



# Housing Associations Act 1985

## 1985 CHAPTER 69

### PART I

#### REGULATION OF HOUSING ASSOCIATIONS

##### *Introductory*

#### **1      Meaning of "housing association " and related expressions**

- (1) In this Act "housing association" means a society, body of trustees or company—
- (a) which is established for the purpose of, or amongst whose objects or powers are included those of, providing, constructing, improving or managing, or facilitating or encouraging the construction or improvement of, housing accommodation, and
  - (b) which does not trade for profit or whose constitution or rules prohibit the issue of capital with interest or dividend exceeding such rate as may be prescribed by the Treasury, whether with or without differentiation as between share and loan capital.
- (2) In this Act "fully mutual", in relation to a housing association, means that the rules of the association—
- (a) restrict membership to persons who are tenants or prospective tenants of the association, and
  - (b) preclude the granting or assignment of tenancies to persons other than members ;
- and " co-operative housing association " means a fully mutual housing association which is a society registered under the Industrial and Provident Societies Act 1965 (in this Part referred to as " the 1965 Act").
- (3) In this Act " self-build society " means a housing association whose object is to provide, for sale to, or occupation by, its members, dwellings built or improved principally with the use of its members' own labour.

## 2      **Meaning of " housing trust"**

In this Act " housing trust" means a corporation or body of persons which—

- (a) is required by the terms of its constituent instrument to use the whole of its funds, including any surplus which may arise from its operations, for the purpose of providing housing accommodation, or
- (b) is required by the terms of its constituent instrument to devote the whole, or substantially the whole, of its funds to charitable purposes and in fact uses the whole, or substantially the whole, of its funds for the purpose of providing housing accommodation.

### *Registration*

## 3      **The register**

- (1) A register of housing associations shall be maintained by the Housing Corporation and shall be open to inspection at the head office of the Corporation at all reasonable times.
- (2) In this Act " registered " and " unregistered ", and other references to registration, in relation to a housing association, refer to registration in the register of housing associations maintained under this section.

## 4      **Eligibility for registration**

- (1) A housing association is eligible for registration if it is—
  - (a) a registered charity, or
  - (b) a society registered under the 1965 Act which fulfils the following conditions.
- (2) The conditions are that the association does not trade for profit and is established for the purpose of, or has among its objects or powers, the provision, construction, improvement or management of—
  - (a) houses to be kept available for letting, or
  - (b) houses for occupation by members of the association, where the rules of the association restrict membership to persons entitled or prospectively entitled (as tenants or otherwise) to occupy a house provided or managed by the association, or
  - (c) hostels,
 and that any additional purposes or objects are among the following.
- (3) The permissible additional purposes or objects are—
  - (a) providing land or buildings for purposes connected with the requirements of the persons occupying the houses or hostels provided or managed by the association;
  - (b) providing amenities or services for the benefit of those persons, either exclusively or together with other persons;
  - (c) acquiring, or repairing and improving, or creating by the conversion of houses or other property, houses to be disposed of on sale or on lease;
  - (d) building houses to be disposed of on shared ownership leases ;
  - (e) encouraging and giving advice on the formation of other housing associations which would be eligible for registration by the Corporation;

- (f) providing services for, and giving advice on the running of, registered housing associations ;
- (g) effecting transactions falling within section 45(1) (acquisition and disposal of house at discount to tenant of charitable body).

## **5 Registration**

- (1) The Housing Corporation may register any housing association which is eligible for registration but—
  - (a) the Corporation shall establish criteria which should be satisfied by a housing association seeking registration, and
  - (b) in deciding whether to register an association the Corporation shall have regard to whether it satisfies those criteria.
- (2) The Corporation may vary the criteria established by them under subsection (1).
- (3) As soon as may be after registering a housing association the Corporation shall give notice of the registration—
  - (a) if the association is a registered charity, to the Charity Commissioners, or
  - (b) if the association is a society registered under the 1965 Act, to the appropriate registrar,who shall record the registration.
- (4) For all purposes other than rectification of the register a body shall be conclusively presumed to be, or to have been, a housing association eligible for registration at any time when it is, or was, on the register.

## **6 Removal from the register**

- (1) A body which has been registered shall not be removed from the register except in accordance with this section.
- (2) If it appears to the Housing Corporation that a body which is on the register—
  - (a) is no longer a housing association eligible for registration, or
  - (b) has ceased to exist or does not operate,the Corporation shall, after giving the body at least 14 days notice, remove it from the register.
- (3) In the case of a body which appears to the Corporation to have ceased to exist or not to operate, notice under subsection (2) shall be deemed to be given to the body if it is served at the address last known to the Corporation to be the principal place of business of the body.
- (4) A body which is registered may request the Corporation to remove it from the register if it has not at any time received—
  - (a) a housing association grant,
  - (b) a revenue deficit grant, or
  - (c) any such payment or loan as is mentioned in paragraph 2 or 3 of Schedule 1 (grant-aided land),and the Corporation may, if it thinks fit, do so.

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- (5) As soon as may be after removing a body from the register the Corporation shall give notice of the removal—
- (a) if the body is a registered charity, to the Charity Commissioners,
  - (b) if the body is a society registered under the 1965 Act, to the appropriate registrar,
- who shall record the removal.

## **7 Appeal against removal**

- (1) A body which is aggrieved by a decision of the Housing Corporation to remove it from the register may appeal against the decision to the High Court or, as the case may be, to the Court of Session.
- (2) If an appeal is brought the Corporation shall not remove the body concerned from the register until the appeal has been finally determined or is withdrawn.
- (3) As soon as may be after an appeal is brought the Corporation shall give notice of the appeal—
- (a) if the body concerned is a registered charity, to the Charity Commissioners, or
  - (b) if the body concerned is a society registered under the 1965 Act, to the appropriate registrar.

## *Disposal of land*

## **8 Power of registered housing associations to dispose of land**

- (1) Without prejudice to the provisions of Part V of the Housing Act 1985 (the right to buy), every registered housing association has power, subject to section 9 (control by Housing Corporation of land transactions), by virtue of this section but not otherwise, to dispose, in such manner as it thinks fit, of land held by it.
- (2) Section 39 of the Settled Land Act 1925 (disposal of land by trustees) does not apply to the disposal of land by a registered housing association; and accordingly the disposal need not be for the best consideration in money that can reasonably be obtained.
- (3) Nothing in subsection (2) shall be taken to authorise any action on the part of a charity which would conflict with the trusts of the charity.

## **9 Control by Housing Corporation of dispositions of land by housing associations**

- (1) The consent of the Housing Corporation, by order under the seal of the Corporation, is required for—
- (a) any disposition of land by a registered housing association, and
  - (b) a disposition of grant-aided land (as defined in Schedule 1) by an unregistered housing association,
- except where the disposition is one excepted from this section by section 10.
- (2) The consent of the Corporation may be so given—
- (a) generally to all housing associations or to a particular housing association or description of association ;
  - (b) in relation to particular land or in relation to a particular description of land;

and may be given subject to conditions.

- (3) A disposition by a housing association which requires the consent of the Corporation under this section is valid in favour of a person claiming under the association notwithstanding that the consent of the Corporation has not been given; and a person dealing with the association, or with a person claiming under the association, shall not be concerned to see or inquire whether any such consent has been given.

This subsection has effect subject to section 12 (avoidance of certain dispositions of houses without consent).

- (4) Where at the time of its removal from the register under section 6(2) (removal of bodies no longer eligible for registration or defunct) a body owns land, this section continues to apply to that land after the removal as if the body concerned continued to be a registered housing association.
- (5) For the purposes of this section " disposition " means sale, lease, mortgage, charge or any other disposal.

## **10 Dispositions excepted from s. 9**

- (1) A disposition by an unregistered housing association which is a charity is not within section 9 if by virtue of section 29 of the Charities Act 1960 it cannot be made without an order of the court or the Charity Commissioners; but the Charity Commissioners shall consult the Housing Corporation before making an order in such a case.
- (2) A letting by a registered housing association, or by an unregistered housing association which is a housing trust, is not within section 9 if it is—
- (a) a letting of land under a secure tenancy, or
  - (b) a letting of land under what would be a secure tenancy but for any of paragraphs 2 to 12 of Schedule 3 to the Housing Act 1985 or paragraphs 2 to 7 of Schedule 1 to the Tenants' Rights &c. (Scotland) Act 1980 (tenancies excepted from being secure tenancies for reasons other than that they are long leases).
- (3) The grant by an unregistered housing association which does not satisfy the landlord condition in section 80 of the Housing Act 1985 (bodies which are capable of granting secure tenancies) of a lease for a term ending within the period of seven years and three months beginning on the date of the grant is not within section 9 unless—
- (a) there is conferred on the lessee (by the lease or otherwise) an option for renewal for a term which, together with the original term, would expire outside that period, or
  - (b) the lease is granted wholly or partly in consideration of a fine.
- (4) In subsection (3) the expression " lease " includes an agreement for a lease and a licence to occupy, and the expressions " grant " and " term " shall be construed accordingly.

## **11 Further provisions as to certain disposals of houses**

Schedule 2 applies in relation to a disposal of a house under section 8 where—

- (a) a discount is given to the purchaser, or
- (b) the house is situated in a National Park, an area designated under section 87 of the National Parks and Access to the Countryside Act 1949 as an area

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of outstanding beauty, or an area designated as a rural area by order under section 157 of the Housing Act 1985.

## **12 Avoidance of certain disposals of houses without consent**

A disposal of a house by a housing association made without the consent required by section 9 is void unless—

- (a) the disposal is to an individual (or to two or more individuals), and
- (b) the disposal does not extend to any other house.

*Control of payments to members, etc.*

## **13 Payments by way of gift, dividend or bonus**

- (1) A registered housing association shall not make a gift or pay a sum by way of dividend or bonus to—
  - (a) a person who is or has been a member of the association, or
  - (b) a person who is a member of the family of a person within paragraph (a), or
  - (c) a company of which a person within paragraph (a) or (b) is a director, or
  - (d) a Scottish firm of which a person within paragraph (a) or (b) is a member,
 except as permitted by this section.
- (2) The following are permitted—
  - (a) the payment of a sum which, in accordance with the rules of the association concerned, is paid as interest on capital lent to the association or subscribed by way of shares in the association ;
  - (b) the payment by a fully mutual housing association to a person who has ceased to be a member of the association, of a sum which is due to him either under his tenancy agreement with the association or under the terms of the agreement under which he became a member of the association.
- (3) Where an association which is a society registered under the 1965 Act pays a sum or makes a gift in contravention of this section the association may recover the sum or the value of the gift, and proceedings for its recovery shall be taken by the association if the Housing Corporation so directs.

## **14 Maximum amounts payable by way of fees, expenses, etc.**

- (1) The Housing Corporation may from time to time specify the maximum amounts which may be paid by a registered housing association which is a society registered under the 1965 Act—
  - (a) by way of fees or other remuneration, or by way of expenses, to a member of the association who is not a member of its committee or an officer or employee of the association,
  - (b) by way of expenses to a member of its committee (including a co-opted member) who is not an officer or employee of the association, or
  - (c) by way of expenses to an officer of the association who does not have a contract of employment with the association;
 and different amounts may be so specified for different purposes.

- (2) Where such an association makes a payment in excess of the specified maximum, the association may recover the excess and proceedings for its recovery shall be taken by the association if the Corporation so directs.

## **15 Payments and benefits to committee members, etc.**

- (1) A registered housing association which is a society registered under the 1965 Act shall not make a payment or grant a benefit to—
- (a) a committee member (including a co-opted member), officer or employee of the association, or
  - (b) a person who at any time within the preceding twelve months has been a person within paragraph (a), or
  - (c) a close relative of a person within paragraph (a) or (b), or
  - (d) a business trading for profit of which a person falling within paragraph (a), (b) or (c) is a principal proprietor or in the management of which such a person is directly concerned,
- except as permitted by this section.
- (2) The following are permitted—
- (a) payments made or benefits granted to an officer or employee under his contract of employment with the association;
  - (b) the payment of expenses to a committee member (including a co-opted member) or to an officer of the association who does not have a contract of employment with the association;
  - (c) any such payment as may be made in accordance with section 13(2) (interest payable in accordance with the rules and certain sums payable by a fully mutual housing association to a person who has ceased to be a member);
  - (d) the grant or renewal of a tenancy by a co-operative housing association;
  - (e) where a tenancy of a house has been granted to, or to a close relative of, a person who later became a committee member (including a co-opted member), officer or employee, the grant to that tenant of a new tenancy, whether of the same or another house.
- (3) Where an association pays a sum or grants a benefit in contravention of this section, the association may recover the sum or the value of the benefit, and proceedings for its recovery shall be taken by the association if the Housing Corporation so directs.

### *Constitution, change of rules, amalgamation and dissolution*

## **16 General power to remove committee member**

- (1) The Housing Corporation may by order remove a committee member of a registered housing association if—
- (a) in England and Wales, he has been adjudged bankrupt or he has made an arrangement with his creditors,
  - (b) in Scotland, he has become not our bankrupt or he has executed a trust deed for behoof of, or has made a composition contract or arrangement with, his creditors,
  - (c) he is incapable of acting by reason of mental disorder,
  - (d) he has not acted, or

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- (e) he cannot be found or does not act and his absence or failure to act is impeding the proper management of the association's affairs.
- (2) Before making an order the Corporation shall give at least 14 days' notice of its intention to do so to the person whom it intends to remove, and to the association concerned.
- (3) Notice under subsection (2) may be given by post, and if so given to the person whom the Corporation intend to remove may be addressed to his last known address in the United Kingdom.
- (4) A person who is ordered to be removed under this section may appeal against the order to the High Court or, as the case may be, the Court of Session.

## **17 Power to appoint new committee member**

- (1) The Housing Corporation may by order appoint a person to be a committee member of a registered housing association—
  - (a) in place of a person removed by the Corporation,
  - (b) where there are no members of the committee, or
  - (c) where the Corporation is of opinion that it is necessary for the proper management of the association's affairs to have an additional committee member.
- (2) A person may be so appointed whether or not he is a member of the association and, if he is not, notwithstanding that the rules of the association restrict appointment to members.
- (3) A person appointed under this section shall hold office for such period and on such terms as the Corporation may specify and on the expiry of the appointment the Corporation may renew the appointment for such period as it may specify; but this does not prevent a person appointed under this section from retiring in accordance with the rules of the association.
- (4) A person appointed under this section is entitled—
  - (a) to attend, speak and vote at any general meeting of the association and to receive all notices of and other communications relating to any general meeting which a member of the association is entitled to receive, and
  - (b) to require a general meeting of the association to be convened within 21 days of a request to that effect made in writing to the committee of the association.

## **18 Exercise of powers under ss. 16 and 17 in relation to registered charities**

- (1) The Housing Corporation may exercise its powers under sections 16 and 17 (removal or appointment of committee member) in relation to an association which is a registered charity only if the association has, at any time before the powers are exercised, received a grant or loan under—
  - section 41 (housing association grants),
  - section 54 or 55 (revenue deficit grants or hostel deficit grants),
  - section 58(2) (grants or loans by local authorities),
  - section 79 (loans by Housing Corporation),
  - section 31 of the Housing Act 1974 (management grants), or



any enactment mentioned in paragraph 2 or 3 of Schedule 1 (pre-1974 grants and certain loans).

- (2) Sections 16 and 17 apply in relation to a trustee of such an association as they apply in relation to a committee member.
- (3) Before exercising its powers under section 17 (appointment of committee member or trustee) in relation to such an association the Corporation shall consult the Charity Commissioners ; and the Corporation may not under that section appoint a trustee in excess of the maximum number permissible under the association's constitution.

## **19 Change of rules under the 1965 Act**

- (1) This section applies to a registered housing association—
  - (a) which is a society registered under the 1965 Act, and
  - (b) whose registration under this Part has been recorded by the appropriate registrar in accordance with section 5(3).
- (2) Notice shall be sent to the Housing Corporation of a change of the association's name or of the situation of its registered office.
- (3) Any other amendment of the association's rules is not valid without the Corporation's consent, given by order under the seal of the Corporation; and a copy of such consent shall be sent with the copies of the amendment required by section 10(1) of the 1965 Act to be sent to the appropriate registrar.
- (4) The 1965 Act applies in relation to the provisions of this section as if they were contained in section 10 of that Act (amendment of registered rules).

## **20 Change of objects by certain charities**

- (1) This section applies to a registered housing association—
  - (a) which is a registered charity and is not a company incorporated under the Companies Act, and
  - (b) whose registration under this Part has been recorded by the Charity Commissioners in accordance with section 5(3).
- (2) No power contained in the provisions establishing the association as a charity, or regulating its purposes and administration, to vary or add to its objects may be exercised without the consent of the Charity Commissioners, and before giving their consent the Charity Commissioners shall consult the Housing Corporation.

## **21 Amalgamation and dissolution under the 1965 Act**

- (1) This section applies to a registered housing association—
  - (a) which is a society registered under the 1965 Act, and
  - (b) whose registration under this Part has been recorded by the appropriate registrar in accordance with section 5(3).
- (2) The appropriate registrar shall not register a special resolution which is passed for the purposes of—
  - (a) section 50 of the 1965 Act (amalgamation of societies), or
  - (b) section 51 of that Act (transfer of engagements between societies),

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unless, together with the copy of the resolution, there is sent to him a copy of the Housing Corporation's consent to the amalgamation or transfer concerned.

- (3) Section 52 of the 1965 Act (power of society to convert itself into, amalgamate with or transfer its engagements to a company registered under the Companies Act) does not apply.
- (4) If the association resolves by special resolution that it be wound up voluntarily under the Companies Act, the resolution has no effect unless—
  - (a) before the resolution was passed the Corporation gave its consent to its passing, and
  - (b) a copy of the consent is forwarded to the appropriate registrar together with the copy of the resolution required to be so forwarded in accordance with the Companies Act.
- (5) If the association is to be dissolved by instrument of dissolution, the appropriate registrar shall not—
  - (a) register the instrument in accordance with section 58(5) of the 1965 Act, or
  - (b) cause notice of the dissolution to be advertised in accordance with section 58(6) of that Act,unless together with the instrument there is sent to him a copy of the Corporation's consent to its making.
- (6) The references in this section to the Corporation's consent are to an order under the seal of the Corporation giving its consent.

## **22 Housing Corporation's power to petition for winding up**

- (1) The Housing Corporation may present a petition for the winding up under the Companies Act of a registered housing association to which this section applies on the ground that the association is failing properly to carry out its purposes or objects.
- (2) This section applies to a registered housing association which is—
  - (a) a company incorporated under the Companies Act, or
  - (b) a society registered under the 1965 Act (to which the winding up provisions of the Companies Act apply in accordance with section 55(a) of the 1965 Act).

## **23 Transfer of net assets on dissolution**

- (1) Where a registered housing association which is a society registered under the 1965 Act is dissolved under that Act, so much of the property of the association as remains after meeting the claims of its creditors and any other liabilities arising on or before the dissolution shall be transferred—
  - (a) to the Housing Corporation, or
  - (b) if the Corporation so directs, to such registered housing association as may be specified in the direction,notwithstanding anything in the 1965 Act or in the rules of the association.
- (2) In order to avoid the necessity for the sale of land belonging to the association, and thereby secure the transfer of the land under this section, the Corporation may, if it appears to it appropriate to do so, make payments to discharge such claims or liabilities as are referred to in subsection (1).

- (3) Where the association which is dissolved is a charity, the Corporation may dispose of property transferred to it by virtue of this section only to another registered housing association—
  - (a) which is also a charity, and
  - (b) the objects of which appear to the Corporation to be, as nearly as practicable, akin to those of the dissolved association.
- (4) In any other case the Corporation may dispose of property transferred to it by virtue of this section to a registered housing association or to a subsidiary of the Corporation.
- (5) Where property transferred to the Corporation by virtue of this section includes land subject to an existing mortgage or charge (whether in favour of the Corporation or not), the Corporation may, in exercise of its powers under Part III dispose of the land either—
  - (a) subject to that mortgage or charge, or
  - (b) subject to a new mortgage or charge in favour of the Corporation securing such amount as appears to the Corporation to be appropriate in the circumstances.

#### *Accounts and audit*

### **24 General requirements as to accounts and audit**

- (1) The Secretary of State may by order lay down accounting requirements for registered housing associations with a view to ensuring that the accounts of every registered housing association—
  - (a) are prepared in the requisite form, and
  - (b) give a true and fair view of the state of affairs of the association, so far as its housing activities are concerned, and of the disposition of funds and assets which are, or at any time have been, in its hands in connection with those activities.
- (2) The method by which an association shall distinguish in its accounts between its housing activities and other activities shall be laid down by orders under subsection (1).
- (3) The accounts of every registered housing association shall comply with the requirements laid down under this section ; and the auditor's report shall state, in addition to any other matters which it is required to state, whether in the auditor's opinion the accounts do so comply.
- (4) Every registered housing association shall furnish to the Housing Corporation a copy of its accounts and auditor's report within six months of the end of the period to which they relate.
- (5) An order under this section—
  - (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament;and the provisions of such an order shall not apply in relation to a period beginning before the day on which the order comes into force.

## **25 Appointment of auditors by associations registered under the 1965 Act**

Section 4(1) of the Friendly and Industrial and Provident Societies Act 1968 (obligation to appoint qualified auditors to audit accounts and balance sheet for each year of account) applies to every registered housing association which is a society registered under the 1965 Act, without regard to the volume of its receipts and payments, the number of its members or the value of its assets.

## **26 Accounting requirements for registered housing associations not within the 1965 Act**

- (1) A registered housing association which is a registered charity shall, in respect of its housing activities (and separately from its other activities, if any) be subject to the provisions of Schedule 3 (which impose accounting and audit requirements corresponding to those imposed by the Friendly and Industrial and Provident Societies Act 1968).
- (2) But this does not affect any obligation of the charity under section 8 of the Charities Act 1960 (statement of accounts to be transmitted to Charity Commissioners).

## **27 Responsibility for securing compliance with accounting requirements**

- (1) Every responsible person, that is to say, every person who—
  - (a) is directly concerned with the conduct and management of the affairs of a registered housing association, and
  - (b) is in that capacity responsible for the preparation and audit of accounts,
 shall ensure that section 24 (general requirements as to accounts and audit) and, where applicable, Schedule 3 (accounting requirements for associations not within 1965 Act) are complied with by the association.
- (2) If—
  - (a) section 24(4) (furnishing of accounts and auditor's report) is not complied with, or
  - (b) the accounts furnished to the Housing Corporation under that provision do not comply with the accounting requirements laid down under section 24(1), or
  - (c) Schedule 3, where applicable, is not complied with,
 every responsible person, and the association itself, commits a summary offence and is liable on conviction to a fine not exceeding level 3 on the standard scale.
- (3) It is a defence—
  - (a) for a responsible person to prove that he did everything that could reasonably have been expected of him by way of discharging the duty imposed by subsection (1);
  - (b) for an association to prove that every responsible person did everything that could reasonably have been expected of him by way of discharging the duty imposed by subsection (1) in relation to the association.
- (4) Proceedings for an offence under this section may in England and Wales be brought only by or with the consent of the Corporation or the Director of Public Prosecutions.

*Inquiries into affairs of housing associations*

**28 Inquiry**

- (1) The Housing Corporation may appoint a person (not a person who is, or at any time has been, a member of the Corporation's staff) to conduct an inquiry into the affairs of a registered housing association.
- (2) The appointed person may by notice in writing served on—
  - (a) the association concerned, or
  - (b) any person who is, or has been, an officer, agent or member of the association, require the association or person to produce to him such books, accounts and other documents relating to the association's business and to give him such other information so relating, as he considers necessary for the purposes of the inquiry.
- (3) An association or other person who fails without reasonable excuse to comply with the requirements of a notice under subsection (2) commits a summary offence and is liable on conviction to a fine not exceeding level 5 on the standard scale.
- (4) On completion of the inquiry the appointed person shall make a report to the Corporation on such matters and in such form as the Corporation may specify.
- (5) In this section "agent" includes banker, solicitor and auditor; but nothing in this section requires the disclosure—
  - (a) by a solicitor, of a privileged communication made to him in his capacity as solicitor, or
  - (b) by a housing association's banker, of information as to the affairs of any of their other customers.

**29 Extraordinary audit for purposes of inquiry**

- (1) For the purposes of an inquiry under section 28 the Housing Corporation may require the accounts and balance sheet of the association concerned, or such of them as the Corporation may specify, to be audited by a qualified auditor appointed by the Corporation.
- (2) A person is a qualified auditor for this purpose if he is under section 7(1) of the Friendly and Industrial and Provident Societies Act 1968 a qualified auditor for the purposes of that Act, or is under section 7(2) of that Act a qualified auditor in relation to the association concerned.
- (3) On completion of the audit the appointed auditor shall make a report to the Corporation on such matters and in such form as the Corporation may specify.
- (4) The expenses of the audit, including the remuneration of the auditor, shall be paid by the Corporation.
- (5) An audit under this section is additional to, and does not affect, any audit made or to be made under any other enactment.

### **30 General powers exercisable as a result of inquiry or audit**

- (1) Where the Housing Corporation is satisfied, as the result of an inquiry under section 28 or an audit under section 29, that there has been misconduct or mismanagement in the affairs of a registered housing association, it may—
  - (a) by order remove any member of the committee of the association, or any officer, agent or employee of the association, who has been responsible for or privy to the misconduct or mismanagement or has by his conduct contributed to it or facilitated it;
  - (b) by order suspend such a person for up to six months, pending determination whether he should be removed;
  - (c) order any bank or other person who holds money or securities on behalf of the association not to part with the money or securities without the approval of the Corporation;
  - (d) by order restrict the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the association without the approval of the Corporation.
- (2) Before making an order under subsection (1)(a) the Corporation shall give at least 14 days' notice of its intention to do so—
  - (a) to the person it intends to remove, and
  - (b) to the association concerned.
- (3) Notice under subsection (2) may be given by post, and if so given to the person whom the Corporation intends to remove may be addressed to his last known address in the United Kingdom.
- (4) A person who is ordered to be removed under subsection (1)(d) or suspended under subsection (1)(b) may appeal against the order to the High Court or, as the case may be, the Court of Session.
- (5) Where a person is suspended under subsection (1)(b), the Corporation may give directions with respect to the performance of his functions and otherwise as to matters arising from the suspension.
- (6) A person who contravenes an order under subsection (1)(c) commits a summary offence and is liable on conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months or both ; but proceedings for such an offence may be brought in England and Wales only by or with the consent of the Corporation or the Director of Public Prosecutions.

### **31 Exercise of powers under ss. 28 to 30 in relation to registered charities**

- (1) The Housing Corporation may exercise its powers under sections 28 to 30 (inquiry, audit, &c.) in relation to an association which is a registered charity only if the association has, at any time before the powers are exercised, received a grant or loan under—
  - section 41 (housing association grants),
  - section 54 or 55 (revenue deficit grants or hostel deficit grants),
  - section 58(2) (grants or loans by local authorities),
  - section 79 (loans by Housing Corporation),
  - section 31 of the Housing Act 1974 (management grants), or

any enactments mentioned in paragraph 2 or 3 of Schedule 1 (pre-1974 grants and certain loans).

- (2) In relation to such an association sections 28 to 30 have effect with the following adaptations—
- (a) references to an officer, agent or member, or to a member of the committee, include a trustee of the association;
  - (b) references to the association's business are confined to its housing activities;
  - (c) references to the association's accounts do not include revenue accounts which do not relate to its housing activities, except so far as such accounts are necessary for the auditing of revenue accounts which do so relate or of the association's balance sheet;
  - (d) a person is a qualified auditor for the purposes of section 29 (extraordinary audit) only if he is an auditor qualified for the purposes of paragraph 3 of Schedule 3.
- (3) In relation to such an association the powers conferred on the Corporation by—  
section 28(1) (appointment of person to inquire into association's affairs), and  
section 30(1)(a) and (b) (removal of person in connection with misconduct or mismanagement and suspension with a view to removal),  
are exercisable only after consultation with the Charity Commissioners.

## **32 Power to direct transfer of land to another housing association or the Housing Corporation**

- (1) Where, as the result of an inquiry under section 28 or an audit under section 29, the Housing Corporation is satisfied as regards a registered housing association which is a society registered under the 1965 Act—
- (a) that there has been misconduct or mismanagement in the administration of the association, or
  - (b) that the management of the land belonging to the association would be improved if the land belonging to the association were transferred in accordance with the provisions of this section,
- the Corporation may, with the consent of the Secretary of State, direct the association to make such a transfer.
- (2) Where the association concerned is a charity, the Housing Corporation may only direct a transfer to be made to another registered housing association—
- (a) which is also a charity, and
  - (b) the objects of which appear to the Corporation to be, as nearly as practicable, akin to those of the association concerned.
- (3) In any other case the Corporation may direct a transfer to be made to the Corporation or to another registered housing association.
- (4) A transfer in pursuance of a direction under this section shall be made on the terms that the transferee will pay or undertake to pay to the association concerned such sum (if any) as will be necessary to defray all its proper debts and liabilities (including debts and liabilities secured on the land) after taking into account any money or other assets belonging to the association.

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- (5) If it appears to the Corporation likely that the association concerned will as a result of the transfer be dissolved under the 1965 Act, the Corporation shall secure that the costs of the dissolution are taken into account in determining the sum payable to the association under subsection (4).

### *Miscellaneous*

## **33 Recognition of central association**

- (1) The Secretary of State may, if he thinks fit, recognise for the purposes of this section a central association or other body established for the purposes of promoting the formation and extension of housing associations and of giving them advice and assistance.
- (2) The Secretary of State may make a grant in aid of the expenses of the association or body of such amount as he may, with the approval of the Treasury, determine.

## **34 Provision of land by county councils**

- (1) Where a housing association wishes to erect houses which in the opinion of the Secretary of State are required and the local housing authority in whose district the houses are proposed to be built are unwilling to acquire land with a view to selling or leasing it to the association, the county council, on the application of the association, may acquire land for that purpose.
- (2) For that purpose the county council may exercise all the powers of a local housing authority under Part II of the Housing Act 1985 (provision of housing) in regard to the acquisition and disposal of land ; and the provisions of that Act as to the acquisition of land by local housing authorities for the purposes of that Part apply accordingly.

## **35 Housing trusts: power to transfer housing to local housing authority**

- (1) A housing trust may—
- (a) sell or lease to the local housing authority the houses provided by the trust, or
  - (b) make over to the authority the management of the houses.
- (2) So far as subsection (1) confers power to dispose of land—
- (a) it does not apply to registered housing associations (on whom power to dispose of land is conferred by section 8);
  - (b) it has effect subject to section 9 (dispositions requiring consent of Housing Corporation) where the housing trust is an unregistered housing association and the land is grant-aided land (as defined in Schedule 1); and
  - (c) it has effect subject to section 29 of the Charities Act 1960 (dispositions which cannot be made without an order of the court or the Charity Commissioners) where the housing trust is a charity.

## **36 Housing trusts: functions of Secretary of State with respect to legal proceedings**

- (1) If it appears to the Secretary of State—
- (a) that the institution of legal proceedings is requisite or desirable with respect to any property belonging to a housing trust, or



(b) that the expediting of any such legal proceedings is requisite or desirable, he may certify the case to the Attorney-General who may institute legal proceedings or intervene in legal proceedings already instituted in such manner as he thinks proper in the circumstances.

- (2) Before preparing a scheme with reference to property belonging to a housing trust, the court or body which is responsible for making the scheme shall communicate with the Secretary of State and consider any recommendations made by him with reference to the proposed scheme.

### *Supplementary*

## **37 Definitions relating to the 1965 Act and societies registered under it**

In this Part " the 1965 Act" means the Industrial and Provident Societies Act 1965, and in relation to a society registered under that Act—

" appropriate registrar " has the same meaning as in that Act (where it is defined in section 73(1)(c) by reference to the situation of the society's registered office);

" committee " means the committee of management or other directing body of the society;

" co-opted member ", in relation to the committee, includes any person co-opted to serve on the committee, whether he is a member of the society or not;

" dissolved under the 1965 Act" means dissolved either as mentioned in section 55(a) of that Act (winding up under the Companies Act) or as mentioned in section 55(6) of that Act (instrument of dissolution).

## **38 Definitions relating to charities**

In this Part—

(a) " charity " has the same meaning as in the Charities Act 1960; and

(b) " registered charity " means a charity which is registered under section 4 of that Act and is not an exempt charity

## **39 Minor definitions**

In this Part—

" mental disorder " has the same meaning as in the Mental Health Act 1983 or the Mental Health (Scotland) Act 1984;

" secure tenancy " has the same meaning as in section 79 of the Housing Act 1985 or section 10 of the Tenants' Rights &c. (Scotland) Act 1980 ;

" standard scale " has the meaning given by section 75 of the Criminal Justice Act 1982.

## **40 Index of defined expressions: Part I**

The following Table shows provisions defining or explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section or paragraph):—

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appropriate registrar (in relation to a society registered under the 1965 Act)	section 37
bank	section 106
charge (in relation to Scotland)	section 106
charity	section 38(a)
committee (in relation to a society registered under the 1965 Act)	section 37
compulsory disposal (in Schedule 2)	paragraph 6 of that Schedule
co-operative housing association	section 1(2)
co-opted member (in relation to the committee of a society registered under the 1965 Act)	section 37
the Companies Act	section 106
dissolved under the 1965 Act (in relation to a society registered under that Act)	section 37
district (of a local housing authority)	section 104(2)
dwelling	section 106
eligible for registration (in relation to a housing association)	section 4
exempted disposal (in Schedule 2)	paragraph 5 of that Schedule
friendly society	section 106
fully mutual (in relation to a housing association)	section 1(2)
hostel	section 106
house	section 106
housing activities	section 106
housing association	section 1(1)
housing association grant	section 41
housing trust	section 2
insurance company	section 106
local housing authority	section 104
member of family	section 105
mental disorder	section 39
mortgage (in relation to Scotland)	section 106
the 1965 Act	section 37

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register, registered, registration and unregistered (in relation to a housing association)	section 3(2)
registered charity	section 38(6)
relevant disposal (in schedule 2)	paragraph 4 or that Schedule
revenue deficit grant	section 54
secure tenancy	section 39
shared ownership lease	section 106
standard scale	section 39
trustee savings bank	section 106