





The Proposals to Reform Supported Accommodation

Desmond Rutledge, Garden Court Chambers

13 December 2022



Topics covered

1. The Housing Benefit background (Desmond Rutledge)
2. The LUHC Committee's Report (27 Oct 2022) – (Georgie Rea)
3. The Supported Housing (Regulatory Oversight) Bill – (Tim Baldwin)

In broad terms:

- The housing benefit background
- The perceived problems with supported accommodation
- What the Government intends to do about it.



Source Materials

- ❑ **Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 SI No 217**, - Schedule 3, Transitional and Savings Provisions
- ❑ **Housing Benefit Regulations 2006, SI 213** - Part 3, Payments in respect of a dwelling and Schedule 1, Ineligible service charges
- ❑ **Housing Benefit and Universal Credit (Supported Accommodation) (Amendment) Regulations 2014 SI No. 771** - four categories of supported housing

NB: Housing Benefit guidance for supported housing claims, published by DWP, 25 May 2022



Terminology – ‘Supported Housing’

The term describes housing that is made available in conjunction with housing-related support to help residents live independently or to move towards mainstream housing.

These include:

- older people with care or support needs;
- people fleeing domestic abuse;
- people with experience of the criminal justice system (including prison leavers);
- young people with a support need (such as care leavers);
- individuals and families at risk of homelessness;
- people recovering from drug or alcohol dependencies;
- individuals with learning disabilities and those with a mental health condition.



Supported Housing cont.

Providers of supported housing could be:

- non-metropolitan county councils (NB unitary authorities are excluded)
- registered social landlords
- housing associations
- charities and other voluntary organisations or
- private landlords.



‘Exempt Accommodation’

- The statutory definition: – **“accommodation provided by a county council, housing association, registered charity or voluntary organisation where that body or person acting on their behalf provides the claimant with care, support or supervision”** (CP Regs 2006, Sch 3 para 4(10)).
- Claims which come within this definition are exempt from regulations which limit benefit to the LHA rates.
- Rent levels for exempt accommodation are usually higher than rents for mainstream housing. This is meant to reflect the higher housing management costs in supported housing



Housing Benefit Case-law

- ❑ As a general rule, deciding whether a claimant's accommodation is "exempt accommodation" needs to be based on an assessment of the individual claimant rather than the accommodation (*CH/1289/2007*, paras. 27 to 32).
- ❑ The phrase "on behalf of" does not cover an arrangement between the landlord and the care provider was a joint venture (*R (H) 2/07*). Prior to this decision it had been assumed that care, support or supervision could be provided 'on behalf' of the landlord by a care provider if the landlord was involved in co-ordinating the care with social services.
- ❑ It is sufficient if the landlord itself provides 'support', so long as it is more than a de minimis (or minimal) extent (*R(H) 6/07*). An average of ten minutes per tenant per week is not enough (*R(H) 7/07*), but three hours per tenant per week might be enough (*CH/1289/2007 para 21*).



• Intensive / Additional Housing Management'

This is a non-legal term used to describe the housing management tasks that supported housing providers perform (sometimes with greater intensity).

According to case-law, intensive housing management can include:

- Controlling access to the premises (concierge-type services).
- Explaining the occupancy agreement and assisting people to abide by it.
- Organising inspections of property.
- Management of anti-social behaviour.



Funding of care, support, or supervision

- On 24 July 1997, the High Court held that service charges that help the tenant maintain their tenancy are not eligible for HB. (*R v St Edmundsbury HBRB ex parte Sandys* [1997] EWHC 711 (Admin), confirmed by *R v Swansea HBRB ex parte Littler* [1998] EWCA Civ 1214).
- On 18 August 1997, the Government put in place an ‘Interim Scheme’ to stabilise the support-ed housing sector. The scheme allowed support charges (disallowed by the High Court) to be paid in exempt accommodation.
- In April 2000, the interim scheme was replaced by the ‘Transitional Housing Benefit Scheme’ for a fixed period of three years. During this time, ‘General Counselling and Support Services’ were treated as eligible service charges for Housing Benefit purposes.



Funding of care, support, or supervision - cont.

- In April 2003, the ‘Supporting People Programme’ was launched as a £1.8 billion ring-fenced grant to local authorities intended to fund services to help vulnerable people live independently. From then onwards, support services were made ineligible charges for Housing Benefit purposes.
- The ring-fence for the Supported People Programme was removed in 2009. From April 2010 the equivalent amount was included in the local authority area-based grant. Following severe cuts to local authority funding after the 2010 Summer Budget many local authorities used the funding of supporting people services to plug funding shortfalls in their statutory care services.



Funding of support - the current position

- Where support provided in exempt accommodation is not commissioned by a local authority, there is no specified funding for its provision.
- The cost of support cannot be met by Housing Benefit.
- Providers therefore fund the ineligible support they provide through:
 - ❖ charitable or commissioned funding (i.e. social service/NHS),
 - ❖ care providers' surpluses, or
 - ❖ by levying a service charge on residents, which they pay from their own income.



‘Specified Accommodation’

The term refers to the categories of supported housing excluded from Universal Credit where the rent could continue to be paid by Housing Benefit. These are

- exempt accommodation (as defined previously);
- managed properties;
- refuges (not meeting the exempt accommodation definition);
- hostels (not meeting the exempt accommodation definition).

The purpose of introducing this new category is to protect supported housing from the benefit cap.





The LUHC Committee's Report on Exempt Accommodation: Issues and Recommendations

Georgie Rea, Garden Court Chambers

13 December 2022



GARDEN COURT CHAMBERS



 @gardencourtlaw

The Inquiry

- September 2020 and October 2021: The Government conducts pilots across five councils to ‘test enforcement measures to improve quality and value for money’ in supported housing. These are backed by £5.4 million of funding.
- 17 December 2021: The Levelling Up, Housing and Communities select committee launches an inquiry into exempt accommodation
- 7 April 2022: Evaluation of the pilots published by Department for Levelling Up, Housing and Communities This sets out the findings and makes a set of recommendations to improve quality and value for money in supported housing.
- 27 October 2022: The Levelling Up, Housing and Communities select committee publish its report on exempt accommodation.



The Limitations

- One of the key issues with exempt accommodation is that there is no data nationally, and no systematic collection of data.
- **Monitoring Quality:** The Government does not know how much exempt accommodation there is or how many people live in exempt accommodation, how many providers are regulated and by which regulators.
- **Value for money:** The Government has no idea how much taxpayer money is spent on exempt accommodation, nor what this money is spent on. It cannot know whether the current system is delivering value for money.

“Due to this scarcity of data on exempt accommodation our inquiry was, for example, unable to establish how widespread the very worst experiences are either among residents or among local communities nor how many exempt accommodation claimants and providers there are.”



The Investigation

- 120 written submissions
- Three oral evidence sessions with regulators, local authorities, providers, charities, and representatives of the Government including:
 - Eddie Hughes MP, then Minister for Rough Sleeping and Housing, Department for Levelling Up, Housing and Communities (DLUHC);
 - Cathy Page, Deputy Director for Supported Housing, Domestic Abuse and Home Adaptations (Disabled Facilities Grant), DLUHC;
 - David Rutley MP, then Minister for Welfare Delivery, DWP;
 - James Wolfe, Director, Disability and Housing Support, DWP.
- On the ground research in Birmingham: visits to areas with a high concentration of exempt accommodation to hear directly from residents of exempt accommodation and neighbourhood and community groups affected by the considerable expansion of exempt accommodation in parts of that city



Purpose of Exemption from Benefit Cap

Exempt accommodation is exempt from locally set caps on housing benefit because the costs of managing shared, supported housing could be higher than the norm, and not for profit organisations' supported housing services may be unviable if benefit levels were limiting using the same rules that applied to mainstream private renting.

Their operating costs are higher than for other types of housing:

- significantly higher administration costs due to the turnover of residents;
- insurance for the building, employer liability, and public liability is three times higher than normal houses in multiple occupation;
- repairs, maintenance, and furniture replacement costs are double those of normal houses in multiple occupation;
- they do not take deposits;
- they run it as a business, paying administration costs and corporation tax; and
- they are at risk of housing benefits being suspended at any time



Providers

- Exempt accommodation in England can be provided by a non-metropolitan county council, unitary council, housing association, registered charity or voluntary organisation.
- To qualify for exempt status, providers must show that they have **not-for-profit status** and that they are providing care, support, or supervision. Providers can be commissioned by a council, or in some cases by the NHS or another statutory body, and there are also non-commissioned providers.
- Some providers are registered with the Regulator of Social Housing, though this is not mandatory except for local authorities.
- Some providers own their properties, while others lease them from landlords or companies.
- While housing costs are covered by the uncapped level of housing benefit, housing benefit cannot be used to fund the cost of care, support, or supervision.
- Providers fund the care they provide through charitable or commissioned funding, providers' surpluses, or by charging the resident a service charge, unless the resident is eligible for a state-funded care package.

Summary of Issues Identified

1. Disparity in the quality of housing due to a lack of National Standards.
2. Lack of statutory definition for ” Care, support, and supervision”.
3. Referral process follows no standard process proper evaluation of the support that they should receive.
4. Regulation and oversight: some providers do not fall under the remit of any regulator, and no regulator has complete oversight of the different elements of exempt accommodation.
5. Significant safeguarding concerns surrounding survivors of domestic abuse and their children, with many providers failing to meet the standards in Part 4 of the Domestic Abuse Act 2021.
6. Vulnerability to eviction due to the licence agreement model of residency, with residence being disincentivised to work and harassed by their landlords under threat of eviction.
7. The lease-based model of exempt accommodation being exploited for profit to the detriment of residence and the tax payer.



1. Quality of Housing and Support

The National Statement of Expectations in October 2020

- Guidance document with no Statutory force
- Only covers the accommodation and not the support elements of supported housing

Hull City Council found 3.5 significant hazards per property in the places it inspected between April 2019 and January 2022, with 62% of inspected properties failing to meet the decent homes standard.

Numerous contributors described properties as cramped, dirty, damp and potentially unsafe in a fire.

Often large buildings with forty or more residents, and “*pod units, with very small rooms around shared facilities*”, that were an inappropriate setting for delivering care or support to people with support needs



Care, support and supervision is not defined in housing benefit regulations, but defined in case law as “more than minimal” (See *Bristol City Council v AW [2009] UKUT 109 (AAC) (15 June 2009)*)

No guarantee that the care, support, and supervision on offer meets the needs of the resident. The support on offer is sometimes “*little more than a loaf of bread left on a table or a support worker shouting at the bottom of the stairs to check on residents.*” Many providers outsource the care and support element to managing agents that are profit making. They can often lack training, are inexperienced and unqualified to help people with varying needs.

Recommendation:

- Statutory definition: outlining minimum standards
- The definition providing enough flexibility to avoid a strict “one-size-fits all” approach, since there is a wide range of people who live in exempt accommodation their needs will differ and be specific to their situation
- Care, support, or supervision, which should include helping the resident progress towards independence and employment

The Government’s announcement on 17 March contained a pledge to change housing benefit regulations to include a definition of care, support, and supervision, and to introduce minimum standards for support.



-
- Some people are referred into exempt accommodation by local authorities or from prisons.
 - Others respond to adverts for exempt accommodation on sites such as Gumtree and Facebook, were offered no assessment of their support needs, and were then relocated great distances or housed alongside an inappropriate mix of residents.

Examples:

- female survivors of domestic abuse being placed in mixed-sex accommodation or with former perpetrators of violent crime.
- those in recovery from a drug problem can find themselves living with people in active addiction or involvement with drug supply

Recommendations include:

- Standardising or strengthening the protocols around the referral process
- Assessing how individual providers accept and decline referrals into their schemes
- Placing housing officers in prisons to identify appropriate accommodation for prison leavers (already in place in some prisons)



There is currently no requirement for providers of exempt accommodation to be registered or accredited. Services may be commissioned or non-commissioned.

Social Housing Register: oversight of the Regulator of Social Housing. Private landlords and non-registered providers are not subject to this oversight. This is the dominant regulator, overseeing roughly 57% of exempt accommodation providers.

Commissioned Services: While councils monitor support provided by the services which they commission, they have no remit to apply the same scrutiny to non-commissioned services.

The Care Quality Commission: only has oversight where an organisation provides personal care as defined in the Care Act 2014, for example for people with a learning disability and autistic people.

Providers with charitable status: may be registered with the Charity Commission, which oversees their governance and meeting their charitable purpose.

Community Interest Companies: may be registered with the Financial Conduct Authority and the Office of the Regulator of Community Interest Companies.

As a result of **this complex regulatory environment, many providers who fall outside of any regulator regime.**

Abuse: some providers amended their structures and status to better bypass regulation or minimise scrutiny, while reaping large returns.



Councils lack control over the extent and spread of exempt accommodation, in part, because of exemptions within the planning system:

1. Providers of exempt accommodation that are registered with the Regulator of Social Housing are exempt from HMO (House in Multiple Occupation) licensing requirement.
2. By being excluded from the HMO definition, registered providers are also exempt from Article 4 directions. Article 4 directions give councils, if they choose to impose them, the ability to restrict the change of use of a property under permitted development rights. Where there is a relevant Article 4 direction in place, a change of use to an HMO would require planning permission.
3. Non-registered providers who would otherwise fall into the definition of HMO can benefit from the loophole whereby a property with six or fewer residents living together as a single household where care is provided for residents can be classed as a single household (Use Class C3) as opposed to a small HMO where the residents are unrelated and care is not provided (Use Class C4), again avoiding the need for planning permission.



Organisations with no expertise target survivors of domestic abuse and their children and provide neither specialist support nor an appropriate or safe environment. Some survivors had experienced violence, harassment, and controlling behaviour by staff and other residents and were inappropriately housed in mixed-sex provision alongside perpetrators.

Part 4 of the Domestic Abuse Act 2021 and The Domestic Abuse Support (Relevant Accommodation and Housing Benefit and Universal Credit Sanctuary Schemes) (Amendment) Regulations 2021 define “relevant safe accommodation” and, inter alia, expressly exclude bed and breakfast accommodation

Recommendation: where a prospective resident of exempt accommodation is a survivor of domestic abuse, there must be a requirement that housing benefit is only paid to providers that have recognised expertise and meet the standards in Part 4 of the Domestic Abuse Act 2021.



Disincentives to work: Once residents gain employment, they can lose access to some of their enhanced housing benefit. They are then liable for the high rents set by providers and are vulnerable to eviction: they cannot afford a private rental until they have a job, however, they cannot get a job until they move into a property with more affordable rents

Licence Agreements: Providers often give residents a licence agreement rather than a tenancy: licences are the dominant agreement type among non-commissioned exempt accommodation. This means that residents had fewer rights to bring forward complaints and protection against eviction.

Suggestions: delaying the point at which tenants in exempt accommodation become liable for paying rent when they gain paid employment, to allow a buffer period in which they can secure alternative accommodation after rather than before starting work



-
- **Lease based model:** The entity that owns the property is for-profit, and leases the property to a not-for-profit entity which delivers the management and care services, often through agencies.
 - Because the landlord meets the criteria for uncapped housing benefit, but the owner of the property sits outside those regulations, the uncapped rent can be pocketed as a disguised profit income stream.

Pros: it enables genuine supported not-for-profit providers to access the market where due to high capital values they could not afford to buy properties outright.

Abuse: exploited by those whose primary objective is to make huge profits, by driving up the base rent, at the expense of the taxpayer.

Recommendation: The Government must set out how it will clamp down on those exploiting the lease-based model for profit and prohibit lease-based profit-making schemes from being set up. This should include how it will ensure that there is full transparency over ownership structures and how income from housing benefit is being used.



Summary of Conclusions and Recommendations

The Committee finds that the quality of provision of exempt accommodation varies greatly and that the 'patchwork regulation' has too many holes, and recommends that: –

- ❑ the government should **publish national standards** with statutory force, and give local authorities the power and resources to enforce these standards;
- ❑ consideration should be given to an **accreditation scheme** for providers which should not be overly onerous or costly for providers to apply to, as several non-profit providers expressed concerns about the burden of an application process, but it will ensure a valuable filter against unfit providers;
- ❑ the government should provide '**burdens funding**' to local authorities; and
- ❑ a **National Oversight Committee** should be urgently established to address the over-sight issues relating to exempt accommodation.



Conclusions and Recommendations

The Committee also recommends that -

- ❑ the government should end existing exemptions that registered providers have from *Houses in Multiple Occupation licensing*, and address the loophole relating to *non-registered providers* with properties containing six or fewer residents - that can be classed as a single household thus avoiding the need for planning permission - so that they are brought within the planning regime.



Conclusions and Recommendations

The Committee also points to the dearth of data on exempt accommodation and recommends that: -

- ❑ the government organise the collection and publication of **annual statistics** on the number of exempt accommodation claimants, providers and units; and the amount of money paid out in housing benefit;
- ❑ the government should conduct a **review exempt housing benefit claims** to determine how much is being spent.



Thank you

020 7993 7600

info@gclaw.co.uk

@gardencourtlaw



GARDEN COURT CHAMBERS



The draft bill - What is in it, are its aims justified, and will it work?

Tim Baldwin, Garden Court Chambers

13 December 2022



Supported Housing (Regulatory Oversight) Bill

- It is a private member's Bill introduced by Bob Blackman (Conservative – Harrow East). He was instrumental in the Homelessness Reduction Act.
- It is Bill 19 2022 -2023 and started in the House of Commons.
- The long title is:
 - A Bill to make provision about the regulation of supported exempt accommodation; to make provision about local authority oversight of, and enforcement powers relating to, the provision of supported exempt accommodation; and for connected purposes.
- As introduced (15 June 2022 – pre publication of the Committee report) the Bill can be found here and in the chat [Supported Housing \(Regulatory Oversight\) Bill \(parliament.uk\)](#)
- The Bill as introduced comprises 14 sections and is broken down into subheadings of:
 - Advice, strategy and standards
 - Licensing
 - Planning and homelessness
 - Information
 - Interpretation and final provisions
- The explanatory notes are in the chat and here [220019en.pdf \(parliament.uk\)](#) DLUHC



Regulation and the perceived problem

- There is no single regulator of supported housing. Where the accommodation is provided by a housing association, in most cases the landlord will be registered with the Regulator of Social Housing (RSH) and will be subject to the associated regulatory framework. The regulator adopts a risk-based approach to regulation with a focus on providers with more than 1,000 units.
- Growth of lease based providers perceived as a problem and standards of management and levels of support: “is associated with investors looking to maximise returns using the higher rents permitted by the exempt Housing Benefit provisions.” ([Crisis Policy Briefing: Exempt Accommodation | Crisis | Together we will end homelessness](#))
- Questions as to the adequacy of the regulatory regime and the lack of a dedicated funding stream to cover the cost of support in non-commissioned provision, i.e. support provided to residents which is not commissioned by a local authority.
- 20 October 2020, the Government published ‘Supported housing: national statement of expectations’, which set out a vision for the planning, commissioning and delivery of supported housing for the first time.
- Pilots in Birmingham; Blackburn; Blackpool; Bristol; and Hull to improve quality; enforcement; oversight; and value for money in the sector. They were expected to focus on short-term, non-commissioned exempt supported accommodation. An independent evaluation of the pilots was published on 7 April 2022.
- National statement here: [Supported housing: national statement of expectations - GOV.UK \(www.gov.uk\)](#)
- Evaluation of pilots here: [Supported housing: national statement of expectations - GOV.UK \(www.gov.uk\)](#)
- Written statement of Minister Eddie Hughes 17 March 2022: [Housing Update - Hansard - UK Parliament](#)



Take home message from the minister

“Supported housing plays a vital role in delivering better life outcomes and improved wellbeing and health for many vulnerable people.

The Government are committed to ensuring that supported housing is good quality and meets the needs of its residents. In recognition of its importance, the Government are investing £11.5 billion in much needed supply through the affordable homes programme, which includes delivery of new supported housing for older, disabled and other vulnerable people.

However, we are aware of a ***minority of landlords*** who charge ***high rents for poor quality accommodation and little or no support.***

I wish to inform the House of the Government’s intention to bring forward measures ***to put an end to unscrupulous landlords exploiting some of the most vulnerable in our society.***

We have no intention of penalising those providers who operate responsibly. We are clear that measures must be as targeted and proportionate as possible to protect supply of housing across the board.”



Take home intentions from the minister in any Bill

“Minimum standards for the support provided to residents to ensure residents receive the good quality support they expect and deserve in order to live as independently as possible and achieve their personal goals;

New powers for local authorities in England to better manage their local supported housing market and ensure that rogue landlords cannot exploit the system to the detriment of vulnerable residents and at the expense of taxpayers; and ***Changes to housing benefit regulations to seek to define care, support and supervision to improve quality and value for money across all specified supported housing provision.***

We will introduce any measures requiring legislation ***when parliamentary time allows.***

We will work closely with local government, sector representatives, providers and people with experience of supported housing as we develop these measures to ensure they are fit for purpose, deliverable and minimise unintended consequences for the providers of much needed, good quality supported housing.

Alongside these proposed measures, ***today I am announcing that we will provide £20 million for a supported housing improvement programme.....”***



So what does the Private Member's bill provide?

- It is at the Report stage having gone through 1st and 2nd reading
- The Hansard Report vol 722 18 November 2022 of the second reading can be found here:
[Supported Housing \(Regulatory Oversight\) Bill - Hansard - UK Parliament](#)
- As yet, I have not seen any amendments. The Act following the Bill extends only to England and Wales (?) (Cl 14(1)), is to come into force two months following beginning with the date of Royal Assent (Cl 14(2))
- The powers of the SoS are in Cl 14(3) and (5).
- The ambition was for it to be cited as a 2022 Act.
- As a Private Members Bill – summer 2023? Long way to go



Clauses and parts of interest

The Draft Bill states England and Wales but not NI and Scotland due to housing being devolved. The Explanatory notes created by the Department is contradictory as they state page 5 “The Bill extends to England and Wales only. The Bill applies to England only. This reflects the fact that housing is a devolved matter for Scotland, Wales and Northern Ireland.” It is not clear what consent if any has been obtained from the Senedd Cymru? Not the greatest start! No pilots other than in England – no evidence base elsewhere.

Supported housing advisory panel

.Cl 1(2) Appointments to the panel.

.Panel to provide information and advice about or in connection with supported exempt accommodation including information or advice about anything which the Panel views could have a significant impact on the provision or regulation of supported exempt accommodation, to the Secretary of State and other bodies in **England**.

Local supported housing strategies

- . Cl 2(1) places a duty on local housing authorities in England to carry out a review of the supported exempt accommodation in their districts and, in light of that review, publish a “supported housing strategy” for the provision of supported exempt accommodation

National Supported housing standards

- . Cl 3 allows SoS to prepare and publish “National Supporting Housing Standards” for **England**, in relation to any aspect of the provision of supported exempt accommodation, but in particular, to set minimum standards in respect of the type or condition of premises used for the provision of supported exempt accommodation or the provision of care, support or supervision at supported exempt accommodation.
- . Such standards must be kept under review.



Licensing

- Cl 4(1) SoS power to make licencing regulations in respect of supported accommodation in line with C 12(2) and located within a designated district. If at end of the year of commencement the power has not been exercised then SoS must publish a report on progress. How would this fit with HMO and selective licensing regimes under 2004 Act?
- Cl 12 definition of supported exempt accommodation –Cl 12 (2) (a) resettlement places with grant provided by SoS s 30 Jobseekers Act 1995 or (b) provided by non-metropolitan county council in England, HA, Registered Charity or voluntary organisation where the body or person acting on it behalf also provides a person resident in the accommodation with “care, support and supervision”.
- And also includes “managed property”, “refuge” and “local authority hostel”
- Cl 4(3) power of SoS to make licensing regulations in respect of exempt accommodation not within Cl 12(2) and located in a designated district.
- Powers under Cl 4(1) and 4(3) are to be exercised with a view to securing that National Supported Housing Standards are met and regulations must include
 - Provisions under which a local housing authority may designate its district.
 - The licensing regulations may include provisions requiring a local authority to designate its district for the purposes of the regulations, if conditions specified in the regulations are met and may include provisions under which the Secretary of State may designate, or revoke a designation of, a local authority’s housing district for the purposes of the regulations.



Further licencing provisions

- **Cl 5(1)** includes matter which may be included in licencing regulations, e.g. designation of a district, how an application for a licence is to be made, conditions, enforcement and compliance, discretion on licencing authority, appeals and provisions corresponding or similar to licences under Part 2 and 3 of Housing Act 2004.
- **Cl 5(2)** provision about how an application for a licence can be made and the circumstances in which a license may be granted, varied or revoked, includes requirement of a fit and proper person test and provision requiring a licence to be revoked if the licencing authority ceases to be so satisfied.
- **Clause 5(3)** provides that conditions that may be attached to a licence include conditions relating to the standard of accommodation, conditions relating to the use of accommodation, conditions relating to the provision of care, support or supervision and conditions requiring compliance with National Supported Housing Standards.
- Clause 5(4) provides that enforcement of licencing regulations includes provision for an offence under the licencing regulations to be: a relevant housing offence for the purposes of section 249A of the Housing Act 2004 (financial penalties for certain housing offences in England); a banning order offence for the purposes of Chapters 2 and 3 of Part 2 of the Housing and Planning Act 2016 (banning orders and database of rogue landlords etc); an offence to which Chapter 4 of that Part of that Act (rent repayment orders) applies.
- **Clause 5(5)** provides that provisions that may be made under clause 5(1)(e) about other consequences of compliance or non-compliance with regulations or with conditions attached to licences includes provision disapplying any requirement relating to HMO licencing or selective licencing, limiting the housing benefit payable in respect of accommodation that is required to be licensed under licencing regulations by is not so licensed, or limiting the rent that may be determined under section 14 of the Housing Act 1988 (determination of rent by tribunal) in respect of such accommodation. 5(6) concerns 5(b) which is without prejudice to any other power to make subordinate legislation relating to housing benefit.
- **Clause 5(7)(a)** provides that licencing regulations may amend, repeal or revoke any enactment. This clause is linked to clause 5(5) and 5(1)(e) which provide for other consequences of compliance or non-compliance with licencing regulations or with conditions attached to licenses



Consultation and local housing authority functions

Cl 6 – Consultation

- Duty on the SoS to consult statutory consultees before exercising the power to make licensing regulations under clause 4 (1) and clause 4 (3).
- These consultations must set out how SoS plans to approach matters listed in clause 5 (a) to (j) when making licensing regulations and ask statutory consultees for their views on those proposals. The SoS must also ask statutory consultees for views on the licensing regulations being an effective means of securing that National Supported Housing Standards are met and any additional mechanisms for securing compliance with such Standards. The statutory consultees are the Local Government Association, the National Housing Federation and the Regulator for Social Housing.

Cl 7 - Local Authority functions

- Places a duty on local housing authorities, in the exercise of their functions under licensing regulations, to have regard to National Supported Housing Standards and any guidance issued by the SoS for the purposes of clause 4 subsections (1) and (3).



Planning and homelessness

Cl 8 – Planning

- Requires the SoS to carry out a review, after a specified period of time, of the effect of the first licensing regulations on the type and condition of premises used for the provision of accommodation within section 12(2) and the provision of care, support and supervision at such accommodation. In light of that review, the SoS must then consider whether to exercise
- The power under section 55(2)(f) of the Town and Country Planning Act 1990 to specify such accommodation as a use class

Cl 7 - Homelessness

- Provides that in relation to a person leaving supported exempt accommodation, such person will not be treated as intentionally homeless for the purposes of section 191 of the Housing Act 1996, where the reason for leaving related to the standard of the accommodation or care, support or supervision provided, and the accommodation does not meet the National Supported Housing Standards.



Finally, information

Cl 10 – Regulations

- Permits SoS to make regulations requiring or authorising specified persons to share information relating to supported exempt accommodation

Cl 11 – Use of information

- Provides that a local housing authority in England may use information obtained by the exercise of its functions, under the specified legislation relating to housing benefit or council tax, for any purpose connected with the exercise of any of the authority's functions under the Act, or otherwise relating to specified exempt accommodation, or for the purposes of investigating whether any offence has been committed by virtue of the Act.



So, finally: A pause for thought?

- As a private members Bill, will the proposed Act make the light of day? Will it survive Parliamentary scrutiny and time, given previous efforts to regulate this have gone nowhere or thought unnecessary?
- Will it make any difference to the problem and MPs' outrage, as the issues seem largely focused in one area of Birmingham on the pilots? Is it a disproportionate response, given the Minister accepts that this relates to a small number of "rogue" providers?
- Will it throw the baby out with the bathwater and dissuade providers and charities to engage? There has been some small examination of costs on the public sector, but no other form of impact assessment. Will it lead to a loss of support for vulnerable people?
- Is this the right answer, using and preserving housing benefit in this manner to provide for care which Universal Credit will not? Do the Government, Parliament and Local Authorities really need to think again on how to fund this vital resource?
- Is the proposed Act proportionate to the perceived problem, or can it be dealt with by other existing legislation?
- Do those charged with enforcement have the resources if the proposed Act comes into force?
- Is the proposed Act properly evidence-based, given the limit on the pilot?



Thank you

020 7993 7600

| info@gclaw.co.uk

| [@gardencourtlaw](https://www.instagram.com/gardencourtlaw)



GARDEN COURT CHAMBERS
