



# Housing Act 1988

## 1988 CHAPTER 50

### PART II

#### HOUSING ASSOCIATIONS

##### *Housing for Wales*

#### **46 Housing for Wales**

- (1) There shall be a body known as Housing for Wales.
- (2) Schedule 5 to this Act shall have effect with respect to the constitution and proceedings of, and other matters relating to, Housing for Wales.
- (3) Housing for Wales shall have the functions conferred on it by the Housing Associations Act 1985 (in this Part referred to as “the 1985 Act”) as amended in accordance with section 59 below.
- (4) All property in Wales which, immediately before the day appointed for the coming into force of this section, is held by the Housing Corporation shall on that day be transferred to and vest in Housing for Wales.
- (5) Any question whether any property has been transferred to Housing for Wales by virtue of subsection (4) above shall be determined by the Secretary of State.

#### **47 Transfer to Housing for Wales of regulation etc. of housing associations based in Wales**

- (1) Every registered housing association which, immediately before the appointed day,—
  - (a) is a society registered under the 1965 Act and has its registered office for the purposes of that Act in Wales, or
  - (b) is a registered charity and has its address for the purposes of registration by the Charity Commissioners in Wales,

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shall on the appointed day cease to be registered in the register maintained by the Housing Corporation under section 3 of the 1985 Act and, by virtue of this subsection, be deemed to be registered in the register maintained by Housing for Wales under that section.

- (2) Not later than one month before the appointed day, the Secretary of State shall notify every registered housing association which appears to him to be one which on that day will be deemed to be registered as mentioned in subsection (1) above of that fact and of the effect of that subsection.
- (3) As soon as may be after the appointed day, Housing for Wales shall give notice of any registration effected by virtue of subsection (1) above,—
  - (a) if the housing association is a registered charity, to the Charity Commissioners; and
  - (b) if the housing association is a society registered under the 1965 Act, to the Chief Registrar of friendly societies.
- (4) All rights, liabilities and obligations to which, immediately before the appointed day, the Housing Corporation was entitled or subject in relation to—
  - (a) any registered housing association to which subsection (1) above applies, and
  - (b) land in Wales held by an unregistered housing association,
 shall on that day become rights, liabilities and obligations of Housing for Wales.
- (5) Any question whether any rights, liabilities or obligations have become rights, liabilities or obligations of Housing for Wales by virtue of subsection (4) above shall be determined by the Secretary of State.
- (6) In this section—
 

“the 1965 Act” means the Industrial and Provident Societies Act 1965; and

“the appointed day” means the day appointed for the coming into force of this section.

### *Registration and issue of guidance*

## **48 Permissible purposes, objects or powers**

- (1) For subsections (3) and (4) of section 4 (eligibility for registration) of the 1985 Act there shall be substituted the following subsections—
  - “(3) The permissible additional purposes or objects are—
    - (a) providing land, amenities or services, or providing, constructing, repairing or improving buildings, for the benefit of the association’s residents, either exclusively or together with other persons;
    - (b) acquiring, or repairing and improving, or creating by the conversion of houses or other property, houses to be disposed of on sale, on lease or on shared ownership terms;
    - (c) constructing houses to be disposed of on shared ownership terms;
    - (d) managing houses which are held on leases or other lettings (not being houses falling within subsection (2)(a) or (b)) or blocks of flats;
    - (e) providing services of any description for owners or occupiers of houses in arranging or carrying out works of maintenance, repair or

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- improvement, or encouraging or facilitating the carrying out of such works;
- (f) encouraging and giving advice on the formation of other housing associations or providing services for, and giving advice on the running of, such associations and other voluntary organisations concerned with housing, or matters connected with housing.
- (4) A housing association shall not be ineligible for registration by reason only that its powers include power—
- (a) to acquire commercial premises or businesses as an incidental part of a project or series of projects undertaken for purposes or objects falling within subsection (2) or (3);
- (b) to repair, improve or convert any commercial premises acquired as mentioned in paragraph (a) or to carry on, for a limited period, any business so acquired;
- (c) to repair or improve houses, or buildings in which houses are situated, after the tenants have exercised, or claimed to exercise, acquisition rights;
- (d) to acquire houses to be disposed of at a discount to tenants to whom section 58 of the Housing Act 1988 applies (tenants of charitable housing associations etc.).
- (5) In this section—
- “acquisition right” means—
- (a) in England and Wales, the right to buy or the right to be granted a shared ownership lease under Part V of the Housing Act 1985;
- (b) in Scotland, a right to purchase under section 61 of the Housing (Scotland) Act 1987;
- “block of flats” means a building—
- (a) containing two or more flats which are held on leases or other lettings; and
- (b) occupied or intended to be occupied wholly or mainly for residential purposes;
- “disposed of on shared ownership terms” means—
- (a) in England and Wales, disposed of on a shared ownership lease;
- (b) in Scotland, disposed of under a shared ownership agreement;
- “letting” includes the grant—
- (a) in England and Wales, of a licence to occupy;
- (b) in Scotland, of a right or permission to occupy;
- “residents”, in relation to a housing association, means the persons occupying the houses or hostels provided or managed by the association;
- “voluntary organisation” means an organisation whose activities are not carried on for profit.”
- (2) The Secretary of State may by order made by statutory instrument amend the subsections substituted by subsection (1) above, but not so as to restrict or limit the permissible purposes, objects or powers.
- (3) An order under subsection (2) above may contain such incidental, supplemental or transitional provisions as the Secretary of State thinks fit.

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- (4) A statutory instrument containing an order under subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**49 Guidance as to management of accommodation by registered housing associations**

After section 36 of the 1985 Act there shall be inserted the following section—

**“36A Issue of guidance by the Corporation**

- (1) In accordance with the provisions of this section, the Corporation may issue guidance with respect to the management of housing accommodation by registered housing associations and, in considering under the preceding provisions of this Part whether action needs to be taken to secure the proper management of an association’s affairs or whether there has been mismanagement, the Corporation may have regard (among other matters) to the extent to which any such guidance is being or has been followed.
- (2) Guidance issued under this section may make different provision in relation to different cases and, in particular, in relation to different areas, different descriptions of housing accommodation and different descriptions of registered housing associations.
- (3) Without prejudice to the generality of subsections (1) and (2), guidance issued under this section may relate to—
- (a) the housing demands for which provision should be made and the means of meeting those demands;
  - (b) the allocation of housing accommodation between individuals;
  - (c) the terms of tenancies and the principles upon which the levels of rent should be determined;
  - (d) standards of maintenance and repair and the means of achieving these standards; and
  - (e) consultation and communication with tenants.
- (4) Guidance issued under this section may be revised or withdrawn but, before issuing or revising any guidance under this section, the Corporation—
- (a) shall consult such bodies appearing to it to be representative of housing associations as it considers appropriate; and
  - (b) shall submit a draft of the proposed guidance or, as the case may be, the proposed revision to the Secretary of State for his approval.
- (5) If the Secretary of State gives his approval to a draft submitted to him under subsection (4)(b), the Corporation shall issue the guidance or, as the case may be, the revision concerned in such manner as the Corporation considers appropriate for bringing it to the notice of the housing associations concerned.”

### *Grants: functions of Corporation*

#### **50 Housing association grants**

- (1) The Housing Corporation and Housing for Wales may make grants to registered housing associations in respect of expenditure incurred or to be incurred by them in connection with housing activities; and any reference in the following provisions of this section to “the Corporation” shall be construed accordingly.
- (2) As respects grants under this section the following, namely—
  - (a) the procedure to be followed in relation to applications for grant;
  - (b) the circumstances in which grant is or is not to be payable;
  - (c) the method for calculating, and any limitations on, the amount of grant; and
  - (d) the manner in which, and time or times at which, grant is to be paid,shall be such as may be specified by the Corporation, acting in accordance with such principles as it may from time to time determine.
- (3) In making a grant under this section, the Corporation may provide that the grant is conditional on compliance by the association with such conditions as it may specify.
- (4) On such terms as it may, with the appropriate approval, specify, the Corporation may appoint a local housing authority which is willing to do so to act as its agent in connection with the assessment and payment of grant under this section; and, where such an appointment is made, the local housing authority shall act as such an agent in accordance with the terms of their appointment.
- (5) In subsection (4) above, “the appropriate approval” means the approval of the Secretary of State given with the consent of the Treasury.
- (6) Where—
  - (a) a grant under this section is payable to an association, and
  - (b) at any time property to which the grant relates becomes vested in, or is leased for a term of years to, or reverts to, some other registered housing association, or trustees for some other such association,this section (including this subsection) shall have effect after that time as if the grant, or such proportion of it as is specified or determined under subsection (7) below, were payable to that other association.
- (7) The proportion referred to in subsection (6) above is that which, in the circumstances of the particular case—
  - (a) the Corporation, acting in accordance with such principles as it may from time to time determine, may specify as being appropriate; or
  - (b) the Corporation may determine to be appropriate.
- (8) Where one of the associations mentioned in subsection (6) above is registered by the Housing Corporation and another is registered by Housing for Wales, the determination mentioned in subsection (7) above shall be such as shall be agreed between the two Corporations.

#### **51 Revenue deficit grants**

- (1) The Housing Corporation or, as the case may be, Housing for Wales may make a grant to a registered housing association if—

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- (a) in relation to all housing activities of the association,
  - (b) in relation to housing activities of the association of a particular description, or
  - (c) in relation to particular housing activities of the association,
- the association's expenditure as calculated by the Corporation concerned for any period (including a period which is wholly or partly a future period) exceeds its income as so calculated for that period.
- (2) In calculating an association's expenditure or income for the purposes of subsection (1) above, the Housing Corporation or, as the case may be, Housing for Wales—
    - (a) shall act in accordance with such principles as it may from time to time determine; and
    - (b) may act on such assumptions (whether or not borne out or likely to be borne out by events) as it may from time to time determine.
  - (3) Subsections (2) and (3) of section 50 above shall apply for the purposes of this section as they apply for the purposes of that section.

## **52 Recovery etc. of grants**

- (1) Where a grant to which this section applies, that is to say—
  - (a) a grant under section 50 or 51 above, or
  - (b) a grant under section 41 of the 1985 Act or any enactment replaced by that section, or
  - (c) a grant under section 2(2) of the Housing (Scotland) Act 1988,
 has been made to a registered housing association, the powers conferred by subsection (2) below are exercisable in such events (including the association not complying with any conditions) as the Corporation may from time to time determine (in this section referred to as "relevant events").
- (2) The Corporation, acting in accordance with such principles as it may from time to time determine, may—
  - (a) reduce the amount of, or of any payment in respect of, the grant;
  - (b) suspend or cancel any instalment of the grant; or
  - (c) direct the association to pay to it an amount equal to the whole, or such proportion as it may specify, of the amount of any payment made to the association in respect of the grant,
 and a direction under paragraph (c) above requiring the payment of any amount may also require the payment of interest on that amount in accordance with subsections (7) to (9) below.
- (3) Where, after a grant to which this section applies has been made to an association, a relevant event occurs, the association shall notify the Corporation and, if so required by written notice of the Corporation, shall furnish it with such particulars of and information relating to the event as are specified in the notice.
- (4) Where a grant to which this section applies (other than one falling within subsection (1) (c) above) has been made to an association, the Chief Land Registrar may furnish the Corporation with such particulars and information as it may reasonably require for the purpose of ascertaining whether a relevant event has occurred; but this subsection shall cease to have effect on the day appointed under section 3(2) of the Land Registration Act 1988 for the coming into force of that Act.

- (5) Where—
- (a) a grant to which this section applies has been made to an association, and
  - (b) at any time property to which the grant relates becomes vested in, or is leased for a term of years to, or reverts to, some other registered housing association, or trustees for some other such association,
- this section (including this subsection) shall have effect after that time as if the grant, or such proportion of it as is specified or determined under subsection (6) below, had been made to that other association.
- (6) The proportion referred to in subsection (5) above is that which, in the circumstances of the particular case,—
- (a) the Corporation, acting in accordance with such principles as it may from time to time determine, may specify as being appropriate; or
  - (b) the Corporation may determine to be appropriate.
- (7) A direction under subsection (2)(c) above requiring the payment of interest on the amount directed to be paid to the Corporation shall specify, in accordance with subsection (9) below,—
- (a) the rate or rates of interest (whether fixed or variable) which is or are applicable;
  - (b) the date from which interest is payable, being not earlier than the date of the relevant event; and
  - (c) any provision for suspended or reduced interest which is applicable.
- (8) In subsection (7)(c) above—
- (a) the reference to a provision for suspended interest is a reference to a provision whereby, if the amount which is directed to be paid to the Corporation is paid before a date specified in the direction, no interest will be payable for any period after the date of the direction; and
  - (b) the reference to a provision for reduced interest is a reference to a provision whereby, if that amount is so paid, any interest payable will be payable at a rate or rates lower than the rate or rates which would otherwise be applicable.
- (9) The matters specified in a direction as mentioned in paragraphs (a) to (c) of subsection (7) above shall be either—
- (a) such as the Corporation, acting in accordance with such principles as it may from time to time determine, may specify as being appropriate, or
  - (b) such as the Corporation may determine to be appropriate in the particular case.

## **53 Determinations under Part II**

- (1) A general determination may either—
- (a) make the same provision for all cases; or
  - (b) make different provision for different cases or descriptions of cases, including different provision for different areas or for different descriptions of housing associations or housing activities;
- and for the purposes of this subsection descriptions may be framed by reference to any matters whatever, including in particular, in the case of housing activities, the manner in which they are financed.

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- (2) The Corporation shall not make a determination under the foregoing provisions of this Part except with the approval of the Secretary of State given, in the case of a general determination, with the consent of the Treasury.
- (3) Before making a general determination, the Corporation shall consult such bodies appearing to it to be representative of housing associations as it considers appropriate; and after making such a determination, the Corporation shall publish the determination in such manner as it considers appropriate for bringing the determination to the notice of the associations concerned.
- (4) In this section “general determination” means a determination under any provision of sections 50 to 52 above, other than a determination relating solely to a particular case.

*Grants: functions of Secretary of State*

#### **54 Tax relief grants**

- (1) If a housing association makes a claim to the Secretary of State in respect of a period and satisfies him that throughout the period it was a housing association to which this section applies and its functions either—
  - (a) consisted exclusively of the function of providing or maintaining housing accommodation for letting or hostels and activities incidental to that function, or
  - (b) included that function and activities incidental to that function,
 the Secretary of State may make grants to the association for affording relief from tax chargeable on the association.
- (2) This section applies to a housing association at any time if, at that time—
  - (a) it is registered;
  - (b) it does not trade for profit; and
  - (c) it is not approved for the purposes of section 488 of the Income and Corporation Taxes Act 1988 (tax treatment of co-operative housing associations).
- (3) References in this section to tax chargeable on an association are to income tax (other than income tax which the association is entitled to deduct on making any payment) and corporation tax.
- (4) A grant under this section may be made—
  - (a) in a case falling within subsection (1)(a) above, for affording relief from any tax chargeable on the association for the period in respect of which the claim is made; and
  - (b) in a case falling within subsection (1)(b) above, for affording relief from such part of any tax so chargeable as the Secretary of State considers appropriate having regard to the other functions of the association;
 and in any case shall be of such amount, shall be made at such times and shall be subject to such conditions as the Secretary of State thinks fit.
- (5) The conditions may include conditions for securing the repayment in whole or in part of a grant made to an association—
  - (a) in the event of tax in respect of which it was made being found not to be chargeable; or



- (b) in such other events (including the association beginning to trade for profit) as the Secretary of State may determine.
- (6) A claim under this section shall be made in such manner and shall be supported by such evidence as the Secretary of State may direct.
- (7) The Commissioners of Inland Revenue and their officers may disclose to the Secretary of State such particulars as he may reasonably require for determining whether a grant should be made on a claim or whether a grant should be repaid or the amount of such grant or repayment.
- (8) In this section “letting” includes—
  - (a) in England and Wales, the grant of a shared ownership lease or a licence to occupy;
  - (b) in Scotland, disposal under a shared ownership agreement or the grant of a right or permission to occupy.

## **55 Surplus rental income**

- (1) An association to which this section applies, that is to say, a registered housing association which has at any time received a payment in respect of—
  - (a) a grant under section 50 above, or
  - (b) a grant under section 41 of the 1985 Act or any enactment replaced by that section, or
  - (c) a grant under section 2(2) of the Housing (Scotland) Act 1988,(in this section referred to as a “relevant grant”) shall show separately in its accounts for any period ending after the coming into force of this section the surpluses arising from increased rental income during that period from such housing activities to which the grant relates as the Secretary of State may from time to time determine.
- (2) The surpluses shall be shown by each association in a fund to be known as its rent surplus fund; and the method of constituting that fund and of showing it in the association’s accounts shall be as required by order of the Secretary of State under section 24 of the 1985 Act (general requirements as to accounts) and, notwithstanding anything in subsection (5) of that section, such an order may make provision applying to any period to which this section applies.
- (3) The surpluses in respect of a period shall be calculated in such manner as the Secretary of State may from time to time determine; and a determination under this subsection may provide that, in calculating surpluses, an association shall act on such assumptions (whether or not borne out or likely to be borne out by events) as may be specified in the determination.
- (4) A determination under subsection (1) or (3) above may—
  - (a) make the same provision for all cases; or
  - (b) make different provision for different cases or descriptions of cases, including different provision for different areas or for different descriptions of housing associations or housing activities;and for the purposes of this subsection descriptions may be framed by reference to any matters whatever, including in particular, in the case of housing activities, the manner in which they are financed.

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- (5) Before making a determination under subsection (1) or (3) above, the Secretary of State shall consult such bodies appearing to him to be representative of housing associations as he considers appropriate; and after making such a determination, the Secretary of State shall publish it in such manner as he considers appropriate for bringing it to the notice of the associations concerned.
- (6) The Secretary of State may from time to time give notice to an association to which this section applies requiring it to pay to him, with interest if demanded, or to apply or appropriate for purposes he specifies, any sums standing in its rent surplus fund at the end of a period of account.
- (7) Any interest demanded by such a notice is payable—
- (a) at the rate or rates (whether fixed or variable) previously determined by the Secretary of State, with the consent of the Treasury, for housing associations generally and published by him or, if no such determination has been made, at the rate or rates (whether fixed or variable) specified with the consent of the Treasury in the notice; and
  - (b) either from the date of the notice or from such other date, not earlier than the end of the period of account, as may be specified in the notice.
- (8) A notice under subsection (6) above demanding interest may with the consent of the Treasury provide that, if the sums required by the notice to be paid to the Secretary of State are paid before a date specified in the notice—
- (a) no interest shall be payable for any period after the date of the notice; and
  - (b) any interest payable shall be payable at a rate or rates lower than the rate or rates given by subsection (7) above.
- (9) The Secretary of State may from time to time give notice—
- (a) to all associations to which this section applies,
  - (b) to associations to which this section applies of a particular description, or
  - (c) to particular associations to which this section applies,
- requiring them to furnish him with such information as he may reasonably require in connection with the exercise of his functions under this section; and a notice under paragraph (a) or (b) above may be given by publication in such manner as the Secretary of State considers appropriate for bringing it to the attention of the associations concerned.
- (10) Where—
- (a) an association has received a payment in respect of a relevant grant, and
  - (b) at any time property to which the grant relates becomes vested in, or is leased for a term of years to, or reverts to, some other registered housing association, or trustees for some other such association,
- this section (including this subsection) shall have effect in relation to periods after that time as if the payment, or such proportion of it as may be determined by the Secretary of State to be appropriate, had been made to that other association.

*Miscellaneous and supplemental*

**56 Duty of Housing Corporation and Housing for Wales in relation to racial discrimination**

At the end of section 75 of the 1985 Act (general functions of the Corporation) there shall be added the following subsection—

“(5) Section 71 of the Race Relations Act 1976 (local authorities: general statutory duty) shall apply to the Corporation as it applies to a local authority.”

**57 Delegation of certain functions**

The Secretary of State may delegate to the Corporation, to such extent and subject to such conditions as he may specify, any of his functions under—

- (a) section 54 or 55 above;
- (b) sections 53 (recoupment of surplus rental income), 54 to 57 (deficit grants) and 62 (grants for affording tax relief) of the 1985 Act, so far as continuing in force after the passing of this Act; and
- (c) Parts I and II of Schedule 5 to the 1985 Act (residual subsidies);

and where he does so, references to him in those provisions shall be construed accordingly.

**58 Application of Housing Acts to certain transactions**

- (1) This section applies to any tenant of a publicly-funded house who, but for paragraph 1 of Schedule 5 to the Housing Act 1985 (no right to buy where landlord a charitable housing trust or housing association), would have the right to buy under Part V of the Housing Act 1985.
- (2) A house is publicly-funded for the purposes of subsection (1) above if a grant under section 50 above, or a grant under section 41 of the 1985 Act or any enactment replaced by that section, has been paid in respect of a project which included—
  - (a) the acquisition of the house;
  - (b) the acquisition of a building and the provision of the house by means of the conversion of the building; or
  - (c) the acquisition of land and the construction of the house on the land.
- (3) Where a registered housing association contracts for the acquisition of a house and, without taking the conveyance, grant or assignment, disposes of its interest at a discount to a tenant to whom this section applies, the provisions mentioned in subsection (4) below shall have effect as if the association first acquired the house and then disposed of it to the tenant.
- (4) The said provisions are—
  - section 4 of the 1985 Act (eligibility for registration);
  - section 8 of that Act (disposal of land by registered housing associations);
  - section 9 of that Act (consent of Corporation to disposals);
  - section 79(2) of that Act (power of Corporation to lend to person acquiring interest from registered housing association);
  - Schedule 2 to that Act (covenants for repayments of discount on early disposal and restricting disposal of houses in National Parks etc.); and

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section 130 of the Housing Act 1985 (reduction of discount on exercise of right to buy where previous discount given).

## **59 Interpretation of Part II and amendments of Housing Associations Act 1985**

- (1) In this Part of this Act—
  - (a) “the 1985 Act” means the Housing Associations Act 1985; and
  - (b) except as provided in section 50(1) above, “the Corporation” and other expressions used in this Part have the same meaning as in the 1985 Act.
- (2) The 1985 Act shall have effect subject to the amendments in Schedule 6 to this Act, being amendments—
  - (a) extending the supervisory powers conferred by Part I of the 1985 Act;
  - (b) making provision incidental to and consequential upon the establishment by this Part of this Act of Housing for Wales and the establishment by the Housing (Scotland) Act 1988 of Scottish Homes;
  - (c) making provision incidental to and consequential upon other provisions of this Part of this Act and the provisions of Part IV of this Act; and
  - (d) varying the grounds on which the Secretary of State may remove a member of the Housing Corporation from office.
- (3) In Schedule 6 to this Act,—
  - (a) Part I contains amendments of Part I of the 1985 Act, including amendments which reproduce the effect of amendments made by Schedule 3 to the Housing (Scotland) Act 1988 with respect to Scottish Homes; and
  - (b) Parts II and III contain amendments of Parts II and III respectively of the 1985 Act.
- (4) Without prejudice to the operation of Schedule 3 to the Housing (Scotland) Act 1988 in relation to anything done before the day appointed for the coming into force of this section, for the purpose of giving effect to the amendments in Part I of Schedule 6 to this Act, the said Schedule 3 shall be deemed never to have come into force.