RENTERS' RIGHTS BILL

Supplementary 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 (DPRRC) to assist with its scrutiny of the Renters' Rights Bill ("the Bill"). It supplements the memorandum that was submitted and published on 16 January 2025 ("the first DPM") when the Bill was introduced to the House of Lords. A further supplementary DPM was submitted and published on 2 April 2025 which detailed the additional powers tabled at Committee Stage.

2. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

B. SUMMARY OF THE BILL

3. The DPRRC is referred to the memorandum published on 6 February 2025 for a summary of the Bill.

C. DELEGATED POWERS

4. The additional powers tabled at Report Stage are:

    a. Clause 7 - Power to amend the effective date following a determination of rent by the First-tier Tribunal
    b. Clause 33 - Power to exempt Purpose Built Student Accommodation (PBSA) from assured tenancy status where a person appointed to act on the landlord's behalf or to discharge management functions is a member of a specified housing management code of practice
    c. Schedule 6, paragraph 13 – power to specify a housing management code of practice, in relation to which a landlord, person acting for the landlord, or person appointed to discharge management functions would need to be a member in order to use a transitional provision.

D. ANALYSIS OF DELEGATED POWERS BY CLAUSE

CLAUSE 7: Power to amend the effective date following a determination of rent by the First-tier Tribunal

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary Procedure: Affirmative

Context and Purpose

5. Clause 7 amends section 13 of the Housing Act 1988, which sets out the process by which a landlord can issue notice to inform the tenant of a rent increase. This means

that the only way private landlords (other than those in 'low-cost tenancies') can increase the rent is using a section 13 notice.

6. Under section 14 of the Housing Act 1988, as amended by the Bill, tenants have the opportunity to challenge a proposed rent increase at the First-tier Tribunal, should they believe it to be above market rate. Section 14ZB, as inserted by the Bill, provides that, where a rent increase is challenged and then determined at the Tribunal, the rent payable will take effect either from the beginning of the rent period specified in the landlord's notice (if that date is on or after the date of the determination) or, otherwise, from the date of the Tribunal's determination. In cases of undue hardship, the Tribunal may order that the rent increase takes effect up to two months after the date of its determination.

7. The Bill adopts this approach in support of the Government's manifesto commitment to empower tenants to challenge unreasonable rent increases. This will prevent tenants being thrust into debt and potentially dissuaded from acting on their rights to challenge above-market increases through the First-tier Tribunal.

8. We therefore expect there will be an increase in challenges to rent increases as a result of the Bill, with tenants better able to challenge unreasonable rent increases. To manage this, the Ministry of Housing, Communities and Local Government (MHCLG) has been working closely with the Ministry of Justice to ensure the judicial system has sufficient capacity for the new tenancy system. We do not, however, anticipate significant demand from tenants bringing rent increase challenges with little prospect of success to the Tribunal, due to the cost and effort that this would require and reluctance to damage their relationship with their landlord.

9. Nonetheless, the Government has listened carefully to debate in both Houses of Parliament, and recognises there is a small risk removing backdating could lead to a larger increase in volumes than anticipated. In the Government's view, were this risk to be realised, it would be in neither landlord nor tenant's interests to allow sustained volumes of appeals which could exceed the Tribunal's capacity – as this would prevent timely access to justice for both parties.

10. These amendments insert a new Henry VIII delegated power into Clause 7 to change the date from which the new rent determined by the Tribunal is payable ("the effective date") using a Statutory Instrument. The power is limited to ensure that the effective date cannot be any earlier than the date originally proposed by the landlord in the section 13 notice given to the tenant. The new date will apply only to applications to challenge the rent made on or after the date on which the regulations come into force.

11. Government intends this power as a proportionate safeguard to protect the capacity of the Tribunal system to operate efficiently. It will allow the Secretary of State to take action if it becomes clear that introducing backdating is absolutely necessary to avoid lengthy delays for genuine cases to be heard.

Justification for taking the power

12. Government recognises that there is some uncertainty in the impact that the Bill's approach to rent determination will have on tenant and landlords' behaviour – as has been highlighted in extensive debate in both Houses of Parliament during the Bill's passage. The risk of a larger number of challenges from tenants facing market-level increases, for example, may increase during future periods of high rent increases or inflation.

13. In the event that the number of rent challenges were significantly greater than anticipated, a failure to deliver timely justice is likely to impede realisation of the Bill's aims. In particular, this could hinder a landlord's ability to achieve market rents in a timely manner and prevent reasonable challenges from tenants discouraged by the length of time for the case to be heard. This could also hinder the ability of the Tribunal to consider other types of case arising from the Bill, such as Civil Penalty Notice appeals, impacting the legislation's wider effectiveness.

14. We therefore consider a delegated power is necessary, rather than for example relying on a future Bill, to ensure rapid action can be taken if cases rise to unanticipated volumes. This would allow the impact of an unexpectedly high number of challenges to be mitigated more quickly than relying on future legislation, which could take a substantial period of time, during which the Tribunal's capacity may have been avoidably exceeded and the intention of the Bill would be compromised.

15. Given that external factors, such as economic considerations, may also give rise to increases in rent challenges, it is reasonable to expect that policy may need to be adjusted more often than could be achieved through primary legislation. Given these factors, and the significant operational complexity of the Tribunal, we do not think it would be feasible to set out a clear test on the face of the Bill which must be satisfied prior to it being used–there are too many variables in assessing when the Tribunal faces capacity issues.

16. Conversely, should the exercise of the power cause the volume of rent challenges to return to a more sustainable level, coupled by other economic developments or improvements in the Tribunal's capacity, there would then be a case to use the power again to reduce or remove backdating. This would be in recognition that Parliament intended (on passing this Bill) for there to be no backdating at all. Again, to wait for a primary vehicle to do this would delay the ability of tenants to challenge a rent increase without having to face backdated payments.

17. The power has important safeguards built into it. As mentioned above, it is limited so that the "effective date" could not be set as a date which is earlier than that originally set out in the landlord's section 13 notice. Further, the power makes clear that any regulations which change the effective date would only apply to applications made by tenants after the date the regulations come into force.

Justification for the procedure

18. We consider the use of the affirmative procedure is appropriate to ensure necessary Parliamentary oversight, recognising this is a Henry VIII power.

CLAUSE 33: Power to exempt Purpose Built Student Accommodation (PBSA) from assured tenancy status where a person appointed to act on the landlord's behalf or to discharge management functions is a member of a specified housing management code of practice.

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary Procedure: Negative

Context and Purpose

19. Paragraph 8 of Schedule 1 to the Housing Act 1988 provides for certain student lettings to not be assured tenancies. An amendment was agreed at Lords Committee stage to enable the exemption to be limited to buildings of a specified class; and for regulations to be able to specify tenancies to fall within the exemption by reference to whether the landlord or building is subject to codes of practice approved under section 233 of the Housing Act 2004.

20. The Government intends to use the power to exempt private Purpose Built Student Accommodation (PBSA) that comply with Unipol and Accreditation Network UK (ANUK) student housing codes approved under section 233 of the Housing Act 2004 from the assured tenancy system. This would mean that private PBSA had the same security of tenure as university-managed accommodation, with the Protection from Eviction Act 1977 preventing eviction without a prior court order. The landlord would not however need to serve a notice under the Housing Act 1988, or establish a ground for possession in court, in order to evict lawfully.

21. Stakeholders have highlighted to the Department that the limitation in the power to landlords, could inadvertently exclude certain PBSA accommodation from the exemption. This is because it limits the exemption to tenancies 'granted' by a code member. A tenancy can only be granted by the landlord, that is, the owner of the dwelling or intermediate landlord. Many UNIPOL code members have a more complex commercial arrangement, for example the member may be managing the buildings and the tenancy, while the actual owner of the building, who is legally "the landlord", may be, for example, an overseas investment fund. PBSA accommodation within this scenario would not be captured by the exemption, contradicting the intention of the relevant clause.

22. As such, we have amended clause 33 so that the power in Schedule 1 of the Housing Act 1988 is now capable of exempting from assured status persons acting on behalf of the landlord or discharging management functions in relation to the building where they are a member of a specified code. The power would then allow the Department to specify the code along the lines set out above. This will ensure that all the organisations intended to be captured by the exemption will be.

Justification for taking the power

23. See supplementary DPM published on 2 April for a detailed explanation of the justification for making the amendments to the power in Schedule 1 of the Housing Act 1988. In short, the Government wishes to exempt PBSA that is compliant with UNIPOL/ANUK codes of management practice from the assured tenancy system, as the new tenant rights after the implementation of the Renters' Rights Bill would risk decreasing supply of housing provided by the PBSA sector, and the existing power in Paragraph 8 of Schedule 1 of the Housing Act 1988 would not allow us to do this in a streamlined manner.

24. Regarding the specific amendment at Lords Report, this ensures that when the Government uses the Paragraph 8 Schedule 1 power to exempt code compliant PBSA providers in future, it includes the full breadth of commercial arrangements present amongst code members, in line with our original policy intent. Both landlords that are signed up to the codes, and managing agents who are, will benefit from the exemption.

Justification for the procedure

25. The power to exclude certain student tenancies from the assured tenancy system in Paragraph 8 of Schedule 1 to the Housing Act 1988 is currently subject to the negative procedure. This amendment does not change this. The Department considers that this is the appropriate level of scrutiny for this power. Parliamentary votes will not necessarily be needed every time the Department specifies a type of landlord/provider or a particular code in regulations, unless they are actively requested. We consider this is the appropriate level of scrutiny given that the overall policy of excluding certain student lettings from assured tenancy status is clear from the power itself, with regulations implementing this in detail.

Schedule 6, paragraph 13 – power within a transitional provision to specify a housing management code of practice, in relation to which a landlord, person acting for the landlord, or person appointed to discharge management functions would need to be a member in order to use a modified Ground 4A.

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary Procedure: Negative

Context and Purpose

26. Part 1 of Schedule 6 to the Bill contains transitional provisions in relation to existing tenancies (those granted before the date on which Part 1 of the Bill comes into force). It ensures a smooth transition into the new tenancy framework for those tenancies.

27. Paragraph 13 of Schedule 6 modifies possession ground 4A (student accommodation) in Schedule 2 to the Housing Act 1988 to ensure it can be used by landlords of existing tenancies. It includes a modification to ensure that landlords of those tenancies can provide "prior notice" of their intention to rely on ground 4A within one month of the commencement date. It also removes the prohibition against there being longer than

6 months between the date the tenancy is granted and the date the tenant is entitled to possession.

28. As set out above, the Government's intention is to exempt PBSA accommodation from assured tenancy status. It will do this by using the power in paragraph 8, Schedule 1 of the Housing Act 1988. However, this exemption will only apply to new PBSA tenancies granted after the commencement date. Existing tenancies of PBSA accommodation will remain on the assured system, which means that landlords of those tenancies will be reliant on Ground 4A as a means to bring those tenancies to an end. The Department's stakeholders have flagged that, even with the modifications already contained in paragraph 13, Schedule 6 to the Bill, PBSA providers will be unable to use that Ground due to other conditions within it.

29. The Department is therefore amending paragraph 13 of Schedule 6 to the Bill so that Ground 4A is further modified in respect of an existing "qualifying student tenancy". The requirement for the dwelling to be an HMO will not apply, nor will the requirement for the "relevant date" (i.e. the date in the landlord's section 8 possession notice) to be between 1 June and 30 September.

30. A "qualifying student tenancy" is defined as one in which the landlord, person appointed to act on the landlord's behalf or to discharge management functions is a member of "a specified housing management code of practice". This therefore creates a power to specify a housing management code of practice for these purposes in regulations. The intention is to use this power to specify a housing management code approved by the Secretary of State under section 233 of the Housing Act 2004 in relation to which the landlord (or a person acting on their behalf/discharging management functions) must be a member. If they are, Ground 4A containing the further modifications can be used to end that tenancy.

Justification for taking the power

31. It is important to ensure providers of existing PBSA tenancies can use Ground 4A to bring the tenancy to an end (bearing in mind the broader policy intention that PBSA accommodation should be completely exempt from the assured tenancy framework).

32. At present Ground 4A is not suitable for PBSA providers given the conditions it imposes regarding the property to be an HMO and in relation to the "relevant date". Further modifications to Ground 4A are therefore required for these existing tenancies. It is an important safeguard that these additional modifications are limited only to those tenancies in which the landlord/person appointed by the landlord/person discharging management functions is a member of a specified code . The power to specify the Code is necessary to ensure that the correct Code is applied for these purposes and a new Code can be specified if necessary for the purposes of the transitional. It is very important that any changes to the Code, which requires a new Code to be specified, can take place quickly given this is a transitional provision. Having to set out the exact Code on the face of the primary legislation, could pose difficulties at a later stage should the Code be changed just before implementation – we would not be able to update the primary legislation quickly enough to ensure a seamless transition for these

existing PBSA tenancies. As such we consider it necessary to specify the Code itself in regulations.

Justification for the procedure

33. The power to specify the code of practice is subject to negative procedure. The Department considers that this is the appropriate level of scrutiny for this power. Parliamentary votes will not necessarily be needed every time the Department specifies a new Code

Department Name: Ministry of Housing, Communities and Local Government

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