

DRAFT COMMONHOLD AND LEASEHOLD REFORM 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 draft Commonhold and Leasehold Reform Bill (“the Bill”). The Bill was published in draft on 27 January 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 delivers the Government’s manifesto commitments to take steps to bring the feudal leasehold system to an end and make commonhold the default tenure for flats by reinvigorating the commonhold model, making it easier for existing leaseholders to convert to commonhold should they wish to, and banning the use of leasehold tenure for most new flats. The Bill will extend the regulation of ground rent to leases which are not regulated leases under the Leasehold Reform (Ground Rent) Act 2022 (“the 2022 Act”). The Bill will also support existing leaseholders by abolishing the draconian threat of forfeiture, replacing it with a new fairer and proportionate lease enforcement scheme benefitting both leaseholders and landlords. The Bill repeals sections 121 and 122 of the Law of Property Act 1925 so that freehold homeowners no longer face the risk of unjustly losing access to their homes over unpaid rentcharge arrears and will be notified of rentcharge arrears before alternative enforcement action can commence.
3. The Bill confers a number of delegated powers on the Secretary of State, primarily to make regulations governing technical and procedural matters. These powers are necessary to ensure the regime remains flexible, responsive to future developments, and capable of being implemented effectively. This memorandum explains the purpose of each power, the justification for its delegation, and the choice of Parliamentary procedure.
4. The Bill contains 6 parts and 164 clauses and 14 schedules creating 179 delegated powers. It introduces substantial new provisions on the face of the Bill and makes changes to a number of pieces of property, housing, and landlord and tenant legislation.
 - a. **Part 1** of the Bill introduces a comprehensive new regime for commonhold, replacing the existing framework under the Commonhold and Leasehold Reform Act 2002. It establishes clearer rules for the creation, governance, and termination of commonhold developments, including detailed

provisions on the Commonhold Community Statement (“CCS”), the role of the commonhold association, and the rights and responsibilities of unit-holders and tenants. The Bill also introduces mechanisms for partial termination, enlargement, and development of commonhold land, and provides for financial management, enforcement, and dispute resolution.

- b. **Parts 2** of the Bill address leasehold reform. Part 2 prohibits the grant of certain long residential leases of flats in new buildings, subject to specified exceptions, and introduces a redress framework for tenants where such leases are granted unlawfully.
- c. **Part 3** extends regulation of ground rent to leases which are not regulated leases under the 2022 Act.
- d. **Part 4** replaces the forfeiture regime for long residential leases with a new lease enforcement scheme, ensuring that leaseholders are protected from disproportionate loss of their homes while enabling landlords to enforce legitimate obligations under the lease.
- e. **Part 5** of the Bill repeals sections 121 and 122 of the Law of Property Act 1925 to end disproportionate enforcement remedies for rentcharges, including for freehold homeowners subject to estate rentcharges.
- f. **Part 6** of the Bill contains general provisions, including Crown application, consequential amendments, regulations, extent, commencement and transitional provision and short title of the Bill.

C. DELEGATED POWERS

5. The delegated powers in the Bill are:

Part 1: Commonhold

- **Clause 4(9): Excluded land:** Power allowing the definition of “contingent estate” in clause 4(8) to be expanded or narrowed by adding to or removing enactments listed in clause 4(8)(b) under which reverter or vesting in a person other than the present registered proprietor would occur by operation of law.
- **Clause 5(c): Consent: land enfranchised for commonhold conversion purposes:** Power to specify additional persons who need to consent to an application for commonhold conversion.
- **Clause 6(1)(e): Consent: previously enfranchised land:** Power to specify additional persons who need to consent to an application for registration as commonhold land of land that includes previously enfranchised land.

- **Clause 7(d): Consent: non-enfranchised land:** Power to specify additional persons who need to consent to an application for registration as commonhold land of land that includes non-enfranchised land.
- **Clause 8(1) and (2): Consent: regulations:** Power to set consent formalities for commonhold registration (in clauses 5 to 7), including obtaining information for the purposes of obtaining consent, withdrawal of consent, deemed consent, and tribunal discretion to dispense with consent.
- **Clause 10: Joint applications for registration**
 - **(1):** Power to make regulations governing how applications under clause 3 may be made to register a commonhold from joint applicants.
 - **(2):** Power to modify the application of a provision of or made under Part 1, to disapply a provision of or made under Part 1 and to impose additional requirements in respect of the registration application process for joint applicants.
- **Clause 13: Effect of registration**
 - **(12)(a):** Power to make provision for the impact on any interests over a lease affected by the merger of the lease with the freehold title to a commonhold unit on conversion to commonhold.
 - **(12)(b):** Power to make provision for the payment of compensation to anyone who has suffered a loss as a result of their lease, or other interest, being extinguished on conversion to commonhold and where they did not consent to the commonhold registration (including where consent was deemed)
- **Clause 14(1): Registered details:** Power to specify details related to the commonhold association and unit holdersthat must be recorded at HM Land Registry.
- **Clause 16: Articles of commonhold association**
 - **(1):** Power to make provision in regulations about the form and content of the articles of association of a commonhold association.
 - **(2):** Power for regulations to include provisions which are to have effect for a commonhold association, irrespective of whether the form and content for the articles of association of a commonhold made under the power in clause 16(1) are adopted by that association.
 - **(4):** Requirement for regulations under clause 16(2) to address the application of clause 17 to voting rights where there are joint unit-holders or tenants.

- **(5):** Requirement for any provision under clause 16(2) to state that a member of the association who is a tenant of a commonhold unit (per clause 17) cannot vote on a partial transfer resolution (clause 79), or a termination statement resolution or a winding-up resolution (per clause 83) without prior written consent from the unit-holder, and any intermediate landlord under a lease of the unit.
- **(7):** Regulations made under clause 16(1) have effect in relation to articles of association irrespective of the date of the articles, but subject to any transitional provision of the regulations.
- **Clause 18: Membership of commonhold association: supplementary**
 - **(1):** Power to make regulations regarding how membership rights are granted for the purposes of clause 17(7) (determination of who qualifies as a member in the context of shared ownership leases that were granted before the registration of a commonhold).
 - **(2):** Power to make regulations under clause 18(1) concerning formalities, duration, revocation, deemed membership rights and notification requirements in respect of the grant and revocation of membership rights.
 - **(5) and (7):** Power to set rules for how a commonhold association is to perform its duties to maintain a register of members, including specification of information that individuals are to provide for this purpose.
 - **(10):** Power to modify or disapply provisions of Part 1 of the Bill, the articles of association of a commonhold association and the Companies Act 2006 as it applies to a commonhold association in order to treat the landlord under a shared ownership lease with an initial repair period (a shared ownership lease where the lease terms require the landlord to bear costs of works or repairs to external features/structural elements of the building, for a limited period) of a commonhold unit as the member of the commonhold association instead of the tenant, even though the tenant would normally be the member under clause 17.
 - **(12):** Regulations under clause 18(10) may only make provision relating to those works or repairs, or to those costs that have effect during that period set out in the lease.
- **Clause 20: “Permitted long residential lease”: meaning and power to amend**
 - **(2):** Power to amend Schedule 2 of the Bill which sets out categories of “permitted long residential lease” which may be granted in commonhold ownership structures.
 - **(3):** Power to amend or repeal any provision in Part 1 where regulations under clause 20(2) are making consequential provision under clause 161(5).

- **Clause 22: Meaning of “pre-registration shared ownership lease”**
 - **(3):** Power to exclude the requirement for conditions C (lease needs to permit staircasing to 100%) and D (shared ownership provisions to fall away on final staircasing) to be fulfilled in respect of a shared ownership lease.
- **Clause 29(3)(a): Scope and application of CCS:** Power to make provision in the CCS Regulations specifying persons who can be bound by provisions in a commonhold community statement (“the CCS” and correspondingly, “the CCS Regulations”), other than a commonhold association (or its directors or officers), a unit-holder, a tenant or an occupier.
- **Clause 30: CCS and CCS regulations**
 - **(1):** Power setting a requirement to make regulations about the form and content for the CCS.
 - **(2)(a):** A power to specify provisions that must be included in a CCS and to identify provisions in the CCS Regulations that must be treated as included in all CCSs.
 - **(4):** Power in the CCS Regulations to permit, require or prohibit the inclusion in a CCS of specified provision or provision of a specified kind, for a specified purpose, or about a specified matter.
 - **(5):** CCS Regulations may provide for the required and/or permitted contents of a CCS to be different at the time of the commonhold registration, from what the required/permitted contents of the CCS are at any time thereafter.
 - **(6):** Power in the CCS Regulations to make provision about any matter for which regulations under clause 97 (enforcement) may make provision.
 - **(7):** Regulations may set a maximum fee (including different maximums for different cases) that a CCS can require for supplying a specified type of document by the commonhold association to a unit-holder, or an eligible tenant of a commonhold unit.
 - **(8):** Power to specify in the CCS Regulations that provisions of a particular nature or concerning specified matters may, must, or must not apply to, or be binding upon tenants of commonhold units, individuals occupying commonhold units and persons falling within a category defined under clause 29(3)(a).
 - **(9):** Power to make provision in the CCS regulations about the extent to which a CCS may make different provision for different descriptions of common parts, unit-holder, tenant, or occupier.

- **Clause 31(1): Further provision about CCS:** Power to make provision in regulations specifying the requirements that a plan of the commonhold needs to meet to be included in the CCS.
- **Clause 32(1) and (2): Amendment of CCS:** Power requiring CCS Regulations to set rules for amending local provisions, including conditions, local requirements, and consent for certain changes.
- **Clause 36(1) and (2): Regulations describing commonhold sections:** Regulations may allow specific types of commonhold sections within certain commonholds, set different criteria for various units in the same commonhold, and define categories of common parts that may or may not be associated with units for the purposes of clause 35(1)(b).
- **Clause 37(8): Permitted commonhold sections:** Power to make regulations specifying factors that the tribunal may, must or must not consider when determining an application for a declaration that a commonhold section of a specified description may be created.
- **Clause 38(6): Commonhold section-only voting:** Power to make regulations specifying types of resolution of a commonhold association which are not to be regarded as relating only to a commonhold section/s; and specifying types of resolution of a commonhold association which are to be regarded as relating only to a commonhold section/s.
- **Clause 41(3): Commonhold units: use and occupation:** A power in CCS regulations to allow local provisions to restrict occupation of commonhold units to persons of a specified description and to prohibit or limit occupation for certain purposes or in specified circumstances.
- **Clause 43(3): Transfer of commonhold unit:** Power to make regulations to make provision for notifying the commonhold association of a transfer of a commonhold unit, including specifying the form and manner of the notice, the time within which the notice must be given and the effect of failure to give notice.
- **Clause 44(2) and (4)(b): Transfer etc: conditional fees:** CCS Regulations may allow local provision to be made in a CCS requiring a fee to be paid to a specified person on the occurrence of an event specified in clause 44(1), under circumstances set by the regulations, such regulations also specifying conditions that the fee needs to meet.
- **Clause 45: Transfer of part of commonhold unit**
 - **(7):** CCS regulations must require written consent from specified parties before amending a CCS after a partial unit transfer, for both new and combined unit cases.

- **(8):** Power in regulations to enable the appropriate tribunal to dispense with the requirement for consent on the application of a commonhold association to transfer part of a commonhold unit in specified circumstances.
- **(11):** Power to make regulations to make provision about the registration of commonhold units created in a new unit case.
- **(12):** Power for regulations to make provision for the modification of a provision of or made under Part 1 to deal with a case where commonhold units are created or modified as a result of clause 45(6) (transfer of a part of a commonhold unit in new unit and combined unit cases).
- **(13):** Power for CCS regulations to set rules for modifying provisions of a CCS when units are created or altered after a part transfer (clause 45(6)).
- **Clause 46(3): Residential lease of commonhold unit:** Stipulation that the CCS regulations may include universal provision that requires that a person who would be the landlord under a lease gives specified information to the person who would be the tenant under the lease before granting it.
- **Clause 47(3): Non-residential lease of commonhold unit:** Stipulation that the CCS regulations may include universal provision that requires that a person who would be the landlord under a lease gives specified information to the person who would be the tenant under the lease before granting it.
- **Clause 48(1): Consent for lease of commonhold unit where contributions overdue:** CCS regulations must require consent from the association before granting or varying a lease if contributions are overdue beyond thresholds set under clause 7.
- **Clause 50: Pre-registration leases: modification of terms**
 - **(1):** Power to make provision in regulations to ensure the terms of leases of commonhold units are consistent with the rules set out in the CCS and in Part 1.
 - **(2):** Power to make provision in regulations that leases of commonhold units are to be treated as if they have been varied in accordance with provision in the regulations and provision that any part of a lease that conflicts with certain types of provisions in the CCS will be invalid.
 - **(3):** Power to make provision in regulations made under clause 50(2)(b) that lease terms of a commonhold unit will have no effect (a) where they give the landlord rights or duties which, under Part 1 or the CCS, belong to the commonhold association; and, (b) where they require payment by a tenant who is a member of the commonhold association if it requires payment of amounts owed under section 68.

- **(4):** Power to make provision in regulations to ensure that lease terms requiring landlord consent for a tenant to do something are to take effect as if consent may be obtained from the directors of the commonhold association instead.
- **Clause 52: Pre-registration leases of qualifying tenants: acquisition of commonhold unit**
 - **(7):**Power to make provision about the exercise of rights under clause 52(2) (rights of a qualifying tenant to acquire the freehold of a commonhold unit or require that it is acquired by another person or persons jointly (with their consent)).
 - **(8):** Regulations may make provision about the procedure for exercising a right, price payable for acquisition, distribution of receipts, compensation payable to other parties, terms of the conveyance, discharge of charges, effects of acquisition on other interests and jurisdiction of the tribunal.
- **Clause 53: Leases of commonhold unit – supplementary**
 - **(1):** Power to make provision in regulations about the application of existing legal rules about leasehold estates, whether from common law or statute, to leases of commonhold unit.
 - **(2):** Power in regulations made under clause 53(1) to amend any enactment, including the bill itself, regardless of when it was passed or made.
 - **(3):** Power to modify in regulations how provisions in Part 1, whether applying to unit-holders, tenants, or both, are applied where only part of a commonhold unit is leased.
 - **(4):** Power to make regulations amending Part 1 of the Bill to remove the application of a provision to tenants or eligible tenants of a commonhold unit or extend the application of a provision to tenants or eligible tenants where it currently does not apply.
- **Clause 55(2): Other interests in commonhold unit:** Power to specify a description of interest that can only be created in a commonhold unit if the commonhold association either participates directly in creating the interest or gives written consent to its creation.
- **Clause 56(5) and (6): Common parts: use, insurance, maintenance and building safety:** Power to make provision in regulations specifying risks arising in or from the common parts that must be insured against, and to impose further requirements about insurance of common parts.
- **Clause 57(3)(a) and 5(a)(i): Transfer of common parts:** Powers enabling steps to be specified in regulations that the directors of a commonhold

association need to have taken before a resolution for a transfer of the freehold estate in part of the common parts may be passed.

- **Clause 58(2) and (3): Changes to extent of commonhold unit and common parts**
 - **(2):** Power to set out the consent requirements in the CCS Regulations for amendments to the CCS that redefine the extent of a commonhold unit, including consent from the unit-holder or eligible tenant and any chargeholder.
 - **(3):** Power to make provision in regulations to allow the appropriate tribunal to dispense with consent requirements if the commonhold association applies and specified circumstances are met.
- **Clause 59(2)(a) and (4)(a)(i): Charges over common parts etc:** Powers enabling steps to be specified in regulations that the directors of a commonhold association need to have taken before a resolution may be passed for the creation of a fixed charge over common parts or a floating charge over the assets of the commonhold association.
- **Clause 62(1), (2), (3), (4) and (5): Code of practice about allocation of expenses of commonhold association:** Power for the Secretary of State to approve, amend, or withdraw a code of practice on fair allocation of commonhold contributions, including partial approvals and different provisions for different purposes.
- **Clause 64(2)(a) (rf2): Amending purpose of specific reserve fund:** Power to specify in regulations steps that directors of a commonhold association need to have taken before a resolution can be passed for the amendment of a CCS which varies provisions made in it specifying the purpose of a specific reserve fund.
- **Clause 67(1)(a): Transfer of assets between reserve funds:** Power to specify in regulations steps that directors of a commonhold association must take before passing a resolution approving the transfer of funds from one reserve fund to another.
- **Clause 70(3) and (4): Order for sale where commonhold unit is in default:** Power to specify the relevant financial threshold and overdue period in regulations by reference to which a commonhold unit will be considered to be in default, giving rise to the right of the commonhold association to apply to the court for an order of sale in respect of that unit. The sum prescribed under subsection (70)(3)(a) must not be less than £500 or more than £5,000.
- **Clause 72(4) and (5): Development rights:** Power to regulate or restrict developers' exercise of development rights under clause 72(1), including setting

conditions, controlling how rights are used, and defining when rights count as development activity.

- **Clause 79: Partial transfer: resolution of commonhold association**
 - **(3):** Power to specify conditions that a partial transfer company must satisfy.
 - **(4)(a):** Power to set requirements for the content of a partial transfer statement.

- **Clause 80(4): Partial transfer: order by court:** Power to make regulations to provide for factors the court must consider when determining whether to make an order determining the terms of a partial transfer statement and as well as the terms of the order.

- **Clause 81(6)(d): Partial transfer: applications to Registrar:** Power to specify persons who may apply to the Registrar for a transferred part of a commonhold to cease to be commonhold land where a partial transfer company does not do so.

- **Clause 82(2): Partial transfer: effect:** Power to make regulations on implementing a partial transfer statement where an application is made to the Registrar under clause 81, including tribunal or court jurisdiction and compensation if the statement is not complied with.

- **Clause 83(3)(a): Voluntary termination of a commonhold:** Power to specify requirements a termination statement must comply with in order to have effect.

- **Clause 85: Duties of liquidator: termination with 100% agreement**
 - **(4):** Power to make provision in regulations to specify factors the court must consider when deciding whether to make an order determining the terms of a termination statement to accompany a termination application, as well as the terms of the order, in cases where 100% of members of the association have voted in favour of the resolution.
 - **(8)(c):** Power to specify person who may make an application to the court for a termination application if the liquidator fails to do so.

- **Clause 86: Duties of liquidator: termination without 100% agreement**
 - **(6):** Power to make regulations to specify factors the court must consider when deciding whether to make an order determining the terms of a termination statement to accompany a termination application, as well as the terms of the order, in cases where less than 100% of members of the association have voted in favour of the resolution

- **(10)(c):** Power to specify person who may make an application to the court for a termination application if the liquidator fails to do so.
- **Clause 90: Effect of termination application**
 - **(2):** Power to make further provision in regulations about giving effect to a termination statement where a termination application is made in accordance with clauses 85 or 86, including provision conferring jurisdiction on the appropriate tribunal or a court and provision requiring compensation to be paid where the termination statement is not complied with.
- **Clause 96: Compulsory purchase**
 - **(3):** Power to make provision in regulations about the transfer of a freehold estate in commonhold land to a compulsory purchaser.
 - **(4):** Power to make provision under clause 96(4) on the impact of the transfer, including parts of the commonhold not transferred, requirements for serving notice, conferral of jurisdiction on the court and relevant tribunal, compensation arrangements, allowing a commonhold association to require the purchaser to buy all or part of the commonhold and, per clause 96(5)(f) modifying or excluding the application of enactments relating to compulsory purchase.
 - **(5):** In respect of land not transferred, the power to allow some or all of it to cease being commonhold land and for a provision of Part 1 to apply to that land with modifications.
- **Clause 97: Regulations about enforcement of Part 1**
 - **(1):** Power to make provision in regulations about the exercise or enforcement of rights and duties under a CCS, a commonhold association's articles, or a provision made under or by virtue of Part 1.
 - **(2) and (3):** Power to give courts or tribunals jurisdiction, including giving the court or tribunal power to order compensation (including any late payment interest), to require actions, or to declare the parties' rights and obligations.
 - **(4):** Power for regulations under this section to make particular kinds of provision, including provision about compensation for breaches, cost recovery, cross-party enforcement, conditions on rights, and requiring dispute resolution before proceedings.
 - **(5):** Regulations made under clause 97 are subject to provisions made in the CCS under clause 30(6).
- **Clause 98: Applications to tribunal for declaration as to lawfulness of proposed action**

- **(1)** Power to allow persons to apply to a tribunal for a determination whether a proposed action regarding a commonhold is lawful under Part 1, considering relevant provisions, the CCS, or the association's articles.
- **(2):** Regulations may also authorise the tribunal to impose conditions on the proposed action and specify the effect of any declaration or order made by the tribunal.
- **Clause 99: The register**
 - **(2):** Regulations under any provision of this Part may confer functions on the Registrar, including discretionary functions.
- **Clause 100: Rules relating to the register**
 - **(1):** Power for the Secretary of State to make rules on any matter related to commonhold land that land registration rules cover or may cover and require notice to be given to the Registrar for matters provided under this Part.
 - **(2):** Rules under clause 100 are to be made via statutory instrument, in the same way as land registration rules are under the Land Registration Act 2002 and they may cover any matters that may be addressed by land registration rules and may provide for land registration rules to apply to commonhold processes under Part 1 as well.
 - **(3):** Rules under clause 100 may set format and content for registration documents, conditions for cancelling unclear applications and inaccurate plans, processing order, and effective dates, including retrospective effect.
 - **(4):** Rules may make provision about how requirements in respect of accompanying documents applications may be satisfied, in particular, whether copies instead of originals are permitted, certification requirements and submission of electronic documents.

Part 2: New Leasehold Flats

- **Clause 118: Permitted leases: transaction warning conditions**
 - **(2)(c):** Power to make regulations making provision for the manner of endorsement of a warning notice and notices of receipt on relevant instruments.
 - **(3) and (3)(c):** Power to make regulations specifying the form and manner of a warning notice, and information that must be contained in that notice.
 - **(4):** Power to make regulations specifying the form and manner of a notice of receipt.
- **Clause 128(6): Financial penalties:** Power to make provision in regulations to amend the financial penalties range set out in clause 128(2) to reflect a change in the value of money.

- **Clause 130(4) and (5): Lead enforcement authority:** Power to make transitional or saving provision where there is a change in lead enforcement authority, both in the context of a specific change in the authority or general changes arising periodically.
- **Clause 134: Power to amend: permitted leases and definitions**
 - **(1):** Power to make regulations amending the definitions in clause 110 (long residential lease of a flat and long residential lease of a flat in a relevant building), clause 111 (a long term), clause 114 (a flat), clause 115 (flat which forms part of a relevant building) and Schedule 8 (categories of permitted leases outside of commonhold).
 - **(2):** Regulations under this clause can be made pursuant to clause 161(5) (consequential etc. provision) including provision that amends or repeals provisions in Part 2.

Part 4: Enforcement of Long Residential Leases

- **Clause 142(2): Explanatory statements:** Power to prescribe the form, manner and information included in an explanatory statement in relation to a lease enforcement claim.
- **Clause 144: Requirements in relation to financial breaches**
 - **(1):** Power to specify in regulations the “amount” and “period” requirements of an unpaid amount in relation to a breach of a covenant of a long residential lease to pay an amount due under the lease.
 - **(2):** The sum prescribed under subsection 146(1)(a) must not be less than £500 or more than £5,000.
- **Clause 145(4): Final determination of breach:** Power to specify in regulations the form, manner and information included in a notice of the application for a breach determination to be given to interested persons per clause 145(1)(b).
- **Clause 146(6): Lease enforcement notices:** Power to specify in regulations the form, manner and information to be included in lease enforcement notices.
- **Clause 151(6): Orders for sale:** Power to make provisions to restrict the court’s ability to make an order under clause 151 either by prohibiting such orders in specified circumstances or by requiring certain conditions to be met.
- **Clause 152(4)(b): Costs orders:** Power to make provision in regulations for matters the court must take into account in deciding whether to make a costs order and the amount to be paid under such an order.

Part 5: Estate Rentcharges

- There are no delegated powers in Part 5.

Part 6: General Provision

- **Clause 158: Power to make consequential amendments**

- **(1):** Power to make provision in regulations for consequential amendments to the Bill.
- **(2):** Regulations made under clause 158 may amend or repeal Acts passed before the Bill or later in the same session of Parliament as the Bill.

- **Clause 159: Court or tribunal rules**

Court or tribunal rules may make provision about proceedings under or by virtue of the Bill, or any provision relating to commonhold land within the meaning of Part 1.

- **Clause 161: Regulations**

- **(1):** Regulations made under the Bill must be made by the Secretary of State subject to clause 161(2).
- **(2):** Regulations under clause 118 (transaction warning conditions for permitted leases) are to be made by the Secretary of State for England and the Welsh Ministers for Wales.
- **(3):** Regulations under the Bill may make different provision for different purposes.
- **(4):** Regulations under Part 1 make different provision of different descriptions of commonhold land, sections, associations, units or common parts, and different types of unit-holder, tenant or occupier.
- **(5):** Powers to make regulations include consequential, supplemental, incidental, transitional and transitory or saving provisions, as well as making general or specific provisions.
- **(6):** Any power conferred on the Secretary of State to make regulations under the Bill are exercisable by statutory instrument.
- **(7):** Any power conferred on the Welsh Ministers to make regulations under the Bill are exercisable by Welsh statutory instrument.
- **(8):** The affirmative procedure applies to the powers set out in clause 161(9):
- **(9):** The powers subject to the affirmative procedure are as follows:
 - regulations made under clause 20(2) (amendment of permitted leases in commonhold) that add a category of lease to Schedule 2.
 - Regulations made under clause 30 (CCS regulations) except for those referred to in clause 30(7), clause 31(1), clause 32(1) or

(2), clause 41(3), clause 44(2), clause 45(7) or (13), clause 48(1) and clause 58(2).

- regulations under clause 50 (modification of pre-registration leases).
- Regulations under clause 52(7) (exercise of right to acquire a commonhold unit).
- regulations under section 53(1) (application of leasehold law to leases of commonhold units) that amend or repeal an Act.
- regulations made under clause 97 (enforcement of Part 1.
- regulations under section 134(1)(a) (amendment of definitions in Part 2).
- regulations under section 134(1)(b) (amendment of permitted leases of flats outside commonhold) that add a category of lease to Schedule 8.
- regulations under section 158 that amend or repeal an Act.
- regulations under paragraph 4(4)(a) of Schedule 10 (modifications of Part 1 following exercise of redress right).
- **(10) and (11):** Any other regulations made under the Bill are to be made under the negative procedure.
- **(12):** Clause 161 does not apply to regulations made under clause 163.
- **Clause 163: Commencement and transitional provision**
 - **(3):** Provisions in the Bill save for those in Parts 5 and 6 come into force when commenced by regulations.
 - **(4) and (5):** Power to make regulations making transitional or saving provision in connection with the coming into force of any provision of the Bill and this includes making different provision for different purposes.
 - **(6):** Regulations commencing clause 107(1) (repeal of Part 1 of the Commonhold and Leasehold Reform 2002 Act) may, as a consequence of that repeal, revoke or amend provisions in the Commonhold Regulations 2004 (S.I. 2004/1829 and the Commonhold (Land Registration) Rules 2004 (S.I. 2004/1830).
 - **(7):** Regulations under clause 163 are to be made by statutory instrument.

Schedules

- **Schedule 2: Categories of permitted long residential leases in commonhold**
 - **Para 1(2):** Power to specify in regulations certain shared ownership leases for which conditions C (lease needs to permit staircasing to 100%) and D

(automatic transfer of freehold to tenant on 100% staircasing) do not need to be fulfilled.

- **Schedule 3: Commonhold Finances: Part 1: Contributions statements and reserve fund statements**
 - **Para 2(5):** A CCS may specify circumstances where approval by resolution is not required for contributions or reserve fund statements, which in respect of local provision must align with those circumstances set out in the CCS Regulations.

- **Schedule 3: Commonhold Finances: Part 3: Costs threshold for non-essential expenses**
 - **Para 10(3) and (4):** Power to set out steps that directors of a commonhold association need to take to enable an amendment of a CCS to be made varying a provision for a costs threshold or deleting such a provision.

- **Schedule 4: Orders for sale of commonhold units**
 - **Para 2(5):** Power to specify the form and manner in which an enforcement notice (notice that a commonhold association intends to apply for an order for sale) must be given and the information to be included in such a notice.
 - **Para 2(9):** Power to amend the 28-day period to be specified in an enforcement notice under paragraph 2(4).
 - **Para 7(5):** Regulations may amend paragraph 7 to prevent the court from making an order for sale of a commonhold unit in specified circumstances, or unless certain conditions are met.

- **Schedule 7: Amendment of other Acts**
 - **Paragraph 9(10):** Power to amend the cost rules applicable where leaseholders are enfranchising for the purposes of a conversion to commonhold.
 - **Paragraph 21(6):** Power to amend the price payable where leaseholders are enfranchising for the purposes of a conversion to commonhold.

- **Schedule 9: New leasehold flats: Right to acquire a commonhold unit**
 - **Para 1(2)(j), (3)(d) and (4):** Powers to make provision for information to be included in a claim notice to acquire a commonhold unit, the documents that must accompany a claim notice, and the form and manner of the claim notice.
 - **Para 2(5)(b), (6)(b) and (7):** Powers to specify information to be included in the response notice to a claim notice to acquire a commonhold unit, the documents that must accompany a response notice, and the form and manner of a response notice.

- **Para 3(2)(b):** Power to make provision as to the form and manner for notification of persons with a proprietary interest (i.e. superior leaseholders or charge holders) in respect of the lease that is the subject of the claim to acquire a commonhold unit of the transfer of the freehold estate in the commonhold unit to the claimant.
- **Schedule 10: New leasehold flats: Right to conversion to commonhold**
 - **Para 1(2)(k), (3)(d) and (4):** Powers to specify in respect of a claim notice to convert a lease of a flat to a commonhold unit the information that must be included in the claim notice, the documents that must accompany the claim notice and the form and manner of the claim notice.
 - **Para 3(5)(c), (6)(b) and (7):** Powers to specify in respect of a response notice to a claim notice to convert a lease of a flat to a commonhold unit the information that must be included in the response notice, the documents that must accompany the response notice and the form and manner of the response notice.
 - **Para 4(2)(b):** Power to specify the form and manner of a notice informing parties with a proprietary interest about the application to the Chief Land Registrar to register the relevant land as a freehold estate in commonhold land.
 - **Para 4(4):** Power to modify or disapply any provision made by or by virtue of Part 1 of the Bill in connection with applications to the Chief Land Registrar under paragraph 4(2)(a) registering land as a freehold estate in commonhold land, including imposing additional requirements and specifying information to be included in a notice notifying parties with proprietary interests of the application under paragraph 4(2)(b).
- **Schedule 11: New leasehold flats: Right to rectification of lease**
 - **Para 1(2)(h), (3)(d) and (4):** Powers to specify information that must be included in the claim notice for the variation of a lease under clause 124 (“right to rectification”), the documents that must accompany the claim notice and the form and manner of the claim notice.
 - **Para 2(5)(b), (6)(b) and (7):** Powers to specify information that must be included in the response notice to a claim notice in respect of the right of rectification, the documents that must accompany the response notice and the form and manner of the response notice.
 - **Para 3(2)(b)(i) and (iii):** Powers to specify the form and manner of the notice of a variation to be given to the Chief Land Registrar, or the notice to be given to a registered or equitable charge holder in respect of the varied lease.
- **Schedule 12: New leasehold flats: Financial penalties**

- **Para 10:** Power to make provision about how notices under Schedule 12 are to be given and when any such notices are to be treated as being given.
- **Schedule 13: Extension of regulation of ground rent to pre-2022 Act leases**
 - **Paragraph 1(2) of new Schedule 2 (inserted into the 2022 Act by paragraph 17 of Schedule 13):** Power to make provision in regulations about the form and manner of a rent variation notice, and the information that must be included in such a notice.
 - **Paragraph 2(3) and (4) of new Schedule 2 (inserted into the 2022 Act by paragraph 17 of Schedule 13):** Power to make provision in regulations about the form and manner of an information notice, and the information that must be provided under such a notice.
 - **Paragraph 3(4) of new Schedule 2 (inserted into the 2022 Act by paragraph 17 of Schedule 13):** Power to make provision in regulations about the form and manner of a counter notice, and the information that must be included in such a notice.

D. ANALYSIS OF DELEGATED POWERS BY CLAUSE

PART 1: Commonhold

Clause 4(9): Excluded land (HENRY VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

6. Clause 4 sets out six “cases” where land is to be excluded from registration as commonhold. Clause 4(7) stipulates that land which is a “contingent estate” is excluded as “Case 6”. Clause 4(8) provides that an estate is “contingent” if (i) it is liable to revert to or vest in a person other than the present registered proprietor on occurrence or non-occurrence of a particular event, and (ii) the reverter or vesting would occur by operation of law as a result of the School Sites Act 1841, the Lands Clauses Acts, the Literary and Scientific Institutions Act 1854, and the Places of Worship Sites Act 1873.
7. The power enables the Secretary of State to add further enactments to the list in clause 4(8)(b) or to remove enactments from that list, thereby adding or removing land from the scope of the definition in clause 4(8). This will enable land subject to reverter or vesting in a person other than the present registered proprietor by operation of law under any other enactments to be treated as “excluded land” and therefore ineligible for registration as commonhold.

Justification for taking the power

8. This power allows changes to the definition of “contingent estate” to be made by adding or removing enactments listed in clause 4(8)(b) under which reverter or vesting of land in a person other than the present registered proprietor occurs by operation of law. Whether land is caught by such enactments is the second limb of the definition of “contingent land” in clause 4(8). Obsolete enactments can be removed and other enactments, including future enactments, that operate to revert or vest land in a person other than the present registered proprietor can be made part of the definition. Without this power, the definition would be limited to the current enactments stipulated by clause 4(8)(b) and would inhibit the Government’s ability to maintain a fit for purpose and relevant definition for “Case 6” of excluded land without requiring primary legislation.

Justification for the procedure

9. Regulations made under this power will be subject to the negative procedure. Whilst the power is a Henry VIII, the negative procedure is considered appropriate given the technical nature of the power and its limited scope. The power does not enable the Secretary of State to alter the broader framework of excluded land, only to update the list of enactments relevant to contingent estates.

Clause 5(c): Consent: land enfranchised for commonhold conversion purposes

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

10. Clause 5 makes provision for the parties who need to consent to an application under clause 3 for registration of land enfranchised for commonhold conversion purposes as commonhold land. Clause 5(c) sets out a power to specify a further description of persons who need to consent to such an application.

Justification for taking the power

11. As commonhold is implemented it may become apparent that other parties who have an interest in an application for registration ought to consent to it. This power will enable the parties from whom consent needs to be obtained to be extended by the Government without having to enact primary legislation to make such provision.

Justification for procedure

12. Regulations made under this power will be subject to the negative procedure. The negative procedure is considered appropriate given the technical nature of the power and its limited scope. The power does not enable the broader framework of registration of land as commonhold land to be altered, only to add parties whose consent to registration needs to be obtained.

Clause 6(1)(e): Consent: previously enfranchised land

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

13. Clause 6 makes provision for the parties who need to consent to an application under clause 3 for registration of land that includes previously enfranchised land as commonhold land. Clause 6(1)(e) sets out a power to specify a further description of persons who need to consent to such an application.

Justification for taking the power

14. As commonhold is implemented it may become apparent that other parties who have an interest in an application for registration ought to consent to it. This power will enable the parties from whom consent needs to be obtained to be extended without having to enact primary legislation to make such provision.

Justification for procedure

15. Regulations made under this power will be subject to the negative procedure. The negative procedure is considered appropriate given the technical nature of the power and its limited scope. The power does not enable the Secretary of State to alter the broader framework of registration of land as commonhold land, only to add parties whose consent to registration needs to be obtained.

Clause 7(d): Consent: non-enfranchised land

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

16. Clause 7 makes provision for the parties who need to consent to an application under clause 3 for registration of land that includes non-enfranchised land as commonhold land. Clause 7(d) sets out a power to specify a further description of persons who need to consent to such an application.

Justification for taking the power

17. As commonhold is implemented it may become apparent that other parties who have an interest in an application for registration ought to consent to it. This power will enable the parties from whom consent needs to be obtained to be extended without having to enact primary legislation to make such provision.

Justification for procedure

18. Regulations made under this power will be subject to the negative procedure. The negative procedure is considered appropriate given the technical nature of the power and its limited scope. The power does not enable the broader framework of registration of land as commonhold land to be altered, only to add parties whose consent to registration needs to be obtained.

Clause 8(1) and (2): Consent: regulations

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

19. Clause 8(1) and (2) enables the Secretary of State to make regulations concerning the form, effect, duration and withdrawal of consents required for applications to register land as commonhold under clause 5 (enfranchisement for commonhold conversion), clause 6 (enfranchised land) and clause 7 (non-enfranchised land as commonhold). The power also allows regulations to provide for consents to apply to multiple applications, for consent to be deemed in prescribed circumstances (including for consent from one person to deem the consent of another) and it enables the appropriate tribunal to dispense with consent in prescribed circumstances. Additionally, there will be a power to access information necessary for the purposes of meeting the consent requirements.

Justification for taking the power

20. This power supplements the consent requirements for applications for registration of land as commonhold, ensuring that the registration process can operate effectively and flexibly, and that it can be adapted to the needs and requirements of practice which will become apparent as the regime is implemented. The details of how consent is to be given, its legal effect, and the circumstances in which it may be deemed or dispensed with are procedural and technical. Delegating this power allows the Government to respond to practical experience and stakeholder feedback without requiring primary legislation to make procedural and technical revisions to the provisions. It also enables alignment with future changes in land registration or property law.

Justification for the procedure

21. The negative procedure is appropriate given the procedural nature of the regulations and their limited impact on substantive rights. The power does not enable changes to the core requirement for consent, only the mechanics of how it is to operate.

Clause 10(1) and (2): Joint applications for registration (HENRY VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

22. Clause 10(1) enables the Secretary of State to make regulations concerning joint applications for registration of land as commonhold under clause 3. Regulations under clause 10(2) may modify or disapply provisions of Part 1 of the Bill and impose additional requirements. This power is intended to ensure that the registration process can accommodate applications made by multiple parties (e.g. joint freeholders or enfranchising tenants) in a way that is legally coherent and administratively workable.

Justification for taking the power

23. Without this power, it may be difficult for commonholds to be registered due to difficulties in meeting requirements designed for applications from a single party. Joint applications may raise complex procedural and legal issues, particularly where multiple parties have overlapping interests or obligations. Delegating this power allows the Government to tailor the registration framework to such scenarios and to respond flexibly to practical experience, without requiring further primary legislation.

Justification for the procedure

24. The negative procedure is appropriate, even though we are concerned with a Henry VIII power here (in clause 10(2)), given the procedural nature of the regulations and their limited impact on substantive rights. The power does not alter the core eligibility or effect of registration but supports its implementation in joint cases.

Clause 13(12)(a) and (b): Effects of registration

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

25. Clause 13(12) confers powers to make regulations concerning the effect of a merger of a lease with the freehold estate under clause 13(4), particularly in relation to other interests in or over the affected commonhold unit. It also enables regulations to be made requiring a person to compensate anyone who has suffered a loss where their consent to the commonhold application was not given (or where it was deemed). These powers support the implementation of the registration process by addressing the legal consequences of merging or extinguishing interests when land becomes commonhold.

Justification for taking the power

26. The power in clause 13(12)(a) will enable regulations to set out further detail about the effect of the merger of the leasehold interest with the commonhold unit on any interests secured over the leasehold title (although the starting point will be that all interests will be transferred to the freehold unit, under clause 13(4). However, certain variations may be required to these interests to reflect that they are instead attached to a freehold interest. Additionally, the power in clause 13(12)(b) will enable regulations to be made that compensate persons whose interests are extinguished if a commonhold is registered without their consent having been required. Most interest holders will be required to agree to the conversion process (and so their interest is protected), however, certain interests, such as those attaching to superior leasehold interests that may be extinguished on registration, without their consent being expressly required by the Bill.
27. In cases where interests are extinguished on conversion to commonhold, regulations may make clear what compensation will be payable if a loss is suffered. The legal and financial consequences of merging or extinguishing interests in land are complex and may vary depending on the nature of the interest and the circumstances of registration. The compensation mechanism is particularly important to ensure fairness and legal certainty for affected parties and may need to be adapted over time. Delegating this power allows the Government to make detailed provision in secondary legislation, informed by consultation and practical experience, without requiring further primary legislation to make changes that are technical and procedural in nature. Whilst the power for technical details regarding the merger process will likely be retained for the final Bill, this power to provide for compensation is included on a provisional basis to ensure the Bill can accommodate potential policy outcomes and be informed by pre-legislative scrutiny. Its necessity will be reassessed as policy development progresses, and it may not be retained in the final legislation.

Justification for the procedure

28. The negative procedure is appropriate given the technical and supplementary nature of the regulations to address the merger process. The power does not alter the core framework of registration but provides necessary detail to support its operation and mitigate adverse effects. The compensation element may not be retained in the final legislation.

Clause 14: Registered details

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

29. Clause 14 provides a power to specify the information related to the commonhold association, unit holders, the CCS and articles that must be recorded at HM Land Registry.

Justification for taking the power

30. The information to be prescribed will be detailed and technical, and the power will enable the Government to have flexibility to add or amend details to be recorded should the need arise in response to the demands of practice.

Justification for the procedure

31. This power relates to a technical matter, and the negative procedure is appropriate given the narrow and administrative nature of it. The power does not substantively affect the core registration regime, and a lesser level of scrutiny is therefore justified.

Clause 16 (1), (2) (4), (5) and (7): Articles of commonhold association

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

32. Clause 16(1) enables regulations to be made governing the form and content of the articles of association of a commonhold association. The articles are the constitutional rules of the company responsible for managing commonhold land. A commonhold association may adopt the articles set out in regulations under clause 16(1) as its articles of association, though under clause 16(2) there is a power to prescribe provisions that apply regardless of adoption.

33. The power under clause 16(4) enables joint ownership to be properly reflected in rules surrounding voting rights and per the power in clause 16(5), regulations prescribing provisions under clause 16(2) may provide that tenant members are restricted from voting on termination decisions on a partial transfer resolution (clause 79), or a termination statement resolution or a winding-up resolution (clause 83) without prior written consent from the unit-holder, and any intermediate landlord under a lease of the unit. Under the power in clause 16(7), regulations under clause 16(1) apply to a commonhold association's articles of association regardless of when the articles were adopted.

Justification for taking the power

34. The governance of commonhold associations involves technical and evolving matters, particularly in relation to membership, voting, and corporate structure.

Delegating this power allows the Government to ensure consistency and legal clarity across associations through making provisions in respect of articles of association, and to respond flexibly to future developments in company law and housing policy. It would be impractical to set out all necessary detail in primary legislation, or to amend this periodically through primary legislation.

Justification for the procedure

35. The negative resolution procedure is appropriate given the technical and administrative nature of the power. It allows for efficient updating of the regulatory framework for articles of association while maintaining parliamentary oversight.

Clause 18 (1), (2), (5), (7), (10) and (12): Membership of commonhold association - supplementary (HENRY VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

36. Clause 18(1) enables regulations to be made concerning the grant of membership rights in a commonhold association, specifically in relation to shared ownership leases granted before the registration of the commonhold. Per clause 18(2), these regulations may prescribe a description of persons who can grant membership, the form and duration of membership grants, make provisions for joint tenants, make provision about the duration of membership, revocation of membership and require notification to the association of revocation of membership.

37. Clause 18 also allows regulations to govern how commonhold associations maintain their register of members under section 113 of the Companies Act 2006, including the timing and content of entries (clause 18(5) and the specification of information to be provided by a party 18(7).

38. Clause 18(10) sets out a power to modify or disapply provisions of Part 1 of the Bill, the articles of association of a commonhold association, and the Companies Act 2006 as it applies to commonhold association, in order to treat the landlord under a shared ownership lease with an initial repair period (a shared ownership lease where the lease terms require the landlord to bear costs of works or repairs to external features/structural elements of the building, for a limited period) of a commonhold unit as the member of the commonhold association instead of the tenant, even though the tenant would normally be the member under clause 17. Under clause 18(12) regulations under clause 18(10) may only make provision relating to those works or repairs, or to those costs, that have effect during that period set out in the lease.

Justification for taking the power

39. The determination of membership rights in complex ownership scenarios—such as shared ownership — requires detailed and flexible rules. Delegating this power allows the Government to respond to evolving housing models and ensure clarity in the governance of commonhold associations. It also supports accurate record-keeping and transparency in membership arrangements which can change over time to meet the needs of commonhold, without having to amend the Bill. In particular, under the current model for shared ownership leases with an initial repair period, the landlord is responsible for cost of repairs for a particular period of time and so it would be appropriate for the landlord to have the vote in respect of such costs, but such a position may change in the future. This power would enable the Government to address such a matter reactively and promptly should the need arise.

Justification for the procedure

40. The negative resolution procedure is appropriate given the technical and administrative nature of the power, including in relation to the Henry VIII power under clause 18(10). It enables timely updates to reflect operational needs without affecting substantive rights or requiring extensive parliamentary scrutiny.

Clause 20(2) and (3): “Permitted long residential lease”: meaning and power to amend (HENRY VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative resolution where amending Schedule 2 under clause 20(2) to add a category of lease; Negative resolution for any other amendments to Schedule 2.

Context and purpose

41. Clause 20(1) provides that for the purposes of clauses 17 and 19 “permitted long residential lease” means a category of lease which may be granted in commonhold ownership structures as set out in Schedule 2 to the Bill. Clause 20(2) sets out a power to amend Schedule 2. Per clause 20(3), regulations made under clause 20(2) by virtue of clause 161(5) (consequential etc provision) may include provision amending or repealing any provision of Part 1.

Justification for taking the power

42. This power is necessary to enable the Government to react responsively and flexibly to new forms of permitted long residential lease types that may come onto the market to meet home ownership needs, for example, lease-based home finance plans and new forms of shared ownership. Without this power, the

Government would not be able to deal with changes in the sector dynamically and would need to pass new primary legislation, which would adversely impact on the effective operation of the reformed commonhold regime.

Justification for the procedure

43. It is considered that the affirmative procedure is appropriate in relation to this power where regulations add a category of permitted lease to Schedule 2 under clause 20(2). This is on the basis that whilst on the one hand the changes here are technical in nature, on the other they are altering a core element of the regime. For all other regulations amending Schedule 2, or those making consequential etc. provision under clause 20(3) by virtue of clause 161(5), the negative procedure is suitable given the technical nature of any changes.

Clause 22(3): Meaning of “pre-registration shared ownership lease”

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

44. Clause 22 sets out criteria that a lease needs to fulfil to be a “pre-registration shared ownership lease”. Clause 22(3) provides a power to exclude the requirement for conditions C (lease needs to permit staircasing to 100%) and D (provisions specific to shared ownership to fall away on final staircasing) to be fulfilled in respect of a shared ownership lease.

Justification for taking the power

45. Shared ownership is a very versatile affordable home ownership product that governments have used in different contexts and across differing demographics to meet home ownership needs and aspirations over almost 5 decades. For some shared ownership schemes, it is inappropriate to allow staircasing to 100% as it would remove the property from being available as affordable home ownership for specific purposes in perpetuity, for example, designated rural areas or older person’s developments. It would be such lease types that are specified in regulations as not needing to satisfy the permitted staircasing requirements to 100% in order to qualify as a shared ownership lease for new commonholds. Being able to add to such leases will enable the Government to promptly make provision for any new shared ownership lease types that are developed which have similar staircasing restrictions, without having to pass new primary legislation.

Justification for the procedure

46. The negative resolution procedure is appropriate given the technical nature of the power. It enables timely updates to reflect new forms of shared ownership leases that come onto the market without affecting substantive rights or requiring extensive parliamentary scrutiny.

Clause 29(3)(a): Scope and application of CCS

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative resolution

Context and purpose

47. Clause 29 sets out the scope of the CCS. Clause 29(3)(a) enables CCS regulations to set out when a CCS may make provision about the rights, duties and powers of people other than the commonhold association (or its directors or officers), a unit-holder, a tenant or an occupier.

Justification for taking the power

48. This power will enable regulations to specify third parties who may be bound by rights, powers and duties set out in the CCS. This will provide necessary flexibility to ensure the CCS can apply to certain people involved with commonholds (e.g. developers, see clause 29(4)) but who are not already provided for in the legislation. Taking this power means that the Government can set out the detail of only those people who the CCS needs to extend to and respond flexibly in the future to include (or remove) descriptions of people as a result of stakeholder engagement and as the market evolves.

Justification for the procedure

49. The affirmative procedure is appropriate for this power, recognising the impact that applying part or all of the CCS to people not already provided for in legislation may have. The affirmative procedure will ensure proper parliamentary scrutiny is given before the CCS is extended in this way.

Clause 30 (1), (2)(a), (4), (5), (6), (7), (8) and (9): CCS and CCS regulations

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative resolution, save for regulations made under clause 30(7)

Context and purpose

50. Clause 30 sets out extensive powers under which the Secretary of State must make regulations (referred to as “CCS Regulations”) to provide for the content and form of the commonhold community statement (“the CCS”) (clause 30(1)). Clause 30(2)(a) provides a power to specify provisions or identify provisions in the CCS Regulations that must be included in all CCSs. Under clause 30(4), there is a power in the CCS Regulations to permit, require or prohibit the inclusion in a CCS of specified provision or provision of a specified kind, for a specified purpose, or about a specified matter.
51. Per clause 30(5), the regulations governing a CCS may differentiate provisions that must, must not or may be included on registration of the commonhold, and provisions that must, must not or may be included at any time thereafter. Clause 30(6) contains a power in the CCS Regulations to make provision about any matter for which regulations under clause 97 (enforcement) may make provision. Per clause 30(7) the CCS Regulations may set a maximum fee (including different maximum fees for different cases) that a CCS may require for supplying a document of a specified description. In clause 30(8) there is a power to specify in the CCS Regulations that provisions of a particular nature or concerning specified matters may, must, or must not apply to, or be binding upon tenants of commonhold units, individuals occupying commonhold units and persons falling within a category defined under subsection 29(3)(a). Finally, clause 30(9) sets out a power to make provision in the CCS regulations about the extent to which a CCS may make different provision for different descriptions of common parts, unit-holder, tenant, or occupier of a commonhold unit.

Justification for taking the power

52. The CCS Regulations will be fundamental in making provision for rights, responsibilities and powers of unit-holders, tenants, occupiers, and the commonhold association that must apply in all CCSs (“universal provision”). The CCS will essentially form the rulebook for these parties and the running of a commonhold. The complexity of setting these rights, duties and powers for different groups requires a high level of detail and flexibility, and invariably they will need to change over time as implementation of the reformed commonhold regime throws up practical issues that need to be addressed through amendment of the CCS Regulations, and the CCS that is in place across commonhold structures. These powers will be paramount to the Government being able to respond to the evolving needs of commonhold or different groups within a commonhold.

Justification for the procedure

53. The affirmative procedure is appropriate given the breadth of the powers under clause 30 and the wide-ranging impacts resulting regulations could have on persons bound by the CCS, and in binding those not already prescribed in Part 1 of the Bill. The exception to this is the power under clause 30(7) for which the

negative procedure is appropriate given the technical nature of the regulations and limited scope which concerns the setting of the maximum fee for the supply of documents, which can be adjusted when needed as a result, without using parliamentary time.

Clause 31(1): Further provision about CCS

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

54. Clause 31(1) makes provision for specification of requirements that a plan of the commonhold needs to meet to be included in the CCS.

Justification for taking the power

55. It is important for a plan of the commonhold to be included in the CCS and there may be widely differing specifications for such plans that need to be accommodated that would be too extensive, technical, and specific to a commonhold to be set out on the face of the Bill. It may be that changes are needed from time to time, which would necessitate primary legislation without this power. This power will enable the Government to set out a range of specifications with the ability to revise these responsively and reactively to changes that may arise from time to time.

Justification for the procedure

56. The negative resolution procedure is appropriate given the technical nature of the power and its limited scope.

Clause 32(1) and (2): Amendment of CCS

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

Clause 32(1) and (2) requires CCS Regulations (see clause 30) to include “universal provision” (i.e. provision in all commonholds) which specifies how “local provision” (i.e. provision specific to a particular commonhold) in a CCS can be amended. This may include imposing requirements before an amendment is made, including requiring consent from a specified person for certain types of

amendments, and universal provision may also modify or disapply requirements in respect of particular kinds of amendments to local provisions. The power also permits CCS regulations to allow local provisions in a CCS to impose, modify or disapply such requirements.

Justification for taking the power

57. Regulations setting out how a CCS may be amended to provide “local provisions” will entail technical and procedural detail, which is best set out in secondary legislation, rather than on the face of the Bill. This will ensure that commonholds are able to amend local rules in the CCS as needed to meet the needs of their commonhold development.

Justification for the procedure

58. The negative resolution procedure is appropriate given the technical and procedural nature of the power.

Clause 36(1) and (2): Regulations describing commonhold sections

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

59. Clause 36 enables the Secretary of State to make regulations specifying the types of commonhold sections that may be created within commonholds of particular descriptions. These regulations may also set out criteria for determining which parts of the common parts may be associated with particular commonhold units for the purpose of forming a section. The powers support the administrative structuring of commonholds into sections, facilitating mixed-use developments or buildings with distinct areas requiring separate governance or financial arrangements. These powers will regulate the use of sections to ensure they can only be created if they meet qualifying criteria set out in these regulations.

Justification for taking the power

60. The types of commonhold sections and associated common parts may vary depending on building design, use, and ownership structures. Delegating this power allows the Government to define and update permitted section types flexibly, in consultation with stakeholders and in response to practical developments, without having to make changes through primary legislation in respect of what is technical detail.

Justification for the procedure

61. The negative procedure is appropriate given the technical and classificatory nature of the regulations. The power does not affect the core rights or obligations of unit-holders but enables the administrative structuring of commonholds.

Clause 37(8): Permitted commonhold sections

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

62. Clause 37 governs the circumstances in which commonhold sections may be created. It provides that a section may be created if it is either of a description permitted by regulations made under clause 37, or if the appropriate tribunal grants a declaration that a section of a specified description may be created.

63. Clause 37(8) confers a power to make regulations specifying factors the appropriate tribunal may or must, or must not, take into account when determining applications to create a section or making orders in connection with them. This power ensures that the tribunal's discretion is exercised in a manner consistent with policy objectives and provides clarity for applicants.

Justification for taking the power

64. The factors relevant to the creation of commonhold sections may vary depending on the nature of the development, the interests of unit-holders, and broader policy considerations. Delegating this power allows the Government to set out appropriate criteria and guidance for tribunal decision-making, which can be updated in light of experience and consultation without the need for further primary legislation.

Justification for the procedure

65. The negative resolution procedure is appropriate given the procedural and evidential nature of the regulations. The power does not affect the substantive rights of unit-holders but supports the tribunal's role in overseeing the creation of commonhold sections.

Clause 38(3): Commonhold section-only voting

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

66. Clause 38 provides that where a resolution of a commonhold association relates only to one or more commonhold sections, only members of those sections are entitled to vote on the resolution. Clause 38(3) confers a power to make regulations specifying descriptions of resolutions that are or are not to be regarded as relating only to a commonhold section or sections. The effect of such regulations is to set out which cases should be considered as section-only and, in those cases, require section-only voting; or to disapply the section-only voting in specified cases, thereby requiring all members of the association to vote on the resolution.

Justification for taking the power

67. The classification of resolutions for voting purposes is a technical matter that may require adjustment over time in response to practical experience and stakeholder feedback. Delegating this power enables the Government to clarify and refine the scope of section-only voting without the need for further primary legislation, ensuring that voting procedures remain fair and workable in a variety of commonhold structures.

Justification for the procedure

68. The negative resolution procedure is appropriate given the procedural nature of the regulations and their limited impact on substantive rights. The power does not alter the underlying voting framework but provides clarity on its application in specific cases.

Clause 41(3): Commonhold units: use and occupation

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

69. Clause 41 provides that a CCS must make provision for the regulation of the use of commonhold units. Clause 41(3) comprises a power in CCS Regulations to allow local provision to restrict occupation of commonhold units to persons of a specified description and to prohibit or limit occupation for certain purposes or in specified circumstances.

Justification for taking the power

70. Regulation of use and occupation of commonholds is an important aspect of commonhold governance and clause 41 provides a mandatory requirement for

the CCS to make regulatory provision though with freedom to decide upon what such provisions should be. For example, through these regulations it could be permitted that the CCS may contain a provision to specify that occupiers must be over the age of 55, thus enabling certain commonholds to be used for retirement housing.

Justification for the procedure

71. The negative resolution procedure is appropriate given the procedural nature of the regulations and their limited impact on substantive rights.

Clause 43(3): Transfer of commonhold unit

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

72. Clause 43(3) confers a power on the Secretary of State to make regulations concerning:

- a. The form and manner in which notice of a transfer of a commonhold unit must be given to the commonhold association.
- b. The timeframe within which such notice must be given.
- c. The consequences of failing to give notice, which may include financial consequences.

73. This supports the administrative functioning of the commonhold association by ensuring it is notified of changes in unit ownership, which is essential for maintaining accurate membership records and enforcing rights and obligations under the CCS.

Justification for taking the power

74. The procedural details of how and when notice must be given, and the consequences of non-compliance, are appropriately set out in secondary legislation. This allows the Government flexibility to adapt the process over time in response to operational experience and stakeholder feedback, without requiring further primary legislation.

Justification for the procedure

75. The negative procedure is appropriate given the procedural and administrative nature of the regulations. The power does not affect substantive rights or the

validity of the transfer itself but ensures the commonhold association is properly informed.

Clause 44(2) and (4)(b): Transfer etc: conditional fees

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

76. Per clause 44, a CCS cannot require payment of an “event fee”, that is a fee for the transfer of a freehold estate in a unit, the grant or assignment of a lease of a unit, or the change in occupancy of a unit. In clause 44(2) and (4)(b), there are powers for the CCS Regulations to allow local provisions requiring payment of an event fee to a specified person, under circumstances set by the regulations. Such regulations may also specify conditions that the fee needs to meet.

Justification for taking the power

77. Providing for exemptions to the prohibition on event fees to be set out in regulations provides flexibility for the Government to allow event fees in discrete circumstances, for example, where the commonhold is a dedicated retirement development. The Government recognises that policy on event fees is still under consideration. This power is included to preserve flexibility while options are explored, including whether any limited exceptions to the general prohibition are appropriate and, if so, what safeguards should apply. The pre-legislative scrutiny process will be used to test these issues and to consider whether the scope of the power remains necessary and whether the affirmative procedure would be more appropriate.

Justification for the procedure

78. At this stage the power is set to be subject to the negative resolution procedure given the procedural nature of the regulations and their limited impact on substantive rights. However, as noted, this may well change following the pre-legislative scrutiny process.

Clause 45(7), (8), (11), (12) and (13): Transfer of part of commonhold unit (Henry VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

79. Clause 45 sets out the framework for transferring part of a commonhold unit, either to form a new unit (a “new unit case”) or to combine with another (a “combined units case”). The power in clause 45(7) requires the CCS Regulations to specify the consent requirements for amending the CCS to reflect such a transfer. These regulations must set out who must consent—such as unit-holders, eligible tenants, and charge-holders - with the power in clause 45(8) enabling regulations to allow the appropriate tribunal to dispense with consent in prescribed circumstances. Clause 45(11) contains a power to make provisions in regulations in respect of registration of commonhold units created in a new unit case. Clause 45(12) provides that regulations may modify provisions under Part 1 to address cases where commonhold units are created or altered under clause 45(6) and per clause 45(13), the CCS Regulations may also provide general rules for modifying CCS provisions in such cases.

Justification for taking the power

80. The process of transferring part of a unit and amending the CCS involves complex ownership and financial interests. Delegating the power allows the Government to set out detailed procedural and evidential requirements in regulations, which would be too extensive to include on the face of the Bill, and to adjust them over time in response to practical experience without needing to amend primary legislation. It ensures flexibility in managing consent and tribunal involvement, while maintaining legal clarity and fairness.

Justification for the procedure

81. The negative resolution procedure is appropriate given the procedural and technical nature of the power. This also applies to the Henry VIII power at clause 45(12) as modification is narrow and targeted solely to cases where commonhold units are created or modified as a result of clause 45(6). It enables timely updates to the consent framework while ensuring sufficient parliamentary oversight.

Clause 46(3): Residential lease of commonhold unit

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

82. Clause 46 provides that a CCS may not prohibit the grant or assignment of a residential lease of a commonhold unit save in certain circumstances. At clause 46(3) there is a stipulation that the CCS Regulations may include universal

provision that requires that a person who would be the landlord under a lease gives specified information to the person who would be the tenant under the lease before granting it.

Justification for taking the power

83. Leases in commonhold, whether long leases or short, will involve multiple parties in relation to the individual units. To ensure that all parties have relevant information relating to the commonhold – for instance, the local rules of the commonhold – regulations may be provided under this power to set out in which circumstances unit owners (as landlords) have to provide information about the commonhold to certain leaseholders. The power provides appropriate flexibility for adjusting over time the information required to be given by landlords to their tenants, which may change in accordance with government policy around permitted leases in commonhold, and more widely revisions to landlord and tenant law that may emerge in future legislation.

Justification for the procedure.

84. The negative resolution procedure is appropriate given the procedural nature of the power.

Clause 47(3): Non-residential lease of commonhold unit

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

85. Clause 47 provides that a CCS may not prohibit the grant or assignment of a a commonhold unit, or part of a commonhold unit that is not a residential lease. At clause 47(3) there is a stipulation that the CCS Regulations may include universal provision that requires that a person who would be the landlord under a lease to give specified information to the person who would be the tenant under the lease before granting it.

Justification for taking the power

86. Leases in commonhold, whether long leases or short, will involve multiple parties in relation to the individual units. To ensure that all parties have relevant information relating to the commonhold – for instance, the local rules of the commonhold – regulations may be made under this power to set out in which circumstances unit owners (as landlords) have to provide information about the commonhold to certain leaseholders. The power provides appropriate flexibility for adjusting over time the information required to be given by landlords to their

tenants, which may change in accordance with government policy around permitted leases in commonhold, and more widely revisions to landlord and tenant law that may emerge in future legislation.

Justification for the procedure

87. The negative resolution procedure is appropriate given the procedural nature of the power.

Clause 48(1): Consent for lease of commonhold unit where contributions overdue

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

88. In clause 48(1) there is a requirement for CCS Regulations to include a universal provision requiring a person liable for the commonhold contributions in respect of a commonhold unit per clause 69 to obtain consents from the commonhold association to the grant or variation of a lease of the unit if there are overdue contributions that are at least half of an amount set by regulations made under clause 70(3)(a), or payments have been overdue for at least half of a time period set by regulations made under clause 70(3)(b).

Justification for taking the power

89. The thresholds for overdue contributions (both monetary and time-based) and the precise consent requirements involve technical and variable factors that may need adjustment over time, including to reflect inflation, market conditions or operational experience. Embedding these details in primary legislation would make future changes cumbersome and require new primary legislation for minor updates. Delegated powers allow the Government to respond quickly without lengthy parliamentary processes.

Justification for the procedure

90. The power is targeted and constrained by the Bill which sets the core requirement (consent before lease grant/variation in specified arrears situations). The regulations only fill in the detail in terms of the amounts and time periods that are to apply, so parliamentary scrutiny via negative procedure is proportionate.

Clause 50(1), (2), (3) and (4): Pre-registration leases: modification of terms

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative resolution

Context and purpose

91. Clause 50 enables the Secretary of State to make regulations to ensure consistency between the terms of leases of commonhold units and the provisions of the CCS or Part 1. The powers at Clause 50(1) to (4) allow regulations to provide that lease terms are to be treated as varied or disapplied where they conflict with specified provisions of the CCS or statute. This includes, for example, ensuring that rights and duties under leases do not duplicate or contradict those held by the commonhold association, and that service charge arrangements align with the statutory model for commonhold contributions, and that directors of the commonhold association are instead required to consent to acts under the lease.

Justification for taking the power

92. Leases granted within a commonhold must operate in harmony with the CCS and the statutory framework to avoid legal uncertainty and administrative complexity. Given the wide variety of lease terms and the potential for inconsistency, it is necessary to provide a mechanism to align lease provisions with the commonhold regime. Delegating this power allows the Government to prescribe detailed rules and to respond flexibly to emerging issues in leasehold practice and commonhold implementation. This will ensure that a converted commonhold can operate effectively. While we consider that it will always be necessary to have the flexibility to respond to emerging issues in secondary legislation, we will use the pre-legislative scrutiny process to inform whether the necessary powers can be more targeted.

Justification for the procedure

93. The affirmative procedure is appropriate because the power may affect the legal impact of lease terms and the rights and obligations of landlords and tenants. It ensures that Parliament has the opportunity to scrutinise the content of the regulations before they come into force, providing a safeguard where private contractual arrangements may be overridden or modified by secondary legislation.

Clause 52(6) and (7): Pre-registration leases of qualifying tenants: acquisition of commonhold unit

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative resolution

Context and Purpose

94. Clause 52(6) and (7) enables the Secretary of State to make regulations concerning the process for a qualifying leaseholder to acquire the commonhold of their unit or require it to be acquired by someone else. The regulations will set out the process by which this can happen, the amount payable and how these funds will be distributed, any compensation needed for other affected parties, how the conveyance should occur and also the jurisdiction of the tribunal.

Justification for taking the power

95. These are critical aspects of the process for converting from leasehold to commonhold. These powers have been replicated from section 19 of the 2002 Act. The process for converting and in particular the amount that is payable and how the funds are distributed between the landlord and tenant are of significant public interest. Much of the detail regarding the operation of these rights will be of a technical and detailed nature, suitable for regulations, and would enable the Government to amend the processes in light of emerging practice. However, whilst a substantive amount of detail ought to be set out in regulations, it is appreciated that more detail around the sums payable to parties and other compensation elements should be provided on the face of the Bill that is eventually introduced. Policy development is ongoing in this regard and will benefit from insights gained through the pre-legislative scrutiny process.

Justification for the procedure

96. Given that these regulations will be quite wide ranging and govern the process for conversion and the amount of compensation which is payable to the landlord upon conversion we think it is appropriate to give Parliament full scrutiny.

Clause 53(1), (2), (3) and (4): Leases of commonhold unit – supplementary (HENRY VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative resolution (if amending an Act); otherwise Negative resolution

Context and purpose

97. Clause 53 enables the Secretary of State to make regulations concerning the application of leasehold law to leases of commonhold units. This includes the power to modify or disapply rules of law (whether common law or statutory) (clause 53(1)), and to amend existing legislation, including the Bill itself (clause 53(2)). The clause also allows for tailored treatment of leases of part-units (clause

53(3) and for adjustments to how provisions of the Bill apply to tenants and eligible tenants (clause 53(4)).

Justification for taking the power

98. The interaction between leasehold law and the commonhold framework is complex and may require ongoing refinement to ensure coherence and avoid unintended consequences. Delegating this power allows the Government to respond flexibly to operational issues and to ensure that leasehold rules are appropriately adapted to the commonhold context. The ability to amend legislation is necessary to ensure that the commonhold regime remains workable and legally consistent. The Government has sought to capture all anticipated changes in Schedule 7, and this power is intended only as a backstop provision.

Justification for the procedure

99. Where the power is used to amend primary legislation, the affirmative procedure is appropriate to ensure full parliamentary scrutiny of changes to statutory rights and obligations. Where the power is used for more technical or administrative purposes, such as clarifying the application of leasehold rules or modifying procedural requirements, the negative procedure provides a proportionate level of oversight while allowing for timely updates.

Clause 55(2): Other interests in commonhold unit

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

100. Clause 55 concerns the creation of other interests in a commonhold unit and clause 55(2) sets out a power to specify a description of interest that can only be created in a commonhold unit if the commonhold association either participates directly in creating the interest or gives written consent to its creation.

Justification for taking the power

101. This power provides flexibility and control over what additional property interests can exist in a commonhold unit. The ability to specify certain interests that can be created ensures that unit-holders cannot grant interests which may be detrimental or burdensome to the commonhold association and its other members. Delegating this power also allows the Government to adapt the specified interests to account for new practices, without needing further primary legislation.

Justification for the procedure

102. The negative procedure is appropriate due to the technical nature of the power, as it only extends to which types of interests can be created and does not fundamentally change how existing interests prescribed in the Act can operate.

Clause 56(5) and (6): Common parts: use, insurance, maintenance and building safety

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

103. Clause 56(5) and (6) confer powers to make regulations concerning the risks against which the commonhold association must insure the common parts and the minimum amount of cover, minimum duration of cover, and maximum excess applicable to such insurance. These powers ensure that commonhold associations maintain adequate insurance for the common parts, which is essential for protecting unit-holders and tenants from financial loss and ensuring the resilience of the commonhold structure.

Justification for taking the power

104. The types of risks and insurance standards may evolve over time due to changes in the insurance market, building safety requirements, or emerging risks (e.g. climate-related hazards). Delegating this power allows the Government to update the requirements flexibly and responsively, without needing further primary legislation.

Justification for the procedure

105. The negative procedure is appropriate given the technical and operational nature of the regulations. The power does not affect the core obligation to insure but sets out the detail of how that obligation is to be met.

Clause 57(3)(a) and (5)(a)(i): Transfer of common parts

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

106. Clause 57 makes provision for a commonhold association to transfer the freehold estate in a part of the common parts in certain circumstances. Powers at

clause 57(3)(a) and (5)(a)(i) enable steps to be specified in regulations that the directors of a commonhold association need to take before a resolution for a transfer of the freehold estate in part of the common parts may be passed.

Justification for taking the power

107. The power provides flexibility to set out which procedural steps commonhold association directors should take when a commonhold association and its members are determining whether to transfer (sell off) a common part of the commonhold. Delegating this power allows the Government to update the steps directors must take, without needing further primary legislation.

Justification for the procedure

108. The negative procedure is appropriate given the procedural nature of the regulations. The power does not affect a commonhold's ability to transfer its common parts but sets out the steps directors must take as one part of the circumstances that must be satisfied to make a transfer.

Clause 58(2) and (3): Changes to extent of a commonhold unit and common parts

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

109. Clause 58 governs amendments to the CCS that redefine the boundaries of commonhold units and common parts, including when land moves from a unit to common parts and when land moves from common parts to a unit. Clause 58(2) requires regulations to set out the consent requirements for such amendments, including consent from the unit-holder or eligible tenant and any charge-holder. Clause 58(3) allows regulations to enable the appropriate tribunal to dispense with consent in prescribed circumstances. This supports the administrative and legal consequences of reconfiguring the boundaries between units and common parts, ensuring the land register reflects the updated ownership and charge arrangements.

Justification for taking the power

110. Changes to the physical extent of a unit can affect ownership, financial interests, and legal responsibilities. Delegating the power allows the Government to prescribe procedural safeguards and evidential requirements, and to adjust them over time in response to practical experience. It ensures that the process remains

fair, consistent, and adaptable to different scenarios, achieved promptly and without the need to pass primary legislation.

Justification for the procedure

111. The negative resolution procedure is appropriate because the power relates to procedural and evidential matters rather than substantive policy. It allows for flexibility and responsiveness in updating the regulatory framework, particularly in light of operational experience and stakeholder feedback. The matters covered by the regulations are technical in nature and do not directly affect the core rights or duties of commonhold participants. The negative procedure ensures sufficient parliamentary oversight without imposing unnecessary delay on the implementation of routine or minor changes.

Clause 59(2)(a) to (4)(a)(i): Charges over common parts etc

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

112. Clause 59 makes provision for a commonhold association to create a fixed charge over some or all of the common parts, or a floating charge over the assets of the commonhold association in certain circumstances. Powers at clause 59(2)(a) and (4)(a)(i) enable steps to be specified in regulations that the directors of a commonhold association need to take before a resolution may be passed for the creation of such charges.

Justification for taking the power

113. The power provides flexibility to set out which procedural steps commonhold association directors should take when a commonhold association and its members are determining whether to create a fixed or floating charge. Delegating this power allows the Government to update the steps directors must take, without needing further primary legislation.

Justification for the procedure

114. The negative procedure is appropriate given the procedural nature of the regulations. The power does not affect a commonhold's ability to create a fixed or floating charge but sets out the steps directors must take as one part of the circumstances that must be satisfied to create such a charge.

Clause 62(1) to (5): Code of practice about allocation of expenses of commonhold association

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

115. Clause 62(1) to (5) sets out powers for the Secretary of State to approve a code of practice relating to the fair and proportionate allocation of percentages of commonhold contributions to commonhold units, this power extending to the amendment and revision or withdrawal of such a code (both in draft and issued form), or the approval of only part of a code, with the ability to approve a code making different provisions for different purposes.

Justification for taking the power

116. This power allows for a Code of Practice to be introduced (or revised or withdrawn) to provide guidance on how commonhold contributions should be allocated reasonably and proportionately in all types of commonholds. The ability to amend the code allows for updates to be made in line with developing financial practices or the needs of commonhold associations.

Justification for the procedure

117. The negative procedure is appropriate as the Code will not be legally binding and the contents would be technical and specific in nature. Although not legally binding, the Code could be admissible as evidence in court or tribunal proceedings.

Clause 64(2)(a): Amending purpose of specific reserve fund

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

118. Clause 64 makes provision for where an amendment of a CCS is to be made which varies a provision in it that specifies the purpose of a specific reserve fund. Clause 64(2)(a) contains a power to specify in regulations steps that directors of a commonhold association need to have taken before a resolution can be passed for such an amendment of a CCS.

Justification for taking the power

119. The power provides flexibility to set out which procedural steps commonhold association directors should take before an amendment to the purpose of a specific reserve fund can proceed. For example, this may include providing notice to unit-holders of the intention to amend the fund's purpose, thus improving transparency. Delegating this power allows the Government to update the steps directors must take, without needing further primary legislation.

Justification for the procedure.

120. The negative procedure is appropriate given the procedural nature of the regulations. The power does not affect a commonhold's ability to amend the purpose of a specific reserve fund but sets out the steps directors must take as one part of the circumstances that must be satisfied before an amendment can proceed.

Clause 67(1)(a): Transfer of assets between reserve funds

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

121. Clause 67 makes provision for directors to transfer all or some assets from one reserve fund to another. Clause 67(1)(a) sets out a power to specify in regulations steps that directors of a commonhold association must take before passing a resolution approving such a transfer.

Justification for taking the power

122. The power provides flexibility to set out which procedural steps commonhold association directors should take before the transfer of assets between reserve funds can proceed. For example, this may include providing notice to unit-holders of the intention to amend the fund's purpose, thus improving transparency. Delegating this power allows the Government to update the steps directors must take, without needing further primary legislation.

Justification for the procedure.

123. The negative procedure is appropriate given the procedural nature of the regulations. The power does not affect a commonhold's ability amend the purpose of a specific reserve fund but sets out the steps a director must take as one part of the circumstances that must be satisfied before the transfer of assets between funds can proceed.

Clause 70(3) and (4): Order for sale where commonhold unit is in default

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

124. Clause 70 makes provision for the right of the commonhold association to apply to the court for an order for sale in respect of a commonhold unit where that unit is in default. Per clause 70(3) a unit will be in default where an unpaid amount exceeds a certain threshold, or where commonhold contributions have been overdue for a certain period. Clause 70(3) provides a power to specify the relevant financial threshold or overdue period in regulations by reference to which a commonhold unit will be considered to be in default, and per clause 70(4) the threshold must be at least £500 but not more than £5,000.

Justification for taking the power

125. The financial threshold and overdue period are technical and operational details rather than aspects of substantive rights or consequences under the order for sale measure. These are appropriately provided for in secondary legislation under a power which will enable the Government periodically to respond to inflationary changes and to make necessary revisions to the overdue period to maintain fair and equitable implementation and application of the measure over time.

Justification for the procedure

126. The negative procedure is appropriate given the technical and narrow nature of the powers and their limited impact on substantive rights.

Clause 72(4) and (5): Development rights

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

127. Clause 72 permits a CCS to confer rights on a developer for the purpose of carrying on development business in relation to the commonhold. Clause 72(4) confers a power on the Secretary of State to make regulations regulating or restricting the exercise of such rights, including preventing development rights from being exercised unless specified conditions are met. Under clause 72(5) regulations may specify circumstances in which a developer is or is not to be

regarded as exercising rights for the purpose of “development business” (which is defined in clause 71). The power ensures that the exercise of development rights is subject to appropriate safeguards and is consistent with the intended scope of development activity.

Justification for taking the power

128. The regulation of development rights within commonhold is a technical and evolving area. Delegating this power allows the Government to respond flexibly to emerging practices, market conditions, and stakeholder concerns, including the need to prevent misuse of development rights or to clarify their scope. It also enables the Government to ensure that the balance between developer interests and the rights of unit-holders and the commonhold association is maintained over time.

Justification for the procedure

129. The negative resolution procedure is appropriate given that the power is technical and procedural in nature and does not affect the core framework of commonhold. It allows for timely and proportionate intervention where necessary, without imposing undue burdens on parliamentary time.

Clause 79(3) and (4)(a): Partial transfer: resolution of commonhold association

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

130. Clause 79 sets out how a commonhold association may make a resolution to approve a partial termination statement. This statement sets out the partial transfer company’s proposals for transferring the part to another person for the purposes of developing the transferred part. Clause 79(3) allows for regulations to be made specifying conditions which must be satisfied in the partial transfer company’s articles. Clause 79(4)(a) allows for regulations to specify requirements with which the partial termination statement must comply.

Justification for taking the power

131. Delegating these powers allows the Government to update the conditions and requirements which must be satisfied by the partial termination company’s articles, and the partial termination statement. The clause already sets out factors which

must be satisfied in both instances, but delegating the power will allow for these to be monitored and adjusted if necessary.

Justification of the procedure

132. The negative procedure is appropriate as the power is narrow and technical in nature. It does not impact a commonhold association's ability to apply for a partial termination.

Clause 80(4): Partial transfer: order by court

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

133. Under clause 79, a commonhold association may pass a partial transfer resolution approving a partial transfer statement, which sets out proposals for transferring some commonhold units and common parts to a specified partial transfer company for onward sale to a developer, whereupon such parts cease to be commonhold land. Where a resolution is passed in respect of a partial transfer statement under clause 79 but less than 100% of members of the association voted in favour, the partial transfer company can apply to court for an order determining the terms of the partial transfer statement under clause 80. Clause 80(4) sets out a power to make provision in regulations for factors to be taken into account by the court in determining whether to make an order and the terms of it.

Justification for taking the power

134. Delegating this power allows the Government to update regulations relating to what the court should take into consideration when determining whether to make an order determining the terms of the partial termination application or deciding to dismiss it. This will allow for factors the court must take into account to be updated over time to match changing practices. Factors that may be included here could include the financial position of the commonhold association or the impact of a partial termination on unit-holders who did not vote in favour of the resolution.

Justification for the procedure

135. The negative procedure is appropriate given that the power is technical and guidance-based in nature. This does not affect a commonhold association's ability to make a partial termination application or proceed through the partial termination process but allows for the factors the court must consider to be updated.

Clause 81(6)(d): Partial transfer: applications to Registrar

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

136. Clause 81 sets out, in the case of a partial transfer, the process for applying to the Registrar for the transferring part ceasing to be commonhold land. Clause 81(6)(d) confers a power to set out who may make applications to the Registrar in the case where the partial transfer company does not make an application in the prescribed timeframe.

Justification for taking the power

137. Delegating this power allows the Government to specify additional classes of person who would have standing to make such an application, beyond those already set out in clause 81(6)(a) to (c). This ensures the provision can be updated to reflect changes to the application process should certain classes of persons emerge who would require standing to make such an application.

Justification for the procedure

138. The negative procedure is appropriate as the power is narrow and technical in nature. It does not remove the ability for any existing classes of person set out in clause 81(6)(a) to (c) to make such an application but allows for additional classes of person to be added.

Clause 82(2): Partial transfer: effect

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

139. Under clause 81 applications are to be made to the Registrar by a partial transfer company specified in the partial transfer statement for the transferring part to cease to be commonhold land. Clause 82 makes provision about the effect of such applications to the Registrar. Clause 82(2) provides a power to make further provision in regulations about giving effect to a partial transfer statement where an application is made, including provision conferring jurisdiction on the appropriate tribunal or a court and provision requiring compensation to be paid where the partial transfer statement is not complied with.

Justification for taking the power

140. Partial transfers of commonhold land are likely to be infrequent and occur later in a commonhold's lifecycle. Delegating this power allows the Government to update regulations to remain in line with changing practices, such as those operated by the Land Registry. This also allows for flexibility in relation to whether jurisdiction should be with the court or appropriate tribunal.

Justification for the procedure

141. The negative procedure is appropriate given that the power is technical in nature and limited in its application. This does not affect a commonhold association's ability to make a partial termination application or proceed through the partial transfer process but sets out procedures which must be followed where a partial transfer application is made.

Clause 83(3)(a): Voluntary termination of a commonhold

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

142. Clause 83 sets out the process for the voluntary termination of a commonhold. Clause 83(3) sets out the conditions which a termination statement must meet in order to have effect, and clause 83(3)(a) provides a power to specify requirements a termination statement must comply with.

Justification for taking the power

143. Voluntary terminations of commonhold land are likely to be infrequent and occur later in a commonhold's lifecycle. Delegating this power allows for the requirements which a termination statement resolution must meet to be updated in the future in accordance with changing needs or practices.

Justification for the procedure

144. The negative procedure is appropriate given that the power is technical in nature and limited in its application. This does not affect a commonhold association's ability to make a termination resolution but sets out requirements which must be satisfied in making the resolution.

Clause 85(4) and (8)(c): Duties of liquidator: termination with 100% agreement

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

145. Clause 85 sets out the duties of a liquidator where a commonhold association has passed both a termination statement resolution and a winding-up resolution with unanimous support. Clause 85(4) confers a power to make regulations specifying the factors that the court must take into account when determining the terms of a termination statement to accompany a termination application. This ensures that the court's discretion is exercised in a consistent and policy-aligned manner when overseeing the voluntary termination of a commonhold. Clause 85(8)(c) confers a power to specify a person who may make an application to the court for a termination application if the liquidator fails to do so.

Justification for taking the power

146. The factors relevant to the court's determination of a termination statement may be technical and subject to change in light of experience or evolving policy. Delegating this power allows the Government to provide clear and adaptable guidance to the court, ensuring that the termination process is fair, transparent, and responsive to the interests of all affected parties. There may be circumstances where a liquidator fails to make the requisite termination application and the Government having the ability to make provision in regulations for other persons to do this instead is paramount for the effective implementation and management of the commonhold regime.

Justification for the procedure

147. The negative resolution procedure is appropriate given that the power is limited to guiding judicial discretion and does not itself alter the statutory framework or confer new substantive rights. In terms of specifying persons who can bring termination applications if a liquidator fails to, this is a technical and procedural matter suitable for exercise via the negative procedure. Both powers support the effective and consistent application of the termination process.

Clause 86(6) and (10)(c): Duties of liquidator: termination without 100% agreement

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

148. Clause 86 sets out the duties of a liquidator where a commonhold association has passed a termination statement resolution and a winding-up resolution, but without unanimous support. In such cases, the liquidator must apply to the court for an order determining the terms of the termination statement. Clause 86(6) confers a power to make regulations specifying the factors that the court must take into account when deciding whether to make such an order and in determining its terms. This ensures that the court's discretion is exercised in a manner that reflects relevant policy considerations and promotes consistency in decision-making. Clause 86(10)(c) confers a power to specify a person who may make an application to the court for a termination application if the liquidator fails to do so.

Justification for taking the power

149. The factors relevant to the court's assessment of whether to approve a termination and on what terms may evolve over time, particularly as the commonhold model becomes more established. Delegating this power allows the Government to provide clear and adaptable guidance to the court, informed by experience and consultation, without the need for further primary legislation. There may be circumstances where a liquidator fails to make the requisite termination application and the Government having the ability to make provision in regulations for other persons to do this instead is paramount for the effective implementation and management of the commonhold regime.

Justification for the procedure

150. The negative resolution procedure is appropriate given that the power is limited to guiding the court's discretion and does not itself alter the statutory framework or confer new substantive rights. In terms of specifying the person who can bring termination applications if a liquidator fails to, this is a technical and procedural matter suitable for exercise via the negative procedure. Both powers support the fair and consistent application of the termination process in cases where unanimity has not been achieved.

Clause 90(2): Effect of termination application

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

151. Under clause 85 and 86 commonholds may be terminated with or without 100% agreement of the members of the association. Clause 90 makes provision about giving effect to a termination statement in such circumstances. Clause 90(2) provides a power to make provision in regulations to make further provision about

giving effect to a termination statement, including provision conferring jurisdiction on the appropriate tribunal or a court and provision requiring compensation to be paid where the termination statement is not complied with.

Justification for taking the power

152. The termination of a commonhold is likely to be infrequent and occur later in a commonhold's lifecycle, and the termination statement is the core agreement that all who are party to it must follow when conducting the termination process. Delegating this power allows the flexibility to make provision in regulations about giving effect to a termination statement, allowing updates to be made to reflect changing practices. This also allows for flexibility in relation to whether jurisdiction should be with the court or appropriate tribunal.

Justification for the procedure

153. The negative procedure is appropriate given the technical and procedural nature of the power. It only applies in the context of termination applications and affected parties will already be involved in the termination process. It also does not affect a commonhold association's ability to make a termination application or proceed through the termination process but allows for the jurisdiction to be conferred on the appropriate tribunal or the court.

Clause 96(3), (4), (5) and (6): Compulsory purchase (Henry VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

154. Clause 96 makes provision for where a freehold estate in commonhold land is transferred to a compulsory purchaser and the land ceases to be commonhold land. Clause 96(3) comprises a power to make provision in regulations about the transfer of a freehold estate in commonhold land to a compulsory purchaser. Clause 96(4) contains a power to make provisions on the impact of the transfer, including parts of the commonhold not transferred, requirements for serving notice, conferral of jurisdiction on the court and relevant tribunal, compensation arrangements, allowing a commonhold association to require the purchaser to buy all or part of the commonhold and, per clause 96(4)(f) modifying or excluding the application of enactments relating to compulsory purchase. Clause 96(5) provides, in respect of land not transferred, a power to allow some or all of it to cease being commonhold land and, per clause 96(5)(b), for a provision of Part 1 to apply with modifications.

Justification for taking the power

155. The interaction between compulsory purchase law and the commonhold regime is complex and may require detailed and context-specific provision. These powers replicate those set out for the current commonhold regime in Part 1 of the 2002 Act, at section 60. Delegating this power allows the Government to ensure that the compulsory acquisition of commonhold land is managed in a way that protects the interests of unit-holders, commonhold associations, and acquiring authorities, while maintaining the integrity of the commonhold structure. It also allows for alignment with future changes to compulsory purchase legislation. It may be necessary for modifications to be made to Part 1 for compulsory purchase contexts, and for other enactments to be modified or disapplied to compulsory purchase in commonhold contexts.

Justification for the procedure

156. Whilst there are Henry VIII powers at clause 96(4)(f) and (5)(b), the negative resolution procedure is appropriate given the technical and procedural nature of the regulations. The power is limited to supplementing the statutory framework for compulsory purchase in the context of commonhold and does not affect the core rights of property owners.

Clause 97(1), (2), (3), (4) and (5): Regulations about enforcement of Part 1

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative resolution

Context and purpose

157. Clause 97(1) enables regulations to be made concerning the exercise or enforcement of rights and duties conferred by the CCS, commonhold association's articles, or a provision made under or by virtue of Part 1. Per clause 97(2) and (3) the power enables conferral of jurisdiction on the court or appropriate tribunal, including giving the court or tribunal power to make an order requiring payment of compensation (including payment of interest for late payment) or for parties to take specified steps; and permitting the court or appropriate tribunal to make a declaration about the rights and obligations of parties. The power under clause 97(4) extends to requiring payment of compensation when rights are exercised or duties are breached, giving rights of access (including to carry out works) to enforce rights or duties or in response to breaches, allowing the recovery of costs where works are carried out for enforcement purposes or in connection with a breach, permitting unit-holders, tenants, commonhold associations, and third parties to enforce duties against each other, enabling enforcement of conditions attached to rights, and requiring or allowing dispute resolution methods (e.g. arbitration or mediation) before legal proceedings. Clause 97(5) provides that regulations made under clause 97 are subject to provisions made in the CCS

under clause 30(6). Clause 97 is based on the existing power in section 37 of the 2002 Act; its scope will continue to be assessed as policy development progresses following pre-legislative scrutiny.

Justification for taking the power

158. The enforcement framework for commonhold must be flexible in order to align with the CCS and provision set out in the CCS regulations, and responsive to practical experience. Delegating this power is necessary to enable provision to be made about the exercise and enforcement of rights and duties contained in CCS regulations (to be made under clause 30) in particular, as the detail of these rights and duties will not be known until after the Bill is passed and may change over time. It will allow the Government to develop detailed procedures and remedies that reflect the evolving needs of commonhold communities, without requiring further primary legislation.

Justification for the procedure

159. The affirmative procedure is appropriate given the breadth of the power and the ability to provide for the enforcement remedy resulting from the CCS, articles of association or provision of or made under Part 1, and the number of parties this comprises (unit-holder, commonhold association, tenant, and third parties). The affirmative procedure will ensure that parliamentary scrutiny is given to the enforcement details of a wide range of duties and responsibilities, ensuring the enforcement remedy is appropriate.

Clause 98(1) and (2): Applications to tribunal for declaration as to lawfulness of proposed action

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

160. Under clause 98(1) there is a power to allow a tribunal to decide whether a proposed action regarding a commonhold is lawful under Part 1, considering relevant provisions, the CCS, or the association's articles. Per clause 98(2), regulations may also (among other things) authorise the tribunal to impose conditions on the proposed action and specify the effect of any declaration or order made by the tribunal.

Justification for taking the power

161. Taking this power will enable the Government to provide for applications to be made to the tribunal proactively to determine whether an action taken under relevant provisions, the CCS, or the association's articles would be lawful. This will provide certainty to those permitted to make an application, such as a developer or commonhold association, on whether an action would be considered lawful or not if not explicitly provided for. This power allows flexibility to decide on the actions under relevant provisions, the CCS, or the association's articles that would benefit from a proactive application and provide for these to be refined depending on evolving market needs and stakeholder feedback.

Justification for the procedure

162. The negative procedure is appropriate for this power given the procedural nature of it. The power is limited in scope and will simply provide for an application to the tribunal on whether a particular action is lawful and does not itself amend rights or duties under relevant provisions, the CCS, or the association's articles.

Clause 99(2): The register

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

163. Clause 99(2) provides that regulations made under any provision of Part 1 may confer functions on the Registrar, including discretionary functions.

Justification for taking the power

164. This power ensures HM Land Registry can maintain an accurate register as commonholds are created, varied or terminated. The ability to confer functions on the Registrar ensures flexibility to respond to changes in the market or if commonhold practices change.

Justification for the procedure

165. The negative procedure is appropriate as the power is limited in scope and procedural. It enables the Registrar to take necessary actions to keep the register accurate and up to date.

Clause 100(1), (2), (3) and (4): Rules relating to the register

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

166. Clause 100 sets out powers in relation to the procedure to be followed in relation to commonhold registration documents and how freehold estates in commonhold land are registered.

167. At clause 100(1), there is a power for the Secretary of State to make rules on any matter related to commonhold land that land registration rules cover or may cover and require notice to be given to the Registrar for matters provided under this Part. Clause 100(2) provides that rules are to be made via statutory instruments, in the same way as land registration rules are under the Land Registration Act 2002 and they may cover any matters that may be addressed by land registration rules and may provide for land registration rules to apply to commonhold processes under Part 1 as well. Rules under clause 100(3) may make provision in relation to the format and content of commonhold registration documents and the circumstances under which the Registrar can cancel applications, in particular, in respect of applications with unclear or inaccurate plans, the order of processing registration documents and the effective dates/times for registration, including whether registration may take effect retrospectively. Rules under clause 100(4) may make provision about how requirements in respect of accompanying documents applications may be satisfied, in particular, whether copies instead of originals are permitted, certification requirements and submission of electronic documents.

Justification for taking the power

168. Commonhold land, in relation to both commonhold units and common parts, requires registration at the Land Registry. Delegating this power allows for flexibility in aligning the commonhold registration process with land registration practices, which may change over time. This could include the notice provided to the Registrar relating to changes of the commonhold land, or further detail on procedural requirements, such as forms, the CCS or other documentation which should be provided to the Registrar.

Justification for the procedure

169. The negative procedure is appropriate as the power is limited in scope and procedural. It enables provisions to be made about how commonhold land applications are to be submitted by the party registered as the commonhold, and how this is to be processed by the Registrar.

PART 2: New Leasehold Flats (Flat Ban)

Clause 118(2)(c), (3), (3)(c) and (4): Permitted leases: transaction warning conditions

Power conferred on: Secretary of State/Welsh Ministers

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

170. Clause 118 sets out the requirements for transaction warning conditions to be met before a permitted lease of a flat in a relevant building may be granted or agreed. These conditions are intended to ensure that prospective tenants are properly informed about the nature of the lease and its permitted status under the regime introduced in Part 2 of the Bill. Powers are set out in clause 118 to specify or describe in regulations the details and information to be contained in a warning notice and are essential to operationalise the transaction warning regime and ensure consistency and clarity in its application.

171. Clause 118(2)(c) contains a power to make regulations making provision for the manner of endorsement of a warning notice and notices of receipt of such notices on relevant instruments. Clauses 118(3) and (4) set out powers to make regulations specifying the form and manner of a warning notice and notice of receipt respectively. Clause 118(3)(c) contains a power to make regulations specifying information that must be contained in a warning notice.

Justification for taking the power

172. The matters to be prescribed are procedural and technical in nature and may require amendment over time to reflect changes in practice, consumer protection standards, or feedback from stakeholders. Delegating these to secondary legislation allows for flexibility and responsiveness without the need for further primary legislation.

Justification for the procedure

173. The negative resolution procedure is considered appropriate given the limited scope of the power and its focus on procedural detail. The powers do not permit substantive changes to the policy framework established by the Bill.

Clause 128(6): Financial penalties (Henry VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

174. Clause 128 makes provision for an enforcement authority to impose a financial penalty on a person if the person has breached a leasehold flat restriction. At clause 128(6) there is a power to make provision in regulations to amend the financial penalties range in clause 128(2) (which are presently between £500 and £30,000) to reflect a change in the value of money.

Justification for taking the power

175. Inflation will change the value of money over time and it will be necessary to change the financial penalties range in clause 128(2) from time to time. This power is necessary to enable the Government to make small changes as required from time to time to reflect such changes without needing to pass primary legislation to make them.

Justification for the procedure

176. The negative procedure is appropriate for the exercise of this power. Whilst this is a power to amend primary legislation, it is narrow in scope and does not warrant the increased level of parliamentary scrutiny afforded by the affirmative procedure.

Clause 130(4) and (5): Lead enforcement authority

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

177. Clause 130 makes provision for the Secretary of State to be the “lead enforcement authority” in respect of enforcement of the new leasehold flat ban measure, or to appoint a person to this role, including a local weights and measures authority in England and Wales. Clauses 130(4) and (5) provide powers to make transitional or saving provision where there is a change in lead enforcement authority, both in the context of a specific change in the authority or general changes arising periodically.

Justification for taking the power

178. The power is necessary to ensure continuity and legal certainty when responsibility for enforcement transfers from one authority to another. Without transitional or saving provisions, there could be gaps in enforcement, uncertainty

about ongoing investigations, or issues with the validity of prior actions taken by the former lead authority. These matters are unsuitable for inclusion in primary legislation as they require flexibility to enable the Government to respond to practical issues that may arise during implementation.

Justification for the procedure

179. The negative resolution procedure is considered appropriate given the limited scope of the power and its focus on procedural detail. The powers do not permit substantive changes to the new leasehold flat ban framework established by the Bill.

Clause 134(1) and (2): Power to amend: permitted leases and definitions (Henry VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative resolution where amending definitions under clause 134(1)(a) or amending Schedule 8 under clause 134(1)(b) to add a category of lease; Negative resolution for any other amendments to Schedule 8.

Context and purpose

180. Clause 134(1)(a) sets out a power to amend the definitions in clause 110 (long residential lease of a flat and long residential lease of a flat in a relevant building), clause 111 (a long term), clause 114 (a flat), and clause 115 (flat which forms parts of a building). Clause 134(1)(b) provides for a power to amend Schedule 8 (categories of permitted leases outside commonhold). Clause 134(2) enables regulations made under clause 134, by virtue of clause 161(5) (consequential etc. provision), to include amendment or repeal of any provision in Part 2. Clause 136(2) is also a further Henry VIII power which is limited to consequential etc. changes that need to be made to Part 2.

Justification for taking the power

181. The new leasehold flat ban measures in Part 2 will be viewed as controversial. The powers in clause 134(1) will enable the Government to respond to any evidence of exploitation of the definitions and the categories of permitted residential long leases by changing these to include novel ownership structures or property designs that would otherwise circumvent the policy underpinning the measures. Equally, there may be new special purpose lease products that the Government wishes to accommodate in the property market, for example, new forms of lease-based home finance products, which need to be added to the categories of permitted leases in Schedule 8. The power will enable the Government to react responsively and promptly, without having to enact new

primary legislation to protect the effective and efficient operation of the new leasehold flat restriction measures.

Justification for the procedure

182. Whilst these powers do enable discrete, though fundamental, elements of the new leasehold flat restriction measures in Part 2 to be amended in the Bill, these Henry VIII powers are narrow and circumscribed to the stated purposes. The powers under clause 134(1)(a) to amend definitions and clause 134(1)(b) to add a category of lease to Schedule 8 are to be exercised via the affirmative procedure to afford increased scrutiny. Regulations making any other amendments to Schedule 8 are to be made by the negative resolution procedure which is appropriate as any such amendments would be limited to technical details and would not permit substantive changes to the framework of permitted leases established by the Bill.

PART 3: Ground rent

183. Powers in Schedule 13.

PART 4: Enforcement of Long Residential Leases

Clause 1424(2): Explanatory statements

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

184. Clause 1424(2) confers a power to make regulations concerning the form and manner in which an explanatory statement in relation to a lease enforcement claim must be given to tenants and the information that must be included in the explanatory statement.

185. The purpose of the explanatory statement is to ensure tenants receive clear, advance notice of the lease enforcement claim and the circumstances in which a claim may be brought against them. By setting out the risks associated with non-compliance upfront, the explanatory statement aims to prevent breaches arising in the first place. It also empowers tenants to understand their rights and obligations, so that if a claim is made, they can respond appropriately and seek advice where necessary.

Justification for taking the power

186. The procedural details of how and when an explanatory statement must be given, and the information that must be included within, are appropriately set out in secondary legislation. This allows the Government flexibility to adapt the process over time in response to operational experience and stakeholder feedback, without requiring further primary legislation.

Justification for the procedure

187. The negative procedure is appropriate given the procedural and administrative nature of the regulations. The power does not affect substantive rights, but ensures tenants are properly informed about the lease enforcement claim.

Clause 144(1) and (2): Requirements in relation to financial breaches

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

188. Clause 144 makes provision for requirements that must be met in relation to financial breaches before a landlord can make a lease enforcement claim. Per clause 144(1) the unpaid amount must exceed a certain threshold, or have been overdue for a certain period, with the power to specify the threshold and period in regulations. The amount specified must not be less than £500 or more than £5,000 per clause 144(2).

Justification for taking the power

189. The financial threshold and overdue period are technical and operational details rather than aspects of substantive rights or consequences under the lease enforcement scheme measure. These are appropriately provided for in secondary legislation under a power which will enable the Government periodically to respond to inflationary changes and to make necessary revisions to the overdue period to maintain fair and equitable implementation and application of the measure over time.

Justification for the procedure

190. The negative procedure is appropriate given the technical and narrow nature of the powers and their limited impact on substantive rights.

Clause 145(4): Final determination of breach

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

191. Clause 145 makes provision for how a final determination of a breach of a long residential lease may be obtained through applications to a court, an arbitral tribunal or the appropriate tribunal. Clause 145(4) confers a power to make regulations specifying the form and manner in which notice of an application to the court or tribunal for a determination that a breach has occurred must be given to the tenant and other relevant parties and the information that must be included in the notice. The purpose of requiring a landlord to give notice before applying to the court for a breach determination is to ensure the tenant and other interested parties—particularly any mortgage lender—are aware that enforcement action may follow. This notice provides an opportunity for the breach to be remedied before formal proceedings begin.

Justification for taking the power

192. The procedural details of how and when notice must be given, and the information that must be included within the notice, are appropriately set out in secondary legislation. This allows the Government flexibility to adapt the process over time in response to operational experience and stakeholder feedback, without requiring further primary legislation.

Justification for the procedure

193. The negative procedure is appropriate given the procedural and administrative nature of the regulations. The power does not affect substantive rights, but ensures tenants and lenders are aware of the risk of lease enforcement action being taken and are given an early opportunity to remedy the breach.

Clause 146(6): Lease enforcement notices

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

194. Clause 146 makes provision for lease enforcement notices, which must be served by a landlord ahead of bringing a lease enforcement claim in respect of a breach of covenant under a long residential lease. Clause 146(6) confers a power to make regulations specifying the form and manner of the lease enforcement notice, explaining that a lease enforcement claim will be made, and how it will be

given to tenants and the information that must be included in the notice. The purpose of requiring a landlord to give notice before bringing a lease enforcement claim is to confirm that the statutory conditions for enforcement have been met and to give the tenant a final opportunity to remedy the breach before formal proceedings commence.

Justification for taking the power

195. The procedural details of how and when notice must be given, and the information that must be included within the notice, are appropriately set out in secondary legislation. This allows the Government flexibility to adapt the process over time in response to operational experience and stakeholder feedback, without requiring further primary legislation.

Justification for the procedure

196. The negative procedure is appropriate given the procedural and administrative nature of the regulations. The power does not affect substantive rights but ensures tenants and other affected parties are aware of the risk of lease enforcement action being taken and are given an opportunity to remedy the breach.

Clause 151(6): Orders for sale: power to order termination of sub-leases (Henry VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

197. Clause 151 makes provision for orders for sale to be made by the court in response to a lease enforcement claim in certain circumstances. Per clause 151(2), if a court orders the sale of a head lease, it may also terminate any sub-lease upon completion of the sale, provided the court considers this fair and reasonable in the circumstances. Under clause 151(6) there is a power to amend clause 151 to restrict the court's ability to make an order under clause 151, either by prohibiting such orders in specified circumstances or by requiring certain conditions to be met.

Justification for taking the power

198. The court's power in clause 151 is intended to give the court flexibility to deal with cases where continuing the sub-lease would be unreasonable or unfair. Determining the circumstances in which a sub-lease should be extinguished on the sale will involve the court balancing competing interests of the affected parties. The power in subsection (6) is considered necessary because these interests may

evolve over time, and it is important for the Government to retain the ability to restrict or condition the court's discretion in response to operational experience and stakeholder feedback, without requiring further primary legislation.

Justification for the procedure

199. The negative procedure is appropriate because the power is limited in scope. It can only be used to specify circumstances or conditions governing the court's discretion under clause 151, rather than to create new substantive rights or obligations.

Clause 152(4)(b): Costs orders

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

200. Clause 152(4)(b) confers a power on the Secretary of State to make provision in regulations for matters the court must take into account in deciding whether to make a costs order and the amount to be paid under such an order. This is intended to ensure a consistent and transparent approach to costs in lease enforcement proceedings and to allow alignment with section 62 of the Leasehold and Freehold Reform Act 2024 ("the 2024 Act") when it is fully implemented.

Justification for taking the power

201. The detail of what factors should guide judicial discretion on costs may need to evolve in light of operational experience, stakeholder feedback and the implementation of related provisions under section 62 of the 2024 Act, which the Government can take account of in making regulations in this regard, without requiring further primary legislation.

Justification for the procedure

202. The negative resolution procedure is appropriate because the power is limited to prescribing considerations for judicial decision-making on costs, rather than creating new substantive rights or obligations.

PART 5: Estate rentcharges etc

There are no delegated powers for Part 5.

PART 6: General provision

Clause 158(1) and (2): Power to make consequential amendments (Henry VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative resolution where an Act of Parliament is amended, negative resolution in all other cases.

Context and purpose

203. Clause 158(1) empowers the Secretary of State to make provision in regulations for consequential amendments to the Bill. Under clause 158(2), regulations made under clause 158 may amend or repeal Acts passed before the Bill or later in the same session of Parliament as the Bill.

Justification for taking the power

204. The power under clause 158(1) to make regulations for consequential amendments, and under clause 158(2) to amend or repeal Acts passed before or in the same session, is necessary to ensure the Bill operates effectively within the wider legislative framework. Primary legislation cannot anticipate every interaction with existing statutes or future provisions enacted during the same session. This delegated power provides flexibility to make timely adjustments without requiring further primary legislation, avoiding delays in implementation. The power will enable technical precision, as consequential amendments often involve detailed, cross-referencing changes that would be unsuitable for inclusion, in full, in the Bill itself. The power will promote legislative coherence, ensuring that related statutes remain consistent and functional after the Bill's enactment. Crucially, without this power, there is a significant risk of inconsistencies or gaps in the statute book, which could undermine legal certainty and the effective operation of the Bill.

Justification for the procedure

205. Whilst clause 158 allows consequential amendments to be made, these amendments are limited in scope to ensuring the Bill fits coherently within existing legislation, the power is very broad and it is appropriate for the affirmative procedure to apply where an Act of Parliament is being amended. Where regulations are not amending an Act of Parliament, the negative procedure provides an appropriate and proportionate level of parliamentary oversight for technical, non-controversial amendments.

Clause 159 (rules): Court or tribunal rules

Power conferred on: Civil Procedure Rules Committee/Tribunal Procedure Committee/Welsh Ministers

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

206. The power provides for court rules or tribunal procedure rules to make provision about proceedings under or by virtue of any provision in the Bill or proceedings brought relating to commonhold land within the meaning of Part 1.

Justification for taking the procedure

207. This power makes clear that court rules or tribunal procedure rules may make provision for dealing with proceedings brought under any provision of the Bill or Part 1 in relation to commonhold land. This will ensure that court and tribunal rules can account for such proceedings.

Justification for the procedure

208. The negative resolution is appropriate for this power given its procedural and technical nature.

Clause 161(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12): Regulations

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

209. Essentially, clause 161 provides the machinery for delegated legislation under the Bill, ensuring clarity on who exercises the powers, the scope of those powers, and the level of parliamentary oversight. Clauses 161(1) and (2) designate who may make regulations under the Bill, this being the Secretary of State, save where regulations are being made under clause 118 (permitted leases: transaction warning conditions) in which case regulations are to be made by the Secretary of State for England and the Welsh Ministers for Wales. Clause 161(3) and (4)1 permits different provisions for different purposes, types of land, commonhold units, or categories of leaseholders, ensuring tailored regulations. Clause 161(5) allows regulations to include consequential, supplementary, incidental, transitional, or saving provisions, which are essential for smooth implementation and clause 162(6) and (7) confirms regulations are made by statutory instrument.

Clauses 162(8) and (9) identify which regulations require affirmative procedure (e.g. those that amend or repeal Acts or add categories of leases). Clause 162(10) and (11) confirm that all other regulations are subject to the negative procedure and where regulations are made by the Welsh Minister this will be subject to the annulment procedure. Clause 161(12) clarifies that this section does not apply to regulations under section 163.

Justification for taking the power

210. The power to make regulations under clause 162 is essential to provide flexibility and ensure the effective implementation of the Bill. The Bill establishes a complex framework for commonhold and leasehold reform, which requires detailed and technical provisions that cannot be fully set out in primary legislation without making it unwieldy. Delegating these matters allows the Government to adapt and respond to practical issues and evolving circumstances without the need for further primary legislation. Many provisions involve intricate definitions, classifications, and transitional arrangements that are unsuitable for inclusion in the Bill itself, and such technical detail is more appropriately set out in regulations which can be revised from time to time as policy is tweaked in response to practical experience following implementation of the reforms. The power promotes consistency and coherence through enabling consequential, supplementary, and transitional provisions to be made, to ensure the statute book operates smoothly.

Justification for the procedure

211. The majority of regulations made under the Bill deal with technical and administrative detail necessary to give effect to the primary legislation. These provisions do not introduce new policy or impose significant obligations, and the negative procedure affords a sufficient level of scrutiny.

Clause 163(3), (4), (5), (6) and (7): Commencement and transitional provision

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

212. Clause 163 sets out a commencement power. Part 6 is commenced on the date the Bill becomes an Act. Part 5 comes into force two months following Royal Assent. Clause 163(3) gives the Secretary of State power to appoint by regulations the day or days on which all other provisions of the Act come into force. This is a standard commencement power, allowing flexibility in bringing provisions into effect at appropriate times. Clause 163(4) empowers the Secretary of State to make transitional or saving provisions in connection with commencement, with clause 163(5) allowing different provision to be made for different purposes,

ensuring adaptability during implementation. Regulations under clause 164(3) commencing section 107(1) (which repeals Part 1 of the Commonhold and Leasehold Reform Act 2002) may repeal or amend provisions of the Commonhold Regulations 2004 (S.I. 2004/182 and the Commonhold (Land Registration) Rules 2004 (S.I. 2004/1830). Clause 163(7) confirms that regulations under this clause are made by statutory instrument.

Justification for taking the power

213. The power in clause 163 is necessary to provide flexibility in bringing the provisions of the Bill into force and to ensure a smooth transition from the existing legal framework. Commencement dates often depend on practical considerations such as readiness of administrative systems, stakeholder engagement, and the need to phase implementation. It would not be practical to fix all commencement dates on the face of the Bill. The power to make transitional and saving provisions is equally essential to avoid disruption and uncertainty during implementation and allows the preservation of existing rights or obligations and the effective management of the transition between old and new regimes. Such powers are standard for complex legislation and ensures operational flexibility to commence provisions at appropriate times, legal certainty by addressing transitional issues and efficiency by avoiding the need for further primary legislation for commencement and transitional arrangements.

Justification for the procedure

214. Regulations made under this power are limited to commencement and transitional or saving provisions. These are purely administrative and technical in nature, designed to bring provisions of the Bill into force at appropriate times and to manage the transition from the old legal framework to the new one. They do not involve substantive policy decisions or impose significant obligations, and the negative procedure is therefore appropriate.

Schedules

Schedule 2

Paragraph 1(2): Categories of permitted long residential leases in commonhold

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

215. Paragraph 1 of Schedule 2 sets out criteria that a lease needs to fulfil to be a shared ownership lease and accordingly a category of permitted long residential lease in commonhold. Under paragraph 1(2), regulations may specify descriptions of leases for which conditions C (lease allows staircasing to 100%) and D (transfer of freehold on 100% staircasing) do not need to be satisfied.

Justification for taking the power

216. The power to disapply conditions C and D for certain lease descriptions is necessary to ensure flexibility in regulating permitted long residential leases within commonhold. The Bill sets out core conditions (A to D) to maintain consistency, but it cannot anticipate all future market developments or specialist lease structures. Delegating these powers allows regulations to respond to emerging shared ownership lease models or policy changes without requiring new primary legislation.

Justification for the procedure

217. These powers are limited to technical detail within the framework set by the Bill and do not involve creating new policy or altering the fundamental structure of the commonhold regime. They are intended to ensure flexibility and practicality in implementing the permitted lease categories. The negative procedure is therefore suitable.

Schedule 3

Paragraph 2(5): Commonhold Finances: Part 1: Contributions statements and reserve fund statements

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

218. Under paragraph 2(5) of Part 1 of Schedule 3, regulations may specify the circumstances in relation to local provision (provisions specific to a particular commonhold, as opposed to applicable to all commonholds (universal provision)) in which a contributions statement or reserve fund statement (or part of it) do not require approval by resolution of the commonhold association. This power ensures flexibility in the approval process for financial statements, allowing exceptions to be defined for practical or urgent situations.

Justification for taking the power

219. This power is necessary to provide flexibility in the financial governance of commonhold associations. While the Bill establishes a general rule requiring approval by resolution, it cannot anticipate all situations where this requirement may be impractical or unnecessary. Delegating this power allows the Government to respond to operational realities, such as urgent repairs or exceptional circumstances that need to be accommodated in CCSs, without requiring further primary legislation. The circumstances requiring exemption are likely to be detailed and subject to change, making them unsuitable for inclusion in the Bill.

Justification for the procedure

220. The power enables regulations of a technical and administrative nature to be made within the framework set by the Bill. It does not create new policy or alter the fundamental governance structure of commonhold associations, rather it provides flexibility for exceptional or practical situations. In light of this, the negative procedure is appropriate.

Paragraph 10(3) and (4): Commonhold Finances: Part 3: Costs thresholds for non-essential expenses

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

221. Paragraph 10 concerns amendments to the CCS which vary or delete a costs threshold provision. Paragraphs 10(3) and (4) enable provisions to be made in regulations specifying the steps that the directors of a commonhold association must take before such amendment can be made.

Justification for taking the power

222. The steps that directors need to take may involve procedural or evidential requirements that are too detailed and subject to change to be set out in primary legislation. Delegating this allows flexible adjustments without amending the Bill. As the commonhold reforms are implemented the practical needs of the regime may evolve and the powers will allow the procedure to be updated to reflect best practice or to respond to emerging issues promptly, and without requiring new primary legislation.

Justification for the procedure

223. The power being delegated is narrow and technical; it only allows regulations to specify procedural steps that directors must take before an amendment to the

CCS can be made. These steps are administrative in nature and do not involve substantive policy decisions, and the negative procedure is therefore justified.

Schedule 4

Paragraph 2(5) and (9): Requirements for notice before applying for an order for sale

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

224. Paragraph 2 concerns service of an enforcement notice by the commonhold association before applying for an order for sale in respect of a commonhold unit. Paragraph 2(5) sets out a power to specify the form and manner in which an enforcement notice must be given, as well as the information that an enforcement notice must include. Paragraph 2(9) enables the minimum remedy period (set at 28 days in paragraph 2(4)) to be amended.

Justification for taking the power

225. The form, manner and content of enforcement notices will concern a lot of technical and procedural requirements which will be too detailed for primary legislation and delegating this power to make provision in regulations will facilitate clarity and uniformity without overburdening the Bill. With regards to the minimum remedy period, this may need adjustment over time to reflect changes in practice, technology, or fairness considerations and delegating this power will enable timely updates without requiring new primary legislation.

Justification for the procedure

226. The delegated powers in this provision are limited to technical and procedural matters specifying the form, manner, and content of enforcement notices and adjusting the minimum remedy period. As they do not involve substantive policy changes or affect fundamental rights and they simply ensure clarity and consistency in the enforcement process, the negative procedure is appropriate.

Paragraph 7(5): Power to extinguish leases (Henry VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

227. Paragraph 7 concerns supplementary powers of the court where an order for sale of a commonhold unit is made. Paragraph 7(2) provides that the court may order that a lease of a unit is to be extinguished if the court considers that it is fair and reasonable in all the circumstances for the lease to be extinguished, having regard to certain factors. Paragraph 7(5) sets out a power to amend paragraph 7 to make provision preventing the court from extinguishing a lease under paragraph 7(2) in certain circumstances, or unless certain conditions are met.

Justification for taking the power

228. The court's power in paragraph 7 is intended to give the court flexibility to deal with cases where continuing the lease would be unreasonable or unfair. Determining the circumstances in which a lease should be extinguished on the sale will involve the court balancing competing interests of unit-holders, tenants, lenders, and commonhold associations. The power in clause 7(5) is considered necessary because these interests may evolve over time, and it is important for the Government to retain the ability to restrict or condition the court's discretion in response to operational experience and stakeholder feedback, without requiring further primary legislation.

Justification for the procedure

229. The negative procedure is appropriate because the power is limited in scope. It can only be used to specify circumstances or conditions governing the court's discretion under paragraph 7(2), rather than to create new substantive rights or obligations.

Schedule 7

Paragraph 9(10): Leasehold Reform, Housing and Urban Development Act 1993 (Henry VIII power)

Power conferred on: Secretary of State (in relation to England), Welsh Ministers (in relation to Wales)

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative resolution

Context and purpose

230. Paragraph 9(10) of Schedule 7 provides a power to amend the cost rules applicable where leaseholders are enfranchising for the purposes of a conversion to commonhold. Leaseholders who wish to convert their building to commonhold, where the freeholder does not agree, must first acquire their freehold under the collective enfranchisement process set out in the Leasehold Reform, Housing and

Urban Development Act 1993. The 1993 Act sets out the costs that shall be payable to the freeholder when acquiring the freehold compulsorily (to be amended by the commencement of section 39 of the Leasehold and Freehold Reform Act 2024). We have designed a mechanism where leaseholders can streamline the processes of acquiring and converting their building to commonhold. At this stage, it is unclear whether the costs involved in pursuing the streamlined process will differ from a standard collective enfranchisement.

Justification for taking the power

231. The power will enable the Government to consider evidence during pre-legislative scrutiny regarding the costs that should be payable to the freeholder and other parties where leaseholders are both acquiring and converting and make provision accordingly. It is however intended that such provisions would be made on the face of the final Bill that is introduced, rather than within regulations.

Justification for the procedure

232. Given that the costs payable are an important aspect of the claim, it is appropriate for any regulations affecting such costs to be made under the affirmative procedure. However, as indicated above, such provisions will be made on the face of the Bill.

Paragraph 21(6): Leasehold and Freehold Reform Act 2024 (Henry VIII power)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative resolution

Context and purpose

233. Paragraph 21(6) of Schedule 7 sets out a power to amend the price payable where leaseholders are enfranchising for the purposes of a conversion to commonhold. Leaseholders who wish to convert their building to commonhold, where the freeholder does not agree, must first acquire their freehold under the collective enfranchisement process set out in the Leasehold Reform, Housing and Urban Development Act 1993. The 1993 Act sets out the compensation that shall be payable to the freeholder, and other affected parties when acquiring the freehold compulsorily (to be amended by the commencement of section 39 of the Leasehold and Freehold Reform Act 2024). We have designed a mechanism where leaseholders can streamline the processes of acquiring and converting their building to commonhold. It may be necessary to make certain modifications to these provisions to account for the fact that leaseholders will be converting immediately following the acquisition, and to correctly reflect the interests being acquired.

Justification for taking the power

234. The Government will consider evidence during pre-legislative scrutiny process regarding the compensation that should be payable to the freeholder and other parties where leaseholders are both acquiring and converting and make provision accordingly. It is however intended that such provisions would be made on the face of the final Bill, rather than within regulations.

Justification for the procedure

235. Given that the amounts payable are an important aspect of the claim, it is appropriate for any regulations affecting such compensation to be made under the affirmative procedure. However, as indicated above, such provisions will be made on the face of the Bill.

Schedule 9

Paragraph 1(2)(j), 1(3)(d) and 1(4): Right to acquire a commonhold unit under section 122: Exercise of right by claim notice

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

236. Paragraph 1 makes provision for exercising the right to acquire a commonhold unit under clause 122 by serving a claim notice. The right under clause 122 is a redress measure where a long residential lease of a flat on commonhold land has been granted or assigned in contravention of the new leasehold flat ban measure under Part 2. Paragraphs 1(2)(j), (3)(d) and (4) set out powers to specify in regulations additional information that must be included in a claim notice, additional documents that must accompany a claim notice and the form and manner in which a claim notice must be given.

Justification for taking the power

237. The technical requirements for claim notices exercising the right to acquire involve practical and administrative details that are too granular for primary legislation. Delegating this ensures clarity and detail without overloading the Bill. The process for exercising the right to acquire may need to adapt to changes in conveyancing practice and technology. These powers allow the Government to make timely updates without new primary legislation, as well as enabling the Government to respond quickly to emerging issues or best practice developments.

Justification for the procedure

238. The powers are limited to making provision for procedural matters and technical details designed to ensure clarity and consistency in the process of exercising the right to acquire a commonhold unit. The powers do not alter the substantive right to acquire, and the negative procedure is therefore suitable in terms of the level of parliamentary scrutiny.

Paragraph 2(5)(b), 2(6)(b) and 2(7): Right to acquire a commonhold unit under section 122: Response notice

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

239. Paragraph 2 makes provision in respect of a response notice that may be served in respect of a claim notice in relation to the right to acquire a commonhold unit under clause 122. Paragraphs 2(5)(b), (6)(b) and (7) set out powers to specify in regulations additional information that must be included in a response notice, additional documents that must accompany a response notice and the form and manner in which a response notice must be given.

Justification for taking the power

240. The technical requirements for response notices involve practical and administrative details that are too granular for primary legislation. Delegating this ensures clarity and detail without overloading the Bill. The process for exercising the right to acquire, including the requirements for response notices, may need to adapt to changes in conveyancing practice and technology. These powers allow the Government to make timely updates without new primary legislation, as well as enabling the Government to respond quickly to emerging issues or best practice developments.

Justification for the procedure

241. The powers are limited to making provision for procedural matters and technical details designed to ensure clarity and consistency in the process of responding to a person exercising the right to acquire a commonhold unit. The powers do not alter the substantive right to acquire, nor the substantive right to respond to a claim notice, and the negative procedure is therefore suitable in terms of the level of parliamentary scrutiny.

**Paragraph 3(2)(b): Right to acquire a commonhold unit under section 122:
Requirements where claim accepted**

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

242. Paragraph 3 sets out requirements in respect of the transfer of the freehold where a claim to acquire a commonhold unit has been accepted by the unit-holder. The unit-holder must notify certain persons of the transfer of the freehold estate, and paragraph 3(2)(b) enables the form and manner of that notification to be prescribed in regulations.

Justification for taking the power

243. The requirements for notifying persons with a proprietary interest involve practical details—format, delivery method, and content—that are too granular for primary legislation. Delegating this ensures clarity and uniformity and enables processes and formalities to be adapted to, for example, developments in technology, allowing timely updates without amending the Bill.

Justification for the procedure

244. The power here is limited to specifying the form and manner of notifications when a freehold transfer occurs under the right to acquire and the unit-holder has accepted the claim. This is a technical and administrative matter, not a substantive policy change, as these changes do not affect property rights or the fundamental structure of the right to acquire. For these reasons, the negative procedure is appropriate as it provides sufficient parliamentary oversight for a power that is narrow and targeted.

Schedule 10

Paragraph 1(2)(k), 1(3)(d) and 1(4): Right to conversion to commonhold under section 123: Exercise of right by claim notice

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

245. Paragraph 1 makes provision in respect of the right to convert to commonhold under clause 123 and the claim notice that needs to be served to exercise this right. Paragraphs 1(2)(k), (3)(d) and (4) enable regulations to specify additional information that must be included in a claim notice, additional documents that must accompany the claim notice and the form and manner in which the claim notice must be given.

Justification for taking the power

246. These powers are necessary as the requirements for claim notices in the exercise of the right to conversion will involve technical, practical and administrative details that are too granular for primary legislation. Delegating this ensures clarity and uniformity without overcomplicating the Bill. The powers will also enable the Government to adapt the requirements in respect of claim notices in response to practical issues that become apparent as the reformed regime is implemented and once it is in operation, without amending the Bill.

Justification for the procedure

247. The powers are limited to making provision for procedural matters and technical details that do not alter the substantive right to conversion, which is set out in primary legislation. These technical details are intended to ensure clarity and consistency in the process of exercising the right to conversion. Therefore, the negative procedure provides appropriate parliamentary oversight.

Paragraph 3(5)(c), 3(6)(b) and 3(7): Right to conversion to commonhold under section 123: Response notice

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

248. Paragraph 3 makes provision in respect of a response notice that may be served in respect of a claim notice exercising the right to convert to commonhold under clause 123. Paragraphs 3(5)(c), (6)(b) and (7) set out powers to specify in regulations additional information that must be included in a response notice, additional documents that must accompany a response notice and the form and manner in which a response notice must be given.

Justification for taking the power

249. The technical requirements for response notices involve practical and administrative details that are too granular for primary legislation. Delegating this ensures clarity and detail without overloading the Bill. The process for exercising

the right to convert to commonhold, including the requirements for response notices, may need to adapt to changes in conveyancing practice and technology. These powers allow the Government to make timely updates without new primary legislation, as well as enabling the Government to respond quickly to emerging issues or best practice developments.

Justification for the procedure

250. The powers are limited to making provision for procedural matters and technical details designed to ensure clarity and consistency in the process of exercising the right to convert to commonhold. The powers do not alter the substantive right to acquire, nor the substantive right to respond to a claim notice, and the negative procedure is therefore suitable in terms of the level of parliamentary scrutiny.

Paragraph 4(2)(b): Right to conversion to commonhold under section 123: Requirements where claim accepted

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

251. Paragraph 4 sets out requirements in respect of registering a freehold estate in commonhold land where a claim to convert a commonhold unit has been accepted by the registered proprietor of the freehold estate in the land in respect of which the claim is made. The registered proprietor must notify certain persons that they have applied to register the freehold estate in commonhold land, and paragraph 4(2)(b) enables the form and manner of that notification to be prescribed in regulations.

Justification for taking the power

252. The requirements for notifying parties with a relevant proprietary interest involve practical details—format, delivery method, and content—that are too granular for primary legislation. Delegating this ensures clarity and uniformity and enables processes and formalities to be adapted to, for example, developments in technology, allowing timely updates without amending the Bill.

Justification for the procedure

253. The power here is limited to specifying the form and manner of notifications when the registration of a freehold estate in commonhold land occurs under the right to conversion. This is a technical and administrative matter, not a substantive policy change, as any changes to the notification process do not affect property rights or the fundamental structure of the right to conversion. For these reasons,

the negative procedure is appropriate as it provides sufficient parliamentary oversight for a power that is narrow and targeted.

Paragraph 4(4): Right to conversion to commonhold under section 123: Requirements where claim accepted (Henry VIII)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative resolution (paragraph 4(4)(a)
Negative resolution (paragraph 4(4)(b) and (c))

Context and purpose

254. Paragraph 4 sets out requirements in respect of registering a freehold estate in commonhold land where a claim to convert a commonhold unit has been accepted by the registered proprietor of the freehold estate in the land subject to the conversion claim (“the recipient of the claim notice”). Paragraph 4(4) sets out a power to modify or disapply provisions of Part 1 for applications under paragraph 4(2)(a) (application to the Chief Land Registrar for registration of the land subject to the conversion claim as a freehold estate in commonhold land). This power extends to imposing additional requirements on such applications and specifying information that must be included in notices under paragraph 4(2)(b) (requirement of the recipient of the claim notice to notify certain persons of the application to register the freehold estate in commonhold land).

Justification for taking the power

255. The conversion of long residential leasehold flats to commonhold involves complex procedural and technical requirements, in terms of detailed notice contents and applicable procedures. These matters are unsuitable for inclusion in primary legislation because they require technical precision and may need frequent updating to reflect changes in practice or technology. The reformed commonhold conversion process will constitute a new regime and may reveal operational difficulties that require urgent correction. Without this power, resolving such issues would require the Government to amend primary legislation, which is disproportionate for technical adjustments.

Justification for the procedure

256. The power under paragraph 4(4)(a) is a Henry VIII power and exercise of this power is likely to occasion changes that can have a material impact on the statutory framework governing commonhold conversion. Parliamentary oversight is essential to ensure that any exercise of this power is proportionate and consistent with the policy intent of the Bill and, consequently, the affirmative procedure is appropriate.

257. For the powers under paragraphs 4(4)(b) and (c), these concern technical and procedural aspects and do not affect the substantive rights and obligations under the commonhold conversion regime. The negative procedure therefore provides a sufficient level of parliamentary scrutiny.

Schedule 11

Paragraph 1(2)(h), 1(3)(d), 1(4): Right to rectification of lease under section 124: Exercise of right by claim notice

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

258. Paragraph 1 makes provision in respect of the right to rectification of a lease under clause 124 (right to variation of a lease where it does not contain a prescribed statement under clause 119, or it contains an incorrect statement) and the claim notice that needs to be served to exercise this right. Paragraphs 1(2)(h), (3)(d) and (4) enable regulations to specify additional information that must be included in a claim notice, additional documents that must accompany the claim notice and the form and manner in which the claim notice must be given.

Justification for taking the power

259. These powers are necessary as the requirements for claim notices in the exercise of the right to rectification will involve technical, practical and administrative details that are too granular for primary legislation. Delegating this power ensures clarity and uniformity without overcomplicating the Bill. The powers will also enable the Government to adapt the requirements in respect of claim notices in response to practical issues that become apparent as the reformed regime is implemented and once it is in operation, without amending the Bill.

Justification for the procedure

260. The powers are limited to making provision for procedural matters and technical detail that do not alter the substantive right to rectification of a lease, which is set out in primary legislation. These technical details are intended to ensure clarity and consistency in the process of exercising the right to rectification of a lease. Therefore, the negative procedure provides appropriate parliamentary oversight.

Paragraph 2(5)(b), 2(6)(b), 2(7): Right to rectification of lease under section 124: Response notice

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

261. Paragraph 2 makes provision in respect of a response notice that may be served in respect of a claim notice exercising the right to rectify a lease under clause 124. Paragraphs 2(5)(b), (6)(b) and (7) set out powers to specify in regulations additional information that must be included in a response notice, additional documents that must accompany a response notice and the form and manner in which a response notice must be given.

Justification for taking the power

262. The technical requirements for response notices involve practical and administrative details that are too granular for primary legislation. Delegating this ensures clarity and detail without overloading the Bill. The process for exercising the right to rectify a lease, including the requirements for response notices, may need to adapt to changes in conveyancing practice and technology. These powers allow the Government to make timely updates without new primary legislation, as well as enabling the Government to respond quickly to emerging issues or best practice developments.

Justification for the procedure

263. The powers are limited to making provision for procedural matters and technical details designed to ensure clarity and consistency in the process of exercising the right to rectify a lease. The powers do not alter the substantive right to rectify, nor the substantive right to respond to a claim notice, and the negative procedure is therefore suitable in terms of the level of parliamentary scrutiny.

Paragraph 3(2)(b)(i), 3(2)(b)(iii): Right to rectification of lease under section 124: Requirements where claim accepted

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

264. Paragraph 3 sets out requirements in respect of the variation of a lease where a claim to rectify the lease has been accepted by the landlord under the lease which is the subject of the claim. The landlord must notify the Chief Land Registrar and certain charge holders of the variation, and paragraphs 3(2)(b)(i) and (2)(b)(iii) enables the form and manner of that notification to be prescribed in regulations.

Justification for taking the power

265. The requirements for notifying the Chief Land Registrar and certain charge holders involve practical details—format, delivery method, and content—that are too granular for primary legislation. Delegating this ensures clarity and uniformity and enables processes and formalities to be adapted to, for example, developments in technology, allowing timely updates without amending the Bill.

Justification for the procedure

266. The power here is limited to specifying the form and manner of notifications when a lease variation occurs under the right to rectification of a lease. This is a technical and administrative matter, not a substantive policy change, as any changes to the notification process do not affect property rights or the fundamental structure of the right to rectification of a lease. For these reasons, the negative procedure is appropriate as it provides sufficient parliamentary oversight for a power that is narrow and targeted.

Schedule 12

Paragraph 10: New leasehold flats: Financial penalties: Manner of giving notices

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

267. Schedule 12 concerns the imposition of financial penalties in respect of breaches of the new leasehold flat ban, and the notice that must be served in advance of this. Paragraph 10 sets out a power to make provision about how any notice under Schedule 12 is to be given to a person and when such a notice is to be treated as being given.

Justification for taking the power

268. This power is necessary as provisions around how a notice of intent to impose a financial penalty is to be given, and to be treated as being given, are matters of a technical and procedural nature, relating to service and timing of such notices. They require flexibility to accommodate different methods of communication (e.g., post, email, electronic service) and to adapt to future technological developments. It is not practical to set out detailed rules in primary legislation because they may need frequent updating. The power will enable the Government to respond to developments and make narrow and targeted changes without needing to amend the Bill.

Justification for the procedure

269. The scope of the power is narrow, clearly defined and limited to technical and procedural matters. The power does not involve significant policy decisions or changes to substantive rights, and the negative procedure is therefore appropriate.

Schedule 13

Paragraph 1(2) of new Schedule 2 (inserted into the 2022 Act by paragraph 17 of Schedule 13):

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

270. Paragraph 1 of new Schedule 2 inserted into the 2022 Act by paragraph 17 of Schedule 13 makes provision for circumstances where intermediate leaseholders can serve a rent variation notice on their landlord to vary their ground rent liability to that payable by their sub-leaseholders under a regulated lease who, by virtue of the operation of Part 3, have their ground rents capped. Paragraph 1(2) of Schedule 2 sets out a power to make provision in regulations specifying the form and the manner of a rent variation notice, as well as specifying the information to be contained in such a notice.

Justification for taking the power

271. The matters to be prescribed are procedural and technical in nature and may require amendment over time to reflect changes in practice, operational experience or feedback from stakeholders. Delegating these aspects to secondary legislation allows for flexibility and responsiveness without the need for further primary legislation.

Justification for the procedure

272. The negative resolution procedure is considered appropriate given the limited scope of the power and its focus on procedural detail. The powers do not permit substantive changes to the policy framework established by the Bill.

Paragraph 2(3) and (4) of new Schedule 2 (inserted into the 2022 Act by paragraph 17 of Schedule 13):

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

273. Paragraph 2 of new Schedule 2 inserted into the 2022 Act by paragraph 17 of Schedule 13 makes provision for the service by the landlord of an information notice on an intermediate leaseholder who has served a rent variation notice. Paragraph 2(3) and (4) of Schedule 2 sets out a power to make provision in regulations specifying the form and the manner of an information notice, as well as a power to specify the information that an intermediate leaseholder must supply in response to such a notice.

Justification for taking the power

274. The matters to be prescribed are procedural and technical in nature and may require amendment over time to reflect changes in practice, operational experience or feedback from stakeholders. Delegating these aspects to secondary legislation allows for flexibility and responsiveness without the need for further primary legislation.

Justification for the procedure

275. The negative resolution procedure is considered appropriate given the limited scope of the power and its focus on procedural detail. The powers do not permit substantive changes to the policy framework established by the Bill.

Paragraph 3(4) of new Schedule 2 (inserted into the 2022 Act by paragraph 17 of Schedule 13):

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative resolution

Context and purpose

276. Paragraph 3 of new Schedule 2 inserted into the 2022 Act by paragraph 17 of Schedule 13 makes provision for the service of a counter notice by a landlord to an intermediate leaseholder who has served a rent variation notice. Paragraph 3(4) of Schedule 2 sets out a power to make provision in regulations specifying the form and the manner of a counter notice, as well as specifying the information to be contained in such a notice.

Justification for taking the power

277. The matters to be prescribed are procedural and technical in nature and may require amendment over time to reflect changes in practice, operational experience or feedback from stakeholders. Delegating these aspects

to secondary legislation allows for flexibility and responsiveness without the need for further primary legislation.

Justification for the procedure

278. The negative resolution procedure is considered appropriate given the limited scope of the power and its focus on procedural detail. The powers do not permit substantive changes to the policy framework established by the Bill.

Department Name: Ministry of Housing, Communities and Local Government

Date: 27 January 2026