Social Housing Bill 2026

EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM

Introduction

1. The Social Housing Bill ("the Bill") was introduced in the House of Lords on14 May 2026.

2. The Social Housing Bill will protect much needed social housing stock, give affordable housing providers the confidence they need to build more social homes, and better protect tenants who are victims of domestic abuse by providing them with greater security and stability. The Bill delivers on manifesto commitments to prioritise the building of new social rented homes and safeguard our existing stock.

3. This memorandum addresses issues arising under the European Convention on Human Rights (ECHR) in relation to the Bill. It has been prepared by the Ministry of Housing, Communities and Local Government (MHCLG).

Summary of the Bill

4. The Bill consists of 4 Parts:

<u>Part 1</u>

5. Part 1 deals with measures designed to protect social housing stock. It makes provision to increase the minimum eligibility period of the Right to Buy (RtB) scheme from 3 years to 10 years before tenants can apply to buy their home, amend discount rules and introduce a 35-year exemption for new build social homes. It will also extend the time local authorities have to process RtB applications, exempt rural properties to better protect hard-to-replace stock, and reform the Right to Acquire scheme to align with the reforms to the RtB to ensure consistency. The Bill will also require private registered providers to notify the local authority and private registered providers in the local area when they intend to dispose of a property out of the regulated sector, providing a potential opportunity to purchase the home before it is placed on the open market, with the aim of retaining social housing stock.

Part 2

6. Part 2 makes provision for further protections for tenants of social housing, by introducing a framework to enable landlords to protect victims of domestic abuse.

Part 3

7. Part 3 repeals uncommenced provisions from existing housing legislation, and introduces Schedule 2, which amends the existing system of housing consents to support local authorities' management of housing-related assets.

Part 4

8. Part 4 contains the technical clauses related to the Bill, including territorial extent, commencement and powers to make consequential provisions.

Summary of the Government's ECHR analysis

9. The provisions of the Bill engage the following Convention rights:
    a. *Article 1 Protocol 1* – this right provides that persons (both natural and legal) have the right to the peaceful enjoyment of their possessions. A1P1 is engaged by Parts 2 and 3 of the Bill, and to a limited extent by Part 1 of the Bill.
    b. *Article 6* – this right provides that in the determination of a person's civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Article 6 is engaged by Part 2 of the Bill.
    c. *Article 8* – this right provides that persons have the right to respect for their home and private life. Article 8 is engaged by Part 2 of the Bill.
    d. *Article 14* – this right provides that the Convention rights shall be secured without discrimination on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Article 14 is engaged by Part 2 of the Bill.

10. The Bill Minister is of the view that the provisions of the Bill are compatible with Convention Rights. As such she has made a statement under section 19(1)(a)

of the Human Rights Act 1998 that, in her view, the provisions of the Bill are compatible with the Convention rights.

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

ECHR analysis by measure

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

<u>The general legitimate aim underlying the measures</u>

13. There is a broad legitimate aim which underlies most of the measures in the Bill (this is referred back to in this ECHR memo as the "general legitimate aim"). This is the aim of protecting much needed social housing stock, giving affordable housing providers the confidence they need to build more social homes. The measures in Part 1 of the Bill (which make amendments to Right to Buy and Right to Acquire, and the provisions governing disposal of social housing stock) have this general legitimate aim.

14.. Part 2 has the legitimate aim of better protecting tenants who are victims of domestic abuse by providing them with greater security and stability.

15. Part 3 has the legitimate aim of giving local authorities regulatory certainty, giving them the confidence they need to build more social homes.

Part 1, Clauses 1-10 – Right to Buy and Right to Acquire

<u>ECHR right engaged: A1P1</u>

<u>Potential Interference</u>

16. The Government's view in respect of <u>tenants</u> is that an unexercised Right to Buy (for tenants of local authorities) or Right to Acquire (for tenants of housing associations) does not constitute a possession of a social housing tenant in A1P1 terms, following the case of R (Plant) v Lambeth Borough Council[1]. The significant changes made by the Bill that affect tenants are to rules around the

[1] [2016] EWHC 3324

scope of, and eligibility for exercising, these rights. These changes only apply where the Right to Buy or Right to Acquire has not yet been exercised (see clause 8 of the Bill), and so the Government's view is that there is no interference in A1P1 rights of tenants.

17. The Government's view is that the Right to Buy and Right to Acquire measures potentially engage the A1P1 rights of some providers of social housing.

18. Many landlords of secure tenancies are local authorities. Public authorities do not have rights under the ECHR. Although some private bodies such as Housing Associations have legacy secure tenancies, or grant assured tenancies which are subject to the RTA, they are likely to be regarded as public authorities in this context, as they are exercising functions of a public nature, following the case of R (Weaver) v London & Quadrant Housing Trust[2]. To that extent, these providers would not enjoy rights under the ECHR.

19. In the event that they were not held to be exercising functions of a public nature, the main provisions of Part 1 will exempt certain tenants from the RTB or RTA, or make exercise of those rights more difficult, and will thus reduce the interference with the private body's A1P1 rights. There is thus no need to consider the general legitimate aim or justification.

Part 1, Clause 11 – Disposals

ECHR Right engaged: A1P1

Interference

20. The measure will create a notification procedure, requiring a Private Registered Provider of Social Housing (PRPSH) proposing to dispose of a social housing property to issue a sales notice detailing that they intend to sell the property. The notice will include specified information. This notice must be served on i) the local housing authority in whose area the property is located; and ii) other Private Registered Providers in that area, four weeks prior to placing the

[2] R (on the application of Susan Weaver) v London & Quadrant Housing Trust [2008] EWHC 1377 (Admin).

property on the market. The measure will not otherwise control the use of property.

21. Whilst a PRPSH may be viewed as exercising functions of a public nature in some of its activities, when it comes to matters such as the process for disposing of properties as part of stock management, A1P1 rights are likely to be engaged. As such, this provision would interfere with A1P1 by introducing a control of use procedural requirement over the disposal of the PRPSH's property. While the clauses do not remove ownership, prevent sale, or regulate the price or purchaser, they condition the timing and process by which a property may be disposed of.

Justification

22. This interference is justified as it pursues the general legitimate aim in the public interest. Specifically (i) promoting opportunity for social housing properties to remain within the social housing sector by protecting the availability of social housing stock; and (ii) supporting transparency and effective oversight of disposals of social housing by PRPSHs.

23. The interference is limited and proportionate: the provisions do not require consent for disposal, do not restrict the identity of the ultimate purchaser, and do not prevent disposal on the open market once the notification requirement has been met. The provisions only apply to the disposal of housing that the PRPSHs hold which falls within the scope of the regulated social housing sector. The clauses are clear and foreseeable in their effect. The burden imposed on a Private Registered Provider wishing to sell the property is modest and administrative in nature. The measures therefore strike a fair balance between the property interests of owners of social housing and the broader public interest in maintaining the supply and oversight of social housing. The measure is therefore compatible with A1P1.

Part 2, Clause 12, and Schedule 1- Protection for Victims of Domestic Abuse

ECHR right engaged: A1P1, Article 6, Article 8 and Article 14

Suspension of a perpetrator's Notice to Quit (A1P1)

Interference

24. There is little definitive ECHR caselaw on whether a social housing tenant's tenancy is a 'possession' for purposes of A1P1[3]. However, if it were held to be a possession, and the restrictions on the tenant's ability to bring the tenancy to an end considered an interference, then that interference is justified.

25. A joint-tenant holds a common law right to terminate a periodic joint-tenancy unilaterally by giving a notice to quite ('NTQ'), and the agreement or knowledge of the other joint-tenant is not needed. Paragraphs 1 and 2 of Schedule 1 amend the Housing Act 1985 and the Housing Act 1988. In both cases, these measures qualify this rule by temporarily preventing a joint-tenant from exercising a right to bring the tenancy to an end. It therefore could amount to an interference for purposes of A1P1 as it relates to control of a proprietary interest.

Justification

26. The measure therefore has a legitimate aim (protection of the victim's tenancy which could otherwise be unilaterally ended by the perpetrator). Service of a NTQ by a perpetrator can amount to an act of abuse and has the effect of ending the interest the victim tenant would wish to preserve during the course of possession proceedings. The limitation prevents this outcome.

27. This interference is proportionate. It is rationally connected to that aim (the measure prevents the perpetrator from terminating the tenancy) and the aim could not have been achieved by a less intrusive measure. The measure will only arise in the prescribed circumstances of a joint-tenant subject to a relevant domestic abuse claim, and will be time-limited as it will only take effect if proceedings have commenced and until such time as proceedings are concluded. Interference is also based on control and not deprivation of the

[3] See e.g. Tchokontio Happi v France 2015, 65289/12 which held that the nature of the applicant's right to a French "social lease" did not amount to a possession. Also Durini V Italy 2014, 19217/91, relating to a right to live in a castle under a will, which was not a lease.

proprietary interest. The perpetrator is not prevented from serving a NTQ once proceedings come to be concluded. The measure is therefore compatible with A1P1.

New mandatory ground for possession (Articles 6, 8 and A1P1)

Article 6

Interference

28. The new mandatory ground for possession will provide landlords with a right to apply to court for a possession order if certain mandatory criteria are met. The purpose of this ground is to provide landlords with a robust remedy to seek possession in the most serious cases where domestic abuse has already been proven in another court. Once satisfied the ground is made out, the county court will be required to order possession. The nature of a mandatory ground therefore limits a tenant's scope to defend a claim as the court cannot consider the reasonableness of an order and holds no power to suspend possession or stay eviction.

29. The criteria to trigger the mandatory ground will be based on a defined set of conditions involving the perpetrator having committed a specific offence or the finding of a breach of a specified order by the perpetrator issued by another court the victim of which must have been either a partner residing with the perpetrator, or a resident family member of that partner.

Justification

30. The measure has a legitimate aim of protecting victims of domestic abuse, in tandem with other measures, by removing a perpetrator from their home.

31. The Housing Act 1985 and Housing Act 1988 already provide for other mandatory grounds including a ground relating to crime or anti-social behaviour ("the absolute ASB ground": Ground 2A Schedule 2 Housing Act 1988; s.84A Housing Act 1985). The absolute ASB ground requires an underlying offence or breach to have been found in another court but if this is met then the landlord will hold a complete right to recover possession. Reliance

on a finding from another court is therefore already established within the social housing framework and this is accepted as Article 6 compliant.

32. The mandatory trigger will not be met, where an appeal of the specified offence or breach of order is in progress or where upon appeal the conviction or breach of order is overturned.

33. Section 84A(1) HA 1985 and s.7(3) HA 1988 also contain a Convention safeguard to ensure the process is ECHR compliant despite this being a mandatory action: the court must make an order "*subject to subsection (2) (and to any available defence based on the tenant's Convention rights, within the meaning of the Human Rights Act 1998)*".

34. The measures will protect Article 6 rights by preserving a tenant's right to access to a Court to test the claim. There will remain judicial scrutiny over proceedings and the Court will need to be satisfied that the necessary conditions for the ground to apply have been met. The right to access a hearing also protects the tenant's right to raise a defence to possession proceedings in public law, and/or under Article 8 ECHR, notwithstanding the mandatory nature of the claim. The measure is therefore compatible with Article 6.

Article 8

Interference

35. The new mandatory possession grounds create new categories of case where a social housing tenant may be subject to claims for possession of their home. The powers available to social housing landlords to evict tenants are therefore widened. This potentially represents an interference with a tenant's Article 8 rights in respect of their home, where possession is based on a mandatory ground, where the Court's powers to make a conditional order or refuse an order are curtailed.

Justification

36. The measure has a legitimate aim of protecting victims of domestic abuse, in tandem with other measures, by strengthening the ability of the landlord to remove a perpetrator from their home.

37. The Courts have fully accepted that mandatory possession regimes are in principle ECHR-compliant and such regimes are established features of social housing law. In *Manchester City Council v Pinnock* [2010] UKSC 45 and *Hounslow LBC v Powell* [2011] UKSC 8 (in cases relating to demoted and introductory tenancies) the Supreme Court confirmed that although a tenant may still raise the question of proportionality when subject to a mandatory possession claim brought by a public authority landlord, the underlying statutory schemes were compliant with Article 8. Caselaw post-*Pinnock* has consistently made clear that establishing a seriously arguable defence in such cases imposes a very high threshold.

38. The trigger criteria are limited to: breach of a Domestic Abuse Protection Order (‘DAPO’); breach of a non-molestation order; breach of a restraining order; a serious offence (as defined under Schedule 2A Housing Act 1985) with a finding under the Sentencing Act 2020 that the offence involved domestic abuse by the offender; the offence of controlling or coercive behaviour in an intimate or family relationship.

39. Cases will therefore require either a relevant criminal conviction involving domestic abuse, or a breach of a relevant domestic abuse related civil order. Where the trigger is a breach of either a DAPO or a non-molestation order then the breach can be established either as a criminal offence, or as a contempt of court before the civil court (however civil contempt would still require proof to the criminal standard). The set of conditions are tightly defined. Each relevant condition case is based on a category of offence (or breach of a relevant order), which will fall within the scope of domestic abuse.

40. The measures pursue a legitimate objective of protecting victims of domestic abuse and providing landlords with effective remedies to recover possession where abuse connected to the dwelling house has occurred. The scope of the

mandatory grounds will be limited to the more serious cases where a finding relating to abuse has been clearly established by another court. The measure is therefore compatible with Article 8.

A1P1

Interference and Justification

41. Matters of possession proceedings against tenants are usually considered in Article 8 terms (see above) due to the interference with the tenant's home. However, if the tenant's A1P1 rights are engaged, the position on A1P1 in the context of this measure is the same as that set out in paragraphs 23-26 for the suspension of perpetrator's notice to quit measure. Thus the interference is proportionate, the measure pursues the legitimate aim of protecting victims of domestic abuse and the measure is compatible with A1P1.

New joint-tenancy transfer power (Articles 8, Article 14 and A1P1)

Article 8

Interference

42. In joint-tenancy cases, where the landlord succeeds in bringing a claim for possession against the perpetrator of domestic abuse under the new or amended grounds, then the Court will be empowered to remove the perpetrator's interest in the tenancy and vest the tenancy into the sole name of the victim. This power goes beyond existing possession remedies which generally only allow the court to make a possession order and bring the tenancy to an end. The power enables the court to instead transfer the tenancy between parties and so reallocate a property interest. Article 8 is engaged as this will directly interfere with the perpetrator's right to occupy their home and potentially extinguish their proprietary interest.

Justification

43. This interference is justified and proportionate. The new power is only engaged where there has already been a full assessment of the possession claim by the county court and can only be exercised once it has

been established that a possession order should be made. The measure has the legitimate aim of protecting the rights of joint-tenant victims who would otherwise be forced to leave their home and face homelessness if subject to eviction. This measure prevents this outcome by enabling the Court to remove the perpetrator's interest whilst preserving the victim's right to occupy. The existing grounds for possession do not allow for this outcome as it is a requirement for the ground to be met that the victim has already left (and is unlikely to return). The measure therefore poses a limited risk of any additional interference with the perpetrator's interest which would be exposed to risk of termination in any event within the conventional possession framework, but it does provide power to the court to provide a significantly less intrusive outcome for victim joint-tenants. This measure is therefore compatible with Article 8.

Article 14

Interference

44. This measure potentially engages Article 14 (engaging Article 8) given that this creates a differential in treatment between victims who are joint-tenants (where the transfer of tenancy power is available) and victims who are not tenants but who reside with a sole-tenant perpetrator.

Justification

45. Any differential in treatment is justified. The measure operates to regularise and protect existing property rights rather than create new property rights. The two cohorts are not in an analogous position as the joint-tenancy victim already holds the legal interest in the property, whereas the non-tenant victim does not.

46. Imposing any further obligation on a landlord to grant a new tenancy to a displaced victim who is not an existing tenant risks interfering with a private registered provider's A1P1 rights. This aspect of the scheme pursues the legitimate aim of protecting the rights of existing joint-tenants and ensuring that such victims do not face homelessness. This measure is therefore compatible with Article 14.

A1P1

Interference and justification

47. The position on A1P1 in the context of this measure in respect of a tenant subject to a possession claim is the same as that set out in paragraphs 23-26 for the suspension of perpetrator's notice to quit measure. Thus, although A1P1 rights of the perpetrator tenant are potentially engaged, the interference is proportionate, the measure pursues the general legitimate aim and the measure is compatible with A1P1.

Part 3, Clause 13 and Schedule 2 – Consent requirements – demolition notices

ECHR right engaged: A1P1

Interference

48. The housing consents regime requires local authorities to seek Secretary of State consent before taking certain housing-related actions. The Bill aims to streamline the consents process while retaining protections.

49. One part of these provisions will remove consent procedures in connection with demolition notices. Under Schedule 5 to the Housing Act 1985, the Right to Buy does not arise if a final demolition notice is in force in respect of the dwelling-house. If demolition does not take place within the statutory period, an extension can only be made with the consent of the Secretary of State. In addition, an initial demolition notice that does not result in demolition cannot be renewed within 5 years without the Secretary of State's consent. Where the tenant has a Right to Buy, once a notice is issued, the landlord does not have to convey the freehold or grant the lease.

50. This measure will remove both consents, replacing them with a power for local authorities to issue further notices. The objective is to reduce administrative burden in support of the legitimate aim of giving local authorities regulatory certainty, giving them the confidence they need to build more social homes.

51. As set out in paragraph 15 above we do not assess that an unexercised Right to Buy can constitute a tenant's possession in A1P1 terms, following the case of *R (Plant) v Lambeth Borough Council*. The A1P1 right may however be engaged where a tenant has made a claim under RTB which is then frustrated by the issue of a demolition notice.

<u>Justification</u>

52. Enabling landlords to serve further final demolition notices where the original demolition plans have slipped is a proportionate means of achieving the legitimate aim of enabling redevelopment schemes providing more social homes to go ahead even in circumstances where a tenant has claimed the Right to Buy.

53. Following the removal of the previous consent requirement, the landlord will instead have to satisfy other procedural requirements. A further notice must include the reason why demolition could not be completed before the date in the original notice, or why a further period for demolition is needed. This protects tenants from the arbitrary issue of a further notice. Furthermore, as eligibility for the Right to Buy is linked, not to time in a particular property but to time as a public sector tenant, the tenant will immediately be able to exercise the Right to Buy in relation to any property occupied under a secure tenancy to which they are decanted when the redevelopment plans are advanced. The measure is compatible with A1P1.