably, landlords should already be ensuring that their properties meet a minimum decency standard and meeting the associated costs.

58. Moreover, the enforcement action to which landlords will be exposed if their property fails to meet the requirements will be subject to procedural safeguards. In addition to being able to request revocation or variation of the enforcement notice or order, there is a right of appeal to the First-tier Tribunal in respect of every type of enforcement action (apart from the service of a hazard awareness notice). If a hazard awareness notice is served it must set out the authority's reasons for deciding to serve the notice, including their reasons for deciding that serving the notice is the most appropriate course of action. Judicial review will therefore be an option for a landlord who believes that a hazard awareness notice has been served illegally, irrationally or unfairly.

59. The revised standard will be subject to a public consultation before it is finalised, which will consider the views of those impacted, including landlords and tenants, and will review what proportionate costs to landlords will entail.

Part 4, Chapter 1: Rent Repayment Orders

ECHR Rights engaged: Article 6 and A1P1

60. The provisions which bring superior landlords within scope of the licensing offences (and, by amendment of the provisions governing service of improvement notices, the offence of non-compliance with an improvement notice) in the Housing Act 2004 will engage the Article 6 rights of superior landlords. This is because these are strict liability offences and the onus will be

on superior landlords to establish one of the statutory defences to avoid conviction or a rent repayment order (RRO) being made against them.

61. The provisions are also likely to engage the A1P1 rights of superior landlords who may be made subject to a rent repayment order as a result of being brought in scope of the licensing offences in the Housing Act 2004.

Justification

62. The Housing Act 2004 RRO offences are designed to regulate conduct in the public interest. There is a strong public interest in ensuring that the responsible person complies with enforcement notices served under Part 1 and the licensing regimes under Parts 2 and 3 to support proper management of housing for the health and safety of occupiers and others. The changes made by the Bill aim to achieve that by ensuring that enforcement is not circumvented by artificial arrangements and that action may be taken against superior landlords where appropriate.

63. The changes made by the Bill do not alter the offences themselves, which are and will remain strict liability, and additional statutory defences are provided as a safeguard for superior landlords who have a reasonable excuse for not knowing that the property was one that should be licensed, or took all reasonably practicable steps to ensure it was licensed, or had some other reasonable excuse for failing to ensure that the property was licensed as required. This helps to strike the right balance between the public interest and the protection of the rights of the individual landlord.

64. To the extent the provisions also engage and constitute an interference with the A1P1 rights of superior landlords and corporate officers (due to the possibility of them being made subject to a rent repayment order), this interference would be provided for by law. It would serve the legitimate public purpose of deterring superior landlords and corporate officers from committing RRO offences and the penalty would be proportionate given the wide margin of appreciation enjoyed by States in relation to questions of economic and social policy.

Part 4 Chapter 3 Investigatory Powers of Entry

ECHR Rights engaged: Article 8, A1P1 and Article 6 (if legally privileged documents are discovered during search of premises)

Interference

65. Investigatory Powers provisions are included in the Bill to bolster the enforcement powers of local authorities and to enable investigation of a wider range of regulatory breaches and offences in the PRS.
66. The powers to enter domestic premises are modelled on sections 239 (powers of entry) and 240 (warrant to authorise entry) of the HA 2004. The powers of entry in relation to business premises are modelled on paragraph 23 (Power to enter premises without warrant) of Schedule 5 (investigatory powers) of the Consumer Rights Act 2015. Both powers can be exercised with or without a warrant.
67. In the case of routine inspections, the powers to enter both domestic and business premises require 24 hours' notice to be given to an occupier. Notice is not required, however, for non-routine inspections (where giving notice would defeat the purpose of the entry or notice is not reasonably practicable). Notice also need not be given if an occupier has waived the right to notice.

Domestic premises

68. The power of entry into domestic premises, where it is suspected that the premises is subject to a residential tenancy, will be an interference with an individual's home and potentially private and family life for the purposes of Article 8. It will also be an interference with the peaceful enjoyment of property for the purposes of A1P1. Where a power of entry is exercised with the informed consent of the occupier they may be taken to have waived their rights under Article 8 or Article 1 First Protocol.

69. Article 6 could be engaged if legally privileged documents are found during a search of premises.

Business premises

70. Entering and searching business premises can be considered interference with the right to a home under Article 8 ECHR (see *Niemietz v Germany* 13710/88). Where items are seized during or following the search this will engage A1P1 amounting to a control of property.

Justification

71. The investigatory powers set out in the Bill are in pursuit of the general legitimate aim set out above of improving the enforcement capabilities of local housing authorities.

72. The power of entry in relation to domestic premises is limited to investigating two matters: whether there has been an offence under the Protection from Eviction Act 1977, or a breach or offence under the PRS Database

73. Under existing legislation, local councils do not have the power to enter residential premises to ascertain whether an offence under section 1 Protection from Eviction Act 1977 has taken place. This significantly impacts the ability of LHAs to effectively enforce the legislation.

74. The powers to enter domestic premises pursues the legitimate aim of the proper investigation and enforcement of unlawful eviction and harassment, preventing and detecting serious crime. The effective enforcement of unlawful eviction is also necessary to protect the rights of tenants to quiet enjoyment of their homes. The power of entry into residential premises also pursues the legitimate aim of protection of health. This is because in some cases harassment can take the form of cutting off essential services, such as gas and electricity, which can have serious impacts on a tenant's health. Entry into domestic property provides a means by which local authorities can gather evidence that unlawful eviction or harassment has occurred. Often such evidence will be inside

premises, therefore the inability to enter premises significantly weakens enforcement.

75. The power to enter domestic premises can also be exercised in order to investigate suspected breaches and offences of the Database provisions in the Bill. In order for the PRS Database to achieve its objectives it is crucial that a landlord cannot avoid registering on the Database, simply by not registering or falsely stating that a property is not rented out. The strongest evidence to determine whether a property is rented out is obtained by effecting entry. In doing so a local housing authority will be able to see evidence such as notices left by landlords and locks on individual bedroom doors. The power of entry pursues the legitimate aim of prevention of crime, protection of health and the protection of the rights and freedoms of others. With an awareness of which properties are rented out, the LHA can also enforce against poor housing standards and enforce tenants' rights, especially in respect of those tenants who are vulnerable and may not know their rights or be unable to voice them. The power is a proportionate means of achieving the legitimate aim because it supports making PRS properties safe and protecting the rights of tenants. Additionally, entry will be either with the co-operation of the occupier or with judicial scrutiny through a warrant.

76. The Bill will also introduce the Decent Homes Standard (DHS) into Part 1 of the HA 2004. Section 239 of the HA 2004 already grants a LHA a power of entry to determine whether any functions under Part 1 should be exercised in relation to the premises in question. A power of entry will therefore attach to the enforcement of the DHS and therefore the legitimate aims underlying the DHS (protecting the health and safety of tenants by ensuring they live in a decent home) also underpins the connected investigatory powers.
