

SCHEDULES

SCHEDULE 11

Section 218

REGISTERED SOCIAL LANDLORDS

Housing Associations Act 1985 (c. 69)

- 1 In section 87 of the Housing Associations Act 1985 (financial assistance with respect to formation, management, etc. of certain housing associations) omit—
- (a) in subsection (3), the words from “, acting” onwards, and
 - (b) subsection (6).

Housing Act 1988 (c. 50)

- 2 The Housing Act 1988 is amended as follows.
- 3 In section 50(2) (housing association grants) omit the words from “, acting” onwards.
- 4 In section 52(2) (recovery etc. of grants) omit the words from “, acting” to “determine,”.
- 5 Omit section 55 (surplus rental income).
- 6 In section 59(1A) (interpretation) for “55” substitute “54”.

Housing Act 1996 (c. 52)

- 7 The Housing Act 1996 is amended as follows.
- 8 In section 18(2) (social housing grants) omit the words from “, acting” to “determine,”.
- 9 In section 20(3) (purchase grant where right to acquire exercised) omit the words from “, acting” to “determine,”.
- 10 In section 21(3) (purchase grant in respect of other disposals) omit the words from “, acting” to “determine,”.
- 11 In section 28 (grants under sections 50 to 55 of the Housing Act 1988), in the sidenote and in subsection (6), for “55” substitute “54”.
- 12 (1) In section 31(2) (offence of intentionally altering etc. document required to be produced under section 30), for paragraph (b) substitute—
- “(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.”
- (2) The amendment made by sub-paragraph (1) does not apply in relation to any offence committed before the day on which that sub-paragraph comes into force.
- 13 (1) Section 36 (issue of guidance by the Relevant Authority) is amended as follows.

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- (2) In subsection (2) (particular matters with respect to which guidance may be issued under the section) for “this section” substitute “subsection (1)”.
- (3) After subsection (2) insert—
- “(2A) The Relevant Authority may also issue guidance with respect to—
- (a) the governance of bodies that are registered social landlords;
- (b) the effective management of such bodies;
- (c) establishing and maintaining the financial viability of such bodies.”
- (4) In subsection (7) (guidance relevant to whether there has been mismanagement) after “there has been” insert “misconduct or”.
- 14 In paragraph 1(2) of Schedule 1 (payments by way of gift, dividend or bonus) after paragraph (b) insert—
- “(c) the payment of a sum, in accordance with the constitution or rules of the body, to a registered social landlord which is a subsidiary or associate of the body.”
- 15 (1) Paragraph 15 of Schedule 1 (transfer of net assets on dissolution or winding up) is amended as follows.
- (2) In sub-paragraph (1)(b), after “1985” insert “(including such a company which is also a registered charity)”.
- (3) At the end of sub-paragraph (4) insert—
- “And in such a case any registered social landlord specified in a direction under sub-paragraph (2) must be one to which paragraphs (a) and (b) above apply.”
- 16 After paragraph 15 insert—
- “Transfer of net assets on termination of charity not within paragraph 15(1)*
- 15A (1) The Secretary of State may by regulations provide for any provisions of paragraph 15(2) to (6) to apply in relation to a registered social landlord within sub-paragraph (2)—
- (a) in such circumstances, and
- (b) with such modifications,
- as may be specified in the regulations.
- (2) A registered social landlord is within this sub-paragraph if—
- (a) it is a registered charity, and
- (b) it does not fall within sub-paragraph (1) of paragraph 15.
- (3) Regulations under this paragraph may in particular provide that any provision of the regulations requiring the transfer of any property of the charity is to have effect notwithstanding—
- (a) anything in the terms of its trusts, or
- (b) any resolution, order or other thing done for the purposes of, or in connection with, the termination of the charity in any manner specified in the regulations.

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- (4) Any regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- 17 (1) Paragraph 16 of Schedule 1 (general requirements as to accounts and audit) is amended as follows.
- (2) Omit sub-paragraph (4) (auditor’s report to state whether accounts comply with paragraph 16).
- (3) For sub-paragraph (5) substitute—
- “(5) Every registered social landlord shall furnish to the Relevant Authority—
- (a) a copy of its accounts, and
- (b) (subject to sub-paragraph (7)) a copy of the auditor’s report in respect of them,
- within six months of the end of the period to which they relate.
- (6) 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 comply with the requirements laid down under this paragraph.
- (7) The provisions of sub-paragraphs (5)(b) and (6) do not apply where, by virtue of any enactment—
- (a) any accounts of a registered social landlord are not required to be audited, and
- (b) instead a report is required to be prepared in respect of them by a person appointed for the purpose (“the reporting accountant”),
- and sub-paragraph (8) shall apply in place of those provisions.
- (8) In such a case—
- (a) the registered social landlord shall furnish to the Relevant Authority a copy of the reporting accountant’s report in respect of the accounts within six months of the end of the period to which they relate; and
- (b) that report shall state, in addition to any other matters which it is required to state, whether in the reporting accountant’s opinion the accounts comply with the requirements laid down under this paragraph.”
- 18 After paragraph 16 of Schedule 1 insert—
- “Companies exempt from audit requirements: accountant’s report*
- 16A (1) This paragraph applies to registered social landlords which are companies registered under the Companies Act 1985 (“RSL companies”).
- (2) In section 249A of the Companies Act 1985 (exemptions from audit)—
- (a) subsection (2) shall apply in relation to an RSL company which meets the total exemption conditions in respect of a financial year (whether it is a charity or not), and
- (b) that subsection shall apply in relation to such a company in the same way as it applies in relation to an RSL company which is a

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charity and meets the report conditions in relation to a financial year; and

(c) subsection (1) accordingly does not have effect in relation to an RSL company.

(3) In section 249C of that Act (report required for the purposes of section 249A(2)), subsection (3) shall apply in relation to an RSL company within sub-paragraph (2)(a) above as if the reference to satisfying the requirements of section 249A(4) were a reference to meeting the total exemption conditions.

(4) The Relevant Authority may, in respect of any relevant financial year of an RSL company, give a direction to the company requiring it—

(a) to appoint a qualified auditor to audit its accounts and balance sheet for that year, and

(b) to furnish to the Relevant Authority a copy of the auditor's report by such date as is specified in the direction.

(5) For the purposes of sub-paragraph (4), a financial year of an RSL company is a "relevant financial year" if—

(a) it precedes that in which the direction is given, and

(b) the company met either the total exemption conditions or the report conditions in respect of that year, and

(c) its accounts and balance sheet for that year were not audited in accordance with Part 7 of the Companies Act 1985.

(6) In this paragraph—

(a) "financial year" has the meaning given by section 223 of the Companies Act 1985;

(b) "qualified auditor" means a person who is eligible for appointment as auditor of the company under Part 2 of the Companies Act 1989;

(c) any reference to a company meeting the report conditions is to be read in accordance with section 249A(4) of the Companies Act 1985; and

(d) any reference to a company meeting the total exemption conditions is to be read in accordance with section 249A(3) or section 249A(3) and (3A) of that Act, depending on whether it is a charity."

19 For paragraph 17 of Schedule 1 (appointment of auditors by industrial and provident societies), together with the heading preceding it, substitute—

“Industrial and provident societies exempt from audit requirements: accountant’s report

17 (1) This paragraph applies to registered social landlords which are industrial and provident societies.

(2) Section 9A of the Friendly and Industrial and Provident Societies Act 1968 (duty to obtain accountant’s reports where section 4 applied) shall have effect, in its application to such a landlord, with the omission

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of subsection (1)(b) (accountant's report required only where turnover exceeds a specified sum).

(3) The Relevant Authority may, in respect of any relevant year of account of such a landlord, give a direction to the landlord requiring it—

- (a) to appoint a qualified auditor to audit its accounts and balance sheet for that year, and
- (b) to furnish to the Relevant Authority a copy of the auditor's report by such date as is specified in the direction.

(4) For the purposes of sub-paragraph (3), a year of account of a landlord is a "relevant year of account" if—

- (a) it precedes that in which the direction is given, and
- (b) at the end of it there is in force in relation to it a disapplication under section 4A(1) of the Friendly and Industrial and Provident Societies Act 1968.

(5) In this paragraph—

"qualified auditor" means a person who is a qualified auditor for the purposes of the Friendly and Industrial and Provident Societies Act 1968;

"year of account" has the meaning given by section 21(1) of that Act."

20 (1) Paragraph 18 of Schedule 1 (accounting and audit requirements for charities) is amended as follows.

(2) In the cross-heading preceding the paragraph, after "and audit" insert "or reporting".

(3) In sub-paragraph (1) (application of provisions to registered social landlord which is a registered charity) omit the words from "(which impose" onwards.

(4) For sub-paragraph (4) substitute—

"(4) The charity must appoint a qualified auditor ("the auditor") to audit the accounts prepared in accordance with sub-paragraph (3) in respect of each period of account in which—

- (a) the charity's gross income (within the meaning of the Charities Act 1993) arising in connection with its housing activities, or
- (b) its total expenditure arising in connection with those activities, exceeds the sum for the time being specified in section 43(1) of the Charities Act 1993 (audit required for charities where gross income or total income exceeds the specified sum).

(4A) Where sub-paragraph (4) does not apply in respect of a period of account, the charity must appoint a qualified auditor ("the reporting accountant") to make such a report as is mentioned in paragraph 18A(1) in respect of the period of account.

(4B) In sub-paragraphs (4) and (4A) "qualified auditor" means a person who is eligible for appointment as auditor of the charity under Part 2 of the Companies Act 1989 or who would be so eligible if the charity were a company registered under the Companies Act 1985."

21 After paragraph 18 of Schedule 1 insert—

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“Charities exempt from audit requirements: accountant’s report

- 18A (1) The report referred to in paragraph 18(4A) is a report—
- (a) relating to the charity’s accounts prepared in accordance with paragraph 18(3) in respect of the period of account in question, and
 - (b) complying with sub-paragraphs (2) and (3) below.
- (2) The report must state whether, in the opinion of the reporting accountant—
- (a) the revenue account or accounts and the balance sheet are in agreement with the books of account kept by the charity under paragraph 18(2),
 - (b) on the basis of the information contained in those books of account, the revenue account or accounts and the balance sheet comply with the requirements of the Charities Act 1993, and
 - (c) on the basis of the information contained in those books of account, paragraph 18(4A) applied to the charity in respect of the period of account in question.
- (3) The report must also state the name of the reporting accountant and be signed by him.
- (4) Paragraph 18(7) applies to the reporting accountant and his functions under this paragraph as it applies to an auditor and his functions under paragraph 18.
- (5) The Relevant Authority may, in respect of a relevant period of account of a charity, give a direction to the charity requiring it—
- (a) to appoint a qualified auditor to audit its accounts for that period, and
 - (b) to furnish to the Relevant Authority a copy of the auditor’s report by such date as is specified in the direction;
- and paragraph 18(5) to (7) apply to an auditor so appointed as they apply to an auditor appointed under paragraph 18.
- (6) For the purposes of sub-paragraph (5), a period of account of a charity is a relevant period of account if—
- (a) it precedes that in which the direction is given; and
 - (b) paragraph 18(4A) applied in relation to it.
- (7) In this paragraph “period of account” and “qualified auditor” have the same meaning as in paragraph 18(4A).”

- 22 (1) Paragraph 19 of Schedule 1 (responsibility for securing compliance with accounting requirements) is amended as follows.
- (2) In sub-paragraph (2)—
- (a) in paragraph (c), after “and audit” insert “or reporting”;
 - (b) omit paragraph (d) (but not the “or” at the end); and
 - (c) for “level 3” substitute “level 5”.

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- (3) The amendment made by sub-paragraph (2)(c) does not apply in relation to any offence committed before the day on which that sub-paragraph comes into force.
- (4) After sub-paragraph (4) insert—
- “(5) Where any of paragraphs (a) to (e) of sub-paragraph (2) applies in respect of any default on the part of a registered social landlord, the High Court may, on the application of the Relevant Authority, make such order as the court thinks fit for requiring the default to be made good.
- Any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the registered social landlord or by any of its officers who are responsible for the default.”
- 23 After paragraph 19 of Schedule 1 insert—
- “Disclosure of information by auditors etc. to the Relevant Authority*
- 19A (1) A person who is, or has been, an auditor of a registered social landlord does not contravene any duty to which he is subject merely because he gives to the Relevant Authority —
- (a) information on a matter of which he became aware in his capacity as auditor of the registered social landlord, or
- (b) his opinion on such a matter,
- if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the Relevant Authority.
- (2) Sub-paragraph (1) applies whether or not the person is responding to a request from the Relevant Authority.
- (3) This paragraph applies to a person who is, or has been, a reporting accountant as it applies to a person who is, or has been, an auditor.
- (4) A “reporting accountant” means a person appointed as mentioned in paragraph 16(7)(b).”
- 24 (1) Paragraph 20 of Schedule 1 (inquiry into affairs of registered social landlord) is amended as follows.
- (2) After sub-paragraph (4) insert—
- “(4A) The person or persons conducting the inquiry may determine the procedure to be followed in connection with the inquiry.”
- (3) At the end of sub-paragraph (7) add “, and the Relevant Authority may arrange for the whole or part of an interim or final report to be published in such manner as it considers appropriate.”
- (4) After sub-paragraph (7) insert—
- “(8) A local authority may, if they think fit, contribute to the expenses of the Relevant Authority in connection with any inquiry under this paragraph.”
- 25 After paragraph 20 of Schedule 1 insert—

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“Evidence

- 20A (1) For the purposes of an inquiry the person or persons conducting it may serve a notice on an appropriate person directing him to attend at a specified time and place and do either or both of the following, namely—
- (a) give evidence;
 - (b) produce any specified documents, or documents of a specified description, which are in his custody or under his control and relate to any matter relevant to the inquiry.
- (2) The person or persons conducting such an inquiry—
- (a) may take evidence on oath and for that purpose administer oaths, or
 - (b) instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matters about which he is examined.
- (3) In this paragraph—
- “appropriate person” means a person listed in section 30(2);
 - “document” has the same meaning as in section 30;
 - “inquiry” means an inquiry under paragraph 20.
- (4) A person may not be required under this paragraph to disclose anything that, by virtue of section 30(4), he could not be required to disclose under section 30.
- (5) Section 31 (enforcement of notice to provide information, &c) applies in relation to a notice given under this paragraph by the person or persons conducting an inquiry as it applies in relation to a notice given under section 30 by the Relevant Authority, but subject to sub-paragraph (6).
- (6) A person guilty of an offence under section 31(1) as it applies in accordance with sub-paragraph (5) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (7) Any person who, in purported compliance with a notice given under this paragraph by the person or persons conducting an inquiry, knowingly or recklessly provides any information which is false or misleading in a material particular commits an offence and is liable to the penalties mentioned in sub-paragraph (6).
- (8) Proceedings for an offence under sub-paragraph (7) may be brought only by or with the consent of the Relevant Authority or the Director of Public Prosecutions.”
- 26 (1) Paragraph 21 of Schedule 1 (power of appointed person to obtain information) is amended as follows.
- (2) At the end of sub-paragraph (3) (application of section 31 to notice under paragraph 20) add “, but subject to sub-paragraph (4).”

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(3) After sub-paragraph (3) add—

“(4) A person guilty of an offence under section 31(1) as it applies in accordance with sub-paragraph (3) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

(5) Any person who, in purported compliance with a notice given under this paragraph by an appointed person, knowingly or recklessly provides any information which is false or misleading in a material particular commits an offence and is liable to the penalties mentioned in sub-paragraph (4).

(6) Proceedings for an offence under sub-paragraph (5) may be brought only by or with the consent of the Relevant Authority or the Director of Public Prosecutions.”

(4) The amendments made by this paragraph do not apply in relation to any offence committed or other thing done before the day on which this paragraph comes into force.