

SOCIAL HOUSING BILL

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

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Social Housing Bill (“the Bill”). The Bill was introduced in the House of Lords on 14 May 2026. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The Bill makes provision to protect existing social housing stock and strengthen protections for tenants who are victims of domestic abuse. The Bill also seeks to clarify the statute book and reduce unnecessary bureaucracy, so that providers can invest in new homes with confidence.
3. The Bill confers a number of delegated powers on the Secretary of State, primarily to make regulations governing technical and procedural matters.
4. The delegated powers in the Bill are necessary to provide flexibility for technical and operational matters, such as designating rural areas where the Right to Buy does not apply and making commencement and consequential provisions. The delegated powers in the Bill allow for effective implementation and for the legislation to be kept up to date in response to changing circumstances while ensuring appropriate Parliamentary scrutiny is maintained. This memorandum explains the purpose of each power, the justification for its delegation, and the choice of Parliamentary procedure.
5. The Bill contains **4** parts and **20** clauses and **3** schedules creating **8** delegated powers.
 - a. **Part 1** deals with measures designed to protect social housing stock. It makes provision to amend the statutory framework governing the Right to Buy (RtB) and the Right to Acquire schemes. 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.
 - b. **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.
 - c. **Part 3** of the Bill repeals uncommenced provisions from previous housing legislation, and introduces Schedule 2, which amends the existing system of housing consents to support local authorities’ management of housing-related assets.
 - d. **Part 4** contains the technical clauses related to the Bill, including territorial extent, commencement and powers to make consequential provisions.

C. DELEGATED POWERS

6. The delegated powers in the Bill are:

Part 1 – Protecting Social Housing Stock

- **Clause 7: Exceptions to the Right to Buy**
 - **(3):** power to make regulations to designate rural areas in which the Right to Buy does not apply, including transitional provision to preserve existing rural designations. (Henry VIII)
 - **(7):** power to make regulations in connection with restrictions on disposals of dwellings in rural areas.
- **Clause 9: Right to Buy: receipts:** power for the Secretary of State to determine the Right to Buy receipt rules.
- **Clause 11: Disposals:**
 - **(2):** power to make regulations to extend the categories of bodies and individuals that must be notified before a private registered provider disposes of a social housing property.
 - **(2):** power to make regulations to amend the exceptions to the notification requirements applying to disposals of social housing property. (Henry VIII).

Part 2 – Tenant Protections

- No powers in Part 2 of the Bill.

Part 3 – Regulation

- No powers in Part 3 of the Bill.

Part 4 – Final Provisions

- **Clause 17: Power to make consequential provision:** power for the Secretary of State to make consequential provision by regulations, including power to make supplementary, incidental, transitional or saving provision and different provision for different purposes; and (as a Henry VIII power) to amend or repeal Acts passed before, or in the same Session as, the Act.
- **Clause 19: Commencement:** commencement power for the Secretary of State to appoint (by regulations) the day or days on which provisions come into force, and to make transitional or saving provision in connection with commencement.

Schedules

- **Schedule 2: Social Housing: Consent requirements:** power to issue general consents for local authorities to hold assets other than homes under the “provision of housing” power in the Housing Act 1985.

D. ANALYSIS OF DELEGATED POWERS BY CLAUSE

Part 1: Protecting Social Housing Stock

Clause 7(3): Exceptions to the Right to Buy (Henry VIII)

Power conferred on: The Secretary of State.

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

7. Clause 7 introduces a new regulation-making power, inserted in new paragraph 17 of Schedule 5 to the Housing Act 1985, which enables the Secretary of State to designate rural areas in which the Right to Buy does not apply. This power will allow the Secretary of State to specify, and where appropriate update, the areas to which the new rural exception to the Right to Buy applies.
8. Clause 7 is also supported by transitional provision made in clause 8. Clause 8(2) provides that, for a temporary period, existing orders made under section 157(1) of the Housing Act 1985 are to have effect as if made under the new regulation-making power in paragraph 17. This transitional arrangement is intended to ensure continuity of rural designations from commencement and to avoid any gap before regulations under paragraph 17 are made.
9. New paragraph 17 of Schedule 5 to the Housing Act 1985 also includes a power for the Secretary of State to repeal this transitional provision once regulations designating rural areas under paragraph 17 have been made.

Justification for taking the power

10. The regulation-making power in paragraph 17 is necessary to enable the Secretary of State to specify the rural areas in which the Right to Buy does not apply and to update those designations over time, ensuring that the regime remains effective and responsive to changing circumstances.
11. In connection with that power, paragraph 17 also includes a Henry VIII power enabling the Secretary of State to repeal the transitional provision in clause 8(2), which is a provision of primary legislation. This repeal power is tightly constrained and may be exercised only to remove that specific transitional provision once it has served its purpose and regulations designating rural areas have been made. Without this power, the transitional provision, introduced solely to ensure continuity at commencement, would remain on the statute book indefinitely despite being temporary and technical in nature.

Justification for the procedure

12. The negative resolution procedure is considered appropriate for both the regulation-making power and the associated Henry VIII repeal power. Currently, by virtue of section 157(1)(c) Housing Act 1985 (restriction on disposal of dwelling-houses in National Parks, etc.), rural areas can be designated by Order. By virtue of subsection (8)(b), such an Order is subject to the negative resolution procedure. The power to designate rural areas in paragraph 17 continues this approach.

13. Although a Henry VIII power would ordinarily be subject to the affirmative procedure, as in this case the power is narrowly framed, may be exercised only in relation to a single, specific transitional provision, and cannot be used to amend or repeal any other provision of primary legislation, it is considered the negative procedure is appropriate. Its exercise will not affect the substance of the rural designation regime or the wider Right to Buy framework but will remove an interim provision once it is no longer required. Therefore, the degree of scrutiny provided by the negative resolution procedure is considered appropriate.

Clause 7(7): Exceptions to the Right to Buy

Power conferred on: The Secretary of State.

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

14. Clause 7(7) amends section 37 of the Housing Act 1985 (restriction on disposal of dwelling-houses in National Parks, etc.) which places restrictions on disposals of dwelling-houses in rural areas, including exceptions for persons living or working in designated rural areas. Section 37 operates by reference to lists of rural areas and regions specified in secondary legislation made under section 157 of that Act.
15. As section 157 is repealed by the Bill for new Right to Buy applications, the existing power under section 157 to specify areas and regions will no longer be available. Clause 7(7)(a) amends section 37(1) so that references to rural areas align with the new list of rural areas designated under regulations made pursuant to paragraph 17 of Schedule 5 to the Housing Act 1985. These amendments are intended to ensure that section 37 continues to operate effectively and coherently following the repeal of section 157 for new cases.
16. Clause 7(7)(b) amends the power in section 37(3) to enable the Secretary of State to specify, by regulations, the regions in which a person's employment or principal home gives rise to an exception from the disposal restrictions.
17. Clause 8 makes provision in connection with these amendments. Clause 8(3) provides that existing orders made under section 157(3) are to have effect as if made under the new regulation-making power inserted into section 37. This arrangement ensures continuity from Royal Assent and avoids a gap before any regulations under the new power are made.

Justification for taking the power

18. The regulation-making power inserted into section 37 is necessary to enable the Secretary of State to specify the areas and regions relevant to the operation of the disposal restrictions and associated exceptions, and to update those areas and regions over time. Without this power, section 37 would cease to operate as intended following the repeal of section 157 for new cases.

Justification for the procedure

19. The negative resolution procedure is considered appropriate for the regulation-making power inserted into section 37, as it replaces and aligns with

an existing regulation-making power previously exercised under section 157, which was subject to the negative resolution procedure.

Clause 9: Right to Buy: Receipts

Power conferred on: The Secretary of State.

Power exercised by: Determination

Parliamentary Procedure: None

Context and Purpose

20. Clause 9 builds on the current framework governing the treatment of receipts by local authorities from the sale of housing land – in particular receipts from sales under Part 5 of the Housing Act 1985, the Right to Buy.
21. Under section 11(2)(b) of the Local Government Act 2003 (LGA 2003) the Secretary of State can, by regulations, require local authorities to pay to the Secretary of State the proceeds from sale of housing land. This power is used to set the core rules governing the pooling of receipts from the disposal of housing land under the Right to Buy.
22. Under section 11(6) of that Act (as currently enacted) requirements imposed by those regulations may be disapplied, or modified, by agreement between the Secretary of State and a local authority in England. Every stock-holding authority has an agreement in place allowing it to retain all its net receipts provided it spends those receipts on replacement social housing. Many of them have further agreements exempting from pooling altogether dwellings built or acquired from 2008 onwards.
23. This clause replaces the power in section 11(6) with a power for the Secretary of State to disapply or modify requirements imposed by regulations under section 11(2)(b) by determination. Such determinations may be of general application or relate to particular local authorities. Provision in clause 9 makes clear that the power of determination may not be used to increase the amount that local authorities are required to pay the Secretary of State.
24. The purpose of the clause is to continue to enable proportionate flexibility in the application of the Right to Buy pooling framework to reflect differing local circumstances and enable changes to the rules governing the retention and use Right to Buy receipts to be put in place easily and quickly, whilst reducing administrative burden.

Justification for taking the power

25. The rules governing the pooling and use of Right to Buy receipts have significant financial and policy implications for local authorities. For that reason, the maximum proportion of housing land sale receipts that may be required to be paid to the Secretary of State is appropriately set out in regulations which are subject to Parliamentary scrutiny.
26. Experience has shown that strict application of uniform or outdated rules can give rise to practical difficulties in particular cases. This is partially mitigated by the power of agreement. However, the existing power to vary the application of the regulations by individual agreement has proven administratively burdensome and resource intensive. Currently, if changes are needed to any rules affecting receipts,

the individual agreements between government and local authorities, of which there are currently 157, need to be updated. Local authorities then need to sign the agreement for it to be binding. Given how time consuming this is, the Bill proposes a determination instead to replace the laborious approach currently in place.

27. The determination power replaces the agreement-based approach with a more efficient mechanism for disapplying or modifying requirements imposed by regulations under section 11(2)(b) LGA 2003 where appropriate. Determinations will not be able to increase the amount that local authorities can be required to pay to the Secretary of State but will operate solely to relax or modify the effect of maximum payment requirements already approved by Parliament.
28. This approach maintains an appropriate balance between accountability and flexibility, while reducing administrative burdens for both central and local government and ensuring the Right to Buy receipts framework works effectively across different local authority circumstances. It was also included in the Reforming Right to Buy consultation which ran from 20 November 2024 to 15 January 2025, with the majority of LAs in favour.

Justification for the procedure

29. No parliamentary procedure is proposed for determinations, as they cannot impose additional payment obligations on local authorities. Regulations, subject to Parliamentary scrutiny (negative), set the maximum that a local authority can be required to pay to the Secretary of State, and determinations can only be used to reduce those requirements.
30. The Department considers that this division of powers preserves an appropriate level of Parliamentary scrutiny of requirements to make payments to the Secretary of State while allowing necessary administrative flexibility, and is therefore proportionate, transparent (noting that the determination must be published) and consistent with established legislative practice.

Clause 11(2) Disposals (power to amend who must be notified)

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

31. Clause 11 introduces (by amending the Housing and Regeneration Act 2008) a requirement for private registered providers to notify the relevant local authority and other private registered providers of social housing in the local area when they intend to dispose of a social housing property. The provision would not stop a provider's ability to sell the property or to determine to whom it is sold. It would create a 28-day period from notification during which the property could not be sold and potentially provide an opportunity for another local registered provider to explore purchasing the home - helping to retain homes within the social housing sector where possible.

Justification for taking the power

32. The provision requires that the relevant local authority, and other private registered providers operating in the local area, must be informed when they intend to dispose of a social housing property. This power to make regulations, in new section 171A(2), allows for other categories of body to be added to those and is intended to future-proof the provision, for example, if a different category of body was to emerge as a potential purchaser of social homes.

Justification for the procedure

33. The requirements in this clause relate to notifying other bodies prior to an event taking place (placing a social home for market sale). It places little burden on the private registered provider concerned. The details to be notified will be the same for all those notified so any extension would similarly create little additional burden. The negative procedure is therefore considered appropriate for this regulation-making power.

Clause 11(2): Disposals (power to amend exceptions) (Henry VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure

Context and Purpose

34. As set out above, clause 11 introduces a requirement for private registered providers to notify the relevant local authority and other private registered providers in the local area when they intend to dispose of a social housing property. The provision would not stop a provider's ability to sell the property or to determine to whom it is sold. It would create a 28-day period from notification during which the property could not be sold and potentially provide an opportunity for another local registered provider to explore purchasing the home - helping to retain homes within the social housing sector where possible.

Justification for taking the power

35. The provision requires that the relevant local authority, and other private registered providers operating in the local area, must be informed when they intend to dispose of a social housing property. This power to make regulations, in new section 171B(6), enables additions to be made to the list of exceptions to which this measure does not apply, for example, should new models of low-cost home ownership be developed and which would not be covered by the exception already provided in this clause.

Justification for the procedure

36. This regulation-making power allows further exceptions to the notification requirement to be added. This regulation-making power is a Henry VIII power as it enables amendments to be made to primary legislation. The affirmative procedure is therefore considered appropriate for this regulation-making power.

Part 2 - Tenant Protections

37. No powers in the clauses of part 2.

Part 3 - Regulation

38. No powers in the clauses of part 3. Powers contained in schedule 2 detailed below in paragraphs 51-59.

Part 4 – General Provision

Clause 17: power to make consequential provision (Henry VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative procedure where the regulations amend or repeal provision made by an Act of Parliament, negative procedure in all other cases.

Context and Purpose

39. Clause 17 allows the Secretary of State to make provision in regulations for consequential amendments to the Bill. Under Clause 17(2), regulations made under clause 17 may amend or repeal Acts passed before the Bill or later in the same session of Parliament as the Bill.

40. The purpose of the power is to ensure that, once the Act is enacted, any necessary consequential changes to the statute book can be made to ensure that the provisions of the Act operate effectively and coherently alongside existing legislation. This includes the ability to deal with consequential amendments that may only become apparent once the Act is finalised and in force, including consequential amendments arising from interactions with other legislation enacted in the same Session.

Justification for taking the power

41. The Department considers it appropriate to take a delegated power to make consequential provision because we do not think it would be possible to anticipate on the face of the Bill every consequential amendment that may be required to ensure the Bill's provisions work as intended across the body of existing housing and local government legislation.

42. The power is limited to making provision that is consequential on the Act and is intended to be used only where necessary to ensure the effective implementation of the Act and to maintain a coherent legislative framework. Without such a power, any further consequential amendments identified following Royal Assent would require additional primary legislation, which would be an inefficient use of Parliamentary time and could delay implementation.

Justification for the procedure

43. Clause 17(4) provides that where regulations under clause 17 amend or repeal provision made by an Act of Parliament, the affirmative procedure applies. This

provides an appropriate level of Parliamentary scrutiny given that such regulations would modify primary legislation.

44. Clause 17(5) provides that any other statutory instrument containing regulations under clause 17 is subject to the negative procedure. This is appropriate because regulations which do not amend or repeal primary legislation are expected to deal with more technical, supplementary, incidental, transitional or saving matters, for which the negative procedure provides a proportionate level of scrutiny.

Clause 19: Commencement

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: None

Context and Purpose

45. Clause 19 makes provision about commencement of the Act, including provision for some sections to come into force on Royal Assent, some to come into force after two months, and for the remaining provisions to be brought into force by commencement regulations.
46. Clause 19(4) contains the power for the remaining provisions to come into force on a day, or days appointed by the Secretary of State by regulations.
47. Clause 19(6) enables the Secretary of State to make transitional or saving provision in connection with commencement, and clause 19(7) provides that the power includes power to make different provision for different purposes.

Justification for taking the power

48. It is appropriate for the remaining provisions of the Act to be brought into force by commencement regulations so that the Secretary of State can ensure that implementation is properly sequenced, and that the necessary operational, administrative and guidance arrangements are in place before provisions take effect.
49. The power to make transitional or saving provision is necessary to ensure a smooth transition from the existing legal framework to the new one, and to enable any necessary provision to be made to deal with cases that are in train when particular provisions are commenced. The ability to make different provision for different purposes provides flexibility to commence provisions in stages where this is needed to support effective implementation.

Justification for the procedure

50. Clause 19(8) provides that regulations under this section are to be made by statutory instrument. No Parliamentary procedure is provided for the commencement regulations. This is consistent with established practice and is appropriate because commencement regulations are limited to bringing provisions into force and making transitional or saving provision connected with commencement.

Schedules

Schedule 2, paragraph 1(1) and (2): Housing Act 1985 (Consents - power to issue general consents for LAs to hold assets other than homes under the "provision of housing" power in HA 1985)

Power conferred on: Secretary of State

Power exercised by: General Consent

Parliamentary Procedure: None

Context and Purpose

51. The Housing Act 1985 ("the 1985 Act") gives councils power to hold land and dwellings for use as council housing. Assets held under this power must be accounted for in a Housing Revenue Account ("HRA") under the Local Government and Housing Act 1989 ("the 1989 Act").
52. Section 12 of the 1985 Act also allows councils to hold shops, recreation grounds, and other assets where these will be for the benefit of council tenants. The benefit does not have to be exclusive, although councils are expected to share the ongoing cost of those assets between HRA and General Fund in proportion to the benefit shared between tenants and the wider community, under the "Who benefits?" principle enshrined in the 1989 Act Schedule 4, Part 3.
53. Councils must individually obtain explicit consent from Secretary of State for all non-housing assets they wish to hold under HA 1985 powers, subject to section 12.
54. The Bill amends section 12 to establish a power of General Consent so that the Secretary of State can enable councils to operate under section 12 without needing to individually go through the section 12 consent process. In establishing this general consent, the Department will look to ensure that local authorities can satisfy certain criteria, such as a requirement that an asset will be more than 50% for the benefit of tenants. The precise criteria for such a General Consent will be drawn up in due course.

Justification for taking the power

55. The Department considers it disproportionate to require local authorities to seek individual consent in these circumstances, particularly where the Secretary of State has historically granted consent.
56. This does not increase the risk of HRAs being charged incorrectly to cover inappropriate costs, as that is mitigated by the well-understood and well-audited "Who benefits?".
57. If evidence arose that misallocation of costs between HRA and General Fund for shared assets was in fact becoming a systemic problem, the Secretary of State already has an unused power in the 1989 Act Schedule 4, Part 3 to make a Direction about how shared assets are accounted for, which could be utilised.

Justification for the procedure

58. The holding of non-housing assets under HA 1985 powers is already subject to a consent procedure, so this is simply an expansion into a General Consent.

59. There are minimal risks associated with this approach, and any risk of overcharging HRAs for shared assets is mitigated by the “Who benefits?” principle, so a different form of delegated power (e.g. one requiring Parliamentary scrutiny) is not proportionate.

Ministry of Housing, Communities and Local Government
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