



## EXPLANATORY NOTES

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### Social Housing (Regulation) Act 2023

Chapter 36

£13.57



# SOCIAL HOUSING (REGULATION) ACT 2023

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Social Housing (Regulation) Act 2023 which received Royal Assent on 20 July 2023 (c. 36).

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

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## Overview of the Act

- 1 The Social Housing (Regulation) Act (the Act) facilitates a new, proactive approach to regulating social housing landlords on consumer issues such as safety, transparency, standards and conduct of staff and tenant engagement, with new enforcement powers to tackle failing landlords. The intent of this Act is to reform the regulatory regime to drive significant change in landlord behaviour to focus on the needs of their tenants and ensure landlords are held to account for their performance.
- 2 The Act has three core objectives:
  - To facilitate a new, proactive consumer regulation regime;
  - To refine the existing economic regulatory regime; and
  - To strengthen the Regulator of Social Housing's (the regulator) powers to enforce the consumer and economic regimes.
- 3 The Act also strengthens the powers of the Housing Ombudsman and enables requirements to be set for social landlords to address hazards such as damp and mould within a fixed time period.

### Reform the consumer regulatory regime

- 4 The Act facilitates a new proactive consumer regulatory regime. To achieve this, the Act makes safety and transparency explicit parts of the regulator's objectives and gives it new powers on the competency and conduct of staff and the transparency and provision of information. The Act removes the serious detriment test (a legislative barrier to regulator action on consumer issues) and requires landlords to nominate a designated person for health and safety issues. The Act also makes provision for the introduction of new requirements for social housing landlords relating to electrical safety checks and makes some changes to the powers of a housing ombudsman.

### Refine the economic regulatory regime

- 5 The Act maintains and refines the regulator's current economic regulatory role, ensuring that providers are well governed and financially viable to protect homes and investment in new supply. This supports the existing work of the regulator, creating continued stability and viability in the sector through robust economic regulation. Through these measures the Government aims to encourage continued investment in the sector, to support the development of new homes, while protecting tenants from the risks of provider insolvency.

### Strengthen the regulator's enforcement powers

- 6 The Act strengthens the regulator by giving it new enforcement powers ensuring they can effectively intervene when required. The measures seek to encourage landlords to maintain standards, to avoid the threat of enforcement action, and ensure that the regulator has the appropriate tools available to deal with non-compliance with the standards.

## Policy background

- 7 Social housing is low-cost rented or shared ownership housing provided by private registered providers of social housing (private registered providers), the majority of whom are housing associations, and local authorities who act as social landlords. Social housing can offer secure long-term tenancies with more affordable rents compared to the private rented sector.

- 8 The social housing sector provides homes to over 4 million households. Private registered providers own c.60% of the housing stock and local authority landlords own c.40%. The sector aims to provide homes that are safe and of a high quality with services that meet tenant expectations.
- 9 There is significant variance in scale of social landlords, with the largest providers owning over 125,000 units and the smallest owning only a few units. Social landlords vary not only in size but in operations and business models as well. Some providers undertake a lot of development while others' operations provide care and support services as well as homes.
- 10 Following the Grenfell Tower tragedy in June 2017, serious concerns were raised about how some social tenants were being treated by their landlord. In response, alongside the public inquiry, the Government published the [Social Housing Green Paper: A new deal for social housing](#)<sup>1</sup> in 2018 and launched a [Call for Evidence: Review of social housing regulation](#)<sup>2</sup> about how social housing is regulated. Many tenants reported positive experiences, but others did not. Concerns were raised about safety and quality, about complaints being handled slowly and poorly, and about tenants feeling that they were not listened to or treated with respect.
- 11 Overall, the responses to the Call for Evidence showed widespread support for the current economic regulatory system. There was also recognition that there needed to be greater consumer regulation of social housing landlords.
- 12 In November 2020 the Government published [The Charter for Social Housing Residents: Social Housing White Paper](#)<sup>3</sup> outlining the Government's proposals to change how social housing will be regulated in the future. A core element of the proposals was appropriate regulation and expectations on landlords, ensuring that landlords are transparent and accountable to tenants and that tenants are the focus of their operations, with safety being a top priority.
- 13 This Act takes forward these proposals to drive up service delivery to tenants by holding landlords to account for delivery against the consumer standards, to rebalance the tenant-landlord relationship and maintain robust economic regulation. The Social Housing White Paper also set out a number of policy changes which will be delivered operationally through the regulator, within their existing powers.
- 14 Another element of the proposals outlined in the Social Housing White Paper is changes to the economic regulatory regime for social housing. Whilst the Government does not consider that the economic regulatory regime requires significant changes, the Social Housing White Paper set out a small number of policy changes to assist the regulator in addressing some concerns raised in the Social Housing Green Paper and the Call for Evidence about increasing sector risks. The Act takes forward these proposals to improve the ability of the regulator to monitor private registered providers.

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<sup>1</sup> The Social Housing Green Paper: *A new deal for social housing*, August 2018:  
<https://www.gov.uk/government/consultations/a-new-deal-for-social-housing>

<sup>2</sup> Call for Evidence: *Review of Social Housing Regulation*, published alongside the Social Housing Green Paper, August 2018:  
<https://www.gov.uk/government/consultations/review-of-social-housing-regulation-call-for-evidence>

<sup>3</sup> *The Charter for Social Housing Residents: Social Housing White Paper*, November 2020:  
<https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>

- 15 The Social Housing White Paper also outlined proposals to keep the housing ombudsman's powers under review and consider ways to strengthen them. This Act takes forward these proposals to ensure the housing ombudsman is empowered to issue good practice, a complaint handling code and make clear that the housing ombudsman can issue orders that seek to prevent the recurrence of issues identified during an investigation.
- 16 The Act also enables legislation that will allow for the introduction of electrical safety regulations in the social housing sector at a later date, subject to consultation.

## Legal background

- 17 The main legislation relevant to the regulation of social housing is:
  - the Housing and Regeneration Act 2008;
  - the Localism Act 2011;
  - the Housing and Planning Act 2016; and
  - the Legislative Reform (Regulator of Social Housing) (England) Order 2018.
- 18 The main legislation relevant to the housing ombudsman scheme is section 51 of, and Schedule 2 to, the Housing Act 1996.
- 19 The Housing and Regeneration Act 2008 (HRA 2008) established the framework for the regulation of social housing. The HRA 2008 created the Homes and Communities Agency (HCA) and set out its objectives and powers. The HRA 2008 also created a new social housing regulator, the Office for Tenants and Social Landlords, and set out its objectives and powers.
- 20 The HRA 2008 was later amended by the Localism Act 2011 in response to the Review of Social Housing 2010 (also known as the "Shapps Review"). The Review of Social Housing concluded that the Tenant Services Authority (TSA) (the operating name of the Office for Tenants and Social Landlords) should be abolished and its regulatory functions transferred to the HCA and vested in a statutory committee within the HCA. The Localism Act 2011 transferred the functions of the TSA to the HCA.
- 21 The legislative framework established by the HRA 2008 was further amended by the Housing and Planning Act 2016 (HPA 2016) which reduced regulation of social housing and local authority influence over private registered providers. The HRA 2008 reduced regulation by, among other things, removing various requirements for the regulator's consent of private registered provider activities and reducing the regulator's powers to appoint managers or officers of private registered providers.
- 22 In 2018, the Legislative Reform (Regulator of Social Housing) (England) Order 2018 made the regulator a standalone body separate from the HCA, in line with a recommendation from a Tailored Review of the HCA.

## Territorial extent and application

- 23 The territorial extent and application of this Act is England and Wales, with the exception of section 11 and section 42 which have England only application, and sections 13, 14, and 44-47 and Part 1 of Schedule 1 and Schedule 2 which have UK extent and application.
- 24 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

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# Commentary on provisions of Act

## The Regulator of Social Housing

### Section 1: Fundamental objectives

- 25 Section 1 amends section 92K of the HRA 2008 which sets out the fundamental objectives that guide the regulator's approach to regulation. These comprise an economic regulation objective and a consumer regulation objective. The economic objective is about good governance, financial viability and value for money of registered providers of social housing (registered providers) that maintains lender confidence and protects the taxpayer. The consumer objective is about supporting the provision of quality social housing that is well managed and ensuring tenants have choice and protection and can hold their landlord to account. The regulator is accountable to Parliament for the discharge of these fundamental objectives.
- 26 This amendment specifies that the regulator must support the provision of housing that is 'safe' and 'energy efficient' in addition to the existing expectations of being 'well managed' and of 'appropriate quality'. It also adds to the consumer objective a new objective for the regulator to require registered providers to be transparent with their tenants. The addition of safety and transparency to the Regulator's objectives was a Social Housing White Paper commitment.

### Section 2: Advisory panel

- 27 Section 2 amends the HRA 2008 by inserting a new section 96A. Subsection (1) requires the regulator to set up an Advisory Panel (the Panel). The Panel will comprise of a range of voices from across the sector, including tenants and landlords, enabling them to inform the regulator on a wide range of matters connected to the regulation of social housing. The regulator will refer to the Panel when they see fit, but the Panel will also be able to proactively raise issues affecting social housing regulation with the regulator. The Panel must include, but is not restricted to, the persons specified in subsection (4).
- 28 The Panel's remit is the provision of information and advice to the regulator about the regulator's functions (or matters connected with them). Matters the Panel may provide advice on include, but are not limited to, significant proposed changes to the regulatory standards and codes of practice, proposed changes to the regulator's approach to regulating the standards, and key sector issues and risks. For example, the regulator may engage the Panel on the design and implementation of new consumer standards and how it engages with key stakeholders such as tenants. This will help shape the regulator's view prior to formal consultation.

### Section 3: Collection of information

- 29 Section 3 amends sections 107 and 108 of the HRA 2008 to broaden the existing power for the regulator to require persons to provide documents or information for purposes connected to its regulatory functions.
- 30 Existing legislation limits the power to request information to that which relates to:
- The financial or other affairs of a registered provider;
  - Activities carried out by a person who is or has applied to become a registered provider; or
  - Activities carried out by a local authority in England which is, or may become, a provider of social housing.

- 31 Furthermore, at present, the regulator may only require persons to provide information from third parties if the body to which it relates has failed to provide the information or documentation in question, or the regulator thinks the body is unable to provide it.
- 32 The existing power is broadened to enable the regulator to obtain information relating to funds or assets once it has left the regulated sector. It is also amended to enable the regulator to request information directly from third parties, to require a person to provide an explanation and to authorise another person to exercise its powers under section 107. The authorisation must specify the extent to which that person is authorised to exercise any of the regulator's powers under this section. This will enable specialists, such as forensic accountants, to conduct investigations into a provider on behalf of the regulator if necessary.
- 33 This section further amends section 107 by making it an offence to knowingly or recklessly provide the regulator with a document, information or an explanation which is false or misleading in purported compliance with a requirement under this section.
- 34 The intention of these changes is to provide the regulator with the powers necessary to access information to understand better how a registered provider is operating and in turn improve its investigation into concerns about a provider's compliance with regulatory standards. For example, the power would enable the regulator to follow money paid to bodies outside of the social housing sector and investigate potential fraud by examining the financial accounts of organisations thought to be deriving profits from the activities of a registered provider. As set out in the Social Housing White Paper, the intention is for this to improve the ability of the regulator to conduct effective economic regulation of private registered providers.

#### Section 4: Power to charge fees

- 35 Section 4 amends section 117 of the HRA 2008 to clarify the extent of the regulator's fee-charging powers.
- 36 A new subsection (4A) is added to section 117 which clarifies that a fee can be set at a level that covers costs not directly connected to services provided to the particular fee-payer.
- 37 This makes clear that the regulator has the power to recover costs for activities that it does not charge registered providers of social housing for at present. For example, it allows for fees to be charged to cover the costs of investigation and enforcement work, which is a cost which may only relate to a subset of providers.
- 38 Section 4 also extends the ability of the regulator to charge registered providers in relation to unsuccessful applications for registration. Unsuccessful, or withdrawn applications are not currently charged for.
- 39 These changes are to ensure that the regulator can maximise cost recovery in line with standard government policy, through fees charged to the sector.
- 40 Subsection (7) amends section 202 of the HRA 2008 and repeals a specific power to charge fees for inspections. This is to ensure no doubt is cast on the regulator's general powers to charge fees to recover costs for activities that it does not charge for at present.

#### Section 5: Relationship between regulator and housing ombudsman

- 41 Section 5 amends the HRA 2008 and the Housing Act 1996 (HA 1996) to add measures on the relationship between the regulator and a housing ombudsman in order that they can work together effectively to provide better protection for tenants.
- 42 The regulator and the housing ombudsman both have a role in overseeing the performance of social housing landlords and making sure that landlords treat their tenants fairly. The regulator regulates registered providers in England and the housing ombudsman seeks to

resolve complaints from residents about registered providers. The HA 1996 allows for multiple housing ombudsman schemes to be approved by the Secretary of State but only one has been approved.

- 43 A new section, 100H, is added to the HRA 2008 requiring both bodies to cooperate and to prepare, publish and regularly review a memorandum of understanding outlining how they will do so.
- 44 The HRA 2008 is amended to require the regulator and Secretary of State to consult any housing ombudsman when setting standards and giving directions to the regulator respectively.
- 45 The HA 1996 is amended to require an ombudsman to consult the regulator about changes to its scheme before these can be approved by the Secretary of State.
- 46 Arrangements are already in place for the two bodies to work together. A non-statutory [memorandum of understanding](#)<sup>4</sup> (MoU) has been agreed between the regulator and the housing ombudsman, originally in 2017 and updated in 2020.

## Registration of providers of social housing

### Section 6: Meaning of “English body”

- 47 Section 6 amends section 79 of the HRA 2008 so that potential eligibility for voluntary registration as a private registered provider is explicitly limited to entities taking certain corporate forms with a registered office or an address for charity registration purposes in England.
- 48 This change is intended to ensure that registration, and the regulatory regime which applies in consequence of it, is limited to bodies which the regulator can regulate in an appropriate manner given their corporate form and location.
- 49 Only an “English body”, as defined in section 79 of the HRA 2008, may be eligible for voluntary registration as a private registered provider under section 112 of the HRA 2008.
- 50 Section 79(1) is amended so that a limited liability partnership (LLP) which has its registered office in England is included within the definition of “English body”.
- 51 Section 79(1)(d) is removed, since the Government’s intention is that only community land trusts which otherwise fall within section 79(1) as amended are to be potentially eligible for registration.
- 52 Section 79(1)(e) is removed to ensure that only English bodies as defined in section 79(1)(a)-(c) and (f) are able to register with the regulator. These bodies will be registered companies, registered societies, registered charities and limited liability partnerships with a registered office or registered address for charity registration purposes in England.

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<sup>4</sup> Memorandum of Understanding between the Housing Ombudsman and the regulator of Social Housing, September 2020: <https://www.housing-ombudsman.org.uk/wp-content/uploads/2020/09/MOU-Ombudsman-and-Regulator-20200901.pdf>

## Section 7: Registration criteria

- 53 Section 7 amends section 112 of the HRA 2008 to enable the regulator to make the registration of private registered providers conditional upon their ability to meet, on registration, regulatory standards.
- 54 Under section 112 of the HRA 2008, the regulator is able to set criteria which specify the financial, constitutional and management arrangements that must be satisfied by new registrants. This change allows the regulator to add to that. The change will allow the regulator to confirm that providers are capable of meeting registration requirements related to all its standards – for instance, on its consumer standards in relation to maintaining homes and adopting suitable procedures for addressing tenant complaints - before they become a registered provider.

## Section 8: Designation

- 55 Section 8 amends section 115 of the HRA 2008 so that the regulator can look beyond constitutional form when determining an organisation's status as either a profit-making or non-profit organisation.
- 56 This is achieved by removing the automatic designation of charities as non-profit organisations and clarifying that the fact that a body is prohibited by its constitution from trading for profit does not automatically mean that, for the purposes of section 115, it is a body that does not trade for profit eligible for designation as a non-profit provider.
- 57 This section removes the condition which states that a non-profit provider can satisfy one of the conditions in the non-profit test if it is prohibited by its constitution from issuing capital with interest or dividend that exceeds a prescribed rate. No rate has ever been prescribed, which therefore leaves a potential loophole.
- 58 These changes are to ensure that the regulator is able to designate registered providers according to the substance of how they actually operate (or intend to operate). Designation as a non-profit provider may bring with it benefits to that landlord, for example, the ability to provide supported accommodation and claim an uncapped rate of housing benefit. It is important that providers are not able to benefit in that way if they, in practice, do not truly operate as a non-profit organisation.

## Section 9: De-registration

- 59 Section 9 amends section 118 of the HRA 2008 allowing the regulator to de-register a private registered provider for failing to meet a regulatory standard under section 193 (consumer standards), 194 (economic standards) or 194C (standards relating to information and transparency). This change relates to that made by section 7, which enables the regulator to make the registration of social housing providers conditional upon their ability to meet, on registration, regulatory standards.

## Duties of registered providers

### Section 10: Appointment of health and safety lead by registered provider

- 60 Section 10 inserts new sections into the HRA 2008 that require registered providers to designate an individual to act as lead on certain functions relating to the provider's compliance with its health and safety obligations towards tenants (known as the 'health and safety lead'). Legal responsibility for ensuring compliance with relevant obligations to protect the health and safety of tenants will remain with the registered provider.

- 61 The registered provider may only designate an individual who meets the relevant criteria set out in section 126A which ensure the health and safety lead is an employee of the provider or another appropriate person (i.e. an officer of a registered provider with less than 15 employees or, in a local authority, a person holding certain executive posts).
- 62 The health and safety lead's functions, as outlined in section 126B, are to monitor the provider's compliance with health and safety requirements, to assess risks of failure to comply, to notify the provider's responsible body of any material risks to or failures of this compliance, and to advise on steps to ensure the provider addresses such material risks and failures. The relevant health and safety requirements are statutory requirements that relate to the health and safety of tenants of social housing.
- 63 The registered provider has duties, under section 126C, to ensure that the health and safety lead has the authority, capacity and resources needed to carry out their role. The registered provider is also required to notify the regulator of the name and contact details of the health and safety lead and publish this information so that tenants know who it is and can contact them. The registered provider can nominate a person to carry out the functions of the health and safety lead if the health and safety lead is unable to do so due to absence or illness.
- 64 Section 10 also amends sections 220 (grounds for giving enforcement notice), 227 (grounds for imposition of penalty), 247(1) (management tender), 251(1) (appointment of manager of private registered provider) and 252A(2) (appointment of advisers to local authorities) of the HRA 2008 so the regulator can use those powers to enforce the requirements these new provisions impose on registered providers.

## Section 11: Electrical safety standards

- 65 This section amends section 122 of the Housing and Planning Act 2016 (electrical safety standards for properties let by private landlords). It extends the power to enable the Secretary of State to, by regulations, impose duties on local authority registered providers in England, rather than just private landlords (a term which, as defined in section 122, includes private registered providers). The duties imposed by regulations under this power are for the purposes of ensuring that electrical safety standards are met during any period when the premises are occupied under a tenancy.
- 66 Such duties relating to electrical safety standards might include ensuring checks of electrical installations and/or appliances provided by the landlord are carried out. Regulations may impose obligations on registered providers with regards to the frequency of the electrical checks and the expertise expected of any persons who undertake such checks. The regulations may also require the landlord to obtain a certificate from a qualified person confirming that the standards are met, and to give a copy to the tenant or prospective tenant.
- 67 Any regulations made under section 122 of the HPA 2016 may make provision for the enforcement of any duties imposed by such regulations, including the use of financial penalties and rights of appeal (see section 123 of the HPA 2016).

## Registered providers: insolvency, restructuring etc

### Section 12: Moratorium on disposal of land

- 68 Section 12 amends the moratorium process, including provision as to how and when the moratorium period commences and ends. During a housing moratorium, the prior consent of the regulator is required for disposals of a registered provider's land. This protects social housing stock while solutions can be explored to support a provider experiencing financial difficulty.

- 69 This is achieved in a new section 145 that sets out the events that trigger the commencement of a moratorium. These are:
- Presentation of a petition for the winding up of a provider;
  - An application by the provider to pass a resolution for voluntary winding up;
  - Application for an administration order;
  - Notice of the appointment of an administrator; and
  - Notice of intention to enforce a security over the property of a provider.
- 70 This modifies the existing position in relation to all but the last of the events mentioned above (where currently the moratorium is triggered by the giving of a notification to the regulator that a relevant event has occurred).
- 71 Subsection (3) makes changes to section 146 relating to the ending of the moratorium by expiry of the relevant period (which is usually 28 days from the “relevant day” unless the moratorium is extended in accordance with section 146(3)). A housing moratorium can also be brought to an end by the making of an administration order or the cancellation of the moratorium in accordance with section 146(5).
- 72 Section 12 widens the regulator’s powers to cancel a moratorium so the regulator can cancel it for any reason. Normal public law principles would apply to any cancellation decision which provides a safeguard against the regulator improperly cancelling a moratorium.
- 73 Subsection (4) amends section 147(3) to provide that the regulator can impose a further moratorium where it has made reasonable enquiries but been unable to locate any secured creditors of the registered provider (as well as where secured creditors have been located and agreed to it). Subsection (3)(f) makes an amendment to enable the regulator to extend the moratorium in the same circumstances.
- 74 Subsection (6) changes the process by which proposals about future management of a registered provider made during a moratorium are agreed. This is to provide a clear process for putting in place proposals and amending them if no secured creditors can be identified to agree to them. Subsection (6) also amends section 151 of the Housing and Regeneration Act 2008 to make clear that the appointment of an interim manager comes to an end when the regulator notifies the interim manager that proposals have been agreed.
- 75 Subsection (7) clarifies that the regulator may give financial or other assistance to a registered provider during a moratorium to preserve the provider’s position until it decides whether or not to make proposals, and if it makes proposals, pending the agreement of proposals.

### Section 13: Limited liability partnerships

- 76 Section 13 introduces Schedule 1 which makes a number of amendments to extend the housing moratorium and housing administration regimes to private registered providers that are LLPs and makes related provision.
- 77 Schedule 1: Limited liability partnerships
- 78 Schedule 1 makes a number of amendments to extend the housing moratorium and housing administration regimes to private registered providers that are LLPs and makes related provision.
- 79 These regimes seek to balance protection of creditors and of tenants in the event of a private registered provider getting into financial difficulty and becoming insolvent.



- 80 Part 1: Amendments of the Housing and Planning Act 2016
- 81 Part 1 of Schedule 1 makes amendments to the HPA 2016 to extend the housing administration regime to LLPs. This regime currently applies only in relation to companies, registered societies and charitable incorporated organisations.
- 82 Paragraph 3 defines “relevant officer” for LLPs as a member of the partnership.
- 83 Paragraph 4 extends regulation making powers in relation to the conduct of administration etc so that they also apply in relation to LLPs.
- 84 Paragraphs 5 to 8 amend sections 104 to 108 to provide that a winding up order or ordinary administration order cannot be made, an administrator cannot be appointed by creditors etc, and security cannot be enforced in relation to a private registered provider that is an LLP unless the regulator is given notice and 28 days have elapsed (or the regulator waives the notice requirement). Its effect is to add LLPs to the provisions that prevent the objectives of housing administration being frustrated by such steps being taken before the Secretary of State and the regulator have been given an opportunity to apply for a housing administration order, or by such orders or appointments being made when an application for a housing administration order has been made and is outstanding.
- 85 Paragraph 9 adds LLPs to the interpretation section for Chapter 5 of Part 2 of the HPA 2016.

## **Part 2: Amendments of the Housing and Regeneration Act 2008**

- 86 Part 2 of Schedule 1 amends the HRA 2008 to extend existing provisions to LLPs.
- 87 Paragraph 11 amends section 120 so that the regulator must notify the registrar of companies after registering or de-registering a provider that is an LLP.
- 88 Paragraphs 12 –16 amend existing provisions in sections 129 - 133 and 141 relating to the accounts of registered providers so that they also apply in relation to LLPs.
- 89 Paragraph 17 updates the drafting of section 141 HRA 2008 to make clear that an offence under that section is punishable on summary conviction with an unlimited fine (as is currently the case by virtue of section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012).
- 90 Paragraph 18 has the effect that where the regulator makes proposals under section 152 of the HRA 2008, the members of an LLP must co-operate with the implementation of agreed proposals.
- 91 Paragraph 19 amends section 160 to extend, to LLPs, the existing notification requirements applicable when a company enters arrangements or reconstructions in the event of an insolvency.
- 92 Paragraph 20 amends section 270 so that in relation to an LLP, “officer” is defined as being a member of the LLP.

## **Section 14: Insolvency of registered providers**

- 93 Section 14 introduces Schedule 2 which amends provisions in the HPA 2016 about procedures to be followed in the event of an insolvency of a registered provider.

## **Schedule 2: Amendments to restrictions on insolvency procedures**

- 94 Schedule 2 amends provisions in the HPA 2016 about procedures to be followed in the event of an insolvency of a registered provider.

95 Sections 104 - 108 are amended to make clear the notification requirements a registered provider must comply with in the following scenarios:

- Section 104 – winding-up orders;
- Section 105 – voluntary winding up;
- Section 106 – ordinary administration orders;
- Section 107 – appointment of administrator; and
- Section 108 – enforcement of security.

96 Details of the notification requirements include how and by whom notice must be given, as well what must be included in the notice. These sections are also amended to allow the regulator to treat a notice that does not meet the requirements set out (other than the requirement for the notice to be given in writing) as if it did.

97 Paragraph 6 extends section 108 (enforcement of security) to all private registered providers. This means that it will, for the first time, apply to providers which are limited liability partnerships and unincorporated charities. In the case of unincorporated charities it provides that the property to which the provision applies is the property held on the charity's trusts.

### Section 15: Notification requirements: expansion to profit-making organisations

98 Section 15 expands to profit-making registered providers the requirements in sections 160, 161, 163, 165, 169A and 169C of the HRA 2008 (currently imposed only on non-profit registered providers) to notify the regulator of various restructuring and dissolution events.

99 This aligns notification requirements across the sector regardless of a provider's profit-making status to ensure that the regulator is able to keep its register up to date and is alerted where there are significant changes to the corporate form of a provider.

100 Sections 15 – 19 will support the regulator in dealing with significant changes to a registered provider's corporate form and constitution and ensure that the regulator has a clear understanding of a registered provider's corporate structure, as well as any significant changes taking place that could influence the manner in which it operates.

### Section 16: Conversion of a company into registered society: continuation of registration

101 Section 16 repeals subsections (4) to (7) of section 161 of the HRA 2008 which require the regulator to decide on the eligibility for registration of a registered provider that has notified it that it is converting from a company to a registered society.

102 In such an event, the registered provider's existing registration would remain in place.

### Section 17: Restructuring of registered societies

103 Section 17 makes amendments to the HRA 2008 which relate to the regulator's duty to make a registration decision when it is given notification that a registered provider that is a registered society has passed a resolution for the purpose of specified restructuring provisions.

104 Its effect is to remove the duty on the regulator to make a registration decision in the event of a conversion of a registered society into a company or the transfer of undertakings of a registered society to another society that is a registered provider.

105 In the case of a conversion, the provider's existing registration continues, and in the case of a transfer, the transferee is already registered. As such, registration decisions are no longer needed in these scenarios.



106 New section 163A inserted by this section requires the regulator to make a registration decision where a restructuring of a registered provider which is a registered society results in:

- the creation of a new body by amalgamation; or
- the transfer of engagements to a body which is not a registered provider,

107 In such a case the successor body must be temporarily designated non-profit, pending the Regulator's registration decision.

### Section 18: Receipt of transfers of engagements from a registered society

108 Section 18 inserts new provisions in the HRA 2008 creating new notification requirements applicable to registered providers that are companies and registered societies.

109 The new provisions require such registered providers to notify the regulator if a registered society that is not a registered provider passes a resolution transferring its engagements to the provider.

### Section 19: Notification of constitutional changes

110 Section 19 concerns notification of constitutional changes. It amends the HRA 2008 to add new notification requirements.

111 Subsection (2) adds a requirement that a registered provider which is a registered society must notify the regulator of any change to its name or registered office (in addition to notifying the regulator about any change to its rules).

112 Subsection (3) inserts new section 169B which requires a registered provider which is a registered charity to notify the regulator of any change to its trusts, purposes, name, Charity Commission registration number, or postal address. (Currently a charity need only notify the regulator of any change to its objects.)

113 Subsection (4) inserts a new section 169C which requires a registered provider which is an LLP to notify the regulator of any change to its name or registered office.

### Section 20: Notification of change of control

114 Section 20 inserts new provisions into the HRA 2008 which set out requirement for registered providers to notify the regulator when there is a change in who has substantial control over its operations.

115 New section 169CB makes clear that this group of sections does not apply to local authorities.

116 New section 169CC deals with change in board members which may lead to a notification requirement. Subsection (1) provides that a registered provider must notify the regulator if there is a change in the membership of the board and any of the circumstances in subsection (2) arise, which are an increase or decrease in the number of board members of more than 50%, or presence of new board members greater than 50%.

117 Subsection (3) defines "board members". For example, in the case of a charity which is not a registered company, charity trustees would fulfil the "board member" role.

118 Subsection (4) defines the "relevant period" across which changes to a registered provider's board may trigger a notification requirement.

119 New section 169CD requires a registered provider to notify the regulator when there is a change in its subsidiary status.

120 This section will ensure that the regulator has a clear picture of who has control over a registered provider and the social housing that it manages, giving sight of potential issues and misconduct relating to who is in control of a registered provider.

*These Explanatory Notes relate to the Social Housing (Regulation) Act 2023 which received Royal Assent on 20 July 2023 (c. 36).*

## Standards

### Section 21: Standards relating to competence and conduct

- 121 Section 21 adds new section 194A to the HRA 2008 allowing the regulator to set regulatory standards on the competence and conduct of individuals involved in the provision of services in connection with the management of social housing.
- 122 New section 194A(2) provides that such standards may require registered providers to comply with specified rules concerning the knowledge, skills, experience and conduct required of individuals involved in the provision of services in connection with the management of social housing.
- 123 New section 194A(3) provides that such standards may require registered providers to secure that their senior housing managers and housing executives, as defined, hold or are working towards housing management qualifications, as defined. New section 194A(4) provides that they may also require registered providers to take steps to secure that relevant managers of their services providers have or are working towards such qualifications. The standards may not include qualifications requirements for other staff.
- 124 New sections 194B (2)-(11) makes provision about the meaning of new terms such as 'services provider' for the purposes of section 194A and also defines senior housing manager and senior housing executive.
- 125 New sections 217A (1)-(7) implies terms into management services agreements between registered providers and services providers (and any sub-contract relating to the provision of such services) relating to qualifications. Subsection (4) specifies the terms that are implied into relevant agreements, including that the services providers must secure that their relevant managers who are involved in the provision of services in connection with the management of social housing meet the qualifications standard.
- 126 Subsection (5) outlines the circumstances in which a relevant manager meets the qualifications standard.

### Section 22: Standards relating to information and transparency

- 127 Section 22 adds new section 194C to the HRA 2008 allowing the regulator to set standards for registered providers on the provision of information and transparency to their social housing tenants and to the regulator, implementing the commitments set out in the Social Housing White Paper.
- 128 New section 194C(2) sets out examples of things that the standards could contain. Subsection (2)(a) relates to provision for an 'Access to Information scheme' for tenants and also enables the Regulator to require registered providers to provide their tenants with information on their rights and how to make complaints; subsection (2)(b) relates to requirements for registered providers to self-report breaches of the regulator's standards to the regulator and subsection (2)(c) relates to requirements on registered providers to publish information about how much they are spending on management costs and executive remuneration.

### Section 23: Code of practice: standards relating to consumer matters

- 129 Section 23 amends the regulator's power to issue a code of practice in section 195 of the HRA 2008. A code of practice amplifies a standard; it does not bind providers, giving registered providers a better idea of what is expected of them, and tenants a better idea of what to expect from their landlords. Before this amendment was made, under section 195, the regulator could only issue a code of practice which relates to economic standards made under section 194 of the HRA 2008 and published codes of practice on financial viability and governance and value

for money. This section extends the provision in section 195 in order to enable the regulator to issue a code of practice for any of its standards, ensuring there is parity between economic and consumer areas of regulation.

### Section 24: Direction by Secretary of State

130 This section amends section 197 of the HRA 2008 by adding a new subsection (2A) which allows the Secretary of State to direct the regulator in relation to standards under new section 194A (competence and conduct standards) inserted by section 21 and under new section 194C (information and transparency standards) inserted by section 22. The power of direction in relation to information and transparency standards only applies to standards which relate to the provision, by registered providers, of information to their tenants about the management of their housing.

131 This section, in partnership with section 21, which sets out powers for the regulator to set standards relating to the competence and conduct of staff, will enable the Secretary of State to direct the regulator to set a standard on matters relating to the competence and conduct of individuals involved in the provision of services in connection with the management of social housing.

132 This section will also, in partnership with section 22, which sets out powers for the regulator to set standards relating to information and transparency, enable the Secretary of State to direct the regulator to set standards:

- Requiring private registered providers to follow an 'Access to Information scheme', which allows tenants to access information from their landlord about how their housing is managed, as set out in the Social Housing White Paper; and
- Requiring all registered providers to provide their tenants with information about their rights and information about how they can make a complaint against their landlord.

### Section 25: Secretary of State's duty to give direction about providing information to tenants

133 Section 25 places a duty on the Secretary of State to direct the regulator on setting a standard for social landlords to provide their tenants with information about their rights (in connection with their accommodation and facilities/services provided by the landlord), as well as information about how their tenants can make a complaint against them.

134 This section also imposes a duty on the Secretary of State to issue a new direction to this effect within six months of royal assent of the Act.

### Section 26: Failure to meet standards: exercise of intervention powers

135 Section 26 repeals sections 198A and 198B of the HRA Act 2008.

136 Section 198A states that failure by a registered provider to meet a consumer standard is a ground to use the Regulator's monitoring and enforcement powers in Chapters 6 and 7 of Part 2 of the HRA 2008, and that a risk of failure to meet a consumer standard provides grounds for the use of the Regulator's monitoring powers.

137 Similarly, Section 198B sets out grounds for the use of the Regulator's monitoring and enforcement powers following a breach, or a risk of a breach, of the economic standards.

138 These overarching grounds for the use of monitoring and enforcement powers are removed and replaced, where necessary, by appropriate tailored grounds for each of the powers. These tailored grounds are set out in Schedule 3.

- 139 The repeal of Section 198A also removes the requirement that, in order to exercise powers set out in 198A(3) on grounds of a breach, or risk of a breach, of a consumer standard, the regulator must have reasonable grounds to suspect that that breach, or risk of breach, has caused or could cause ‘serious detriment’ to the registered provider’s tenants or potential tenants.
- 140 The removal of the ‘serious detriment test’ was committed to in the Social Housing White Paper. Abolishing the serious detriment test will allow the regulator to intervene on grounds of a breach or potential breach of the consumer standards, whether or not the breach in question has caused or may cause tenants serious harm.

## Section 27: Performance monitoring

- 141 Section 27 amends the HRA 2008 to insert new section 198C, which gives the regulator a power to direct registered providers to collect, process and publish information concerning their performance in relation to the regulator’s standards. The regulator can apply these directions to all registered providers or only to specified cases, circumstances or registered providers.
- 142 The Regulator already has the power to set standards on this matter. This section gives the Regulator an additional power to direct registered providers on detailed matters relating to the process which will underpin the Tenant Satisfaction Measures scheme, as set out in the Social Housing White Paper. The scheme will provide tenants with greater transparency about their landlord’s performance and will inform the regulator about how a provider is complying with the consumer standards under a proactive consumer regulation regime. Subsection (2) provides a non-exhaustive list of the things the regulator may direct on. Subsection (5) enables the regulator to require providers to provide it with performance information and an analysis of that information, and to provide detail about how the information is collected, processed and published so that the regulator can get assurances on the quality of the information and processes involved.
- 143 Section 27 also amends section 220 and section 227 so that where a registered provider fails to comply with a direction made under section 198C or provide information requested under subsection (5) the regulator can take enforcement action by issuing an enforcement notice or imposing a financial penalty. In this circumstance the regulator will also be able to require a performance improvement plan (see new section 218A(1)(c) inserted by section 30).

## Monitoring and enforcement

### Section 28: Surveys

- 144 Section 28 amends sections 199 and 200 of the HRA 2008 and inserts new sections 199A and 199B. Section 199 gives the regulator power to arrange for a survey of the condition of premises where it suspects that a registered provider is failing to maintain the premises in accordance with standards under section 193. This section reduces the minimum notice period the regulator must give to the registered provider and occupier/s before an authorised person can enter to conduct such a survey. It also gives the regulator power to apply for a warrant to allow an authorised person to gain entry in certain cases. These changes give the regulator the power to arrange for surveys of the condition of properties more quickly, by reducing the notice period which must be given, and enabling a warrant to be sought to gain entry in cases where this is reasonably required. This ensures a survey can take place promptly.
- 145 Amendments to section 199 remove subsections (4), (5) and (6). These provisions gave a person authorised by the regulator power to enter a property so they can carry out a survey and set out the rules about notification of registered providers by an authorised person and of

occupiers of the relevant premises by the registered provider before a survey takes place. They are replaced by the new section 199A. There are consequential amendments to the definition of 'authorised person' in subsection (3). Subsection (9) is added, to enable the regulator to pay people that are not its staff members to carry out a survey.

146 New section 199A provides a power to enter premises to carry out a survey without a warrant. The provision allows an authorised person to enter premises at any reasonable time, providing they give the registered provider and the occupier/s (if any) at least 48 hours' notice. Section 199A(3) provides that the provider and the occupier can choose to waive the requirement to give notice. This would enable them to let the survey take place without receiving notice or before the notice period has elapsed. Subsection (4) provides that the notice can state that an authorised person would propose to apply for a warrant to enter if entry is refused. Subsection (5) allows for a notice under subsection (2)(b) to be provided to occupier/s by fixing it to some conspicuous part of the premises. Subsection (6) states that the authorised person must show a copy of the authorisation from the regulator on request from an occupier. Subsection (7) allows the authorised person to be accompanied by any other people they think will be needed for them to complete the survey properly, or to take with them any equipment or materials that they think are necessary for the survey. Subsection (8) allows materials or equipment to be left in a place on the premises until the survey is completed, provided that it does not significantly impair the ability of an occupier to use the premises (or, where relevant, common parts of a building) or it is necessary to leave the equipment or materials on the premises and it is not possible to leave them in a place that does not significantly impair the ability of an occupier to use the premises (or common parts).

147 Section 199B allows an authorised person to apply for a warrant from a justice of the peace to enter a property to conduct a survey. Before a warrant may be issued a justice must be satisfied that entry is reasonably required for the purpose of carrying out a survey, based on sworn information provided in writing by an authorised person. Subsection (2) provides that the justice must also be satisfied that the authorised person has tried to enter the premises but that they have been refused entry, that the premises are currently unoccupied, or the occupier is temporarily absent, or that there are reasonable grounds to believe entry will not be possible without a warrant. Subsection (3) provides that a warrant allows for entry at any reasonable time and using reasonable force if necessary. Subsection (4) provides that a warrant allows the authorised person to take with them any equipment or materials that they think are necessary for the survey. Subsection (5) allows any of these materials or equipment to be left in a place on the premises until the survey is completed, provided that it does not significantly impair the ability of an occupier to use the premises (or, where relevant, common parts of a building) or it is necessary to leave the equipment or materials on the premises and it is not possible to leave them in a place that does not significantly impair the ability of an occupier to use the premises (or common parts). Subsection (7) provides that a warrant may allow the authorised person to be accompanied by any other people they think will be needed for them to complete the survey properly. Subsection (8) clarifies that 'accompanying persons' have the same powers as the authorised person but that they must be in the company of the authorised person at the time and be supervised by them. Subsection (9) states that the authorised person must show a copy of the warrant and authorisation from the regulator to anybody who asks to see it. Subsection (10) states that the warrant is in force until the survey is completed. Subsection (11) requires the authorised person to leave premises that were unoccupied (or had a temporarily absent occupier) at the time of entry as effectively secured against trespassers as they were found upon entry.

148 Subsection (1) of section 200, which requires an authorised person to give a copy of the authorisation from the regulator allowing them to carry out a survey to an occupier, is repealed; this is now covered by section 199A(6) and 199B(9).

149 Subsection (3) of section 200 is repealed in consequence of the removal of the requirement on providers to give notice to occupiers ahead of a survey taking place. Consequential amendments are also made to the offence in subsection (4). Subsection (4A) is also added to make it an offence for a person to obstruct an authorised person exercising a power conferred by a warrant under section 199B or to obstruct an authorised person in exercising a power under section 199 where the authorised person has entered the premises to carry out a survey with a warrant under section 199B.

### Section 29: Inspection plan

150 Section 29 adds Section 201A to the HRA 2008, requiring the regulator to make, and take appropriate steps to implement, a plan for carrying out inspections. The introduction of regular consumer inspections was proposed in the Social Housing White Paper.

151 Subsection 201A(1) requires the plan to include the types of registered providers that should be subject to regular inspections, the frequency of regular inspections and the circumstances in which registered provider should be subject to ad-hoc inspections. Subsection 201A(2) allows the plan to make different provision for different cases, circumstances or areas.

152 Subsection 201A(3) requires the regulator to take appropriate steps to implement the inspections plan.

153 Subsection 201A(4) requires the regulator to keep the plan under review, revise or replace the plan where appropriate, and publish the plan and any revised or replacement plan.

154 Section 29 also adds Subsection 215(1A), which provides that the regulator's plan for inspections must be taken into account when considering whether the regulator has complied with its duty under section 215(1) to publish guidance about its use of its intervention powers.

### Section 30: Action after inspection

155 Section 30 requires an inspector to produce a summary of their findings following an inspection, as well as a written report about any matters specified by the regulator.

156 The summary and the report must be in the form specified by the regulator. The regulator can exercise this power to specify the matters and form of a summary or written report in a general sense, or in relation to a specific inspection.

157 The regulator is required to share the summary of findings, and any written report, with the provider. If a written report has not been produced, the inspector must issue the provider with a notice confirming no matters were specified by the regulator.

158 The regulator may choose to publish these documents in full or in part, along with related information.

### Section 31: Performance improvement plans

159 Section 31 will add sections 218A, 218B, 218C and 218D to the HRA 2008 enabling the regulator to require a registered provider of social housing to prepare and implement a performance improvement plan ('PIP'). This enforcement measure was first promised in the Social Housing White Paper.

160 This power will allow the regulator to hold a registered provider to account in relation to how, and by when, it proposes to address an issue that has been identified. A PIP must be published so it will also allow tenants to be aware of the actions their landlord is required to carry out and when, so they can hold their landlord to account. As well as increasing the tools available to the regulator and underpinning the new consumer regulation by allowing the regulator to intervene proactively in cases where providers do not meet standards, this change will promote improved landlord performance and service delivery for the benefit of tenants.



161 Section 218A(1) sets out the grounds on which the regulator can give a provider a PIP notice requiring the provider to prepare and submit a PIP. A PIP notice may be given if the regulator is satisfied as to any one of the below grounds:

- The provider has failed to meet a standard under section 193, 194, 194A, or 194C. These sections refer to consumer standards, economic standards, and new standards relating to competence and conduct, and information and transparency, created by the Act.
- There is a risk the provider could fail to meet a standard under section 193, 194, 194A or 194C unless action is taken by the provider or the regulator.
- The provider has failed to comply with directions or a request under the new section 198C, which is also added by the Act, relating to collecting and publishing performance information.
- The interests of the registered provider's tenants of social housing require protection.
- The registered provider has given an undertaking under section 125 and failed to comply with it. A voluntary undertaking is a commitment made to the regulator to carry out specified actions.

162 Section 218A(2) sets out requirements for the PIP notice. The PIP notice must specify on which of the grounds (listed above) the PIP is given; identify the issues which led the regulator to be satisfied of those grounds; require the provider to prepare and submit to the regulator a PIP setting out the action the provider will take to address the issues identified; specify the date by which the PIP must be submitted to the regulator; require the provider to publish a PIP if it is approved by the regulator and specify the manner of such publication; and explain the effect of subsections (3) and (4) and sections 218B to 218D meaning it must explain the wider effects of the PIP, as set out below. Subsection (3) provides that the regulator may withdraw the PIP by notice to the provider. Subsection (4) provides that if a provider fails to comply with a PIP notice, the regulator must consider exercising another enforcement power under Chapter 6 or 7 of the HRA 2008.

163 Section 218B sets out duties for the regulator and provider relating to the PIP. The regulator is required to either approve a PIP submitted or reject it and provide reasons for doing so. If approved the provider is required to implement the PIP. If a PIP is not approved by the regulator, the provider is deemed to have failed to comply with the PIP notice. Following a rejection, the regulator must consider exercising another enforcement power. Subsection 218B(4) provides that if a tenant requests a copy of the approved PIP in writing, the provider must provide a copy to the tenant as soon as practicable.

164 Section 218C relates to the cancellation of a PIP. The regulator can, by notice to the provider, cancel a PIP which it has approved. This could, for example, be because the initial concerns which led to the PIP notice being issued are no longer held or have been adequately addressed. If a PIP is cancelled, the provider's duties to publish a PIP which has been approved, to implement the PIP, and to provide a copy of the PIP on request from a tenant, no longer apply. However, if the provider breached one of these duties prior to the plan being cancelled, this cancellation does not impact action being taken in relation to this breach.

165 Section 218D provides that providers can appeal to the High Court against a decision by the regulator to issue a PIP notice within 28 days of the provider receiving the notice. The requirement for the PIP to be prepared and submitted is suspended during the appeal period

(which is defined as the period during which an appeal could be brought, or where an appeal is brought the period pending the final determination or withdrawal of the appeal). However, if a PIP has already been approved, an appeal does not suspend the provider's duties to publish, implement, or provide copies of the PIP.

166 Section 31 also amends various enforcement provisions of the HRA 2008:

- Failure to comply with a PIP notice and failure to implement a PIP which has been approved by the regulator are added as grounds for the regulator giving a provider an enforcement notice under section 220.
- Failure to comply with a PIP notice, and failure to provide a copy of a PIP to a tenant who requests one, are added as grounds for the regulator to impose a financial penalty on the provider under section 227 and to award compensation to a person who has suffered as a result of that failure, e.g. a tenant, under section 237.
- Failure to comply with a PIP notice is added as a ground for the regulator to require a provider to invite persons to apply to undertake management functions of the provider and select from the applicants to make an appointment under section 247, and to appoint a manager to a provider under section 251.
- Failure to comply with a PIP notice is added as a ground for the regulator to appoint advisers to a local authority or to require the authority to appoint advisers under section 252A.

### Section 32: Emergency remedial action

167 Section 32 adds sections 225A to 225H to the HRA 2008. These measures enable the regulator, following completion of a survey under section 199, to arrange for an authorised person to take emergency remedial action on premises to remedy specified failures on the part of registered providers that cause an imminent serious health and safety risk. Section 225A provides an overview of the group of sections.

168 Section 225B(1) enables the regulator to arrange for an authorised person to take emergency remedial action, as long as:

- A survey of the premises has been carried out under section 199;
- The regulator is satisfied that the registered provider has failed to maintain premises in accordance with standards under section 193 and that the failure has caused an imminent risk of serious harm to the health or safety of the occupiers of the premises or other premises; and
- The registered provider has failed to comply with an enforcement notice requiring it to take action to address the relevant failure.

169 Subsection (5) defines 'emergency remedial action' as carrying out works which the authorised person considers immediately necessary to remove the imminent risk of serious harm. Subsection (6) defines 'authorised person' as a member of the regulator's staff, or another person who has been authorised in writing by the regulator to carry out the action on its behalf. Subsection (7) allows arrangements for payment to be made when a person other than a member of the regulator's staff is carrying out emergency remedial action.



170 Section 225C(1) provides the power for an authorised person to enter premises at any reasonable time (or times) to carry out emergency remedial action. This power can only be used if an authorised person has given a pre-entry notice in accordance with subsection (2) to:

- The occupier or any one of the occupiers (if the premises are occupied);
- Where the premises include common parts, the occupier or any one of the occupiers of each of the dwellings in the building that use those common parts;
- The registered provider; and
- The proprietor of a registered estate in the premises.

171 Subsection (3) states that an authorised person need only give a pre-entry notice once, even multiple entries are made. A pre-entry notice authorises any authorised person to enter (not only the authorised person who gave the notice). Subsection (4) provides that a pre-entry notice must:

- Identify the premises to be entered;
- Identify the failure in question to be remediated;
- State that a person authorised by the regulator intends to enter the premises;
- Specify the (first) date of proposed entry;
- Specify that the power under section 225C will be used to allow the authorised person to enter; and
- Explain rights of appeal (set out in section 225H).

172 Subsection (5) provides that a pre-entry notice can state that an authorised person would propose to apply for a warrant if they are not allowed to enter the premises. Subsection (6) provides that an authorised person cannot enter a premises before the (first) date specified on the pre-entry notice, or within 24 hours of giving the notice unless the relevant person in respect of a pre-entry notice consents. The relevant person is defined in subsection (7) as the party entitled by subsection (2) to the pre-entry notice in question.

173 Subsection (8) defines “common parts” of a building as including the structure, exterior and any common facilities for persons occupying the building.

174 Section 225D makes supplementary provision in respect of the power under section 225C. Subsection (1) allows for a pre-entry notice to be given to occupiers by fixing it to a conspicuous part of the premises. Subsection (2) provides that where a pre-entry notice must be given to owners of the premises in question, it may be given by sending it to an address supplied for the purpose of a notice under the Land Registration Act 2002. Subsection (3) states that the authorised person must show a copy of the authorisation from the regulator to an occupier who asks to see it. Subsection (4) allows the authorised person to be accompanied by any other persons they think will be needed for them to conduct the emergency remedial action and to take any equipment or materials that they think are necessary for the action. Subsection (5) and (6) allow any of these materials or equipment to be left in a place on the premises until the action is completed, provided that leaving the materials or equipment there does not significantly impair the ability of an occupier to use the premises (or where relevant common parts of a building) or it is necessary to leave the material or equipment on the premises (or where relevant common parts of a building) and it is not possible to leave them in another place that does not significantly impair the ability of an occupier to use the premises (or common parts).

- 175 Section 225E allows an authorised person to apply for a warrant from a justice of the peace to enter a property and conduct emergency remedial action. Before a warrant may be issued a justice must be satisfied, on sworn information in writing by an authorised person, that it is reasonable for the authorised person to need to enter the property to take the action. Subsection (2) provides that the justice must also be satisfied that the authorised person has tried to enter the premises but that they have been refused entry, that the premises are currently unoccupied or the occupier is temporarily absent, or that there are reasonable grounds to believe entry will not be possible without a warrant. Subsection (3) allows for entry at any reasonable time, and using reasonable force if necessary. Subsection (4) allows the authorised person to take with them any equipment or materials that they think are necessary for the emergency remedial action. Subsection (5) and (6) allow any of these materials or equipment to be left in a place on the premises until the action is completed, provided that leaving the materials or equipment there does not significantly impair the ability of an occupier to use the premises (or where relevant common parts of a building) and it is not possible to leave them in another place that does not significantly impair the ability of an occupier to use the premises (or common parts). Subsection (7) provides that a warrant may allow the authorised person to be accompanied by any other people they think will be needed for them to complete the action properly. Subsection (8) clarifies that ‘accompanying persons’ have the same powers as the authorised person, but that they must be in the company of the authorised person at the time, and be supervised by them. Subsection (9) states that the authorised person must show a copy of the warrant and authorisation from the regulator to anybody who asks to see it. Subsection (10) states that the warrant is in force until the emergency remedial action is completed. Subsection (11) requires the authorised person to leave premises that were unoccupied (or had a temporarily absent occupier) at the time of entry as effectively secured against trespassers as they were found upon entry. Section 225F(1) make it an offence for a registered provider, or an officer of a registered provider, to obstruct an authorised person entering or using powers to carry out emergency remedial action after entry without a warrant. Subsection (2) states that any person commits an offence if they obstruct an authorised person exercising a warrant or powers under section 225B (where the authorised person’s entry was authorised by warrant). Subsection (3) states that a person guilty of one of these offences is liable on summary conviction to a fine not exceeding level 4 on the standard scale. Subsection (4) provides that proceedings must be brought by or with the consent of the regulator or the Director of Public Prosecutions.
- 176 Section 225G(1) allows the regulator to reclaim ‘relevant expenses’ for carrying out emergency remedial action (and interest on those expenses) from the registered provider. Subsection (2) defines ‘relevant expenses’ as reasonable expenses which the regulator has incurred in taking emergency remedial action or deciding whether to take emergency remedial action (as well as any related costs). Subsection (3) states that these expenses must be paid by providers within 28 days of being given notice under subsection (1), and subsection (4) adds that interest may be charged on any sums not paid by the end of this period.
- 177 Section 225H(1) permits a registered provider to appeal to the High Court against decisions by the regulator to enter premises to conduct emergency remedial action, and/or a decision to reclaim ‘relevant expenses.’ Subsections (2) and (3) provide that appeals must be brought within 28 days from the day the registered provider is given the pre-entry/expenses notice, (or in relevant cases the day the premises were first entered under a warrant). Subsection (4) states that a question cannot be raised on appeal against the reclaiming of expenses by the regulator, if it could have been raised on an appeal against the carrying out of the emergency remedial works themselves instead. Subsection (5) states that where an appeal against reclaiming expenses is made, the provider does not need to pay these expenses until the appeal outcome has been determined or the appeal is withdrawn (and the provider also does not have to pay any interest on the expenses owed during this period.)

178 These measures will allow the regulator to take emergency remedial action quickly to address issues causing an imminent risk of serious harm to the health and safety of occupiers.

### Section 33: Extension of powers to charities who have not received public assistance

179 Section 33 amends the HRA 2008 to repeal provisions which prevent the regulator from exercising various enforcement powers in relation to registered charities who have not received public assistance. These changes will allow the regulator to exercise the following enforcement powers in relation to registered charities who have not received public assistance:

- Holding an inquiry (section 209);
- Placing a restriction on the charity's financial dealings during an inquiry or where, as a result of an inquiry or audit, the regulator has identified mismanagement of its affairs (sections 256 and 257);
- Suspending an officer, employee or agent of the charity during an inquiry (section 259);
- Removing or suspending an officer, employee or agent of the charity where, as result of an inquiry or audit, the regulator has identified mismanagement (section 260);
- Removing an officer where they are unfit to fulfil their position (e.g. being made bankrupt, being absent from duties, suffering from mental illness which affects their ability to carry out their role, etc) (section 266); and
- Appointing a new officer to replace an officer who has been removed or suspended (section 269).

180 These changes will give the regulator stronger enforcement powers to use in relation to registered charities that have not received public assistance. This will allow the regulator to take action to ensure these charities meet consumer standards in the same way as in relation to other registered providers.

### Section 34: Notification of Charity Commission of exercise of enforcement powers

181 Section 34 amends the HRA 2008 to introduce a requirement for the regulator to inform the Charity Commission when it exercises certain enforcement powers in relation to registered charities. The section amends the sections listed below to add provisions requiring such notification when the following powers are exercised:

- Placing a restriction on the charity's financial dealings during an inquiry or following an inquiry (sections 256 and 257);
- Removing an officer where they are unfit to fulfil their position (e.g. being made bankrupt, being absent from duties, suffering from mental illness which affects their ability to carry out their role, etc) (section 267); and
- Appointing a new officer (section 269). (This requirement replaces the previous requirement to consult the Charity Commission with regard to such an appointment.)

182 These amendments ensure the Charity Commission is fully informed about the activities of the regulator relating to registered charities who are also registered providers. The amendment to section 269 allows the regulator to act more quickly in urgent circumstances where a registered charity fails to meet a consumer standard.

### Section 35: Exercise of powers: land with a Crown or Duchy interest

183 Section 35 clarifies that the regulator may exercise its powers in relation to premises located on land where there is a Crown or Duchy interest as defined in subsections (2) and (3).

### Section 36: Regulatory and enforcement powers: further amendments

184 This section is self-explanatory.

## Schedule 3: Regulatory and enforcement powers

### **Inspections: Secretary of State approval**

185 Schedule 3, paragraph 2 amends section 201 of the HRA 2008 to remove the requirement for the regulator to obtain the Secretary of State's consent to use its own staff to conduct inspections of a registered provider. Section 201 provides that the regulator may arrange for a person to inspect a registered provider's performance of its functions in relation to the provision of social housing, or the financial or other affairs of a registered provider.

### **Clarify grounds for use of enforcement powers**

186 Schedule 3, paragraphs 3(a), 7, 10, 11, 12, 15, 16, 18(c) and 19 amend sections 206, 249, 252A, 253, 255, 259, 260, 269 and 269A of the HRA 2008 to add failure by a registered provider (and in the case of section 206, a risk of failure by a registered provider) to meet a standard under sections 193, 194 or 194C as a specific ground for the regulator to exercise these enforcement powers. The standards referenced relate to consumer, economic, and information and transparency regulation. These amendments relate to the repeal of sections 198A and 198B, which are replaced by specific grounds in each section (with modifications tailored to the specific power where appropriate). These tailored grounds provide greater clarity on when the regulator can use each of these powers, and ensures all grounds have been carefully considered to ensure they are appropriate:

- Section 206 gives the regulator the power to hold an inquiry;
- Section 249 gives the regulator the power to order a registered provider to transfer management functions following an inquiry or audit;
- Section 252A gives the regulator the power to appoint advisers to local authorities or require a local authority to appoint an adviser to assist it in relation to its social housing affairs;
- Section 253 gives the regulator the power to order the transfer of a land by a private registered provider of social housing following an audit or inquiry;
- Section 255 gives the regulator the power to amalgamate one registered society with another following an audit or inquiry;
- Section 259 gives the regulator the power to remove or suspend officers during an inquiry;

- Section 260 gives the regulator the power to remove or suspends officers following an audit or inquiry;
- Section 269 gives the regulator the power to appoint new officers to a registered provider;
- Section 269A gives the regulator the power to censure a local authority during or following an inquiry.

187 Schedule 3, paragraphs 13 and 14 amend sections 256 (restrictions on dealings during inquiry) and 257 (restrictions on dealings following inquiry) of the HRA 2008 to add failure by a registered provider to meet a regulatory standard under section 194 as a ground for the regulator to use these enforcement powers. This is because it is only appropriate for the regulator to have power to restrict a provider's financial dealings in cases where financial mismanagement has been found or is suspected, which is an issue relating to the regulator's economic regulatory remit only. As such, it was not considered appropriate to replace the ground in section 198A.

188 Paragraph 20 amends section 269B as a consequential change arising from the new enforcement grounds for issuing a censure notice added to section 269A, so that where a local authority responds to a censure notice issued under this section, the response must explain why it doesn't think it has failed to meet a regulatory standard (if this is why the notice was issued).

### **Inquiry appointments**

189 Schedule 3, paragraph 3(b) and (c) amends section 206 of the HRA 2008 to provide that consultants of the regulator are no longer ineligible for appointment to conduct an inquiry.

190 Section 206 gives the regulator the power to hold an inquiry where it suspects that the affairs of a registered provider may have been mismanaged, to which paragraph 3(a) of Schedule 3 adds new grounds (see 'Clarify grounds for use of enforcement powers'). Subsection (3) restricts who can be appointed to conduct an inquiry to individuals who are independent of the regulator. Paragraph 3(b) amends subsection (4) so that consultants of the regulator are no longer listed as individuals who are not independent of the regulator. The definition of 'consultant' in subsection (5) is removed by paragraph 3(c).

191 This amendment ensures that the regulator can appoint independent inquirers with the right skills on a timely basis.

### **Penalties**

192 Schedule 3, paragraphs 4 and 5 amend sections 226 and 227 of the HRA 2008 to allow the regulator to issue fines to all registered providers, including local authority providers. This aligns the regulator's enforcement powers for local authority providers with those it has in relation to private registered providers.

193 Paragraph 6 amends section 229 of the HRA 2008 to remove the cap on the level of penalty the regulator is able to impose on registered providers as committed to in the Social Housing White Paper. This gives the regulator flexibility to determine the appropriate level of penalty depending on the circumstances.

### **Appointment of a manager**

194 Schedule 3, paragraph 8 amends section 251 of the HRA 2008 to provide that the regulator may appoint an organisation as a manager of a private registered provider, by removing the reference to appointing an 'individual'.

*These Explanatory Notes relate to the Social Housing (Regulation) Act 2023 which received Royal Assent on 20 July 2023 (c. 36).*

195 Section 251 provides that the regulator can appoint a manager of a private registered provider of social housing that has failed to comply with regulatory standards or been found to have mismanaged its affairs. The amendment in paragraph 7 removes the reference to an ‘individual’, enabling the regulator to appoint an organisation as a manager if required. This will allow the regulator to draw from a wider pool of potential managers. Organisations may be more effective in cases where wider expertise, skills and capacity are required to improve the management of a provider quickly and effectively.

196 Section 252 states that the regulator must give the registered provider notice of its intention to appoint a manager. Paragraph 9 amends section 252 to change the 28-day minimum representations period to a 5-day period. The 5-day representations period will commence on the day that the provider receives the notice. The regulator will not be able to appoint a manager until the expiry of this 5-day period, unless the registered provider consents. The reduction in the period for representations will allow the regulator to intervene quickly and take urgent action to remedy issues such as critical financial viability problems or serious deficiencies in service delivery.

### **Extend Enforcement Powers to For-Profit providers**

197 Paragraphs 13 to 18 amend the HRA 2008 to extend a number of the regulator’s enforcement powers so that they also apply to for-profit providers of social housing:

- Paragraph 13 amends section 256 – restrictions on dealings during inquiry;
- Paragraph 14 amends section 257 – restrictions on dealings following inquiry;
- Paragraph 15(a) amends section 259 – suspension during inquiry;
- Paragraph 16(a) amends section 260 – removal or suspension following inquiry;
- Paragraph 17(a) amends section 266 – removal of officers; and
- Paragraph 18(a) amends section 269 – appointment of new officers.

198 These amendments more closely align the regulation of for-profit providers with non-profit providers, to provide equal protection for tenants regardless of the profit status of their landlord.

### **Suspension and removal of officers etc**

199 Schedule 3, paragraphs 15, 16 and 17 also amend sections 259, 260 and 266 of the HRA 2008 to add new grounds on which the regulator can remove or suspend the officers of registered providers.

200 Section 259 provides for the regulator to suspend or remove an officer, employee or agent of a registered provider during an inquiry in cases where it has reasonable grounds to believe that the affairs of the registered provider have been mismanaged and the interests of tenants or the provider’s assets require protection or, if as a result of an interim report during the inquiry, it is satisfied that the affairs of the provider have been mismanaged.

201 Paragraph 15(d) adds a third case for removing or suspending an officer, employee or agent of a provider during an inquiry, allowing removal or suspension if the regulator is satisfied that the officer, employee or agent is either obstructing or failing to co-operate with the inquiry.

202 Section 260 provides for the regulator by order to remove or suspend an officer, agent or employee of a registered provider following an inquiry in which mismanagement has been identified. Paragraph 16 of the Schedule extends the grounds to include obstruction or failure to co-operate with the inquiry as grounds for removing an officer, agent or employee.



203 Section 266 lists grounds under which the regulator can remove an officer of a registered provider. Paragraph 17 of the Schedule adds a further case to this list where a person is obstructing or failing to co-operate with the regulator in the performance of its regulatory functions.

204 These changes enable the regulator to act where it encounters unreasonable resistance from a registered provider's officers, employees and agents.

### **Appointment of officers**

205 Schedule 3, paragraph 18(e) amends section 269(4)(a) of the HRA 2008 to clarify that, the regulator may renew the appointment of an officer it has appointed under that section on any number of occasions, and that the regulator can do so before the term of that officer's appointment has expired.

206 In addition to adding a new ground of failure to meet regulatory standards (mentioned above), paragraph 18(c) amends section 269 to provide that, where a registered provider is a registered charity, registered society, or registered company, if none of its officers are board members, the regulator may appoint new officers. Subsection (d) defines 'board member'.

## **Social housing**

### **Section 37: Leaving the social housing stock: end of lease**

207 Section 37 amends section 74 of the HRA 2008 which provides that where the lease of a home held by a registered provider expires it ceases to be social housing.

208 Subsection (1)(b) clarifies that homes will cease to be social housing no matter how the leasehold ends and not just at the end of the term of the lease. Subsection (1)(a) is a consequential change to the title of section 74.

209 Subsection (1)(c) closes a loophole which potentially might allow a registered provider to dispose of or declassify social housing stock without notifying or seeking consent from the regulator if the party from which it had leased the dwelling was another registered provider.

210 Subsection (2) provides that these amendments will have retrospective effect. They will apply to leases that exist at the time the provision comes into force if they were granted on or after the 10 June 2022, i.e. those granted after the date on which this Bill for this Act was first published.

## **Meaning of “subsidiary”**

### **Section 38: Meaning of “subsidiary”**

211 Section 38 amends section 271 of the HRA 2008, to broaden the definition of “subsidiary”, so that it applies to bodies other than companies.

## **Appeals**

### **Section 39: Appeals**

212 This section is self-explanatory.

### **Schedule 4: Appeals**

213 Schedule 4 makes amendments to the HRA 2008, relating to appeals against deregistration decisions and enforcement action. These amendments provide that such appeals must be brought within 28 days of when the body or registered provider is given notice of the relevant

decision or action. The amendments also stipulate that a requirement to pay a penalty or compensation is suspended during the appeal period (including during the period when an appeal could be brought).

- 214 Paragraph 2 amends section 115 (profit-making and non-profit-making organisations), to require the regulator to notify a registered provider in cases where it changes its registered designation from profit to non-profit, or vice versa.
- 215 Paragraph 3 adds subsection (2A) to section 116 (voluntary registration), requiring the regulator to notify a body of the outcome of its application to be registered as a provider of social housing.
- 216 Paragraph 4 amends section 118 (compulsory de-registration) to provide that the regulator must give a private registered provider notice that it is considering deregistering them, that specifies a minimum 14-day period for the provider to make representations (as well as a supplementary duty for the regulator to consider any representations that are made). It also provides that the regulator must notify a private registered provider of its decision to remove it from the register because it is no longer eligible for registration, has ceased to meet a relevant standard or has ceased to carry out activities.
- 217 Paragraph 5 amends section 121 (registration decisions: appeals) which provides that a body may appeal a decision by the regulator to de-register it using de-registration powers in section 118 or to refuse to register or de-register it. It adds a right of appeal in respect of designation decisions under section 115. An appeal under this section must be brought within a 28-day period beginning with the day on which the body is notified of the decision it wishes to appeal. A definition of 'appeal period' is added. It is defined, if an appeal is brought, as the period beginning with the day on which notice of the decision to be appealed against is given to a provider and ending with the day on which the appeal is finally determined or withdrawn, and otherwise the time in which an appeal could be brought, i.e., the 28-day period. Subsection (2B) states that the provisions relating to appeals do not apply to a decision of the regulator to de-register a private registered provider that has ceased to exist (under 118(1)(c)).
- 218 Paragraph 6 adds a new subsection (2) to section 223 (enforcement notice: appeal) which provides that an appeal against an enforcement notice must be brought within a 28-day period beginning with the day on which the registered provider is given the enforcement notice.
- 219 Paragraphs 7 and 8 amend sections 235 (penalty notice: appeals) and 245 (compensation notice: appeals) respectively so that an appeal under the respective section must be brought within a 28-day period beginning with the day on which the registered provider is given the penalty/compensation notice. A new subsection (3) adds that the requirement to pay the penalty/compensation is suspended during the appeal period, and subsection (4) clarifies that regulations made under section 234(2) and 244(2) may not authorise the regulator to charge interest or impose additional penalties/compensation during the appeal period. New subsection (5) defines 'appeal period' in the same way as in section 121.
- 220 Paragraph 9 amends section 247 (management tender) so that the regulator must issue a notice in cases where it requires a registered provider to invite applications for and make an appointment to undertake management functions of the registered provider.
- 221 Paragraphs 10, 12 and 14 add a new subsection to sections 248 (management tender: procedure and appeal), 250 (management transfer: procedure and appeal) and 252 (appointment of manager: procedure and appeal). These provide that an appeal must be brought within a 28-day period beginning with the day on which the registered provider is



notified of the imposition of requirements under these sections or of an appointment under section 252. Paragraph 11 changes section 249 so that the regulator must issue a notice in cases where it requires a registered provider to transfer management functions to a specified person.

222 Paragraph 13 changes section 251 so that where the regulator appoints a new manager to a registered provider or requires a provider to appoint a new manager, this must be done by notice to the provider.

223 New subsections (7A) and (5A) are added to sections 259 (suspension of officer etc during inquiry) and 260 (removal or suspension of officer etc following inquiry) respectively by paragraphs 15 and 16, providing that if the regulator makes an order suspending/removing an officer, employee or agent of a registered provider, it must notify the registered provider and take all reasonable steps to notify the person suspended or removed.

224 Paragraph 17 adds a new subsection (1A) to section 267 (removal of officers: supplemental), providing that if the regulator makes an order removing an officer from a registered provider, it must notify the registered provider and take all reasonable steps to notify the person removed.

225 Paragraph 18 amends section 268 (removal or suspension of officer etc: appeals) so that an appeal under this section must be brought within the period of 28 days beginning with the day on which the registered provider concerned is notified of the removal or suspension.

## Housing ombudsman scheme

### Section 40: Housing ombudsman scheme

226 This section will ensure the housing ombudsman of a scheme approved by the Secretary of State under Schedule 2 to the HA 1996 is empowered to issue a code of practice on complaint handling and makes clear that the housing ombudsman of an approved scheme can issue orders that seek to prevent the recurrence of issues identified during an investigation by ordering a member to review its practice and/or policy.

227 Subsection (2) amends paragraph 2 of Schedule 2 to the HA 1996 to add to the list of matters for which an approved scheme must provide to add, including to add the power for the housing ombudsman of an approved scheme to issue a code of practice on complaint handling which will inform members of the scheme of the complaint handling standards they are expected to maintain and will give the residents of those members a better idea of what to expect from their landlord.

228 Subsection (2) also adds to those matters: a duty on a housing ombudsman issuing a code of practice to consult the members of that ombudsman's scheme, individuals who may make complaints under the scheme (which will include residents of members of the scheme) and the regulator prior to issuing or making changes to that code (such a duty will provide a mechanism for the views of these individuals/organisations to be fed into any code issued under this power); and, a duty on a housing ombudsman to monitor compliance with a code of practice on complaint handling (if the Ombudsman of that scheme has issued one).

229 Subsections (3) and (5) are intended to clarify that the costs of all the functions of a housing ombudsman scheme's administrator and ombudsman can be recovered from fees, including costs such as enforcement costs which may not relate to all members. In particular, it is intended to clarify that the costs of monitoring compliance with a complaint handling code under the new duty may be recouped from members' subscription fees, rather than paid for by Government grant. This will maintain consistency with the funding model for the housing ombudsman and alignment with the cost recovery goals set out in the Treasury Guidance entitled 'Managing Public Money'.

230 Subsection (4) amends the HA 1996 to specify that a housing ombudsman, as part of a determination it has made following an investigation into a complaint against a member of its scheme, may order that member to review its practice and/or policy relating to matters relevant to that complaint.

231 As part of a determination made by a housing ombudsman following a complaint received, an ombudsman can issue orders to the member that the complaint relates to which seek to address the individual complaint, for example through compensation paid by the member to the complainant. This provision will specify that a housing ombudsman has the power to issue orders that aim to prevent the recurrence of issues identified during investigation which may recur for other residents in the future.

#### Section 41: Power of housing ombudsman to issue guidance to scheme members

232 This section confers a power on a housing ombudsman to issue to scheme members guidance as to good practice in the carrying on of housing activities.

233 Subsection (3) will require the housing ombudsman to consult with the regulator, members of the scheme and individuals who may make complaints under the scheme before issuing, revising or replacing any guidance as to good practice.

234 Subsection (7) will provide that in certain circumstances where a complaint is made against a scheme member the housing ombudsman may order the scheme member to assess whether its policies and practices in relation to a matter to which the complaint relates are consistent with the guidance. It also requires members of the scheme to give a written statement of the results of their assessment to the Ombudsman.

235 Subsection (8) provides that if a member of the scheme fails to comply with an order within the period specified in the order, the housing ombudsman may order the member to publish a statement that the member has failed to comply with the order.

236 Subsection (9) provides that if the member of the scheme fails to comply with subsection (8) the housing ombudsman may publish what the member ought to have published and recover from the member the costs of doing so.

### Social housing leases: remedying hazards

#### Section 42: Social housing leases: remedying hazards

237 Section 42 amends the Landlord and Tenant Act 1985 by inserting two new sections which imply a new term into social housing leases relating to the remedying of hazards.

238 Section 10A(1) provides that these provisions apply to the lease of a dwelling if, the lease is a relevant social housing lease of a dwelling in England and section 9A relating to fitness for human habitation applies to the lease, or would so apply if section 9B(3) were disregarded.

239 Section 10A(2) implies into such leases a covenant by the landlord that the landlord will comply with all prescribed requirements that are applicable to the lease.

240 Section 10A(3) requires the Secretary of State to make regulations that will require registered providers of social housing to take action in relation to prescribed hazards which affect, or may affect a relevant property within a time period (or periods) that will be specified within the regulations.

241 The covenant implied under section 10A forms part of a tenant's tenancy agreement and is enforceable by tenants through the courts.

242 New section 10B makes supplementary provision. Regulations may apply to existing leases, existing hazards, and only some descriptions of prescribed hazards. Regulations can specify periods in relation to particular actions, including periods that are not of a specific duration. Regulations can require landlords to take actions in relation to hazards, even if those actions are not intended to remedy the hazard (for example investigations or rehousing).

243 New section 10B(4) gives the Secretary of State power to disapply section 10A in relation to particular descriptions of leases, to make anti-avoidance provision, to apply the implied covenant to common parts, and to make provision implying a corresponding covenant on the part of the tenant that the landlord may enter the property for the purpose of viewing whether the property contains any relevant prescribed hazards.

244 Regulations under new section 10A(3) and 10B(4) must be made by statutory instrument which must be approved by Parliament before it can be made.

## General

### Section 43: Minor and consequential amendments

245 Section 43 gives effect to Schedule 5, which contains minor and consequential amendments.

### Schedule 5: Minor and consequential amendments

246 Paragraphs are grouped together where they have similar effects.

### **Part 1: Housing and Regeneration Act 2008**

247 Part 1 contains minor and consequential amendments to the HRA 2008, including the below.

248 Paragraph 4 omits subsections (2) to (5) of section 79. As community land trusts are removed from the definition of 'English body', these provisions are removed as consequential amendments.

249 Paragraphs 6, 27(b), 30 and 31 make the references to the housing ombudsman consistent in the HRA 2008. A definition of housing ombudsman is inserted by section 5.

250 Paragraphs 7, 8 and 9 are consequential on the amendment made by section 6 to the meaning of English body.

251 Paragraph 11 amends section 122 (payments to members etc) so that the regulator may enforce the restrictions on the making of gifts and the payment of dividends and bonuses by any type of non-profit registered provider.

252 Paragraph 12 amends section 135 (charity accounts) to extend its provisions to for profit organisations that are registered charities.

253 Paragraph 13 amends section 153 of the HRA 2008 to remove the specification that moratorium proposals must be sent to the officers of a registered provider.

254 Paragraph 14 creates a new section (169ZA) which provides that the group of sections relating to notification of constitutional changes does not apply to local authorities.

255 The changes made by paragraph 15 are consequential on the extension of notification requirements to profit-making organisations by section 15, as well as notification requirements created by sections 19 and 20.

256 Paragraph 17(a) clarifies that the regulator's consumer standard setting power includes setting standards for registered providers as to the safety and energy efficiency of accommodation, facilities or services provided by them in connection with social housing

(consistent with the change to the regulator’s objectives in section 1). Paragraph 17(b) clarifies that the regulator’s consumer standard setting power includes requiring registered providers to comply with specified rules about policies and procedures in place around domestic abuse.

- 257 Paragraph 19 amends section 197 of the HRA 2008 by providing that safety and energy efficiency of accommodation are matters on which the Secretary of State may give a direction to the regulator under subsections (1)(a) and (b). The other matters on which the Secretary of State may give such a direction are quality of accommodation, tenure, rent, tenant involvement, and methods of assisting tenants to exchange tenancies. The change makes section 197 consistent with changes made in section 1 where safety and energy efficiency are made explicit in the fundamental objectives for the regulator.
- 258 Paragraph 20 inserts a new subsection (6) in section 198 (supplemental provision about standards) which provides that in setting standards the regulator must have regard to the desirability of registered providers being free to choose how to provide services and conduct business. Paragraphs 17(c) and 18 make consequential amendments.
- 259 Paragraphs 21 and 22 amend sections 203(3) and 208(4) as consequential amendments following the changes to section 107 of the HRA 2008 by section 3 of this Act.
- 260 Paragraph 23 removes a requirement for the regulator to publish guidance about the information it receives about the performance of registered providers. The regulator is being given powers through section 27: “Performance monitoring” to require landlords to provide performance information and set directions in relation to this and this new section contains separate requirements for the regulator to bring these to the attention of every registered provider they apply to.
- 261 Paragraphs 27(c), 28, 29, 32(b), 33 are consequential amendments to the HRA 2008 to repeal provisions which allowed a range of enforcement powers to be used by the regulator on the grounds that a registered provider failed to comply with social housing rent requirements in the Welfare Reform and Work Act 2016. The requirements in the Welfare Reform and Work Act 2016 have now fallen away because they applied in relation to registered providers only for four relevant years. The latest date on which the four relevant years could expire was 30 March 2021. Consequently, those grounds will become redundant in due course.
- 262 Paragraphs 34, 37, 39 and 40 amend sections 256 (restrictions on dealings during inquiry), 259 (suspension during inquiry), 269 (appointment of new officers) and 269A (local authorities: censure during or following inquiry) respectively. They amend the language used to express the standard which must be met for exercise of the relevant power in order to achieve greater consistency within Part 2 of the Housing and Regeneration Act 2008.
- 263 Paragraphs 35 and 38 update the drafting of sections 258 (restrictions on dealing: supplemental) and 264 (offence of acting as an officer while disqualified) HRA 2008 to make clear that an offence under the relevant section is punishable on summary conviction with an unlimited fine (as is currently the case by virtue of section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012).
- 264 Paragraph 36 alters the heading that precedes section 259 HRA 2008 because the powers it refers to are now to be applicable to both for-profit and non-profit providers.
- 265 Paragraph 41 is a consequential amendment on the extension of enforcement powers to charities who have not received public assistance.
- 266 Paragraph 42 amends the definition of ‘local authorities’ for the purposes of this Act. Paragraph 10 makes an amendment consequential on this.

## **Part 2: Other Acts**

267 Part 2 contains minor and consequential amendments to other Acts, including the following.

268 Paragraph 47 omits section 30 of the Welfare Reform and Work Act 2016, which amended the HRA 2008 to enable the regulator to use specific enforcement powers on the grounds that registered providers failed to comply with rent requirements. As noted above the amendments made will become redundant in due course.

269 Paragraph 48 amends the Leasehold Reform (Ground Rent) Act 2022. A definition of ‘community land trust’, removed from the HRA 2008 by paragraph 4 of Schedule 5, is added to the Leasehold Reform (Ground Rent) Act 2022.

### **Section 44: Power to make consequential provision**

270 Section 44 enables the Secretary of State to make provision that is consequential on this Act by regulations. Such regulations may amend an Act of Parliament including an Act passed in the same session as this Act and where they do the affirmative procedure will apply.

### **Section 45: Extent**

271 Section 45 details the territorial extent of the provisions in the Act. See Territorial extent and application above and Annex A of these Explanatory notes for additional detail.

### **Section 46: Commencement**

272 Section 46 is explained under Commencement below.

### **Section 47: Short title**

273 Section 47 is self-explanatory.

## **Commencement**

274 The Act will come into force on such day or days as the Secretary of State may appoint by regulations, except for the following sections. Section 11 (electrical safety standards) and sections 44-47 will come into force the day the Act is passed. Section 25 (Secretary of State’s duty to give direction about providing information to tenants), section 40 (housing ombudsman scheme) and section 41 (power of housing ombudsman to issue guidance to scheme members) will come into force at the end of the period of two months beginning with the day on which the Act is passed.

275 The Secretary of State may by regulations made by statutory instrument make transitional or saving provisions in connection with the coming into force of any provision of the Act. This includes the power to make different provisions for different purposes.

## **Financial implications of the Act**

276 An Impact Assessment has been prepared for the Act and covers the implications of the Act for the regulator and both private registered provider and local authority landlords.

277 The majority of the measures do not have monetisable costs and are aimed at ensuring there is behavioural change in the sector. There are however non-monetisable costs associated with these measures. Some of the measures covered by the Impact Assessment require further development to identify exactly how they will be put into practice; this further work will affect costs and benefits. The regulator will produce a fuller Impact Assessment for the impact of revisions to the regulatory standards.

278 It is not anticipated that there will be any costs for social housing tenants.

279 Though the majority of the measures in the Act do not have monetisable costs, there are monetisable costs associated with some of these measures. Based on the analysis conducted for the Impact Assessment, financial implications arising from the Act are likely to include, but are not limited to, the following:

- Introducing new requirements for social housing landlords relating to electrical safety checks. The largest source of cost is predicted to come from the requirements on registered providers to perform 5 yearly electrical safety checks. The total cost for the electrical safety policy over the initial 10-year period is estimated at around £56.04 million for private registered providers and £31.37 million for LAs.
- Requiring landlords to identify a nominated person responsible for compliance with their health and safety requirements. It is estimated that the policy will cost the sector approximately £4.15 million in the year it is introduced. Between 2025 and 2035, it is estimated that this measure will cost housing associations £35.8 million and LAs £5.9 million.
- Requiring the regulator to establish a set of Tenant Satisfaction Measures (TSMs). The regulator has carried out its own Impact Assessment for the introduction of these measures.

280 Any changes to the existing fees regime to reflect the new role of the regulator in relation to consumer regulation will be subject to further consideration in the development of the new regime, including further consultation with stakeholders, and is not in the scope of this impact assessment.

281 The Department for Levelling Up, Housing and Communities estimates that the cost to providers of social housing as a result of the combined effect of the measures in the Act is £173.90 million over the 10-year appraisal period.

## Related documents

282 The following documents are relevant to the Act and can be read at the stated locations:

- The Social Housing Green Paper: A new deal for social housing, August 2018: <https://www.gov.uk/government/consultations/a-new-deal-for-social-housing>
- Call for Evidence: Review of Social Housing Regulation, published alongside the Social Housing Green Paper, August 2018: <https://www.gov.uk/government/consultations/review-of-social-housing-regulation-call-for-evidence>
- The Charter for Social Housing Residents: Social Housing White Paper, November 2020: <https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>

- Review of social housing regulation (also known as the “Shapps Review”), October 2010: <https://www.gov.uk/government/publications/review-of-social-housing-regulation--2>
- Memorandum of Understanding between the Housing Ombudsman and the Regulator of Social Housing, September 2020: <https://www.housing-ombudsman.org.uk/wp-content/uploads/2020/09/MOU-Ombudsman-and-Regulator-20200901.pdf>



## Annex A - Territorial extent and application in the United Kingdom

Provision <sup>5</sup>	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Sections 1-10, 12, 15-41, Schedule 1, Part 2 and Schedules 3-5 (except para 48 of Schedule 5)	Yes	Yes	No	No
Section 11 and 42	Yes	No	No	No
Sections 13 and 14, Schedule 1, Part 1 and Schedule 2	Yes	Yes	Yes	Yes
Sections 41-46	Yes	Yes	Yes	Yes
Para 48 of Schedule 5	Yes	Yes	No	No

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<sup>5</sup> For the purposes of Annex A, provisions that have minor or consequential effects in devolved territories are not listed as 'applying' to those territories.

## Annex B - Clause numbers throughout Parliamentary scrutiny

Section of the Act	Bill as Introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended in Report in the Lords	Bill as introduced in the Commons	Bill as amended in Committee in the Commons	Bill as amended on Report in the Commons
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4		Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 4	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 5	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 6	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 7	Clause 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 8	Clause 9	Clause 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 9	Clause 10	Clause 10	Clause 10	Clause 10	Clause 10
Section 11	Clause 10	Clause 11	Clause 11	Clause 11	Clause 11	Clause 11
Section 12	Clause 11	Clause 12	Clause 12	Clause 12	Clause 12	Clause 12
Section 13	Clause 12	Clause 13	Clause 13	Clause 13	Clause 13	Clause 13
Section 14	Clause 13	Clause 14	Clause 14	Clause 14	Clause 14	Clause 14
Section 15	Clause 14	Clause 15	Clause 15	Clause 15	Clause 15	Clause 15
Section 16		Clause 16	Clause 16	Clause 16	Clause 16	Clause 16

*These Explanatory Notes relate to the Social Housing (Regulation) Act 2023 which received Royal Assent on 20 July 2023 (c. 36).*

Section 17			Clause 17	Clause 17	Clause 17	Clause 17
Section 18	Clause 15		Clause 18	Clause 18	Clause 18	Clause 18
Section 19	Clause 16	Clause 17	Clause 19	Clause 19	Clause 19	Clause 19
Section 20		Clause 18	Clause 20	Clause 20	Clause 20	Clause 20
Section 21			Clause 21	Clause 21	Clause 21	Clause 21
Section 22	Clause 17	Clause 19	Clause 22	Clause 22	Clause 22	Clause 22
Section 23	Clause 18	Clause 20	Clause 23	Clause 23	Clause 23	Clause 23
Section 24	Clause 19	Clause 21	Clause 25	Clause 25	Clause 24	Clause 24
Section 25						Clause 25
Section 26	Clause 20	Clause 22	Clause 26	Clause 26	Clause 25	Clause 26
Section 27	Clause 21	Clause 23	Clause 27	Clause 27	Clause 26	Clause 27
Section 28	Clause 22	Clause 24	Clause 28	Clause 28	Clause 27	Clause 28
Section 29			Clause 29	Clause 29	Clause 28	Clause 29
Section 30						Clause 30
Section 31	Clause 23	Clause 25	Clause 30	Clause 30	Clause 29	Clause 31
Section 32	Clause 24	Clause 26	Clause 31	Clause 31	Clause 30	Clause 32
Section 33	Clause 25	Clause 27	Clause 32	Clause 32	Clause 31	Clause 33
Section 34	Clause 26	Clause 28	Clause 33	Clause 33	Clause 32	Clause 34
Section 35	Clause 27	Clause 29	Clause 34	Clause 34	Clause 33	Clause 35
Section 36	Clause 28	Clause 30	Clause 35	Clause 35	Clause 34	Clause 36

*These Explanatory Notes relate to the Social Housing (Regulation) Act 2023 which received Royal Assent on 20 July 2023 (c. 36).*

Section 37	Clause 29	Clause 31	Clause 36	Clause 36	Clause 35	Clause 37
Section 38		Clause 32	Clause 37	Clause 37	Clause 36	Clause 38
Section 39	Clause 30	Clause 33	Clause 38	Clause 38	Clause 37	Clause 39
Section 40	Clause 31	Clause 34	Clause 39	Clause 39	Clause 38	Clause 40
Section 41						Clause 41
Section 42						Clause 42
Section 43	Clause 32	Clause 35	Clause 40	Clause 40	Clause 39	Clause 43
Section 44	Clause 33	Clause 36	Clause 41	Clause 41	Clause 40	Clause 44
Section 45	Clause 34	Clause 37	Clause 42	Clause 42	Clause 41	Clause 45
Section 46	Clause 35	Clause 38	Clause 43	Clause 43	Clause 42	Clause 46
Section 47	Clause 36	Clause 39	Clause 44	Clause 44	Clause 43	Clause 47
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4
Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5

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## Annex C – Hansard references

Stage	Date	Hansard reference
<i>House of Lords</i>		
1 <sup>st</sup> reading	8 June 2022	
2 <sup>nd</sup> reading	27 June 2022	<a href="#">Vol. 823 Col.445</a>
Committee stage	6 September 2022	<a href="#">Vol. 824 Col. 100</a>
Report stage	18 October 2022	<a href="#">Vol. 824 Col. 1016</a>
Third reading	31 October 2022	<a href="#">Vol. 825 Col. 22</a>
Consideration of Commons amendments	27 June 2023	<a href="#">Vol. 831 Col. 587</a>
<i>House of Commons</i>		
1 <sup>st</sup> reading	31 October 2022	
2 <sup>nd</sup> reading	7 November 2023	<a href="#">Vol. 722 Col. 49</a>
Public Bill Committee	29 November 2022	<a href="#">PBC transcript</a>
Report stage	1 March 2023	<a href="#">Vol. 728 Col. 819</a>
Third reading	1 March 2023	<a href="#">Vol. 728 Col. 819</a>
Consideration of Lords message	17 July 2023	<a href="#">Vol. 736 Col. 710</a>
Royal assent	20 July 2023	<a href="#">Vol. 831</a>

*These Explanatory Notes relate to the Social Housing (Regulation) Act 2023 which received Royal Assent on 20 July 2023 (c. 36).*

## Glossary

Term	Notes
HA 1996	Housing Act 1996
HCA	Homes and Communities Agency
HPA 2016	Housing and Planning Act 2016
HRA 2008	The Housing and Regeneration Act 2008
LLP	Limited Liability Partnership
MoU	Memorandum of Understanding
Private registered provider	Private Registered Provider of Social Housing
Registered provider	Registered Provider of Social Housing
The regulator	The Regulator of Social Housing
The Social Housing Green Paper	The Social Housing Green Paper: A new deal for social housing, August 2018
The Social Housing White Paper	The Charter for Social Housing Residents: Social Housing White Paper, November 2020
TSA	Tenant Services Authority

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Published by TSO (The Stationery Office), a Williams Lea company,  
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ISBN 978-0-10-560349-8



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