



# Housing and Regeneration Act 2008

## 2008 CHAPTER 17

### PART 1

#### THE HOMES AND COMMUNITIES AGENCY

### CHAPTER 1

#### GENERAL

#### 1 Establishment and constitution

- (1) There shall be a body corporate known as the Homes and Communities Agency (“the HCA”).
- (2) Schedule 1 (which makes further provision about the HCA) has effect.

#### Commencement Information

**II** S. 1 in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 2\(1\)](#)

#### 2 Objects

- (1) The objects of the HCA are—
  - (a) to improve the supply and quality of housing in England,
  - (b) to secure the regeneration or development of land or infrastructure in England,
  - (c) to support in other ways the creation, regeneration or development of communities in England or their continued well-being, and
  - (d) to contribute to the achievement of sustainable development and good design in England,with a view to meeting the needs of people living in England.
- (2) In subsection (1)—

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“good design” includes design which has due regard to the needs of elderly persons and disabled persons,

“needs” includes future needs,

and the reference to improving the supply of housing includes a reference to improving the supply of particular kinds of housing.

(3) In this Part—

“building” means a building or other structure (including a house-boat or caravan),

“caravan” has the meaning given by section 29(1) of the Caravan Sites and Control of Development Act 1960 (c. 2),

“housing” means a building, or part of a building, occupied or intended to be occupied as a dwelling or as more than one dwelling; and includes a hostel which provides temporary residential accommodation,

“infrastructure” includes—

- (a) water, electricity, gas, telecommunications, sewerage or other services,
- (b) roads or other transport facilities,
- (c) retail or other business facilities,
- (d) health, educational, employment or training facilities,
- (e) social, religious or recreational facilities,
- (f) cremation or burial facilities, and
- (g) community facilities not falling within paragraphs (a) to (f),

“land” includes housing or other buildings (and see also the definition in Schedule 1 to the Interpretation Act 1978 (c. 30)),

and references to housing include (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, the building or part of building concerned.

(4) See also sections 19(5) (financial assistance), 44 (local government involvement) and 52 (role of the HCA in relation to certain former functions of the Commission for the New Towns).

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**Commencement Information**

**I2** S. 2 in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 2\(1\)](#)

### 3 Principal powers

The HCA may do anything it considers appropriate for the purposes of its objects or for purposes incidental to those purposes.

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**Commencement Information**

**I3** S. 3 in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 2\(1\)](#)

### 4 Powers: general

(1) This Part contains various specific powers of the HCA.

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- (2) The specific powers of the HCA (whether contained in this Part or elsewhere) are to be exercised for the purposes of its objects or for purposes incidental to those purposes.
- (3) Each power may be exercised separately or together with, or as part of, another power.
- (4) Each power does not limit the scope of another power.
- (5) Each power does not limit the scope of the powers conferred by section 3.
- (6) But—
  - (a) subsections (2) and (3) do not apply to the HCA in its capacity as a local planning authority by virtue of sections 13 and 14 or in its exercise of other functions by virtue of those sections, and
  - (b) the powers conferred by section 3 must not be used to override a restriction imposed on the exercise of a specific power.

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**Commencement Information**

**I4** S. 4 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 2\(1\)](#)

VALID FROM 01/12/2008

**CHAPTER 2**

LAND AND INFRASTRUCTURE

*General*

**5 Powers to provide housing or other land**

- (1) The HCA may provide housing or other land.
- (2) The HCA may facilitate the provision of housing or other land.
- (3) In this section “provide” includes provide by way of acquisition, construction, conversion, improvement or repair (and “provision” is to be read in the same way).

**6 Powers for regeneration, development or effective use of land**

- (1) The HCA may regenerate or develop land.
- (2) The HCA may bring about the more effective use of land.
- (3) The HCA may facilitate—
  - (a) the regeneration or development of land, or
  - (b) the more effective use of land.

**7 Powers in relation to infrastructure**

- (1) The HCA may provide infrastructure.

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- (2) The HCA may facilitate the provision of infrastructure.
- (3) In this section “provide” includes provide by way of acquisition, construction, conversion, improvement or repair (and “provision” is to be read in the same way).

*Powers to deal with land etc.*

## **8 Powers to deal with land etc.**

The HCA may carry out, or facilitate the carrying out of, any of the following activities in relation to land—

- (a) acquiring, holding, improving, managing, reclaiming, repairing or disposing of housing,
- (b) acquiring, holding, improving, managing, reclaiming, repairing or disposing of other land, plant, machinery, equipment or other property, and
- (c) carrying out building and other operations (including converting or demolishing buildings).

## **9 Acquisition of land**

- (1) The HCA may acquire land by agreement.
- (2) The HCA may acquire land compulsorily if the Secretary of State authorises it to do so.
- (3) The power of acquiring land compulsorily under subsection (2) includes power to acquire new rights over land.
- (4) Subsection (5) applies where—
  - (a) land or new rights over land are being acquired compulsorily under subsection (2), and
  - (b) the land which is being acquired, or over which new rights are being acquired, forms part of a common, open space or allotment.
- (5) The power under subsection (2) to acquire land compulsorily includes the power to acquire land compulsorily for giving in exchange for the land or (as the case may be) new rights mentioned in subsection (4)(a).
- (6) Schedule 2 (which makes further provision in relation to the acquisition of land by the HCA) has effect.
- (7) In this Part—
  - “allotment” means a fuel or field garden allotment,
  - “common” has the meaning given by section 19(4) of the Acquisition of Land Act 1981 (c. 67),
  - “open space” means any land which is—
    - (a) laid out as a public garden,
    - (b) used for the purposes of public recreation, or
    - (c) a disused burial ground.

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## **10 Restrictions on disposal of land**

- (1) The HCA may not dispose of land for less than the best consideration which can reasonably be obtained unless the Secretary of State consents.
- (2) Subsection (1) does not apply to a disposal by way of a short tenancy if the disposal consists of—
  - (a) the grant of a term of not more than 7 years, or
  - (b) the assignment of a term which, at the date of assignment, has not more than 7 years to run.
- (3) The HCA may not dispose of land which has been compulsorily acquired by it under this Part unless the Secretary of State consents.
- (4) Subject as above, the HCA may dispose of land held by it in any way it considers appropriate.

### *Powers in relation to acquired land*

## **11 Main powers in relation to acquired land**

Schedule 3 (which makes provision about powers in relation to land of the HCA) has effect.

## **12 Powers in relation to, and for, statutory undertakers**

Schedule 4 (which provides for powers in relation to, and for, statutory undertakers) has effect.

### *Planning*

## **13 Power of Secretary of State to make designation orders**

- (1) The Secretary of State may by order designate an area in England if the Secretary of State considers that—
  - (a) the area is suitable for development, and
  - (b) it is appropriate for the HCA to be the local planning authority for the whole or any part of the area—
    - (i) for particular permitted purposes, and
    - (ii) in relation to particular kinds of development.
- (2) In deciding whether it is appropriate for the HCA to be the local planning authority as mentioned in subsection (1)(b), the Secretary of State must, in particular, be satisfied that making the designation order is likely to improve the effectiveness with which the functions of the local planning authority for the area or part are discharged.
- (3) The Secretary of State must, before making a designation order—
  - (a) publish—
    - (i) a draft of the order, and
    - (ii) the Secretary of State's reasons for making the order, and
  - (b) consult the persons mentioned in subsection (4).

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(4) The persons are—

- (a) every local authority any part of whose area is intended to be included in the proposed designated area,
- (b) any person, other than a local authority, who is the local planning authority for the proposed designated area or any part of it,
- (c) such persons which appear to the Secretary of State to represent the interests of local authorities as the Secretary of State considers appropriate, and
- (d) persons who reside or carry on business in the proposed designated area.

(5) In this Part—

“designated area” means an area designated by a designation order,

“designation order” means an order under this section,

“local planning authority”, in relation to a designation order or proposed designation order, means—

- (a) so far as the order relates to permitted purposes under Part 2 of the Planning and Compulsory Purchase Act 2004 (c. 5), the local planning authority within the meaning of that Part of that Act, and
- (b) in any other case, the local planning authority within the meaning of Part 1 of the Town and Country Planning Act 1990 (c. 8),

“permitted purposes” means any purposes of—

- (a) the Town and Country Planning Act 1990 (other than section 137A, Parts 9 and 13, and sections 325A, 329A and 330A, of that Act),
- (b) the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) (other than section 32A, Chapter 5 of Part 1, and sections 82A to 82F and 88C, of that Act), and
- (c) Part 2 of the Planning and Compulsory Purchase Act 2004,

and references to a designated area, in the case of an area whose boundaries have been amended by an order made under this section by virtue of section 14 of the Interpretation Act 1978 (c. 30), are to be read as references to the designated area as so amended.

- (6) In this section “local authority” means a county council in England, a district council, a London borough council or the Common Council of the City of London.

## **14 Contents of designation orders**

- (1) A designation order may contain provisions of the following kind.
- (2) The order may provide for the HCA to be the local planning authority for the whole or any part of the designated area—
  - (a) for specified permitted purposes, and
  - (b) in relation to specified kinds of development.
- (3) The order may provide that where the HCA is the local planning authority for the whole or any part of the designated area it is to have—
  - (a) in relation to the whole or any part of the designated area, and
  - (b) subject to any specified modifications,
 specified relevant functions conferred by or under specified planning-related provisions.

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- (4) An order which makes provision of the kind mentioned in subsection (2) may make provision about the application of enactments relating to local planning authorities to the HCA in its capacity as the local planning authority by virtue of the order.
- (5) An order which makes provision of the kind mentioned in subsection (3)—
- (a) may provide for the HCA to have the functions concerned instead of, or concurrently with, other persons who have them,
  - (b) may make provision about the application to the HCA of enactments relating to the functions concerned.
- (6) Provision made by virtue of subsection (4) or (5), or section 320(1)(d) in its application to an order of a kind falling within this section, may, in particular, provide that any enactment—
- (a) is to apply to the HCA without modification,
  - (b) is to apply to it subject to specified modifications.
- (7) In this section—
- “planning-related provisions” means—
- (a) Chapter 1 of Part 6 (other than section 137A), and sections 188 and 330, of the Town and Country Planning Act 1990 (c. 8),
  - (b) sections 32 and 33 to 37, 54 and 55 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9), and
  - (c) the Planning (Hazardous Substances) Act 1990 (c. 10) (other than sections 30A to 31A and 36C of that Act),
- “relevant functions” means functions of—
- (a) a district council, a London borough council, the Common Council of the City of London, or any other body which is a local authority within the meaning of the Town and Country Planning Act 1990,
  - (b) a district planning authority (within the meaning of that Act), or
  - (c) a hazardous substances authority (within the meaning of the Planning (Hazardous Substances) Act 1990),
- “specified”, in relation to a designation order, means specified or described in the order.

## **15 HCA as local planning authority: local involvement**

- (1) Subsections (2) to (6) apply where a designation order provides for the HCA to be the local planning authority for the whole or any part of the designated area.
- (2) The HCA must prepare and publish a statement of local involvement.
- (3) The statement of local involvement is a statement of the HCA's policy as to the extent to which it intends to involve persons mentioned in subsection (4) in relation to the exercise by the HCA of functions conferred on it by virtue of the designation order.
- (4) The persons are—
- (a) every local authority for the designated area or any part of the area in relation to which a function is to be exercised, and
  - (b) persons appearing to the HCA to have special knowledge or experience of matters relevant to functions to be exercised in relation to the area or part.
- (5) The HCA must—



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- (a) keep the statement under review, and
  - (b) publish any revision of it.
- (6) In deciding its policy about the extent of involvement of persons mentioned in subsection (4), the HCA must, in particular, have regard to—
- (a) the benefits that it might receive from their knowledge and experience, and
  - (b) the nature of the functions concerned.
- (7) Subsection (8) applies where—
- (a) the HCA establishes a committee for the purpose of exercising functions conferred on the HCA by virtue of a designation order,
  - (b) such a committee establishes a sub-committee for such a purpose, or
  - (c) a new or replacement member is to be appointed to such a committee or sub-committee.
- (8) The HCA must—
- (a) inform every local authority for the designated area or any part of the area in relation to which the functions are to be, or are being, exercised of—
    - (i) the establishment of the committee or sub-committee concerned, or
    - (ii) (as the case may be) the proposed appointment, and
  - (b) invite the authority to suggest one or more candidates for membership of the committee or (as the case may be) sub-committee.
- (9) In this section “local authority” has the same meaning as in section 13.

## **16 Regional planning**

- (1) Section 4 of the Planning and Compulsory Purchase Act 2004 (c. 5) (assistance for regional planning bodies from certain local authorities) is amended as follows.
- (2) For subsection (4) substitute—
- “(4) These are the authorities which fall within this subsection—
- (a) each of the following if their area or any part of their area is in the RPB's region—
    - (i) a county council;
    - (ii) a metropolitan district council;
    - (iii) a district council for an area for which there is no county council;
    - (iv) a National Park authority; and
  - (b) the Homes and Communities Agency if it is the local planning authority for an area or part of an area in the RPB's region.
- (4A) For the purposes of subsection (4), the Homes and Communities Agency is the local planning authority for an area or part of an area in the RPB's region if it is the local planning authority for that area or part, or for an area which includes that area or part, by virtue of an order of the kind mentioned in section 14(2) of the Housing and Regeneration Act 2008 (designation orders).



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(4B) In subsections (4) and (4A) “local planning authority” has the same meaning as in Part 1 of the Housing and Regeneration Act 2008 (see section 13(5) of that Act).”

- (3) In subsection (8) after “(5)” insert “ other than arrangements with the Homes and Communities Agency ”.

*Other powers etc. in relation to land*

**17 Power to enter and survey land**

- (1) Any person authorised by the HCA may, at any reasonable time and subject as follows, enter any land for the purpose of surveying it, or estimating its value, in connection with—
- (a) any proposal for the HCA to acquire that land or any other land, or
  - (b) any claim for compensation in respect of any such acquisition.
- (2) A person authorised under subsection (1) to enter any land—
- (a) must, if required, produce evidence of the authority before entering the land, and
  - (b) must not demand admission as of right to the land unless the HCA has served notice of the intended entry on every owner or occupier of the land not less than 28 days before the making of the demand.
- (3) A notice under subsection (2)(b) must—
- (a) state the purpose for which entry is required, and
  - (b) inform the person to whom it is given of the person's rights under this section and, if applicable, section 18.
- (4) A person interested in any land may recover compensation from the HCA in respect of any damage done to the land—
- (a) in the exercise of a right of entry under this section, or
  - (b) in making a survey under this section.
- (5) Section 118 of the Town and Country Planning Act 1990 (c. 8) (determination of claims for compensation) applies in relation to compensation under subsection (4) as it applies in relation to compensation under Part 4 of that Act.
- (6) A person (“A”) commits an offence if A intentionally obstructs another person (“B”) in the exercise of B's powers under subsection (1) above.
- (7) A person who commits an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (8) In subsection (2)(b) “owner” has the same meaning as in the Acquisition of Land Act 1981 (c. 67).
- (9) The references in subsections (4) and (6) to this section or subsection (1) include references to those provisions as extended by section 18.

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## **18 Section 17: supplementary**

- (1) The power to survey land conferred by section 17(1) includes power to search and bore for the purpose of ascertaining—
  - (a) the nature of the subsoil, or
  - (b) the presence of minerals in it.
- (2) But this is subject to subsections (3) to (5).
- (3) No person may carry out any works authorised by virtue of subsection (1) unless notice of the person's intention to do so was included in the notice required by section 17(2)(b).
- (4) The authority of the appropriate Minister is required for the carrying out of any works authorised by virtue of subsection (1) if—
  - (a) the land concerned is held by statutory undertakers, and
  - (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to carrying on their undertaking.
- (5) The references in subsection (4) to the appropriate Minister, statutory undertakers and their undertaking have the same meanings as they have in section 325(9) of the Town and Country Planning Act 1990 (c. 8) (supplementary provisions as to rights of entry).

VALID FROM 01/12/2008

## **CHAPTER 3**

### FINANCIAL PROVISION

#### *Powers to give financial assistance*

## **19 Financial assistance**

- (1) The HCA may, with the consent of the Secretary of State, give financial assistance to any person.
- (2) Financial assistance under this section may be given in any form.
- (3) Financial assistance under this section may, in particular, be given by way of—
  - (a) grants,
  - (b) loans,
  - (c) guarantee or indemnity,
  - (d) investment, or
  - (e) incurring expenditure for the benefit of the person assisted.
- (4) Financial assistance under this section may be given on such terms and conditions as the HCA considers appropriate (including provision for repayment, with or without interest).

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- (5) The objects of the HCA are not to be read as preventing the HCA from exercising functions in relation to financial assistance (whether under this section or otherwise) which—
- (a) are transferred to the HCA from the Housing Corporation by virtue of this Act, or
  - (b) would supersede functions of the Housing Corporation,
- in ways corresponding to those in which the Housing Corporation could have exercised its functions.
- (6) See also sections 31 to 35 (further provision about certain types of financial assistance: social housing).

### *Borrowing powers of the HCA*

#### **20 Powers to borrow**

- (1) The HCA may, for the purpose of what it considers to be the short-term management of its finances, borrow from any person by way of overdraft or otherwise.
- (2) Subject to this, the HCA may only borrow from the Secretary of State or the European Investment Bank.
- (3) The HCA may not borrow in currencies other than sterling.

#### **21 Loans by the Secretary of State**

- (1) The Secretary of State may lend to the HCA any sums it has power to borrow from the Secretary of State under section 20.
- (2) Loans under subsection (1) may be made on such terms and conditions as the Secretary of State considers appropriate (including provision for repayment with or without interest).

#### **22 Guarantees by the Secretary of State**

- (1) The Secretary of State may guarantee—
  - (a) the repayment of the principal of any sums which the HCA borrows from a person other than the Secretary of State, and
  - (b) the payment of interest on such sums.
- (2) Such a guarantee is to be in such manner, and on such terms and conditions, as the Secretary of State considers appropriate.
- (3) The Secretary of State must lay a statement of any such guarantee before Parliament immediately after giving the guarantee.
- (4) The Secretary of State must lay before Parliament a statement relating to any sum issued for fulfilling such a guarantee.
- (5) A statement under subsection (4) must be laid as soon as possible after the end of each financial year—
  - (a) beginning with that in which the sum is issued, and

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- (b) ending with that in which all liability in respect of the principal of the sum guaranteed, and of interest on it, is finally discharged.
- (6) In respect of any sums issued in fulfilment of a guarantee given under this section, the HCA must make payments to the Secretary of State—
  - (a) of such amounts as the Secretary of State may direct in or towards repayment of those sums, and
  - (b) of interest on what is outstanding in respect of those sums, at such rates as the Secretary of State may direct.
- (7) Payments under subsection (6) must be made at such times, and in such manner, as the Secretary of State may direct.

### **23 Financial limits**

- (1) The current borrowings of the HCA must not exceed £2,300 million.
- (2) The Secretary of State may by order amend subsection (1) so as to specify a greater amount than that for the time being specified there.
- (3) But an order under subsection (2) may not specify an amount of more than £3,000 million.
- (4) In this section “current borrowings of the HCA” means—
  - (a) the aggregate amount at any time of—
    - (i) sums borrowed by the HCA under section 20, and
    - (ii) sums borrowed by subsidiaries of the HCA (other than from the HCA), less
  - (b) repayments made, or treated as made, in respect of those sums.
- (5) In this Part “subsidiary” has the meaning given by section 1159 of the Companies Act 2006 (c. 46).

*Other*

### **24 Power to charge for certain activities**

- (1) The HCA may impose charges for, or in connection with, anything done by it by virtue of section 38, 39 or 45.
- (2) Any such charges must be of such amounts as the HCA considers to be reasonable.

### **25 Directions as to surplus funds**

- (1) Subsection (2) applies if the Secretary of State considers that the HCA or any subsidiary of the HCA has a surplus, whether on capital or on revenue account, after making allowance by way of transfer to reserve or otherwise for its future requirements.
- (2) The Secretary of State may give a direction to the HCA to pay to the Secretary of State such sum not exceeding the amount of the surplus as may be specified in the direction.

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- (3) The Secretary of State must consult the HCA before coming to a decision of the kind mentioned in subsection (1) or giving a direction as mentioned in subsection (2).
- (4) The Secretary of State may decide to treat the whole or part of any payment under subsection (2) as made—
  - (a) by way of repayment of such part of the principal of loans under section 21(1), and
  - (b) in respect of the repayments due at such times,as the Secretary of State may decide.

## **26 Duty to act as agent in respect of regeneration and development**

- (1) The Secretary of State may appoint the HCA to act as the agent of the Secretary of State in connection with such financial assistance functions as the Secretary of State may specify.
- (2) In subsection (1) “financial assistance functions” means, so far as exercisable in relation to England, functions under sections 126 to 128 of the Housing Grants, Construction and Regeneration Act 1996 (c. 53) (financial assistance for regeneration and development).
- (3) An appointment under this section is to be on such terms as the Secretary of State may specify.
- (4) The HCA must, if appointed, act as agent in accordance with the terms of its appointment.

## **27 Duty to act as agent in respect of derelict land etc.**

- (1) The Secretary of State may appoint the HCA to act as the agent of the Secretary of State in connection with such derelict land functions as the Secretary of State may specify.
- (2) In subsection (1) “derelict land functions” means functions under—
  - (a) section 1 of the Derelict Land Act 1982 (c. 42) (grants for reclaiming or improving land or bringing land into use), or
  - (b) any enactment superseded by that section,but excluding the powers to make orders under section 1(5) and (7) of that Act.
- (3) An appointment under this section is to be on such terms as the Secretary of State may specify.
- (4) The HCA must, if appointed, act as agent in accordance with the terms of its appointment.

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## CHAPTER 4

### OTHER FUNCTIONS OF THE HCA

VALID FROM 01/12/2008

#### *General*

#### **28 Business**

- (1) The HCA may carry on any business.
- (2) In subsection (1) “business” includes undertaking.

#### **29 Powers to form companies etc.**

The HCA may, with the consent of the Secretary of State, form, or acquire interests in, bodies corporate.

#### **30 Community services**

The HCA may provide such services for communities as it considers appropriate or facilitate the provision of such services.

#### *Social housing*

VALID FROM 01/04/2010

#### **31 Duties in relation to social housing**

- (1) Subsection (2) applies if the HCA acquires, constructs or converts any housing or other land for use as low cost rental accommodation.
- (2) The HCA must ensure that a [<sup>F1</sup>registered provider of social housing] is the landlord of the accommodation when it is made available for rent.
- (3) Subsection (4) applies if the HCA disposes of any housing or other land to a person on condition that the person provides low cost rental accommodation (whether in the same or different housing or other land).
- (4) The HCA must impose a further condition that a [<sup>F2</sup>registered provider of social housing] is the landlord of the accommodation when it is made available for rent.
- (5) Subsection (6) applies if the HCA provides infrastructure to a person on condition that the person provides low cost rental accommodation.
- (6) The HCA must impose a further condition ensuring that a [<sup>F3</sup>registered provider of social housing] is the landlord of the accommodation when it is made available for rent.

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- (7) Subsection (8) applies if the HCA is proposing to give financial assistance on condition that the recipient provides low cost rental accommodation.
- (8) The HCA must impose a further condition ensuring that a [<sup>F4</sup>registered provider of social housing] is the landlord of the accommodation when it is made available for rent.
- (9) Subsection (10) applies if the HCA is proposing to give financial assistance on condition that the recipient provides low cost home ownership accommodation.
- (10) The HCA must consult the Regulator of Social Housing about the proposals.
- (11) For the purposes of this section, a person provides low cost rental accommodation or low cost home ownership accommodation if (and only if) the person acquires, constructs or converts any housing or other land for use as low cost rental accommodation or (as the case may be) low cost home ownership accommodation or ensures such acquisition, construction or conversion by another.
- (12) In this section—  
    <sup>F5</sup> ...  
    “low cost home ownership accommodation” has the meaning given by section 70,  
    <sup>F5</sup> ...  
    “low cost rental accommodation” has the meaning given by section 69,

#### Textual Amendments

- F1** Words in s. 31(2) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 2 para. 26(2)(a)**
- F2** Words in s. 31(4) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 2 para. 26(2)(a)**
- F3** Words in s. 31(6) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 2 para. 26(2)(a)**
- F4** Words in s. 31(8) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 2 para. 26(2)(a)**
- F5** Words in s. 31(12) omitted (1.4.2010) by virtue of [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 2 para. 26(2)(b)**

#### Commencement Information

- I5** S. 31 in force at 1.4.2010 by [S.I. 2010/862](#), **art. 2** (with [Sch.](#))

VALID FROM 01/04/2009

### 32 Recovery etc. of social housing assistance

- (1) The HCA may, in such events as it may determine, exercise the powers conferred by subsections (2) to (4) in relation to a person who has received social housing assistance.



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- (2) The HCA may reduce any grant payable by it or restrict any other social housing assistance due from it.
- (3) The HCA may suspend or cancel any instalment of any grant payable by it or any aspect of any other social housing assistance due from it.
- (4) The HCA may direct the recipient of any social housing assistance given by way of grant to—
  - (a) apply or appropriate for such purposes of the recipient as the HCA may specify, or
  - (b) pay to the HCA,
 such amount as the HCA may specify.
- (5) The HCA may not specify an amount which exceeds the recoverable amount.
- (6) The recoverable amount is—
  - (a) the total amount of grant received by the person to whom the direction is given, less
  - (b) the total of any amounts applied, appropriated or paid in accordance with any previous directions given in respect of that grant under subsection (4), and for the purposes of paragraph (b) any amounts provided for by virtue of section 33(1) are to be ignored.
- (7) Subsection (5) is without prejudice to the power of the HCA under section 33(1).
- (8) In exercising its powers under subsections (2) to (4) the HCA must act in accordance with such principles as it has determined.
- (9) A person who has received social housing assistance must notify the HCA if an event of a kind determined by the HCA under subsection (1) occurs after the assistance has been given.
- (10) Such a person must, if required by notice of the HCA, supply the HCA with such particulars of, and information relating to, the event as are specified in the notice.
- (11) The HCA must notify the Regulator of Social Housing at least 14 days before exercising, in relation to a registered provider of social housing, any of the powers conferred by subsections (2) to (4).
- (12) Events determined by the HCA under subsection (1), and principles determined by the HCA under subsection (8), must be determined on or before the time the HCA gives the social housing assistance concerned unless they are determined subsequently with the agreement of the recipient of the assistance.
- (13) In this Part—
 

“social housing” has the same meaning as in Part 2,

“social housing assistance” means financial assistance given under section 19 on condition that the recipient provides social housing (whether by itself or as part of a wider project);

and, for the purposes of this Part, a person provides social housing if (and only if) the person acquires, constructs, converts, improves or repairs any housing or other land for use as social housing or ensures such acquisition, construction, conversion, improvement or repair by another.

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VALID FROM 01/04/2009

### 33 Section 32: interest and successors in title

- (1) A direction by the HCA under section 32(4) may require the application, appropriation or payment, in addition to the specified amount, of one or more of the following—
  - (a) interest on the specified amount,
  - (b) an amount calculated by reference to any increase in the market value of any housing or other land acquired, constructed, converted, improved or repaired as a result of the grant, and
  - (c) interest on the amount falling within paragraph (b).
- (2) Any direction falling within subsection (1)(a) or (c) must specify—
  - (a) the applicable rate or rates of interest (whether fixed or variable),
  - (b) the date from which interest is payable, and
  - (c) any provision for suspended or reduced interest which is applicable.
- (3) The date specified under subsection (2)(b) must not be earlier than the date of the event giving rise to the power to give a direction.
- (4) In subsection (2)(c)—
  - (a) provision for suspended interest means provision to the effect that if the principal amount is applied, appropriated or paid before a date specified in the direction, no interest will be payable for any period after the date of the direction, and
  - (b) provision for reduced interest means provision to the effect that if the principal amount is so applied, appropriated or paid, any interest payable will be payable at a rate or rates lower than the rate or rates which would otherwise be applicable.
- (5) Any direction falling within subsection (1)(b) must specify—
  - (a) the housing or other land concerned, and
  - (b) the method of calculating the amount concerned.
- (6) Subsection (7) applies if—
  - (a) social housing assistance has been given to a person, and
  - (b) at any time the social housing provided as a result of the assistance becomes vested in, or is leased for a term of years to, or reverts to, another person.
- (7) Section 32 and this section (including this subsection) have effect in relation to periods after that time as if the assistance, or such element of it as may be determined by the HCA to be appropriate, had been given to that other person.
- (8) The matters specified in a direction under subsection (2)(a) to (c) or (5), and the element mentioned in subsection (7), are to be—
  - (a) such as the HCA, acting in accordance with such principles as it may determine, may specify as being appropriate, or
  - (b) such as the HCA may determine to be appropriate in the particular case.
- (9) Principles determined by the HCA under subsection (8)(a), and determinations by the HCA under subsection (8)(b), must be determined on or before the time the

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HCA gives the social housing assistance concerned unless they are determined subsequently with the agreement of the recipient of the assistance.

VALID FROM 01/04/2009

### 34 Determinations under sections 32 and 33

- (1) The HCA must not make a general determination under section 32 or 33 without the consent of the Secretary of State.
- (2) Before making such a determination, the HCA must consult—
  - (a) the Regulator of Social Housing, and
  - (b) such other persons as it considers appropriate.
- (3) Subsection (4) applies if a general determination under section 32 or 33 about relevant events relates to social housing assistance given to a registered provider of social housing.
- (4) The HCA must, in particular, consult such bodies appearing to it to represent the interests of registered providers of social housing as it considers appropriate.
- (5) The HCA must publish a general determination made under section 32 or 33 in such manner as it considers appropriate for bringing the determination to the attention of those affected by it.
- (6) A general determination of the HCA under section 32 or 33 may make different provision for different cases or descriptions of case (including different provision for different areas).
- (7) For the purposes of subsection (6) descriptions may be framed by reference to any matters whatever.
- (8) A determination of the HCA under section 32 or 33 may be varied or revoked by it (subject to any provision as to the time by which such a determination must be made).
- (9) In this section—
 

“general determination” means a determination which does not relate solely to a particular case,

“relevant event” means an event of a kind determined by the HCA under section 32(1).

VALID FROM 01/04/2010

### 35 Duty to give financial assistance in respect of certain disposals

- (1) The HCA must exercise its powers under section 19 to give financial assistance by way of grant to a relevant provider of social housing in respect of any discount given by the provider—
  - (a) to a person exercising the right to acquire conferred by section 180, or
  - (b) on a disposal of a dwelling in England by the provider to a qualifying tenant otherwise than in pursuance of the right conferred by that section.

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- (2) In subsection (1)(b) “qualifying tenant” means a tenant who was entitled to exercise the right to acquire conferred by section 180, or by section 16 of the Housing Act 1996 (c. 52), in relation to a dwelling of the relevant provider of social housing other than the dwelling being disposed of by the provider.
- (3) The amount of the grant given by virtue of subsection (1)(a) to a relevant provider of social housing for any year is to be the aggregate value of the discounts given by that provider in that year.
- (4) The amount of the grant given by virtue of subsection (1)(b) to a relevant provider of social housing must not exceed the amount of the discount to which the tenant would have been entitled in respect of the other dwelling.
- (5) The HCA must specify—
  - (a) the procedure to be followed in relation to applications for a grant by virtue of this section,
  - (b) in the case of a grant by virtue of subsection (1)(b), the method for calculating, and any other limitations on, the amount of the grant,
  - (c) the manner in which, and time or times at which, a grant by virtue of this section is to be paid,
  - (d) any other terms or conditions on which such a grant is given.
- (6) In this section—
  - “dwelling” has the same meaning as in Part 2,
  - “registered provider of social housing” includes a person falling within section 180(3),
  - “registered social landlord” has the same meaning as in Part 1 of the Housing Act 1996,
  - “relevant provider of social housing” means—
    - (a) a registered provider of social housing, or
    - (b) a registered social landlord,
  - “tenant” has the same meaning as in Part 2.

VALID FROM 01/04/2009

### **36 Information in relation to social housing**

- (1) The Secretary of State may by order provide for the HCA to supply such information about—
  - (a) which accommodation provided directly or indirectly by it is to be social housing,
  - (b) the type of social housing to be so provided, and
  - (c) the consequences of it being social housing,as may be specified or described in the order.
- (2) An order under this section may, in particular, provide for—
  - (a) the person or persons to whom the information is to be provided,
  - (b) the time at which, or period or frequency within which, the information is to be provided,

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(c) the form and manner in which the information is to be provided.

### 37 Duty to co-operate with Regulator of Social Housing

- (1) The HCA must co-operate with the Regulator of Social Housing.
- (2) In particular, the HCA must consult the regulator on matters likely to interest the regulator.

#### Commencement Information

**I6** S. 37 in force at 8.9.2008 by S.I. 2008/2358, art. 2(1)

VALID FROM 01/12/2008

*Information, education and guidance etc.*

### 38 Information services

- (1) The HCA may—
  - (a) publish ideas or information, or
  - (b) disseminate or promote ideas or information in other ways.
- (2) The HCA may undertake research or experimentation.
- (3) The HCA may provide other information services.
- (4) The HCA may facilitate—
  - (a) the publication or other dissemination or promotion of ideas or information,
  - (b) research or experimentation, or
  - (c) the provision of other information services.

### 39 Advice, education and training

- (1) The HCA may provide—
  - (a) advice, education or training, or
  - (b) other advisory, education or training services.
- (2) The HCA may facilitate the provision of—
  - (a) advice, education or training, or
  - (b) other advisory, education or training services.

### 40 Guidance

- (1) The HCA may give guidance to such persons as it considers appropriate about any matters relating to its objects.
- (2) Before giving guidance under this section, the HCA must consult such persons as it considers appropriate.

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- (3) As soon as reasonably practicable after giving guidance under this section, the HCA must take such steps as the HCA considers appropriate to bring it to the attention of those affected by it.
- (4) The HCA may revoke guidance given under this section.
- (5) The HCA—
  - (a) must, before revoking guidance under this section, consult such persons as it considers appropriate, and
  - (b) must, as soon as reasonably practicable after the revocation, take such steps as it considers appropriate to bring the revocation to the attention of those affected by it.
- (6) References in this section to giving guidance include references to giving guidance by varying existing guidance.

*Functions in relation to companies and other persons*

VALID FROM 01/12/2008

**41 Control of subsidiaries**

- (1) The HCA must ensure that no subsidiary of the HCA engages, without the consent of the Secretary of State, in an activity which the HCA would not be required or permitted to carry on.
- (2) The HCA must ensure that no subsidiary of the HCA—
  - (a) borrows from a person other than the HCA, or
  - (b) raises money by the issue of shares or stock to a person other than the HCA, without the consent of the Secretary of State.

VALID FROM 01/12/2008

**42 Agency arrangements with UDCs**

- (1) The HCA may, with the consent of the Secretary of State, appoint an urban development corporation to act as its agent.
- (2) The appointment—
  - (a) may be in connection with any of the functions of the HCA other than its functions in connection with Chapter 3, and
  - (b) is to be on such terms as may be agreed.
- (3) The appointment must specify the functions in connection with which it is made.
- (4) An urban development corporation must act as agent in accordance with the terms of its appointment.

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- (5) An urban development corporation may arrange for any of its property or staff to be made available to the HCA if—
  - (a) the purpose is to assist the HCA to exercise any of its functions, and
  - (b) the HCA asks the urban development corporation to make the property or staff available.
- (6) The property or staff are to be made available for such period, and on such other terms, as the urban development corporation considers appropriate.
- (7) In this Part “urban development corporation” means a corporation established by an order under section 135 of the Local Government, Planning and Land Act 1980 (c. 65).

VALID FROM 01/12/2008

#### **43 Acting with, or for, other persons: general**

- (1) The HCA may act with other persons (whether in partnership or otherwise).
- (2) The HCA may act as agent for other persons.

#### **44 Local government involvement**

- (1) The HCA must from time to time consult such representatives of local government as the HCA considers appropriate about how the HCA pursues its objects.
- (2) The HCA must from time to time publish a statement about how it proposes to comply with subsection (1).
- (3) Before publishing a statement the HCA must consult such persons as it considers appropriate.

#### **Commencement Information**

**I7** S. 44 in force at 8.9.2008 by S.I. 2008/2358, art. 2(1)

VALID FROM 01/12/2008

#### *Other*

#### **45 Support services**

- (1) The HCA may provide services in support of a project.
- (2) The HCA may, in particular—
  - (a) second staff to the project,
  - (b) provide consultants or other manpower resources to the project on a temporary basis, or



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- (c) lend or otherwise provide technical, property or other resources to the project.
- (3) The HCA may facilitate the provision of services in support of a project.

## CHAPTER 5

### SUPPLEMENTARY

#### *Certain supervisory powers of the Secretary of State*

#### **46 Guidance by the Secretary of State**

- (1) The Secretary of State may give guidance to the HCA as to the exercise of any of its functions.
- (2) Before giving guidance under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (3) The Secretary of State must publish any guidance given under this section as soon as reasonably practicable after giving it.
- (4) The Secretary of State may revoke guidance given under this section.
- (5) The Secretary of State must—
  - (a) consult, before revoking guidance under this section, such persons as the Secretary of State considers appropriate, and
  - (b) publish the fact that the guidance has been revoked as soon as reasonably practicable after the revocation.
- (6) The HCA must, in exercising its functions, have regard to any guidance for the time being in force under this section.
- (7) References in this section to giving guidance include references to giving guidance by varying existing guidance.

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#### **Commencement Information**

**I8** S. 46 in force at 8.9.2008 by S.I. 2008/2358, art. 2(1)

#### **47 Directions by the Secretary of State**

- (1) The Secretary of State may give the HCA general or specific directions as to the exercise of any of its functions.
- (2) The Secretary of State must publish any directions given by the Secretary of State under this Part as soon as reasonably practicable after giving them.
- (3) The Secretary of State—
  - (a) may revoke any directions given by the Secretary of State under this Part, and
  - (b) must publish the fact that the directions have been revoked as soon as reasonably practicable after the revocation.

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- (4) The HCA must comply with any directions of the Secretary of State in force under this Part.
- (5) Subsections (2) and (3)(b) do not apply to directions given under section 22 or paragraph 7 of Schedule 1; and this section does not apply to directions given under Schedule 4.
- (6) References in this Part to the Secretary of State giving directions include references to the Secretary of State giving directions by varying existing directions.

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**Commencement Information**

**19** S. 47 in force at 8.9.2008 by S.I. 2008/2358, art. 2(1)

VALID FROM 01/12/2008

**48 Consents of the Secretary of State**

- (1) Any consent of the Secretary of State required under this Part may be given—
  - (a) unconditionally or subject to conditions, and
  - (b) generally or specifically.
- (2) The Secretary of State may vary or revoke any such consent except in the case of anything already done, or agreed to be done, on the authority of it.
- (3) A variation or revocation under subsection (2) does not have effect until the Secretary of State has served notice of it on the HCA or (as the case may be) the other person to whom the consent is given.

*Abolition of existing bodies*

**49 Abolition of Urban Regeneration Agency**

The Urban Regeneration Agency shall cease to exist on such day as the Secretary of State may by order appoint.

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**Commencement Information**

**110** S. 49 in force at 8.9.2008 by S.I. 2008/2358, art. 2(1)

**50 Abolition of the Commission for the New Towns**

- (1) The Commission for the New Towns shall cease to exist on such day as the Secretary of State may by order appoint.
- (2) Schedule 5 (which transfers Welsh functions of the Commission to the Welsh Ministers and makes other amendments of the New Towns Act 1981 (c. 64)) has effect.

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#### Commencement Information

**I11** S. 50(1) in force at 8.9.2008 by S.I. 2008/2358, art. 2(1)

## 51 Property etc. transfers to the HCA and the Welsh Ministers

- (1) The Secretary of State may make one or more schemes for—
  - (a) the transfer to the HCA of designated property, rights or liabilities of—
    - (i) the Urban Regeneration Agency,
    - (ii) the Commission for the New Towns,
    - (iii) a regional development agency (within the meaning of the Regional Development Agencies Act 1998 (c. 45)), or
    - (iv) a Minister of the Crown, or
  - (b) the transfer to the Welsh Ministers of designated property, rights or liabilities of—
    - (i) the Urban Regeneration Agency, or
    - (ii) the Commission for the New Towns.
- (2) On the transfer date, the designated property, rights or liabilities are transferred and vest in accordance with the scheme.
- (3) Schedule 6 (which makes further provision about the making of schemes) has effect.
- (4) In this section and in Schedule 6—
  - “designated” in relation to a scheme, means specified in, or determined in accordance with, the scheme,
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26),
  - “the transfer date” means a date specified by a scheme as the date on which the scheme is to have effect.
- (5) Schedule 7 makes provision about the tax implications of schemes under this section (and schemes under section 65).

#### Commencement Information

**I12** S. 51 in force at 8.9.2008 by S.I. 2008/2358, art. 2(1)

## 52 Role of the HCA in relation to former CNT functions

- (1) The HCA must, so far as practicable, exercise its powers in relation to—
  - (a) any property, rights or liabilities of the Commission for the New Towns transferred to it by virtue of section 51 and Schedule 6,
  - (b) any property, rights or liabilities of a new town development corporation transferred to it by virtue of section 41 of, and Schedule 10 to, the New Towns Act 1981 (c. 64),
  - (c) any undertaking, or part of an undertaking, of an urban development corporation transferred to it by virtue of an agreement under section 165 of the Local Government, Planning and Land Act 1980 (c. 65), or

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- (d) any property, rights or liabilities of an urban development corporation transferred to it by virtue of an order under section 165B of that Act, for the purposes of the objects mentioned in section 2(1) or for purposes incidental to those purposes.
- (2) But subsection (1) does not apply if the HCA does not consider it appropriate to exercise its powers in this way having regard, in particular, to the purposes for which the transferred property was held by the Commission for the New Towns, the new town development corporation or (as the case may be) the urban development corporation.
- (3) In such a case, the HCA must exercise its powers in relation to the transferred property in such a way as it considers appropriate having regard, in particular, to—
- (a) the objects mentioned in section 2(1), and
  - (b) the purposes for which the transferred property was held by the body concerned,
- and the references in this Part to the objects of the HCA are to be read accordingly.
- (4) In this section—
- “new town development corporation” means a development corporation established under section 3 of the New Towns Act 1981 (c. 64),
- “transferred property” means any property, rights or liabilities, or any undertaking or part of an undertaking, falling within paragraphs (a) to (d) of subsection (1) above.

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**Commencement Information**

**I13** S. 52 in force at 8.9.2008 by S.I. 2008/2358, art. 2(1)

### 53 Interim arrangements

- (1) The Secretary of State may by notice require the Urban Regeneration Agency or the Commission for the New Towns to provide staff, premises, facilities or other assistance on a temporary basis to—
- (a) the HCA, or
  - (b) the Welsh Ministers.
- (2) In paragraph 1(1) of Schedule 17 to the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) (constitution of the Urban Regeneration Agency: number of members), for “six” substitute “two”.
- (3) This section is without prejudice to the power of the Secretary of State under section 322(1).

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**Commencement Information**

**I14** S. 53 in force at 8.9.2008 by S.I. 2008/2358, art. 2(1)

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## Other

### 54 Validity of transactions

- (1) A transaction between a person and the HCA is not invalid merely because of a failure by the HCA to exercise its powers for the purposes mentioned in sections 3 and 4(2).
- (2) A transaction between a person and the HCA is not invalid merely because it was carried out in contravention of a direction under section 47.
- (3) A transaction between a person and a subsidiary of the HCA is not invalid merely because of a failure by the HCA to comply with section 41(1) or (2).
- (4) A person entering into a transaction with the HCA or a subsidiary of the HCA need not be concerned as to whether—
  - (a) there has been a failure of the kind mentioned in subsection (1) or (3), or
  - (b) a direction of the kind mentioned in subsection (2) has been given or complied with.
- (5) A disposal of land by the HCA is not invalid merely because any consent required by section 10(1) or (3) has not been given.
- (6) A person dealing with—
  - (a) the HCA, or
  - (b) a person claiming under the HCA,in relation to any land need not be concerned as to whether any consent required by section 10(1) or (3) has been given.

#### Commencement Information

**I15** S. 54 in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 2\(1\)](#)

### 55 Notices

- (1) Any notice required or authorised under this Part to be served on any person may be served by—
  - (a) delivering it to the person,
  - (b) leaving it at the person's proper address, or
  - (c) sending it by post to the person at that address.
- (2) Any such notice may—
  - (a) in the case of a body corporate, be served in accordance with subsection (1) on an officer of the body, and
  - (b) in the case of a partnership, be served in accordance with subsection (1) on a partner or a person having the control or management of the partnership business.
- (3) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of any person on whom a notice is to be served is the person's last known address except as follows.

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- (4) For the purposes of this section and section 7 of the Act of 1978 in its application to this section, the proper address is—
- (a) in the case of service on a body corporate or an officer of the body, the address of the registered or principal office of the body, and
  - (b) in the case of service on a partnership, a partner or a person having the control or management of the partnership business, the address of the principal office of the partnership.
- (5) For the purposes of subsection (4) the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (6) Subsection (7) applies if a person to be served under this Part with a notice has specified an address within the United Kingdom other than the person's proper address (as decided under subsections (3) and (4)) as the one at which the person, or someone on the person's behalf, will accept documents of the same description as the notice.
- (7) The specified address is also to be treated for the purposes of this section and section 7 of the Act of 1978 in its application to this section as the person's proper address.
- (8) Subsection (9) applies if the name or address of any owner, lessee or occupier of land on whom a notice is to be served under this Part cannot, after reasonable inquiry, be ascertained.
- (9) The notice may be served by—
- (a) leaving it in the hands of a person who is, or appears to be, resident or employed on the land, or
  - (b) leaving it conspicuously affixed to a building or object on the land.
- (10) Any notice required or authorised under this Part to be served on any person may be served on the person by transmitting the text of the notice to the person by means of an electronic communications network or by other means but while in electronic form provided the text is received by the person in legible form and is capable of being used for subsequent reference.
- (11) In this section—
- “body corporate” includes a limited liability partnership,
  - “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate,
  - “officer of a body corporate” means any director, manager, secretary or other similar officer of the body corporate,
  - “partnership” does not include a limited liability partnership,
- and references to serving include references to similar expressions (such as giving or sending).

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**Commencement Information**

**I16** S. 55 in force at 8.9.2008 by S.I. 2008/2358, art. 2(1)

**56 Consequential amendments: Part 1**

Schedule 8 (which contains amendments of enactments) has effect.

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### Commencement Information

**I17** S. 56 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 2\(1\)](#)

## 57 Interpretation: Part 1

(1) In this Part—

“conduit system” has the same meaning as in the electronic communications code; and references to providing a conduit system are to be read in accordance with paragraph 1(3A) of that code,

“develop” (and development), in relation to land or infrastructure, includes redevelop (and redevelopment),

“electronic communications apparatus” has the same meaning as in the electronic communications code,

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the Communications Act 2003 (c. 21),

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the Act of 2003 (application of the electronic communications code), and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide,

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the Act of 2003,

“electronic communications network” has the same meaning as in the Act of 2003,

“enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)),

“financial year” means—

(a) the period beginning with the day on which the HCA is established and ending with the next 31 March, and

(b) each subsequent period of 12 months ending with 31 March,

“improve”, in relation to housing and other land, includes refurbish, equip and fit out,

“modifications” includes omissions,

“notice” means notice in writing,

“operator”, in relation to an electronic communications code network means—

(a) the electronic communications code operator providing that network, or

(b) the Secretary of State, so far as the Secretary of State is providing or proposing to provide that network,

“provide” and related expressions, in relation to an electronic communications network, are to be read in accordance with section 32(4) of the Communications Act 2003 (c. 21).



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- (2) References in this Part to powers of the HCA do not include references to powers contained in duties imposed on the HCA.

**Commencement Information**

**I18** S. 57 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 2\(1\)](#)

**58 Index of defined expressions: Part 1**

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision</i>
Allotment	Section 9(7)
Building	Section 2(3)
Caravan	Section 2(3)
Common	Section 9(7)
Conduit system (and providing such a system)	Section 57(1)
Designated area	Section 13(5)
Designation order	Section 13(5)
Develop (and development)	Section 57(1)
Electronic communications apparatus	Section 57(1)
Electronic communications code	Section 57(1)
Electronic communications code network	Section 57(1)
Electronic communications code operator	Section 57(1)
Electronic communications network	Section 57(1)
Enactment	Section 57(1)
Financial year	Section 57(1)
Giving directions	Section 47(6)
The HCA	Section 1(1)
Housing	Section 2(3)
Improve	Section 57(1)
Infrastructure	Section 2(3)
Land	Section 2(3) (and Schedule 1 to the Interpretation Act 1978 (c. 30))
Local planning authority (in relation to designation orders or proposed designation orders)	Section 13(5)

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Modifications	Section 57(1)
Notice	Section 57(1)
Objects of the HCA	Sections 2, 19(5) and 52(3)
Open space	Section 9(7)
Operator (in relation to electronic communications code network)	Section 57(1)
Permitted purposes	Section 13(5)
Powers of the HCA	Section 57(2)
Provide (in relation to an electronic communications network)	Section 57(1)
Registered provider of social housing	Section 80(2)(a)
Regulator of Social Housing	Section 81(2)(a)
Social housing (and its provision)	Section 32(13)
Social housing assistance	Section 32(13)
Subsidiary	Section 23(5)
Urban development corporation	Section 42(7)

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#### Commencement Information

**I19** [S. 58](#) in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 2\(1\)](#)

## PART 2

### REGULATION OF SOCIAL HOUSING

#### CHAPTER 1

##### INTRODUCTION

###### *Preliminary*

## 59 Purpose

The purpose of this Part is to regulate the provision of social housing (as defined in sections 68 to 77) by English bodies (as defined in section 79).

#### Commencement Information

**I20** [S. 59](#) in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 3\(1\)](#)

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VALID FROM 01/04/2010

## 60 Structural overview

- (1) This Part replaces the system of “registered social landlords” under Part 1 of the Housing Act 1996 (c. 52).
- (2) That Part will continue to apply in relation to Wales (see section 61).
- (3) Certain provisions of that Part—
  - (a) are applied in relation to England by this Part (see section 179), or
  - (b) are preserved although they apply to England only (see section 124).
- (4) The Table describes the content of this Part.

<i>Chapter</i>	<i>Sections</i>	<i>Topic</i>	<i>Contents</i>
1	59 to 80	Introduction	(a) Preliminary (b) Social housing (c) Other key concepts
2	81 to 109	The Social Housing Regulator	(a) Constitution (b) Proceedings (c) Powers (d) Money (e) Relationship with other bodies (f) Information
3	110 to 121	Registration	(a) Introduction (b) Eligibility (c) Procedure
4	122 to 169	Registered providers	(a) General provisions (b) Accounts (c) Insolvency etc. (d) Restructuring and dissolution
5	170 to 191	Disposal of property [ <sup>F6</sup> by private registered providers]	(a) Introductory (b) Regulator's consent (c) Proceeds (d) Tenants' rights and duties

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			(e) Miscellaneous
			(f) Right to acquire
			(g) Consents under other legislation
6	192 to 217	Regulatory powers	(a) Standards
			(b) Monitoring
			(c) Management and constitution
			(d) Guidance
			(e) Managers of social housing
7	218 to [F7269B]	Enforcement powers	(a) General
			(b) Enforcement notice
			(c) Penalty
			(d) Compensation
			(e) Management
			(f) Restrictions on dealings
			(g) Suspension and removal of officers
			[F8(h) Censure of local authority employees]
8	270 to 278	General	(a) Interpretation
			(b) Miscellaneous

#### Textual Amendments

- F6** Words in s. 60(4) inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 1\(a\)](#)
- F7** Word in s. 60(4) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 1\(b\)](#)
- F8** Words in s. 60(4) inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 1\(c\)](#)

#### Commencement Information

- I21** S. 60 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

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VALID FROM 01/04/2010

## 61 Restriction of “registered social landlord” system to Wales

(1) Part 1 of the Housing Act 1996 (c. 52) (social rented sector) is amended as follows (and the title of Part 1 becomes “Social Rented Sector in Wales”).

(2) Before section 1 (register of social landlords) insert—

### “A1 Introduction

This Chapter provides for the registration of social landlords in Wales.”

(3) In section 1—

- (a) for “The Relevant Authority” substitute “ The Welsh Ministers ”, and
- (b) omit subsections (1A) and (1B).

(4) After section 1 insert—

### “1A Welsh bodies

In this Chapter “Welsh body” means a body which is—

- (a) a registered charity whose address, for the purposes of registration by the Charity Commission for England and Wales, is in Wales,
- (b) an industrial and provident society whose registered office for the purposes of the Industrial and Provident Societies Act 1965 is in Wales, or
- (c) a company within the meaning of the Companies Act 2006 which has its registered office for the purposes of that Act in Wales.”

(5) In section 2 (eligibility for registration)—

- (a) in subsection (1), for “A body” substitute “ A Welsh body ”,
- (b) in subsection (2) after “that the body is” insert “ principally concerned with Welsh housing, is ”,
- (c) after subsection (2) insert—

“(2A) A body is principally concerned with Welsh housing if the Welsh Ministers think—

- (a) that it owns housing only or mainly in Wales, or
- (b) that its activities are principally undertaken in respect of Wales;

and once a body has been registered in reliance on paragraph (a) or (b) it does not cease to be eligible for registration by virtue only of ceasing to satisfy that paragraph.”,

- (d) in subsection (7) for “Secretary of State” (in each place) substitute “ Welsh Ministers ”, and
- (e) in subsection (8) for “either House of Parliament” substitute “ the National Assembly for Wales ”.

(6) In section 3 (registration)—

- (a) in subsection (1) for “any body” substitute “ any Welsh body ”, and

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(b) in subsection (4) for “A body” substitute “ A Welsh body ”.

(7) The table sets out substitutions which have effect throughout the Part (except section 51 and Schedule 2); and where necessary in consequence of those substitutions, for words in the singular substitute appropriate corresponding words in the plural.

<i>Expression</i>	<i>Substitution</i>
“the Relevant Authority”	“the Welsh Ministers”
“the Authority”	“the Welsh Ministers”
“the Relevant Authority's”	“the Welsh Ministers”

(8) Omit section 56 (meaning of “the Relevant Authority”).

(9) Sections 62 and 63 make other consequential amendments.

VALID FROM 01/04/2010

## 62 References to Welsh Ministers

In the following provisions of the Housing Act 1996 (c. 52)—

- for “Secretary of State” substitute “ Welsh Ministers ”,
- for “Secretary of State makes” substitute “ Welsh Ministers make ”,
- for “he” substitute “ they ”,
- for “him” substitute “ them ” (except in section 12A(4)), and
- for “considers” substitute “ consider ”.

<i>Provision</i>	<i>Topic</i>
Section 9(1A)(b)	Consent for disposal of land
Section 12A(4)	Right of first refusal: regulations
Section 15A(5)	Deferred resale agreements: order
Section 17(1), (2)(b), (5)(b) and (6)	Right to acquire: orders and regulations
Section 18(5)(b)	Social housing grants: appointment of agent
Section 23(6)	Loans: approved schemes
Section 27A(3)	Grants to other bodies: further provision
Section 29(1), (2) and (3)	Commutation of special residual subsidy
Section 30(5)(b)	Collection of information: notice
Section 39(3)	Insolvency etc: order defining terms

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Section 46(7)(b)	Appointment of manager: order
Section 52(1) and (3)	Orders: general
Section 53(1), (4) and (5)	Determinations: general
Section 55(2)	Consequential: order
Paragraph 9(3A)(b) of Schedule 1	Change of rules of industrial and provident society: consent
Paragraph 11(3A)(b) of Schedule 1	Change of articles of company: consent
Paragraph 15A(1) of Schedule 1	Transfer of assets of charity on dissolution: order

VALID FROM 01/04/2010

### 63 References to National Assembly for Wales

In the following provisions of the Housing Act 1996 (c. 52) for “either House of Parliament” substitute “ the National Assembly for Wales ”.

<i>Provision</i>	<i>Topic</i>
Section 12A(8)(b)	Right of first refusal: regulations
Section 15A(6)(b)	Deferred resale agreements: order
Section 17(7)	Right to acquire: orders and regulations
Section 27A(10)	Grants to other bodies: order
Section 39(3)	Insolvency: order
Section 55(3)	Consequential: order
Paragraph 15A(4) of Schedule 1	Transfer of assets of charity on dissolution: order

VALID FROM 16/02/2009

### 64 Dissolution of Housing Corporation

- (1) The Secretary of State shall by order make provision for the dissolution of the Housing Corporation.
- (2) The Secretary of State may by order make consequential amendment of enactments referring to the Housing Corporation.
- (3) Omit section 33A of the Housing Associations Act 1985 (c. 69) (provision of services between the Corporations).



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## 65 Transfer schemes

- (1) The Secretary of State may make one or more schemes for the transfer of the Housing Corporation's property, rights or liabilities to—
  - (a) the regulator,
  - (b) the HCA, or
  - (c) the Secretary of State.
- (2) On the transfer date, the designated property, rights or liabilities are transferred and vest in accordance with the scheme.
- (3) Schedule 6 applies to a scheme under this section.
- (4) In this section—

“designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;

“the transfer date” means the date specified by a scheme as the date on which the scheme is to have effect.
- (5) Schedule 7 makes provision about the tax implications of schemes under this section (and schemes under section 51).

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### Commencement Information

**I22** S. 65 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

## 66 Interim arrangements

The Secretary of State may by notice require the Housing Corporation to provide staff, premises, facilities or other assistance to—

- (a) the regulator, or
- (b) the HCA.

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### Commencement Information

**I23** S. 66 in force at 8.9.2008 as it applies in relation to, or makes provision about the tax implications of, schemes under ss. 51 and 65 by S.I. 2008/2358, art. 3(1)

## 67 Transitional arrangements

- (1) The Secretary of State may by order transfer functions of the Housing Corporation to—
  - (a) the regulator,
  - (b) the HCA, or
  - (c) the regulator and the HCA jointly or concurrently.
- (2) An order under subsection (1) may make provision in relation to English registered social landlords which is similar to any provision made by this Part in relation to registered providers.
- (3) “English registered social landlord” means a body—

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- (a) which is registered as a social landlord under Part 1 of the Housing Act 1996, and
  - (b) which does not fall within paragraphs (a) to (c) of section 56(2) of that Act (Welsh bodies).
- (4) The Secretary of State may by order make further provision in respect of a function transferred under this section (which may, in particular, include provision for the function to cease to be exercisable).
- (5) Provision made under this section, including provision made by virtue of section 320(1)(d), may modify an enactment.
- (6) Provision under section 322(1) in connection with the coming into force of a provision of this Act may, in particular, include transitional provision having regard to the effect of provision made under this section.

#### Commencement Information

**I24** S. 67 in force at 8.9.2008 as it applies in relation to, or makes provision about the tax implications of, schemes under ss. 51 and 65 by S.I. 2008/2358, art. 3(1)

### Social housing

#### 68 Basic principle

- (1) In this Part “social housing” means—
- (a) low cost rental accommodation (defined by section 69), and
  - (b) low cost home ownership accommodation (defined by section 70).
- (2) Accommodation which becomes “social housing” by satisfying subsection (1)(a) or (b) remains “social housing” for the purposes of this Part unless and until an event specified in sections 73 to 76 occurs.
- (3) Section 77 makes transitional provision as a result of which certain accommodation is to be treated as “social housing” whether or not it satisfies subsection (1)(a) or (b).

#### Commencement Information

**I25** S. 68 in force at 8.9.2008 for specified purposes by S.I. 2008/2358, art. 3(1)

#### 69 Low cost rental

Accommodation is low cost rental accommodation if—

- (a) it is made available for rent,
- (b) the rent is below the market rate, and
- (c) the accommodation is made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market.

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#### Commencement Information

**I26** S. 69 in force at 8.9.2008 for specified purposes by S.I. 2008/2358, art. 3(1)

### 70 Low cost home ownership

- (1) Accommodation is low cost home ownership accommodation if the following conditions are satisfied.
- (2) Condition 1 is that the accommodation is occupied, or made available for occupation, in accordance with—
  - (a) shared ownership arrangements,
  - (b) equity percentage arrangements, or
  - (c) shared ownership trusts.
- (3) Condition 2 is that the accommodation is made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market.
- (4) “Shared ownership arrangements” means arrangements under a lease which—
  - (a) is granted on payment of a premium calculated by reference to a percentage of either the value of the accommodation or the cost of providing it, and
  - (b) provides that the tenant (or the tenant's personal representatives) will or may be entitled to a sum calculated by reference to the value of the accommodation.
- (5) “Equity percentage arrangements” means arrangements under which—
  - (a) the owner of a freehold or leasehold interest in residential property (“the seller”) conveys it to an individual (“the buyer”),
  - (b) the buyer, in consideration for the conveyance—
    - (i) pays the seller a sum (the “initial payment”) expressed to represent a percentage of the value of the interest at the time of the conveyance, and
    - (ii) agrees to pay the seller other sums calculated by reference to a percentage of the value of the interest at the time when each sum is to be paid, and
  - (c) the liability to make any payment required by the arrangements (apart from the initial payment) is secured by a mortgage.
- (6) Shared ownership trusts has the same meaning as in Schedule 9 to the Finance Act 2003 (c. 14) (stamp duty land tax).
- (7) The Secretary of State may make regulations amending—
  - (a) the definition of “low cost home ownership accommodation”;
  - (b) the definition of any of the sub-categories specified in that definition.

#### Commencement Information

**I27** S. 70 in force at 8.9.2008 for specified purposes by S.I. 2008/2358, art. 3(1)

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## 71 Shared ownership low cost rental

Accommodation which is both low cost rental accommodation and low cost home ownership accommodation is to be treated as the latter and not as the former.

### Commencement Information

**I28** S. 71 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358, art. 3\(1\)](#)

## 72 Regulations

- (1) The Secretary of State may make regulations providing that specified property, or a specified class of property, is or is not to be treated as social housing for the purposes of this Part.
- (2) The regulations may provide for property to be social housing despite not satisfying section 68(1)(a) or (b) where the Secretary of State thinks the property is of a kind, or is provided in circumstances, that serve the needs of a group whose needs are not adequately served by the commercial housing market.
- (3) The regulations—
  - (a) may override section 68(2),
  - (b) are subject to sections 68(3) and 77, and
  - (c) are subject to sections 69 and 70 (but may clarify doubt about the application of those sections).
- (4) The regulations—
  - (a) may make provision by reference to the opinion of the regulator or another specified person, and
  - (b) may make provision by reference to designation, agreement or other action by the regulator or another specified person.

### Commencement Information

**I29** S. 72 in force at 8.9.2008 by [S.I. 2008/2358, art. 3\(1\)](#)

## 73 Leaving the social housing stock: sale

- (1) A dwelling ceases to be social housing if it is sold to the tenant.
- (2) Low cost rental accommodation is “sold to the tenant” when the tenant exercises a statutory or contractual right and as a result becomes the owner of—
  - (a) the freehold interest in the property, or
  - (b) the leasehold interest previously owned by the person providing the social housing.
- (3) Low cost home ownership accommodation of the shared ownership kind is “sold to the tenant” when the tenant exercises a statutory or contractual right and as a result becomes the owner of—
  - (a) the freehold interest in the property, or

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- (b) the leasehold interest previously owned by the person providing the social housing.
- (4) Low cost home ownership accommodation of the equity percentage kind is “sold to the tenant” when the “buyer” (see section 70(5)(a)) exercises a statutory or contractual right as a result of which the equity percentage arrangements (see section 70(5)) come to an end.
- (5) Low cost home ownership accommodation of the shared ownership trust kind comes to an end when the “purchaser” (see paragraph 7(4)(a) of Schedule 9 to the Finance Act 2003 (c. 14)) exercises a statutory or contractual right as a result of which the trust comes to an end.

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**Commencement Information**

**I30** S. 73 in force at 8.9.2008 for specified purposes by S.I. 2008/2358, art. 3(1)

**74 Leaving the social housing stock: expired lease**

- (1) A dwelling ceases to be social housing if—
  - (a) the provider holds a leasehold interest in the dwelling, and
  - (b) the leasehold interest expires.
- (2) A lease from an associate or subsidiary of the provider is disregarded for the purposes of subsection (1).

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**Commencement Information**

**I31** S. 74 in force at 8.9.2008 for specified purposes by S.I. 2008/2358, art. 3(1)

**75 Leaving the social housing stock: disposal with consent**

- (1) A dwelling ceases to be social housing if it is disposed of with the regulator's consent in accordance with—
  - (a) Chapter 5,
  - (b) section 171D of the Housing Act 1985 (c. 68) (consent to certain disposals of housing obtained subject to the preserved right to buy), or
  - (c) section 81 or 133 of the Housing Act 1988 (c. 50) (consent to certain disposals of housing obtained from housing action trusts or local authorities).
- (2) Subsection (1) does not apply to a disposal in pursuance of shared ownership arrangements or equity percentage arrangements.
- (3) Subsection (1) does not apply if the consent is conditional upon the dwelling continuing to be low cost rental accommodation or low cost home ownership accommodation.
- (4) A condition of that kind shall include provision for determining when the dwelling ceases to be social housing.

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#### Commencement Information

**I32** S. 75 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

### 76 Leaving the social housing stock: regulator's direction

- (1) The regulator may direct that a specified dwelling is to cease to be social housing.
- (2) The regulator may make a direction only on the application of the provider.

#### Commencement Information

**I33** S. 76 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

### 77 Housing stock under Housing Act 1996

- (1) This section applies to property owned by a registered social landlord within the meaning of Part 1 of the Housing Act 1996 (c. 52) before the coming into force of section 61 of this Act.
- (2) Property to which this section applies is social housing—
  - (a) whether or not it satisfies section 68(1)(a) or (b), and
  - (b) unless and until an event specified in sections 73 to 76 occurs.
- (3) But property to which any of the exceptions below applies when section 61 comes into force is social housing only if the purchase, construction or renovation of the property was funded by means of a grant under—
  - (a) section 19 (financial assistance by the HCA),
  - (b) section 18 of the Housing Act 1996 (social housing grant), or
  - (c) section 50 of the Housing Act 1988, section 41 of the Housing Associations Act 1985 (c. 69) or section 29 or 29A of the Housing Act 1974 (c. 44) (housing association grant).
- (4) Exception 1 is accommodation let on the open market.
- (5) Exception 2 is accommodation made available only to students in full-time education or training.
- (6) Exception 3 is a care home (within the meaning of the Care Standards Act 2000 (c. 14)) in which nursing is provided.
- (7) Exception 4 is accommodation provided in response to a request by the Secretary of State under section 100 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum seekers).
- (8) Exception 5 is property of a kind specified by regulations made by the Secretary of State.

#### Commencement Information

**I34** S. 77 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

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### Other key concepts

## 78 Regulator of Social Housing

- (1) Section 81 establishes the Office referred to in this Part as “the regulator”.
- (2) Chapter 2 makes provision for the regulator's constitution and general powers.
- (3) Other provisions of this Part confer functions on the regulator.

### Commencement Information

**I35** S. 78 in force at 8.9.2008 for specified purposes by S.I. 2008/2358, art. 3(1)

## 79 English bodies

- (1) In this Part “English body” means—
  - (a) a registered charity whose address for the purposes of registration by the Charity Commission is in England,
  - (b) an industrial and provident society whose registered office for the purposes of the Industrial and Provident Societies Act 1965 (c. 12) is in England,
  - (c) a registered company which has its registered office in England,
  - (d) a community land trust which owns land in England, and
  - (e) any other person (whether or not a body corporate registered under the law of the United Kingdom) which—
    - (i) is not a Welsh body within the meaning of section 1A of the Housing Act 1996 (c. 52), and
    - (ii) makes available, or intends to make available, accommodation in England.
- (2) In subsection (1)(d) “community land trust” means a body corporate which satisfies the conditions below.
- (3) In those conditions “local community” means the individuals who live or work, or want to live or work, in a specified area.
- (4) Condition 1 is that the body is established for the express purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets in order—
  - (a) to provide a benefit to the local community, and
  - (b) to ensure that the assets are not sold or developed except in a manner which the trust's members think benefits the local community.
- (5) Condition 2 is that the body is established under arrangements which are expressly designed to ensure that—
  - (a) any profits from its activities will be used to benefit the local community (otherwise than by being paid directly to members),
  - (b) individuals who live or work in the specified area have the opportunity to become members of the trust (whether or not others can also become members), and
  - (c) the members of the trust control it.



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**Commencement Information**

**I36** S. 79 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

**80 Provider of social housing**

(1) In this Chapter a reference to the provider of social housing is to be construed as follows.

<i>Type of social housing</i>	<i>Provider</i>
Low cost rental accommodation	The landlord
Low cost home ownership accommodation: shared ownership	The landlord
Low cost home ownership accommodation: equity percentage	“The seller” within the meaning of section 70(5)(a)
Low cost home ownership accommodation: shared ownership trust	The “social landlord” within the meaning of paragraph 7(3) of Schedule 9 to the Finance Act 2003

(2) Chapter 3 provides for the establishment of a register of providers of social housing: persons listed in the register—

- (a) may be referred to in an enactment or other instrument as “registered providers of social housing”, and
- (b) are referred to in this Part as “registered providers”.

**Commencement Information**

**I37** S. 80 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

**CHAPTER 2**

THE SOCIAL HOUSING REGULATOR

*Constitution*

**81 Establishment**

(1) There shall be a body corporate to be known as the Office for Tenants and Social Landlords.

(2) The Office—

- (a) may be referred to in an enactment or other instrument as “the Regulator of Social Housing”, and
- (b) is referred to in this Part as “the regulator”.

(3) The Office (and any member of the Office)—

- (a) is not the servant or agent of the Crown, and

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- (b) does not share any immunity or privilege of the Crown.

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**Commencement Information**

**I38** S. 81 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

## 82 Membership

- (1) The regulator shall consist of—
- (a) a person appointed by the Secretary of State as chair,
  - (b) neither less than 3 nor more than 10 other members appointed by the Secretary of State, and
  - (c) the chief executive appointed under section 84.
- (2) The Secretary of State must consult the chair before appointing other members.
- (3) The Secretary of State may appoint a person under subsection (1) only if satisfied that the person has no financial or other personal interest in the performance of functions.
- (4) Former membership of the Housing Corporation is not a bar to appointment.
- (5) In this Part “appointed member” means—
- (a) the chair, or
  - (b) a member appointed under subsection (1)(b).
- (6) A vacancy for, or a defect in the appointment of, the chair, the chief executive or another member does not prevent or invalidate proceedings.

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**Commencement Information**

**I39** S. 82 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

## 83 Tenure

- (1) An appointed member holds and vacates office in accordance with the terms of appointment (subject to this section).
- (2) A period of appointment may not exceed 5 years (but a member may be reappointed).
- (3) An appointed member may resign by notice to the Secretary of State.
- (4) The Secretary of State may dismiss an appointed member if satisfied that any of the following cases applies—
- (a) Case 1 is where a member has been absent from meetings of the regulator for a period of more than 6 months without its permission.
  - (b) Case 2 is where a member is subject to—
    - (i) a bankruptcy restrictions order, or
    - (ii) an interim bankruptcy restrictions order.
  - (c) Case 3 is where—
    - (i) a member's estate has been sequestrated by a court in Scotland, or

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- (ii) under the law of Scotland, a member has made a composition or arrangement with, or granted a trust deed for, creditors.
- (d) Case 4 is where a member has a financial or other personal interest which is likely to influence the performance of functions.
- (e) Case 5 is where a member has misbehaved or is for any other reason unable, unsuitable or unwilling to perform functions.

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**Commencement Information**

**I40** [S. 83](#) in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 3\(1\)](#)

## 84 Chief executive

- (1) The regulator shall appoint a chief executive.
- (2) The regulator may appoint a person only if approved by the Secretary of State.
- (3) The first chief executive shall be appointed by the Secretary of State, having consulted the chair.

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**Commencement Information**

**I41** [S. 84](#) in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 3\(1\)](#)

## 85 Other staff

The regulator may appoint employees (in addition to the chief executive).

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**Commencement Information**

**I42** [S. 85](#) in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 3\(1\)](#)

## *Proceedings*

## 86 Fundamental objectives

- (1) The regulator shall perform its functions with a view to achieving the following objectives so far as possible.
- (2) Objective 1 is to encourage and support a supply of well-managed social housing, of appropriate quality, sufficient to meet reasonable demands.
- (3) Objective 2 is to ensure that actual or potential tenants of social housing have an appropriate degree of—
  - (a) choice, and
  - (b) protection.
- (4) Objective 3 is to ensure that tenants of social housing have the opportunity to be involved in its management.

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- (5) Objective 4 is to ensure that registered providers of social housing perform their functions efficiently, effectively and economically.
- (6) Objective 5 is to ensure that registered providers of social housing are financially viable and properly managed.
- (7) Objective 6 is to encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas in which the housing is situated.
- (8) Objective 7 is to encourage investment in social housing (including by promoting the availability of financial services to registered providers of social housing).
- (9) Objective 8 is to avoid the imposition of an unreasonable burden (directly or indirectly) on public funds.
- (10) Objective 9 is to guard against the misuse of public funds.
- (11) Objective 10 is to regulate in a manner which—
  - (a) minimises interference, and
  - (b) is proportionate, consistent, transparent and accountable.
- (12) Pursuit of Objective 10 includes, but is not necessarily limited to, compliance with any duty of the regulator under section 22 of the Legislative and Regulatory Reform Act 2006 (c. 51) (code of practice).
- (13) The order in which the objectives are listed in this section is not significant; the regulator shall balance them as it thinks appropriate.
- (14) The objectives are referred to in this Part as the regulator's fundamental objectives.

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**Commencement Information**

**I43** S. 86 in force at 8.9.2008 for specified purposes by S.I. 2008/2358, art. 3(1)

## 87 Procedure

- (1) The regulator may determine its own procedure (which may include provision about a quorum).
- (2) The regulator shall make such arrangements as it thinks appropriate for publishing its procedure.

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**Commencement Information**

**I44** S. 87 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

## 88 Conflict of interest

- (1) The regulator's procedural arrangements under section 87 must include arrangements for dealing with any conflict of interest of—
  - (a) members,
  - (b) employees, or

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- (c) members of committees and sub-committees.
- (2) The arrangements must oblige a person—
- (a) to declare any financial or other personal interest relevant to the exercise of a function, and
  - (b) to withdraw from the performance of that function unless the regulator directs otherwise, being satisfied that the interest will not influence performance of the function.

**Commencement Information**

**I45** S. 88 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

## 89 Committees

- (1) The regulator may establish committees and sub-committees.
- (2) A committee or sub-committee may include non-members (provided that it includes at least one member).

**Commencement Information**

**I46** S. 89 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

## 90 Delegation

The regulator may authorise any of the following to exercise a function—

- (a) a committee,
- (b) a sub-committee,
- (c) a member, and
- (d) an employee.

**Commencement Information**

**I47** S. 90 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

## 91 Seal

- (1) The application of the regulator's seal shall be authenticated by a member or by some other person authorised (generally or specially) for that purpose.
- (2) A document purporting to be duly executed under the seal—
  - (a) shall be received in evidence, and
  - (b) shall be treated as so executed unless the contrary is shown.

**Commencement Information**

**I48** S. 91 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

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## 92 Annual report

- (1) As soon as is reasonably practicable after the end of each financial year the regulator shall—
  - (a) prepare a report on the performance of its functions during the year, and
  - (b) send a copy to the Secretary of State.
- (2) The report must, in particular—
  - (a) include a statement of the regulator's accounts,
  - (b) specify any direction given to the regulator by the Secretary of State in that year under section 197, and
  - (c) contain a general description of complaints made to the regulator in that year about the performance of registered providers and of how those complaints have been dealt with.
- (3) The Secretary of State shall lay a copy before Parliament.

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### Commencement Information

**149** S. 92 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

## Powers

## 93 General

- (1) The regulator may do anything it thinks necessary or expedient for the purpose of or in connection with the performance of a function conferred on it by this Part or another enactment.
- (2) In particular, the regulator may do anything it thinks appropriate for advancing its fundamental objectives.

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### Commencement Information

**150** S. 93 in force at 8.9.2008 for specified purposes by S.I. 2008/2358, art. 3(1)

VALID FROM 01/04/2010

## 94 Studies

- (1) The regulator may carry out or commission studies designed to improve the economy, effectiveness and efficiency of registered providers.
- (2) The regulator may publish a report on a study.

## 95 Financial assistance

- (1) The regulator may, where it thinks it advances a fundamental objective, give financial assistance to a person in connection with—

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- (a) undertaking research,
  - (b) preparing guidance,
  - (c) developing and publicising best practice, or
  - (d) facilitating the management of social housing by tenants.
- (2) Financial assistance under subsection (1) may be given—
- (a) by way of grant,
  - (b) by way of loan,
  - (c) by defraying expenditure on behalf of a person, or
  - (d) in any other way except purchasing loan or share capital of a body corporate or giving a guarantee or indemnity.
- (3) The regulator may, where it thinks it advances a fundamental objective, give financial assistance to a registered provider by—
- (a) lending money to or in respect of the registered provider, or
  - (b) giving a guarantee or indemnity in respect of the registered provider.
- (4) Financial assistance may be given under subsection (3) only with the consent of the Secretary of State (given with the approval of the Treasury).
- (5) Financial assistance under subsection (1) or (3) may be given on conditions (which may include provision for repayment, with or without interest).

**Commencement Information**

**I51** S. 95(1)(2)(5) in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

**96 Evidence**

In considering whether to exercise a power under this Part the regulator may have regard to information or opinions from any source including, in particular, from—

- (a) tenants,
- (b) bodies representing tenants,
- (c) local housing authorities, or
- (d) an ombudsman appointed by virtue of section 124.

**Commencement Information**

**I52** S. 96 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

**97 Information, advice etc.**

- (1) The regulator may for the purpose of advancing its fundamental objectives—
- (a) publish ideas or information;
  - (b) undertake research in relation to social housing;
  - (c) provide guidance, advice, education or training.
- (2) The regulator may for that purpose—
- (a) arrange for another person to do anything within subsection (1)(a) to (c);



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- (b) act jointly with, cooperate with or assist another person doing anything within subsection (1)(a) to (c).
- (3) The persons to whom advice may be given under subsection (1) include—
  - (a) unregistered housing associations (as defined by section 2B of the Housing Associations Act 1985 (c. 69)), and
  - (b) persons who may be forming a housing association (within the meaning of section 1(1) of that Act).

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**Commencement Information**

**I53** S. 97 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

## 98 Tenant involvement

- (1) The regulator shall—
  - (a) promote awareness of the regulator's functions among tenants of social housing,
  - (b) where the regulator thinks it appropriate, consult them about the exercise of its functions (for example, by holding meetings), and
  - (c) where the regulator thinks it appropriate, involve them in the exercise of its functions (for example, by appointing them to committees or sub-committees).
- (2) The regulator shall from time to time publish a statement about how it proposes to comply with subsection (1).
- (3) Before publishing a statement the regulator must consult such persons as it thinks appropriate.

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**Commencement Information**

**I54** S. 98 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

## Money

## 99 Remuneration

- (1) The regulator may pay to or in respect of appointed members—
  - (a) remuneration,
  - (b) travelling and other allowances, and
  - (c) sums by way of or in respect of pensions and gratuities.
- (2) The Secretary of State shall determine rates and eligibility criteria for payments under subsection (1).
- (3) If the Secretary of State thinks there are special circumstances that make it right to compensate a person on ceasing to be an appointed member, the regulator may pay compensation determined by the Secretary of State.
- (4) The regulator may pay to or in respect of employees —

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- (a) remuneration,
- (b) travelling and other allowances, and
- (c) sums by way of or in respect of pensions and gratuities.

(5) In this section a reference to a member or employee includes a reference to a former member or employee.

**Commencement Information**

**I55** S. 99 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

**100 Charging**

The regulator may charge for giving advice, conducting research or providing other services.

**Commencement Information**

**I56** S. 100 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

**101 Assistance by Secretary of State**

- (1) The Secretary of State may make payments to the regulator by way of grant or loan.
- (2) A grant or loan may be subject to conditions (which may include provision for repayment, with or without interest).

**Commencement Information**

**I57** S. 101 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

**102 Borrowing**

- (1) The regulator may borrow—
  - (a) by way of overdraft or otherwise, for the purpose of what it considers to be short-term management of its finances, or
  - (b) from the Secretary of State.
- (2) The regulator may not borrow otherwise.

**Commencement Information**

**I58** S. 102 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

**103 Accounts**

- (1) The regulator shall keep accounts (and records of its accounts).

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- (2) As soon as is reasonably practicable after the end of each financial year the regulator shall prepare a statement of accounts in respect of that financial year.
- (3) The statement must be in such form as the Secretary of State may direct.
- (4) The regulator shall, within such period as the Secretary of State may direct, send a copy of the statement to—
  - (a) the Secretary of State, and
  - (b) the Comptroller and Auditor General.
- (5) The Comptroller and Auditor General shall—
  - (a) examine, certify and report on the statement, and
  - (b) lay a copy of the report before Parliament.

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**Commencement Information**

**I59** S. 103 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

#### **104 Financial year**

- (1) The regulator's financial year is each period of 12 months beginning with 1st April.
- (2) But the first financial year is the period—
  - (a) beginning with the day on which section 81 comes into force, and
  - (b) ending with the next 31st March.

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**Commencement Information**

**I60** S. 104 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

#### *Relationship with other bodies*

#### **105 Cooperation with the HCA**

- (1) The regulator shall cooperate with the HCA.
- (2) In particular, the regulator shall consult the HCA on matters likely to interest it.

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**Commencement Information**

**I61** S. 105 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

VALID FROM 01/04/2010

#### **106 Direction to the HCA**

- (1) The regulator may direct the HCA not to give financial assistance to a specified registered provider—

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- (a) under section 19, and
  - (b) in connection with social housing.
- (2) A direction may be given if—
- (a) the regulator has decided to hold an inquiry into affairs of the registered provider under section 206 (and the inquiry is not concluded),
  - (b) the regulator has received notice in respect of the registered provider under section 145, or
  - (c) the regulator has appointed an officer of the registered provider under section 269 (and the person appointed has not vacated office).
- (3) A direction may prohibit the HCA from giving assistance of a specified kind (whether or not in pursuance of a decision already taken and communicated to the registered provider).
- (4) A direction may not prohibit grants to a registered provider in respect of discounts given by the provider on disposals of dwellings to tenants.
- (5) A direction shall have effect until withdrawn.

VALID FROM 01/04/2010

### *Information*

#### **107 Collection**

- (1) The regulator may for a purpose connected with its functions require a person to provide documents or information which it has reason to believe is or may be in the person's possession and which relates to—
- (a) the financial or other affairs of a registered provider;
  - (b) activities which are or may be carried out by a person who is, or who has applied to become, a registered provider.
- (2) A requirement may be imposed on a person other than the body to which the document or information relates only if—
- (a) the body has been required to provide the document or information but has failed to do so, or
  - (b) the regulator thinks that the body is unable to provide it.
- (3) A requirement may specify—
- (a) the form and manner in which a document or information is to be provided (which may include the provision of a legible copy of information stored electronically);
  - (b) when and where it is to be provided.
- (4) The regulator may copy or record documents or information provided.
- (5) Failure to comply with a requirement without reasonable excuse is an offence.
- (6) Intentionally altering, suppressing or destroying a document or information to which a requirement relates is an offence.

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- (7) If a person fails to comply with a requirement the High Court may, on an application by the regulator, make an order for the purpose of remedying the failure.

#### **108 Section 107: supplemental**

- (1) A requirement does not require a person to disclose anything which the person would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court.
- (2) A requirement does not require a banker to breach a duty of confidentiality owed to a person who is not—
- (a) the registered provider to whose affairs or activities the documents or information relates,
  - (b) a subsidiary of the registered provider, or
  - (c) an associate of the registered provider.
- (3) A person guilty of an offence under section 107(5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person guilty of an offence under section 107(6) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to—
    - (i) imprisonment for a term not exceeding two years,
    - (ii) a fine, or
    - (iii) both.
- (5) Proceedings for an offence under section 107(5) or (6) may be brought only by or with the consent of—
- (a) the regulator, or
  - (b) the Director of Public Prosecutions.
- (6) An order under section 107(7) may include provision about costs.

#### **109 Disclosure**

- (1) A public authority may disclose information to the regulator if the authority thinks that the disclosure is necessary for a purpose connected with the regulator's functions.
- (2) The regulator may disclose information to a public authority if the regulator thinks that the disclosure is necessary—
- (a) for a purpose connected with the regulator's functions, or
  - (b) for a purpose connected with the authority's functions.
- (3) The regulator may disclose information to a person acting on its behalf for a purpose connected with the regulator's functions.
- (4) A disclosure may be subject to restrictions on further disclosure.
- (5) The power to disclose information under this section is subject to any express restriction on disclosure imposed by another enactment (ignoring any restriction which allows disclosure if authorised by an enactment).
- (6) Disclosure in contravention of a restriction under subsection (4) is an offence.

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- (7) A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) “Public authority” means a person having functions of a public nature (whether or not in the United Kingdom).

## CHAPTER 3

### REGISTRATION

VALID FROM 01/04/2010

#### *Introduction*

#### **110 Overview**

This Chapter provides for the establishment of a register of providers of social housing.

#### **111 The register**

- (1) The regulator shall maintain a register of providers of social housing.
- (2) The regulator shall make the register available for inspection by the public.

#### *Eligibility*

#### **112 Eligibility for registration**

- (1) An English body is eligible for registration if—
  - (a) it satisfies the following conditions, and
  - (b) it does not fall within the exceptions in section 113.
- (2) Condition 1 is that the body—
  - (a) is a provider of social housing in England, or
  - (b) intends to become a provider of social housing in England.
- (3) Condition 2 is that the body satisfies any relevant criteria set by the regulator as to—
  - (a) its financial situation,
  - (b) its constitution, and
  - (c) other arrangements for its management.
- (4) Before setting criteria the regulator must consult—
  - (a) the HCA,
  - (b) one or more bodies appearing to it to represent the interests of registered providers, and
  - (c) one or more bodies appearing to it to represent the interests of tenants.

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#### Commencement Information

**I62** S. 112(3)(4) in force at 8.9.2008 for specified purposes by S.I. 2008/2358, **art. 3(1)** (with **art. 3(3)(4)**)

### 113 Local authority non-registrable bodies

- (1) This section sets out the exceptions to section 112(1).
- (2) Exception 1 is a local housing authority.
- (3) Exception 2 is a county council.
- (4) Exception 3 is a person controlled by an authority within Exception 1 or 2.
- (5) The Secretary of State may make regulations defining when a person is controlled by an authority for the purpose of Exception 3.
- (6) The definition may be expressed by reference to a definition for the time being given in a document identified by regulations under section 21(2)(b) of the Local Government Act 2003 (c. 26) (accounting practices for local authorities).

#### Commencement Information

**I63** S. 113(5)(6) in force at 8.9.2008 for specified purposes by S.I. 2008/2358, **art. 3(1)**

### 114 Registration of local authorities

- (1) The Secretary of State may by order—
  - (a) repeal section 113, or
  - (b) amend it so as to permit the registration of specified classes of local authority.
- (2) The Secretary of State may by order require the regulator to register—
  - (a) a specified local authority, or
  - (b) a specified class of local authority.
- (3) Registration under subsection (2)—
  - (a) takes effect in accordance with any provision of the order about timing or other procedural or incidental matters,
  - (b) does not require an application for registration, and
  - (c) may apply to a local authority whether or not it is eligible for registration by virtue of subsection (1).
- (4) If the Secretary of State thinks it necessary or desirable in connection with the registration of local authorities, the Secretary of State may by order—
  - (a) provide for a provision of this Part or any other enactment not to apply in relation to registered local authorities;
  - (b) provide for a provision of this Part or any other enactment to apply with specified modifications in relation to registered local authorities;
  - (c) amend a provision of this Part or any other enactment.
- (5) In this section—



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- (a) “local authority” means an authority or person to whom section 113 applies or has applied, and
  - (b) “registered local authorities” means authorities or persons who are registered, registrable or to be registered as a result of an order under subsection (1) or (2) above.
- (6) Before making an order under this section the Secretary of State shall consult—
- (a) any authority or person likely to be affected by it, and
  - (b) such other persons as the Secretary of State thinks fit.

#### Commencement Information

**I64** S. 114 in force at 8.9.2008 for specified purposes by S.I. 2008/2358, art. 3(1)

VALID FROM 01/04/2010

### 115 Profit-making and non-profit organisations

- (1) Each entry in the register shall designate the body registered as either—
  - (a) a non-profit organisation, or
  - (b) a profit-making organisation.
- (2) A body is a non-profit organisation if it is a registered or non-registrable charity.
- (3) A body is also a non-profit organisation if it satisfies the following conditions.
- (4) Condition 1 is that the body—
  - (a) does not trade for profit, or
  - (b) is prohibited by its constitution from issuing capital with interest or dividend at a rate exceeding that prescribed under section 1(1)(b) of the Housing Associations Act 1985 (c. 69).
- (5) Condition 2 is that a purpose of the body is the provision or management of housing.
- (6) Condition 3 is that any other purposes of the body are connected with or incidental to the provision of housing.
- (7) The Secretary of State may make regulations providing that a specified purpose is to be, or not to be, treated as connected with or incidental to the provision of housing.
- (8) A body which is not a non-profit organisation under subsection (2) or (3) is a profit-making organisation.
- (9) If the regulator thinks that what was a profit-making organisation has become a non-profit organisation, the regulator must change the registered designation accordingly.

#### Procedure

### 116 Entry

- (1) The regulator shall register anyone who—

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- (a) is eligible for registration, and
  - (b) applies to be registered.
- (2) The regulator may make provision about—
- (a) the form of an application;
  - (b) the information to be contained in it or provided with it;
  - (c) the manner in which an application is to be submitted;
  - (d) the consequences of failure to comply with provision under paragraphs (a) to (c).
- (3) This section is subject to section 117 (fees).
- (4) Once entered a body remains registered unless and until removed under section 118 or 119.
- (5) It shall be presumed for all purposes that a person entered in the register is eligible for registration while the registration lasts (irrespective of whether and why the person is later removed from the register).

#### Commencement Information

**I65** S. 116(2) in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 3\(1\)](#)

## 117 Fees

- (1) The regulator may make initial registration conditional upon payment of a fee.
- (2) The regulator may make continued registration conditional upon payment of an annual fee.
- (3) The regulator shall—
  - (a) prescribe the amount of a fee, and
  - (b) make provision about the periods during which and in respect of which annual fees are payable.
- (4) The regulator may set different fees, and make different provision, for different cases or circumstances.
- (5) Fees must be set in accordance with principles which the regulator prepares and publishes and which are designed to ensure that so far as is reasonably practicable—
  - (a) fee income matches expenditure on the performance of functions,
  - (b) each fee is reasonable and proportionate to the costs to which it relates, and
  - (c) actual or potential registered providers can see the relationship between the amount of a fee and the costs to which it relates.
- (6) The principles—
  - (a) shall provide for section 95(3) to be disregarded for the purpose of subsection (5)(a), and
  - (b) may provide for specified expenditure or potential expenditure under section 95 or otherwise to be disregarded for the purpose of subsection (5)(a).
- (7) Principles do not have effect until approved by the Secretary of State.

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- (8) In preparing (or revising) the principles the regulator shall consult persons appearing to the regulator to represent the interests of fee-payers.
- (9) The regulator's accounts shall show—
  - (a) fees received, and
  - (b) fees outstanding.

#### Commencement Information

**I66** S. 117 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

VALID FROM 01/04/2010

#### 118 De-registration: compulsory

- (1) The regulator may remove from the register a body which the regulator thinks—
  - (a) is no longer eligible for registration,
  - (b) has ceased to carry out activities, or
  - (c) has ceased to exist.
- (2) Before removing a body under subsection (1)(a) or (b) the regulator must—
  - (a) take all reasonable steps to give the body at least 14 days' notice, and
  - (b) consider any representations it makes in that period.
- (3) After removing a body under subsection (1)(a) or (b) the regulator must take all reasonable steps to notify the body.

#### 119 De-registration: voluntary

- (1) A registered provider may ask the regulator to remove it from the register.
- (2) The regulator may comply with a request—
  - (a) on the grounds that the registered provider no longer is or intends to be a provider of social housing in England,
  - (b) on the grounds that the registered provider is subject to regulation by another authority whose control is likely to be sufficient, or
  - (c) on the grounds that the registered provider meets any relevant criteria for de-registration set by the regulator.
- (3) Before deciding whether or not to comply, the regulator must consult such local authorities in whose area the registered provider acts as it thinks appropriate.
- (4) The regulator shall not comply with a request by a non-profit registered provider if it thinks that removal is sought with a view to enabling the registered provider to distribute assets to members.
- (5) In deciding whether or not to comply, the regulator must (in particular) have regard to—
  - (a) any conditions imposed in connection with disposal consents given to the registered provider under Chapter 5, and

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- (b) any conditions imposed in connection with financial assistance given to the registered provider under any enactment.
- (6) Having decided whether or not to remove the registered provider the regulator must notify—
- (a) the provider, and
  - (b) any authority consulted.
- (7) The regulator shall publish criteria set for the purposes of subsection (2)(c).

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#### Commencement Information

**I67** S. 119(2)(7) in force at 8.9.2008 for specified purposes by S.I. 2008/2358, art. 3(1)

VALID FROM 01/04/2010

#### 120 Notice

- (1) As soon as is reasonably practicable after registering or de-registering a body the regulator shall notify—
- (a) in the case of a registered charity, the Charity Commission,
  - (b) in the case of an industrial and provident society, the Financial Services Authority,<sup>F9</sup> ...
  - (c) in the case of a registered company (whether or not also a registered charity), the registrar of companies for England and Wales<sup>F10</sup>, and
  - (d) in the case of a local authority, the Secretary of State.]
- (2) [<sup>F11</sup>Except in the case of a local authority,] a notice of registration shall specify whether the person registered is designated as a non-profit or profit-making organisation.
- (3) If the designation changes, the regulator shall notify any person notified of the registration.
- (4) A person to whom notice is given under this section must keep a record of it.

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#### Textual Amendments

- F9** Word in s. 120(1)(b) omitted (1.4.2010) by virtue of [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 19\(2\)\(a\)](#)
- F10** S. 120(1)(d) and word inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 19\(2\)\(b\)](#)
- F11** Words in s. 120(2) inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 19\(3\)](#)

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#### Commencement Information

**I68** S. 120 in force at 1.4.2010 by [S.I. 2010/862](#), art. 2 (with Sch.)

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VALID FROM 01/04/2010

## 121 Appeal

- (1) A body may appeal to the High Court against a decision of the regulator—
  - (a) to refuse to register it,
  - (b) to de-register it, or
  - (c) to refuse to de-register it.
- (2) The regulator shall not de-register a body while an appeal is pending.
- (3) The Secretary of State may by order provide for the First-tier Tribunal to have jurisdiction under this section instead of the High Court.

## CHAPTER 4

### REGISTERED PROVIDERS

VALID FROM 01/04/2010

#### *General provisions*

## 122 Payments to members etc.

- (1) This section restricts the making of gifts, and the payment of dividends and bonuses, by a non-profit registered provider to—
  - (a) a member or former member of the registered provider,
  - (b) a member of the family of a member or former member,
  - (c) a company which has as a director a person within paragraph (a) or (b).
- (2) A gift may be made, and a dividend or bonus may be paid, only if it falls within one of the following permitted classes.
- (3) Class 1 is payments which—
  - (a) are in accordance with the constitution of the registered provider, and
  - (b) are due as interest on capital lent to the provider or subscribed in its shares.
- (4) Class 2 is payments which—
  - (a) are paid by a fully mutual housing association (within the meaning of section 1(2) of the Housing Associations Act 1985 (c. 69)),
  - (b) are paid to former members of the association, and
  - (c) are due under—
    - (i) tenancy agreements with the association, or
    - (ii) agreements under which the former members became members of the association.
- (5) Class 3 is payments which—

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- (a) are in accordance with the constitution of the registered provider making the payment (“the payer”), and
  - (b) are made to a registered provider which is a subsidiary or associate of the payer.
- (6) If a registered company or industrial and provident society contravenes this section—
- (a) it may recover the wrongful gift or payment as a debt from the recipient, and
  - (b) the regulator may require it to take action to recover the gift or payment.

### 123 Disposal of property

Chapter 5 makes provision about disposal of property [<sup>F12</sup>by private registered providers].

#### Textual Amendments

**F12** Words in s. 123 inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 20](#)

#### Commencement Information

**I69** S. 123 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

### 124 Complaints

- (1) In section 51 of, and Schedule 2 to, the Housing Act 1996 (c. 52) (schemes for investigation of complaints by housing ombudsmen) for “Relevant Authority”, wherever appearing, substitute “Regulator of Social Housing”.
- (2) In section 51 of that Act—
  - (a) for subsection (2)(a) substitute—
    - “(a) a registered provider of social housing,”
  - (b) in subsection (2)(d) after “registered with” insert “the Regulator of Social Housing or”, and
  - (c) at the end add—
    - “(7) Section 52 shall apply to an order under subsection (4) (with any necessary modifications).”
- (3) In paragraph 6(2) of Schedule 2 to that Act (grants) for “Housing Corporation”, in both places, substitute “Regulator of Social Housing”.
- (4) In paragraph 11(4) of Schedule 2 to that Act, omit—
  - (a) “or the Housing Corporation”, and
  - (b) “or, as the case may be, the Housing Corporation”.
- (5) At the end of Schedule 2 to that Act add—

#### “General provision about orders

12 Section 52 shall apply to an order of the Secretary of State under this Schedule (with any necessary modifications).”

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### **125 Voluntary undertaking**

- (1) A registered provider may give the regulator an undertaking in respect of any matter concerning social housing.
- (2) The regulator may prescribe a procedure to be followed in giving an undertaking.
- (3) In exercising a power under Chapter 6 or 7 the regulator must have regard to any undertaking offered or given.
- (4) The regulator may found a decision about whether to exercise a power under Chapter 6 or 7 wholly or partly on the extent to which an undertaking has been honoured.

### **126 Sustainable community strategies**

If invited by a local authority to participate in the preparation or modification of a sustainable community strategy under section 4 of the Local Government Act 2000 (c. 22), a registered provider must co-operate with the local authority.

## *Accounts*

### **127 Directions**

- (1) The regulator may give directions to registered providers about the preparation of their accounts.
- (2) A direction may be given to a profit-making registered provider only in so far as its accounts relate to social housing activities.
- (3) The power must be exercised with a view to ensuring that accounts—
  - (a) are prepared in proper form, and
  - (b) present a true and fair view of—
    - (i) the state of affairs of each registered provider in relation to its social housing activities, and
    - (ii) the disposition of funds and assets which are, or have been, in its hands in connection with those activities.
- (4) A direction may require a registered charity to use a specified method for distinguishing in its accounts between—
  - (a) matters relating to its social housing activities, and
  - (b) other matters.
- (5) A direction—
  - (a) may make provision that applies generally or only to specified cases, circumstances or registered providers, and
  - (b) may make different provision for different cases, circumstances or registered providers.
- (6) A direction that relates to more than one registered provider may be given only after consulting one or more bodies appearing to the regulator to represent the interests of registered providers.



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- (7) The regulator shall make arrangements for bringing a direction to the attention of every registered provider to which it applies.

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**Commencement Information**

**170** S. 127(6) in force at 8.9.2008 for specified purposes by S.I. 2008/2358, art. 3(1) (with art. 3(3)(4))

VALID FROM 01/04/2010

**128 Submission to regulator**

- (1) Each registered provider shall send a copy of its accounts to the regulator within the period of 6 months beginning with the end of the period to which the accounts relate.
- (2) The accounts must be accompanied by—
  - (a) an auditor's report, or
  - (b) in the case of accounts that by virtue of an enactment are not subject to audit, any report that is required to be prepared in respect of the accounts by virtue of an enactment.
- (3) The report must specify whether the accounts comply with any relevant directions under section 127.

VALID FROM 01/04/2010

**129 Companies exempt from audit**

- (1) This section applies in relation to a registered provider which—
  - (a) is a registered company other than a charity, and
  - (b) is exempt from the audit requirements of the Companies Act 2006 (c. 46) by virtue of section 477 of that Act (small companies' exemption).
- (2) The directors of the company shall cause a report to be prepared in accordance with section 130 and made to the company's members in respect of the company's individual accounts for any year in which the company takes advantage of its exemption from audit.
- (3) “Individual accounts” has the same meaning as in section 396 of the Companies Act 2006.

VALID FROM 01/04/2010

**130 Exempt companies: accountant's report**

- (1) The report required by section 129 must be prepared by a person (“the reporting accountant”) who is eligible under section 131.

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- (2) The report must state whether the individual accounts are in accordance with the company's accounting records kept under section 386 of the Companies Act 2006.
- (3) On the basis of the information contained in the accounting records the report must also state whether—
  - (a) the accounts comply with Part 15 of the Companies Act 2006;
  - (b) the company is entitled to exemption from audit under section 477 of that Act (small companies' exemption) for the year in question.
- (4) The report must give the name of the reporting accountant and be signed and dated.
- (5) The report must be signed—
  - (a) where the reporting accountant is an individual, by that individual, and
  - (b) where the reporting accountant is a firm, for and on behalf of the firm by an individual authorised to do so.
- (6) In this section and sections 131 and 132 “firm” has the meaning given by section 1173(1) of the Companies Act 2006.

### **131 Exempt companies: reporting accountant**

- (1) A person is eligible for appointment by a company as a reporting accountant under section 130 if—
  - (a) either of the following conditions is satisfied, and
  - (b) the person would not be prohibited from acting as auditor of the company by virtue of section 1214 of the Companies Act 2006 (c. 46).
- (2) Condition 1 is satisfied if the person is a member of a body listed in subsection (4) and under its rules—
  - (a) the person is entitled to engage in public practice, and
  - (b) is not ineligible for appointment as a reporting accountant.
- (3) Condition 2 is satisfied if the person—
  - (a) is subject to the rules of a body listed in subsection (4) in seeking appointment or acting as a statutory auditor under Part 42 of the Companies Act 2006, and
  - (b) under those rules, is eligible for appointment as a statutory auditor under that Part.
- (4) The bodies mentioned in subsections (2) and (3) are—
  - (a) the Institute of Chartered Accountants in England and Wales,
  - (b) the Institute of Chartered Accountants of Scotland,
  - (c) the Institute of Chartered Accountants in Ireland,
  - (d) the Association of Chartered Certified Accountants,
  - (e) the Association of Authorised Public Accountants,
  - (f) the Association of Accounting Technicians,
  - (g) the Association of International Accountants,
  - (h) the Chartered Institute of Management Accountants, and
  - (i) the Institute of Chartered Secretaries and Administrators.
- (5) The Secretary of State may by order amend the list of bodies in subsection (4).

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- (6) References in this section to the rules of a body are to rules (whether or not laid down by the body itself) which the body has power to enforce and which are relevant for the purposes of Part 42 of the Companies Act 2006 (statutory auditors) or this section; and this includes rules relating to the admission and expulsion of members of the body so far as relevant for the purposes of that Part or this section.
- (7) An individual or a firm may be appointed as a reporting accountant; and section 1216 of the Companies Act 2006 applies to the appointment of a partnership constituted under the law of—
- (a) England and Wales,
  - (b) Northern Ireland, or
  - (c) any other country or territory in which a partnership is not a legal person.

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**Commencement Information**

**I71** S. 131(5) in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

VALID FROM 01/04/2010

**132 Application of Companies Act**

- (1) The provisions of the Companies Act 2006 listed in subsection (2) apply to the reporting accountant and a reporting accountant's report as they apply to an auditor of the company and an auditor's report on the company's accounts (with any necessary modifications).
- (2) The provisions are—
- (a) sections 423 to 425 (duty to circulate copies of annual accounts),
  - (b) sections 431 and 432 (right of member or debenture holder to demand copies of accounts),
  - (c) sections 434 to 436 (requirements in connection with publication of accounts),
  - (d) sections 441 to 444A (duty to file accounts with registrar of companies),
  - (e) section 454(4)(b) and regulations made under that provision (functions of auditor in relation to revised accounts),
  - (f) sections 499 to 502 (auditor's right to information), and
  - (g) sections 505 and 506 (name of auditor to be stated in published copies of report).
- (3) In sections 505 and 506 as they apply by virtue of this section in a case where the reporting accountant is a firm, any reference to the senior statutory auditor shall be read as a reference to the person who signed the report on behalf of the firm.

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VALID FROM 01/04/2010

### 133 Exempt companies: extraordinary audit

- (1) This section applies where, in accordance with section 129, a company appoints a reporting accountant to prepare a report in respect of its accounts for any year.
- (2) The regulator may require the company to—
  - (a) cause a qualified auditor to audit its accounts and balance sheet for that year, and
  - (b) send a copy of the report to the regulator by a specified date.
- (3) A requirement may not be imposed before the end of the financial year to which it relates.
- (4) “Qualified auditor”, in relation to a company, means a person who—
  - (a) is eligible for appointment as a statutory auditor of the company under Part 42 of the Companies Act 2006 (c. 46) (statutory auditors), and
  - (b) is not prohibited from acting as statutory auditor of the company by virtue of section 1214 of that Act (independence requirement).

VALID FROM 01/04/2010

### 134 Non-audited industrial and provident society

- (1) This section applies to a registered provider which is an industrial and provident society.
- (2) Section 9A of the Friendly and Industrial and Provident Societies Act 1968 (c. 55) applies to the society as if subsection (1)(b) were omitted (accountant's report required only where turnover exceeds specified sum).
- (3) The regulator may require the society to—
  - (a) appoint a qualified auditor to audit the society's accounts and balance sheet for any year of account in respect of which section 4 of the Friendly and Industrial and Provident Societies Act 1968 (audit requirements) has been disapplied (see section 4A of that Act), and
  - (b) send a copy of the auditor's report to the regulator by a specified date.
- (4) A requirement under subsection (3) may be imposed only during the year of account following the year to which the accounts relate.
- (5) In this section—
 

“qualified auditor” means a person who is a qualified auditor for the purposes of Friendly and Industrial and Provident Societies Act 1968 (c. 55), and

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

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VALID FROM 01/04/2010

### 135 Charity

- (1) This section applies to a non-profit registered provider which is a registered charity.
- (2) The charity shall—
  - (a) keep proper accounting records of its transactions and its assets and liabilities in relation to its housing activities, and
  - (b) maintain a satisfactory system of control of those records, its cash holdings and its receipts and remittances in relation to those activities.
- (3) For each period of account the charity shall prepare—
  - (a) a revenue account giving a true and fair view of the charity's income and expenditure during the period, so far as relating to its housing activities, and
  - (b) a balance sheet giving a true and fair view of the state of affairs of the charity as at the end of the period.
- (4) The revenue account and balance sheet must be signed by at least two directors or trustees.
- (5) “Period of account” means—
  - (a) a period of 12 months, or
  - (b) such other period not less than 6 months nor more than 18 as the charity may, with the consent of the regulator, determine.
- (6) This section does not affect any obligation under sections 41 to 45 of the Charities Act 1993 (c. 10) (charity accounts).

VALID FROM 01/04/2010

### 136 Charity: audit

- (1) This section applies in relation to the accounts of a charity under section 135(3).
- (2) If Condition 1 or 2 is met, the charity shall cause a qualified person to audit the accounts and report on them in accordance with section 137.
- (3) If neither Condition is met, the charity shall cause a qualified person (“the reporting accountant”) to report on the accounts in accordance with section 138.
- (4) Condition 1 is met if the accounts relate to a period during which the charity's gross income arising in connection with its housing activities was greater than the sum specified in section 43(1)(a) of the Charities Act 1993.
- (5) Condition 2 is met if—
  - (a) the accounts relate to a period during which the charity's gross income arising in connection with its housing activities was greater than the accounts threshold as defined by section 43(1) of the Charities Act 1993, and

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- (b) at the end of the period the aggregate value of its assets (before deduction of liabilities) in respect of its housing activities was greater than the sum specified in section 43(1)(b).
- (6) “Gross income” has the same meaning as in section 43 of the Charities Act 1993 (c. 10).
- (7) “Qualified person” means a person professionally qualified as an accountant.

VALID FROM 01/04/2010

### 137 Charity: auditor's report

- (1) An auditor appointed for the purposes of section 136(2) or 139(2) in respect of a charity's accounts shall make a report to the charity in accordance with this section.
- (2) The report must state—
  - (a) whether the revenue account gives a true and fair view of the charity's income and expenditure, so far as relating to its housing activities, and
  - (b) whether the balance sheet gives a true and fair view of the state of affairs of the charity as at the end of the period to which the accounts relate.
- (3) The report must give the name of the auditor and be signed.
- (4) The auditor shall, in preparing the report, carry out such investigations as are necessary to form an opinion as to—
  - (a) whether the charity has complied with section 135(2) during the period to which the accounts relate, and
  - (b) whether the accounts are in accordance with accounting records kept under section 135(2)(a).
- (5) If the auditor thinks that the charity has not complied section 135(2) or that the accounts are not in accordance with its accounting records, that must be stated in the report.
- (6) If the auditor fails to obtain all the information and explanations which the auditor thinks necessary for the purposes of the audit, that must be stated in the report.

VALID FROM 01/04/2010

### 138 Charity: accountant's report

- (1) A reporting accountant appointed for the purposes of section 136(3) in respect of a charity's accounts shall make a report to the charity in accordance with this section.
- (2) The report must state whether the accounts are in accordance with accounting records kept under section 135(2)(a).
- (3) On the basis of the information in the accounting records the report must also state whether—
  - (a) the accounts comply with the requirements of the Charities Act 1993;

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- (b) section 136(3) applied in respect of the accounts.
- (4) The report must give the name of the reporting accountant and be signed.
- (5) If the reporting accountant fails to obtain all the information and explanations which the reporting accountant thinks necessary for the purposes of preparing the report, that must be stated in the report.

VALID FROM 01/04/2010

### **139 Charity: extraordinary audit**

- (1) This section applies where, in accordance with section 136(3), a charity appoints a reporting accountant to prepare a report in respect of any accounts.
- (2) The regulator may require the charity to—
  - (a) cause a qualified person to audit the accounts and prepare a report on them in accordance with section 137, and
  - (b) send a copy of the report to the regulator by a specified date.
- (3) A requirement under subsection (2) may be imposed only during the period of account following the period to which the accounts relate.
- (4) In this section—
  - “period of account” has the meaning given by section 135(5), and
  - “qualified person” has the meaning given by section 136(7).

VALID FROM 01/04/2010

### **140 Charity: auditor's powers**

- (1) This section applies to a person who is appointed by a charity for the purposes of section 136(2) or (3) or 139(2).
- (2) The charity must grant the person access to its documents, if or in so far as they relate to its housing activities.
- (3) An officer of the charity must provide such information or explanations as the person thinks necessary.

VALID FROM 01/04/2010

### **141 Offences**

- (1) A registered provider commits an offence if it fails, without reasonable excuse, to comply with—
  - (a) a direction under section 127,
  - (b) a provision listed in subsection (2), or



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- (c) a requirement imposed under a provision listed in subsection (3).
- (2) The provisions referred to in subsection (1)(b) are—
- (a) section 128;
  - (b) section 129;
  - (c) section 135;
  - (d) section 136.
- (3) The provisions referred to in subsection (1)(c) are—
- (a) section 133;
  - (b) section 134;
  - (c) section 139.
- (4) If a registered provider fails to comply with a direction, provision or requirement mentioned in subsection (1) every officer of the registered provider is guilty of an offence.
- (5) It is a defence for an officer to show that the officer did everything that could reasonably have been expected to ensure compliance by the registered provider.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) Proceedings for an offence may be brought only by or with the consent of—
- (a) the regulator, or
  - (b) the Director of Public Prosecutions.

VALID FROM 01/04/2010

#### 142 High Court

- (1) If a registered provider fails to comply with a direction, provision or requirement mentioned in section 141(1), the High Court may on the application of the regulator make an order for the purpose of remedying the failure.
- (2) An order may include provision about costs.

VALID FROM 01/04/2010

#### 143 Disclosure

- (1) This section applies to information that a person has received while acting—
- (a) as auditor of a registered provider, or
  - (b) as a reporting accountant in relation to a registered provider.
- (2) The person may disclose the information to the regulator for a purpose connected with the regulator's functions—
- (a) despite any duty of confidentiality, and
  - (b) whether or not the regulator requests the information.



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- (3) The reference to disclosing information includes expressing an opinion on it.
- (4) “Reporting accountant” means a person who is appointed to prepare a report which, by virtue of any enactment, has to be prepared in respect of accounts that are not subject to audit.

VALID FROM 01/04/2009

*Insolvency etc.*

**144 Preparatory steps: notice**

A step specified in the Table has effect only if the person specified has given the regulator notice.

<i>Step</i>	<i>Person to give notice</i>
Any step, of a kind prescribed for the purposes of this section by the Secretary of State by order, to enforce a security over land held by a registered provider	The person taking the step
Presenting a petition for the winding up of a registered provider which is— (a) a registered company, or (b) an industrial and provident society But not the presenting of a petition by the regulator under section 166	The petitioner
Passing a resolution for the winding up of a registered provider which is— (a) a registered company, or (b) an industrial and provident society But not the passing of a resolution for winding-up where the regulator's consent is required under section 162 or 164	The registered provider
Making an administration application in accordance with paragraph 12 of Schedule B1 to the Insolvency Act 1986 in respect of a registered provider which is a registered company	The applicant
Appointing an administrator under paragraph 14 or 22 of that Schedule in respect of a registered provider which is a registered company	The person making the appointment
Filing with the court a copy of a notice of intention to appoint a person under either of those paragraphs in respect	The person filing the notice

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of a registered provider which is a registered company

#### 145 Moratorium

- (1) If a step specified in the Table below is taken in respect of a registered provider, a moratorium on the disposal of land by the provider begins.
- (2) Where a step specified in the Table is taken in respect of a registered provider, the person specified must give the regulator notice as soon as is reasonably practicable.
- (3) If the notice is not given the step is not invalidated (but the end of the moratorium depends on the notice being given — see section 146(2)).
- (4) The regulator shall give the HCA a copy of any notice received under this section.

<i>Step</i>	<i>Person</i>
Any step, of a kind prescribed for the purposes of this section by the Secretary of State by order, to enforce a security over land held by a registered provider	The person taking the step
The presenting of a petition for winding up a registered provider which is— (a) a registered company, or (b) an industrial and provident society But not the presenting of a petition by the directors or other governing body of the registered provider or by the regulator under section 166	The petitioner
The passing of a resolution for the winding up of a registered provider which is— (a) a registered company, or (b) an industrial and provident society	The registered provider
A decision by the directors or other governing body of a registered provider to present a petition for winding up where the registered provider is— (a) a registered company, or (b) an industrial and provident society	The directors or governing body
The making of an administration order in accordance with paragraph 13 of Schedule B1 to the Insolvency Act 1986 in respect of a registered provider which is a registered company	The person who applied for the order
The appointment of an administrator under paragraph 14 or 22 of that Schedule in respect of a registered provider which is a registered company	The person making the appointment

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#### **146 Duration of moratorium**

- (1) The moratorium begins when the step specified in section 145 is taken.
- (2) The moratorium ends (unless extended or cancelled) with the period of 28 working days beginning with the day on which the regulator receives notice under section 145(2).
- (3) During a moratorium the regulator may extend it (or further extend it) for a specified period, with the consent of each secured creditor of the registered provider whom the regulator is able to locate after making reasonable enquiries.
- (4) If the regulator extends a moratorium it shall notify—
  - (a) the registered provider,
  - (b) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land, and
  - (c) the HCA.
- (5) During a moratorium the regulator may cancel it if satisfied that it is unnecessary to make proposals under section 152.
- (6) Before cancelling a moratorium the regulator must consult the person who took the step that triggered it.
- (7) When a moratorium ends the regulator shall give notice, and (except in the case of cancellation) an explanation of section 147, to—
  - (a) the registered provider, and
  - (b) such of its secured creditors as the regulator is able to locate after making reasonable enquiries.
- (8) When a moratorium ends the regulator shall also give notice to the HCA.
- (9) Taking a further step during a moratorium does not—
  - (a) start a new moratorium, or
  - (b) alter the existing moratorium's duration.

VALID FROM 01/04/2010

#### **147 Further moratorium**

- (1) This section applies if—
  - (a) a moratorium in respect of a registered provider ends otherwise than by cancellation, and
  - (b) a further step specified in section 145 is taken in relation to the provider within the period of 3 years beginning with the end of the moratorium.
- (2) The further step does not automatically trigger a further moratorium.

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- (3) But the regulator may impose a further moratorium for a specified period, if each secured creditor of the registered provider whom the regulator is able to locate after making reasonable enquiries consents.
- (4) If the regulator imposes a new moratorium it shall notify—
  - (a) the registered provider,
  - (b) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or any of its land, and
  - (c) the HCA.
- (5) This group of sections applies to a further moratorium as to a first moratorium (except for section 146(2)).

VALID FROM 01/04/2010

#### 148 Effect of moratorium

- (1) During a moratorium the HCA—
  - (a) may not give the registered provider a direction under section 32(4), and
  - (b) may not take steps to enforce such a direction against the registered provider.
- (2) During a moratorium a disposal of the registered provider's land requires the regulator's prior consent.
- (3) Section 149 sets out exceptions to subsection (2).
- (4) Consent—
  - (a) may be given before the moratorium begins, and
  - (b) may be subject to conditions.
- (5) This section does not prevent a liquidator from disclaiming land as onerous property during a moratorium.
- (6) In this section “land” includes a present or future interest in rent or other receipts arising from land.

VALID FROM 01/04/2010

#### 149 Exempted disposals

- (1) The regulator's consent is not required under section 148 for the following exceptions.
- (2) Exception 1 is a letting under—
  - (a) an assured tenancy, or
  - (b) an assured agricultural occupancy.
- (3) Exception 2 is a letting under what would be an assured tenancy or an assured agricultural occupancy but for any of paragraphs 4 to 8, 12(1)(h) and 12ZA to 12B

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of Schedule 1 to the Housing Act 1988 (c. 50) (tenancies which cannot be assured tenancies).

- (4) Exception 3 is a letting under a secure tenancy.
- (5) Exception 4 is a letting under what would be a secure tenancy but for any of paragraphs 2 to 12 of Schedule 1 to the Housing Act 1985 (c. 68) (tenancies which are not secure tenancies).
- (6) Exception 5 is a disposal for which consent is required under—
  - (a) section 81 or 133 of the Housing Act 1988 (c. 50), or
  - (b) section 173 of the Local Government and Housing Act 1989 (c. 42).
- (7) Exception 6 is a disposal under Part V of the Housing Act 1985 (right to buy).
- (8) Exception 7 is a disposal under the right conferred by—
  - (a) section 180, or
  - (b) section 16 of the Housing Act 1996 (c. 52) (tenant's right to acquire social housing in Wales).

VALID FROM 01/04/2010

#### **150 Disposals without consent**

- (1) A purported disposal by a registered provider is void if—
  - (a) it requires the regulator's consent under section 148, and
  - (b) the regulator has not given consent.
- (2) But subsection (1) does not apply to a disposal by a non-profit registered provider to one or more individuals (“the buyer”) if—
  - (a) the disposal is of a single dwelling, and
  - (b) the registered provider reasonably believes at the time of the disposal that the buyer intends to use the property as the buyer's principal residence.

VALID FROM 01/04/2010

#### **151 Interim manager**

- (1) During a moratorium the regulator may appoint an interim manager of the registered provider.
- (2) An appointment may relate to the registered provider's affairs generally or to affairs specified in the appointment.
- (3) Appointment shall be on terms and conditions (including as to remuneration) specified in, or determined in accordance with, the appointment.
- (4) An appointment under this section shall come to an end with the earliest of the following—
  - (a) the end of the moratorium,

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- (b) the agreement of proposals under section 152, or
  - (c) a date specified in the appointment.
- (5) An interim manager shall have—
- (a) any power specified in the appointment, and
  - (b) any other power in relation to the registered provider's affairs required by the manager for the purposes specified in the appointment (including the power to enter into agreements and take other action on behalf of the registered provider).
- (6) But an interim manager may not—
- (a) dispose of land, or
  - (b) grant security over land.

VALID FROM 01/04/2010

## 152 Proposals

- (1) During a moratorium the regulator may make proposals about the future ownership and management of the registered provider's land, with a view to ensuring that the property will be properly managed by a registered provider.
- (2) In making proposals the regulator shall—
- (a) have regard to the interests of the registered provider's creditors as a whole, and
  - (b) so far as is reasonably practicable avoid worsening the position of unsecured creditors.
- (3) Proposals may provide for the appointment of a manager in accordance with section 155 to implement all or part of the proposals.
- (4) Proposals may not include anything which would result in—
- (a) a preferential debt being paid otherwise than in priority to a non-preferential debt, or
  - (b) a preferential creditor (PC1) being paid a smaller proportion of a preferential debt than another preferential creditor (PC2) (unless PC1 consents).
- (5) Proposals relating to a registered provider which is a charity (C1)—
- (a) may not require it to act outside the terms of its trusts, and
  - (b) may provide for the disposal of accommodation only to another charity whose objects the regulator thinks are similar to those of C1.

VALID FROM 01/04/2010

## 153 Proposals: procedure

- (1) Before making proposals the regulator shall consult—
- (a) the registered provider,

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- (b) its tenants (so far as is reasonably practicable),
  - (c) if the registered provider is an industrial and provident society, the Financial Services Authority, and
  - (d) if the registered provider is a registered charity, the Charity Commission.
- (2) The regulator shall send a copy of proposals to—
- (a) the registered provider and its officers,
  - (b) such of its secured creditors as the regulator is able to locate after making reasonable enquiries, and
  - (c) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or any of its land.
- (3) The regulator shall also make arrangements for bringing proposals to the attention of—
- (a) the registered provider's members,
  - (b) its tenants, and
  - (c) its unsecured creditors.
- (4) If each secured creditor to whom proposals were sent agrees to the proposals by notice to the regulator, the proposals have effect.
- (5) Proposals may be agreed with modifications if—
- (a) each secured creditor to whom the proposals were sent consents by notice to the regulator, and
  - (b) the regulator consents.
- (6) The regulator shall send a copy of agreed proposals to—
- (a) the registered provider and its officers,
  - (b) its secured creditors to whom the original proposals were sent,
  - (c) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or any of its land,
  - (d) if the registered provider is an industrial and provident society, the Financial Services Authority, and
  - (e) if the registered provider is a registered charity, the Charity Commission.
- (7) The regulator shall also make arrangements for bringing agreed proposals to the attention of—
- (a) the registered provider's members,
  - (b) its tenants, and
  - (c) its unsecured creditors.
- (8) Proposals may be amended by agreement between the secured creditors to whom the original proposals were sent and the regulator; and this section and section 152 apply to an amendment as to the original proposals.

VALID FROM 01/04/2010

## 154 Proposals: effect

- (1) The following are obliged to implement agreed proposals—



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- (a) the regulator,
  - (b) the registered provider,
  - (c) its creditors, and
  - (d) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or any of its land.
- (2) The following shall co-operate with implementation of agreed proposals—
- (a) in the case of a charitable trust, its trustees,
  - (b) in the case of an industrial and provident society, its committee members, and
  - (c) in the case of a registered company, its directors.
- (3) Subsection (2) does not require or permit a breach of a fiduciary or other duty.

VALID FROM 01/04/2010

#### **155 Manager: appointment**

- (1) This section applies where agreed proposals provide for the appointment of a manager.
- (2) The proposals must provide for the manager to be paid reasonable remuneration and expenses.
- (3) The regulator shall appoint a manager.
- (4) The regulator may give the manager directions (general or specific).
- (5) The manager may apply to the High Court for directions (and directions of the regulator are subject to directions of the High Court).
- (6) If the registered provider is a charity, the regulator must notify the Charity Commission that a manager has been appointed.
- (7) The regulator may appoint a new manager in place of a person who ceases to be manager (in accordance with terms of appointment specified in the proposals or determined by the regulator).

VALID FROM 01/04/2010

#### **156 Manager: powers**

- (1) A manager—
  - (a) may do anything necessary for the purpose of the appointment,
  - (b) acts as the registered provider's agent (and is not personally liable on a contract), and
  - (c) has ostensible authority to act for the registered provider (so that a person dealing with the manager in good faith and for value need not inquire into the manager's powers).



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- (2) In particular, the terms of a manager's appointment may confer power—
- (a) to sell or otherwise dispose of land by public auction or private contract;
  - (b) to raise or borrow money;
  - (c) to grant security over land;
  - (d) to grant or accept surrender of a lease;
  - (e) to take a lease;
  - (f) to take possession of property;
  - (g) to appoint a solicitor, accountant or other professional to assist the manager;
  - (h) to appoint agents and staff (and to dismiss them);
  - (i) to make payments;
  - (j) to bring or defend legal proceedings;
  - (k) to refer a question to arbitration;
  - (l) to make any arrangement or compromise;
  - (m) to carry on the business of the registered provider;
  - (n) to carry out works and do other things in connection with the management or transfer of land;
  - (o) to take out insurance;
  - (p) to use the registered body's seal;
  - (q) to execute in the name and on behalf of the registered provider any deed, receipt or other document;
  - (r) to do anything incidental to a power in paragraphs (a) to (q).
- (3) A manager shall so far as is reasonably practicable consult and inform the registered provider's tenants about an exercise of powers likely to affect them.

VALID FROM 01/04/2010

### **157 Manager of industrial and provident society: extra powers**

- (1) This section applies to a manager appointed to implement proposals relating to an industrial and provident society.
- (2) The appointment may confer on the manager power to make and execute on behalf of the society—
- (a) an instrument providing for the amalgamation of the society with another industrial and provident society, or
  - (b) an instrument transferring its engagements.
- (3) An instrument providing for the amalgamation of a society (“S1”) with another has the same effect as a resolution by S1 under section 50 of the Industrial and Provident Societies Act 1965 (c. 12) (amalgamation of societies by special resolution).
- (4) An instrument transferring engagements has the same effect as a transfer of engagements under sections 51 and 52 of the Industrial and Provident Societies Act 1965 (transfer by special resolution to another society or company).
- (5) A copy of the instrument shall be sent to and registered by the Financial Services Authority.

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- (6) An instrument does not take effect until the copy is registered.
- (7) The copy must be sent for registration during the period of 14 days beginning with the date of execution; but a copy registered after that period is valid.

VALID FROM 01/04/2010

### **158 Assistance by regulator**

- (1) The regulator may give financial or other assistance to a registered provider for the purpose of preserving its position pending the agreement of proposals.
- (2) The regulator may give financial or other assistance to a registered provider, or a manager appointed under section 155, to facilitate the implementation of agreed proposals.
- (3) In particular, the regulator may—
  - (a) lend staff;
  - (b) arrange payment of the manager's remuneration and expenses.
- (4) The regulator may do the following only with the Secretary of State's consent—
  - (a) make grants,
  - (b) make loans,
  - (c) indemnify a manager,
  - (d) make payments in connection with secured loans, and
  - (e) guarantee payments in connection with secured loans.

VALID FROM 01/04/2010

### **159 Applications to court**

- (1) A registered provider may apply to the High Court where the registered provider thinks that action taken by a manager is not in accordance with the agreed proposals.
- (2) A creditor of a registered provider may apply to the High Court where the creditor thinks that action taken by a manager is not in accordance with the agreed proposals.
- (3) The High Court may—
  - (a) confirm, annul or modify an act of the manager;
  - (b) give the manager directions;
  - (c) make any other order.
- (4) If a person bound by agreed proposals (P1) thinks that action by another person (P2) breaches section 154, P1 may apply to the High Court.
- (5) The High Court may—
  - (a) confirm, annul or modify the action;
  - (b) grant relief by way of injunction, damages or otherwise.

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### *Restructuring and dissolution*

#### **160 Company: arrangements and reconstructions**

- (1) This section applies to a non-profit registered provider which is a registered company.
- (2) A voluntary arrangement under Part 1 of the Insolvency Act 1986 (c. 45) in relation to the company is effective only if the regulator has first consented.
- (3) An order under section 899 of the Companies Act 2006 (c. 46) (court sanction for compromise or arrangement)—
  - (a) is effective only if the regulator has first consented, and
  - (b) does not take effect until a copy of the consent is delivered to the registrar of companies.
- (4) An order under section 900 of the Companies Act 2006 (powers of court to facilitate reconstruction or amalgamation) is effective only if the regulator has first consented.
- (5) The requirement in section 900(6) of the Companies Act 2006 (sending copy of order to registrar) is satisfied only if the copy is accompanied by a copy of the regulator's consent.

#### **161 Company: conversion into industrial and provident society**

- (1) This section applies to a non-profit registered provider which is a registered company.
- (2) The registrar of companies may register a resolution under section 53 of the Industrial and Provident Societies Act 1965 (c. 12) for converting the company into an industrial and provident society only if—
  - (a) the regulator has consented to the resolution, and
  - (b) a copy of the consent accompanies the resolution as sent to the registrar.
- (3) The regulator shall register the body created by the conversion and designate it as a non-profit organisation.
- (4) Pending registration the body shall be treated as if it were registered and designated as a non-profit organisation.

#### **162 Company: winding up**

- (1) This section applies to a non-profit registered provider which is a registered company.
- (2) A special resolution for the voluntary winding-up of the company under the Insolvency Act 1986 (c. 45) is effective only if the regulator has first consented.
- (3) The requirement under section 30 of the Companies Act 2006 (c. 46) (sending copy of resolution to registrar) is satisfied only if the copy is accompanied by a copy of the regulator's consent.

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### **163 Industrial and provident society: restructuring**

- (1) This section applies to a non-profit registered provider which is an industrial and provident society.
- (2) The Financial Services Authority may register a resolution passed by the society for the purposes of restructuring provisions listed in subsection (3) only if—
  - (a) the regulator has consented to the resolution, and
  - (b) a copy of the consent accompanies the resolution as sent to the Authority.
- (3) The following provisions of the Industrial and Provident Societies Act 1965 (c. 12) are the restructuring provisions—
  - (a) section 50 (amalgamation of societies),
  - (b) section 51 (transfer of engagements between societies), and
  - (c) section 52 of that Act (conversion into or amalgamation with registered company).
- (4) Where a resolution is registered in accordance with subsection (2), any body created or to whom engagements are transferred—
  - (a) must be registered by the regulator and designated as a non-profit organisation, and
  - (b) pending registration shall be treated as registered and designated as a non-profit organisation.

### **164 Industrial and provident society: winding up**

- (1) This section applies to a non-profit registered provider which is an industrial and provident society.
- (2) A resolution for the voluntary winding-up of the society under the Insolvency Act 1986 is effective only if the regulator has first consented.
- (3) The requirement in section 30 of the Companies Act 2006 (c. 46) (as applied by section 55 of the Industrial and Provident Societies Act 1965 and section 84(3) of the Insolvency Act 1986) (sending copy of resolution to FSA) is satisfied only if the copy is accompanied by a copy of the regulator's consent.

### **165 Industrial and provident society: dissolution**

- (1) This section applies to a non-profit registered provider which is—
  - (a) an industrial and provident society, and
  - (b) to be dissolved by instrument of dissolution in accordance with section 58 of the Industrial and Provident Societies Act 1965.
- (2) The Financial Services Authority may register the instrument under section 58(5), or cause notice of the dissolution to be advertised under section 58(6), only if—
  - (a) the regulator has consented to the dissolution, and
  - (b) a copy of the consent accompanies the instrument as sent to the Authority.

### **166 Winding up petition by regulator**

- (1) This section applies to a non-profit registered provider which is—
  - (a) a registered company, or

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(b) an industrial and provident society.

- (2) The regulator may present a petition for the registered provider to be wound up under the Insolvency Act 1986 (c. 45) on any of the following grounds.
- (3) Ground 1 is that the registered provider is failing properly to carry out its objects.
- (4) Ground 2 is that the registered provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- (5) Ground 3 is that the regulator has directed the registered provider under section 253 to transfer all its land to another person.

## **167 Transfer of property**

- (1) This section applies—
  - (a) where a non-profit registered provider which is an industrial and provident society is dissolved in accordance with section 55(a) or (b) of the Industrial and Provident Societies Act 1965 (c. 12), and
  - (b) where a non-profit registered provider which is a registered company is wound up under the Insolvency Act 1986.
- (2) Any surplus property that is available after satisfying the registered provider's liabilities shall be transferred—
  - (a) to the regulator, or
  - (b) if the regulator directs, to a specified non-profit registered provider.
- (3) If land belonging to the registered provider needs to be sold to satisfy its liabilities, the regulator may discharge those liabilities so as to ensure that the land is instead transferred in accordance with subsection (2).
- (4) Where the registered provider dissolved or wound up is a charity, a registered provider may be specified under subsection (2)(b) only if it is a charity whose objects the regulator thinks are similar to those of the original charity.
- (5) This section has effect despite anything in—
  - (a) the Industrial and Provident Societies Act 1965,
  - (b) the Insolvency Act 1986,
  - (c) the Companies Act 2006 (c. 46), or
  - (d) the constitution of a registered provider.

## **168 Section 167: supplemental**

- (1) This section applies to property transferred to the regulator in accordance with section 167(2)(a).
- (2) The regulator may dispose of the property only to a non-profit registered provider.
- (3) Where the registered provider wound up or dissolved was a charity, the regulator may dispose of the property only to a registered provider—
  - (a) which is a charity, and
  - (b) whose objects the regulator thinks are similar to those of the original charity.

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- (4) If the property includes land subject to a mortgage or charge, the regulator may dispose of the land—
- (a) subject to that mortgage or charge, or
  - (b) subject to a new mortgage or charge in favour of the regulator.

#### **169 Extension of sections 167 and 168**

The Secretary of State may by regulations provide for sections 167 and 168 to apply in relation to a registered provider which is a charity but not a registered company—

- (a) in specified circumstances, and
- (b) with specified modifications.

## **CHAPTER 5**

### DISPOSAL OF PROPERTY

VALID FROM 01/04/2010

#### *Introductory*

#### **170 Overview**

This Chapter makes provision about the disposal of property by registered providers.

#### **171 Power to dispose**

- (1) A [<sup>F13</sup>private registered provider] may dispose of land.
- (2) But a non-profit registered provider may dispose of the landlord's interest under a secure tenancy only to another non-profit registered provider [<sup>F14</sup>or to a local authority which is a registered provider].
- (3) Subsection (1) is subject to the following provisions of this Chapter (which include provisions requiring the regulator's consent for certain disposals).

#### **Textual Amendments**

**F13** Words in s. 171(1) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 36\(a\)](#)

**F14** Words in s. 171(2) inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 36\(b\)](#)

#### **Commencement Information**

**I72** S. 171 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

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### Regulator's consent

VALID FROM 01/04/2010

#### 172 Requirement of consent

- (1) Disposal of a dwelling by a registered provider requires the regulator's consent if the dwelling is social housing.
- (2) The regulator shall not consent to a disposal by a non-profit registered provider which it thinks is being made with a view to enabling the provider to distribute assets to members.
- (3) Consent is not required under this section if the disposal falls within an exception listed in section 173.

VALID FROM 01/04/2010

#### 173 Exceptions

- (1) This section lists exceptions to the requirement of consent in section 172.
- (2) Exception 1 is that consent is not required for disposal by a registered provider by way of—
  - (a) an assured tenancy,
  - (b) an assured agricultural occupancy,
  - (c) an arrangement that would be an assured tenancy or an assured agricultural occupancy but for any of paragraphs 4 to 8, 12(1)(h) and 12ZA to 12B of Schedule 1 to the Housing Act 1988 (c. 50) (exclusions),
  - (d) a secure tenancy, or
  - (e) an arrangement that would be a secure tenancy but for any of paragraphs 2 to 12 of Schedule 1 to the Housing Act 1985 (c. 68) (exclusions).
- (3) Exception 2 is that consent is not required for a disposal for which consent is required under—
  - (a) section 81 or 133 of the Housing Act 1988, or
  - (b) section 173 of the Local Government and Housing Act 1989 (c. 42).
- (4) Exception 3 is that consent is not required for a disposal under Part V of the Housing Act 1985 (right to buy).
- (5) Exception 4 is that consent is not required for a disposal in pursuance of a tenant's right to acquire under—
  - (a) section 180, or
  - (b) section 16 of the Housing Act 1996 (c. 52) (tenant's right to acquire social housing in Wales).



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## 174 Procedure

- (1) Consent may be—
  - (a) general, or
  - (b) specific (whether as to particular registered providers, as to particular property, as to particular forms of disposal or in any other way).
- (2) Consent may be retrospective.
- (3) Consent may be expressed by reference to a policy for disposals submitted by a registered provider.
- (4) Consent may be conditional.
- (5) Before giving consent the regulator must consult—
  - (a) the HCA,
  - (b) one or more bodies appearing to it to represent the interests of registered providers, and
  - (c) one or more bodies appearing to it to represent the interests of tenants.
- (6) Subsection (5) does not apply to specific consent relating only to one or more particular registered providers or properties.

### Commencement Information

**I73** S. 174(5)(6) in force at 8.9.2008 by S.I. 2008/2358, **art. 3(1)** (with **art. 3(3)(4)**)

VALID FROM 01/04/2010

## 175 Disposal without consent

- (1) A purported disposal by a registered provider is void if—
  - (a) it requires the regulator's consent, and
  - (b) the regulator has not given consent.
- (2) But subsection (1) does not apply to a disposal by a non-profit registered provider to one or more individuals (“the buyer”) if—
  - (a) the disposal is of a single dwelling, and
  - (b) the registered provider reasonably believes at the time of the disposal that the buyer intends to use the property as the buyer's principal residence.

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## 176 Notification where disposal consent not required

- (1) If a non-profit registered provider disposes of land other than a dwelling which is social housing it shall notify the regulator as soon as is reasonably practicable.
- (2) The regulator may give a direction dispensing with the notification requirement.



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(3) Section 174(1) and (3) to (6) applies to a direction under this section as it applies to consent under section 172.

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### *Proceeds*

#### **177 Separate accounting**

- (1) The accounts of a registered provider must show its net disposal proceeds, as a separate “disposal proceeds fund”.
- (2) The following are net disposal proceeds—
  - (a) net proceeds of sale to a tenant in pursuance of the right to acquire conferred by section 180,
  - (b) net proceeds of sale to a tenant in pursuance of the right to acquire conferred by section 16 of the Housing Act 1996 (c. 52),
  - (c) net proceeds of sale of property in respect of which a grant was made under section 21 of that Act,
  - (d) net proceeds of sale of property in respect of which a grant was made under section 19 of this Act in respect of discounts given by a registered provider on disposals of dwellings to tenants,
  - (e) grant received under section 20 or 21 of the 1996 Act,
  - (f) grant received under section 19 of this Act in respect of discounts given by a registered provider on disposals of dwellings to tenants,
  - (g) repayments of discount in respect of which grant was received under section 20 or 21 of the 1996 Act,
  - (h) repayments of discount in respect of which grant was received under section 19 of this Act in respect of discounts given by a registered provider on disposals of dwellings to tenants,
  - (i) other proceeds of sale specified by the regulator, and
  - (j) other grants specified by the regulator.
- (3) The regulator shall determine amounts to be deducted in determining net proceeds of sale.
- (4) The method of constituting the disposal proceeds fund and showing it in the accounts shall be in accordance with a direction of the regulator.
- (5) Subsections (5) to (7) of section 127 apply to a direction under this section as to a direction under that section.
- (6) Sections 141 and 142 apply in relation to a direction under this section as in relation to a direction under section 127.
- (7) Interest shall be added to the fund in accordance with a determination made by the regulator.

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- (8) Where this section applies in relation to the proceeds of sale arising on a disposal, section 32 above, section 27 of the Housing Act 1996 (c. 52) and section 52 of the Housing Act 1988 (c. 50) do not apply.

### **178 Use of proceeds**

- (1) Sums in a registered provider's disposal proceeds fund may be used or allocated only in accordance with a direction by the regulator.
- (2) The regulator may give a direction only with the Secretary of State's approval.
- (3) If at the end of a period specified by the regulator the disposal proceeds fund includes sums which have not been allocated in accordance with subsection (1), the regulator may require the registered provider to pay the sums to the HCA.

VALID FROM 01/04/2010

## *Tenants' rights and duties*

### **179 Application of Housing Act 1996**

- (1) The following provisions of the Housing Act 1996 apply in relation to disposals of social housing by registered providers, with the modifications set out below (and any other necessary modifications).
- (2) The provisions are—
- (a) sections 11 to 12 (repayment of discount on disposal),
  - (b) sections 12A and 12B (landlord's right of first refusal),
  - (c) section 13 (disposal of property in National Park), and
  - (d) sections 14 and 15 (supplemental).
- (3) In those provisions—
- (a) references to a registered social landlord shall be treated as references to a registered provider,
  - (b) references to consent given by the Welsh Ministers under section 9 of the 1996 Act shall be treated as references to consent given by the regulator under section 172 of this Act,
  - (c) references to the Welsh Ministers in connection with a power to make orders or regulations shall be treated as references to the Secretary of State,
  - (d) in section 12(5)(b) of the 1996 Act the reference to the Welsh Ministers shall be treated as a reference to the HCA, and
  - (e) references to a resolution of the National Assembly for Wales shall be treated as references to a resolution of either House of Parliament.
- (4) This section does not affect the continued application of the provisions listed in subsection (2) in relation to disposals made before this section comes into force.

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### *Right to acquire*

#### **180 Right to acquire**

- (1) The tenant of a dwelling in England has a right to acquire the dwelling if—
  - (a) the landlord is a registered provider or a registered social landlord,
  - (b) the tenancy is within subsection (2),
  - (c) the provision of the dwelling was publicly funded,
  - (d) the dwelling has remained in the social rented sector ever since that provision, and
  - (e) the tenant satisfies any qualifying conditions applicable under Part V of the Housing Act 1985 (c. 68) (as it applies by virtue of section 184).
- (2) A tenancy is within this subsection if it is—
  - (a) an assured tenancy, other than an assured shorthold tenancy or a long tenancy, or
  - (b) a secure tenancy.
- (3) The reference in subsection (1)(a) to a registered provider includes—
  - (a) a person who provided the dwelling in fulfilment of a condition imposed by the HCA when giving assistance to the person;
  - (b) a person who provided the dwelling wholly or partly by means of a grant under section 27A of the Housing Act 1996 (c. 52).

#### **181 Interpretation: “publicly funded”**

- (1) The provision of a dwelling was publicly funded if any of the following conditions is satisfied.
- (2) Condition 1 is that—
  - (a) the dwelling was provided by a person in fulfilment of a condition imposed by the HCA when giving assistance to the person, and
  - (b) before giving the assistance the HCA notified the person that if it did so the provision of the dwelling would be regarded as publicly funded.
- (3) Condition 2 is that the dwelling was provided wholly or partly by using sums in the disposal proceeds fund of—
  - (a) a registered provider, or
  - (b) a registered social landlord.
- (4) Condition 3 is that —
  - (a) the dwelling was acquired by a registered provider, or a registered social landlord, on a disposal by a public sector landlord,
  - (b) the disposal was made on or after 1st April 1997, and
  - (c) at the time of the disposal the dwelling was capable of being let as a separate dwelling.

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(5) Condition 3 is not satisfied if the dwelling was acquired in pursuance of a contract made, or option created, before 1st April 1997.

(6) Condition 4 is that—

- (a) the dwelling was provided wholly or partly by means of a grant under section 18 or 27A of the Housing Act 1996 (c. 52), and
- (b) when the grant was made the recipient was notified under section 16(4) of that Act that the dwelling was to be regarded as funded by means of such a grant.

### **182 Interpretation: “remained in the social rented sector”**

(1) This section applies for the purposes of determining whether a dwelling has remained in the social rented sector.

(2) A dwelling shall be treated as having remained in the social rented sector for any period during which—

- (a) the freeholder was a person within subsection (3), and
- (b) each leaseholder was either a person within that subsection or an individual holding otherwise than under a long tenancy.

(3) A person is within this subsection if the person is—

- (a) a registered provider,
- (b) a registered social landlord, or
- (c) a public sector landlord.

(4) A dwelling provided wholly or partly by means of a grant under section 27A of the Housing Act 1996 shall also be treated as having remained in the social rented sector for any period during which it was used exclusively for permitted purposes by—

- (a) the recipient of the grant, or
- (b) any person treated as the recipient by virtue of section 27B of that Act.

(5) “Permitted purposes” are purposes for which the grant was made and any other purposes agreed by the Housing Corporation or the HCA.

(6) Where a lease of a dwelling has been granted to a former freeholder in pursuance of paragraph 3 of Schedule 9 to the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) (mandatory leaseback to former freeholder on collective enfranchisement) the reference in subsection (1)(a) above to the freeholder shall be construed as a reference to the leaseholder under that lease.

### **183 Interpretation: other expressions**

(1) The definitions in this section apply to sections 180 to 182.

(2) The HCA gives “assistance” to a person if it—

- (a) transfers housing or other land to the person,
- (b) provides infrastructure to the person, or
- (c) gives financial assistance to the person,

and for this purpose “infrastructure” has the same meaning as in Part 1.

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- (3) References to a “registered social landlord” are to a body which, at the time to which the reference relates, was a registered social landlord within the meaning of Part I of the Housing Act 1996 (c. 52) as it then had effect.
- (4) “Leaseholder” does not include a mortgagee.
- (5) “Long tenancy” has the same meaning as in Part V of the Housing Act 1985 (c. 68).
- (6) A person provides a dwelling if the person—
  - (a) acquires, constructs, converts, improves or repairs housing or other land for use as a dwelling, or
  - (b) ensures such acquisition, construction, conversion, improvement or repair by another.
- (7) “Public sector landlord” means anyone falling within section 80(1) of the Housing Act 1985.

#### **184 Right to acquire: supplemental**

- (1) Section 17 of the Housing Act 1996 (right to acquire: supplemental) applies in relation to the right to acquire under section 180 of this Act with the modifications set out below.
- (2) The modifications are as follows—
  - (a) references to the right to acquire under section 16 of the 1996 Act shall be treated as references to the right to acquire under section 180 of this Act,
  - (b) references to the Welsh Ministers shall be treated as references to the Secretary of State,
  - (c) the reference to registered social landlords shall be treated as a reference to registered providers, and
  - (d) the reference to a resolution of the National Assembly for Wales shall be treated as a reference to a resolution of either House of Parliament.

#### **185 Right to acquire: consequential amendments**

- (1) In section 16 of the Housing Act 1996 (right to acquire)—
  - (a) for subsection (1) substitute—

“(1) The tenant of a dwelling in Wales has a right to acquire the dwelling if—

    - (a) the landlord is a registered social landlord or a registered provider of social housing,
    - (b) the tenancy is—
      - (i) an assured tenancy, other than an assured shorthold tenancy or a long tenancy, or
      - (ii) a secure tenancy,
    - (c) the dwelling was provided with public money and has remained in the social rented sector, and
    - (d) the tenant satisfies any further qualifying conditions applicable under Part V of the Housing Act 1985 (the right to buy) as it applies in relation to the right conferred by this section.”,

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- (b) in subsection (2)(c) after “registered social landlord” insert “ or a registered provider of social housing ”, and
  - (c) in subsection (3)(a) and (b)(ii) after “registered social landlord” insert “ , a registered provider of social housing ”.
- (2) In section 16A(1) (extension of section 16 to dwellings funded by grants under section 27A) after the first “dwelling” insert “ in Wales ”.
- (3) In section 20 (purchase grant where right to acquire exercised)—
- (a) in subsection (1) after “landlords” insert “ and registered providers of social housing ”, and
  - (b) in subsection (4) after “landlord” insert “ or registered provider of social housing ”.
- (4) In section 21 (purchase grant in respect of other disposals)—
- (a) in subsection (1)—
    - (i) after “landlords” insert “ and registered providers of social housing ”, and
    - (ii) after “dwellings” insert “ in Wales ”,
  - (b) in subsection (2)—
    - (i) after “section 16” insert “ or by section 180 of the Housing and Regeneration Act 2008 ”, and
    - (ii) for “landlord's” substitute “ landlord or provider (as the case may be) ”, and
  - (c) in subsection (4) after “landlord” insert “ or registered provider of social housing ”.

VALID FROM 01/04/2010

### *Miscellaneous*

#### **186 Former registered providers**

Where a person ceases to be a registered provider, sections 171 to 175 continue to apply in respect of any property owned by the person at any time when it was registered.

#### **187 Change of use, etc.**

- (1) Where the regulator's consent is required for the disposal of a dwelling by a registered provider, sections 172 to 175 continue to apply in relation to a disposal of the land by the registered provider even if the land has ceased to be a dwelling.
- (2) Sections 172 to 175 also apply in relation to a disposal of land by a registered provider which would fall within Exception 2 or 3 of section 173 but for a change of use of the land by the registered provider.

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**188 Trustees**

Section 39 of the Settled Land Act 1925 (c. 18) (disposal by trustees: best price etc.) shall not apply to the disposal of land by a registered provider.

**189 Charities**

Nothing in this Chapter authorises a charity to effect a disposal which it would not otherwise have power to effect.

VALID FROM 01/04/2010

*Consents under other legislation*

**190 Consent to disposals under other legislation**

The Secretary of State's functions under the following provisions are transferred to the regulator in so far as they relate to disposals by registered providers—

- (a) section 171D of the Housing Act 1985 (c. 68) (consent to certain disposals of housing subject to the preserved right to buy),
- (b) sections 81 and 133 of the Housing Act 1988 (c. 50) (consent to certain disposals of housing obtained from housing action trusts or local authorities), and
- (c) section 173 of the Local Government and Housing Act 1989 (c. 42) (consent to certain disposals of housing obtained from new town corporations).

**191 Section 190: consequential amendments**

(1) In section 171D of the Housing Act 1985 (consent to certain disposals of housing obtained subject to the preserved right to buy)—

- (a) in subsection (2) (consent) for “Secretary of State” substitute “ appropriate authority ”, and
- (b) after that subsection insert—

“(2A) “The appropriate authority” means—

- (a) in relation to a disposal of land in England by a registered provider of social housing, the Regulator of Social Housing,
- (b) in relation to any other disposal of land in England, the Secretary of State, and
- (c) in relation to a disposal of land in Wales, the Welsh Ministers.”

(2) In section 81 of the Housing Act 1988 (consent to certain disposals of housing obtained from housing action trusts)—

- (a) in subsection (3) (consent) for “Secretary of State” substitute “ appropriate authority ”,
- (b) after that subsection insert—

“(3A) In this section “the appropriate authority” means—



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- (a) in relation to a disposal of land in England by a registered provider of social housing, the Regulator of Social Housing,
    - (b) in relation to any other disposal of land in England, the Secretary of State, and
    - (c) in relation to a disposal of land in Wales, the Welsh Ministers.”,
  - (c) in subsection (5) (consultation of tenants) for “Secretary of State” substitute “ appropriate authority ”,
  - (d) in subsection (5)(a) for “himself” substitute “ itself ”, and
  - (e) omit subsection (6) (consultation of Housing Corporation).
- (3) In section 133 of that Act (consent to certain disposals of housing obtained from local authorities)—
- (a) in subsection (1) (consent) for “Secretary of State” substitute “ appropriate authority ”,
  - (b) after that subsection insert—
    - “(1ZA) In this section “the appropriate authority” means—
    - (a) in relation to a disposal of land in England by a registered provider of social housing, the Regulator of Social Housing,
    - (b) in relation to any other disposal of land in England, the Secretary of State, and
    - (c) in relation to a disposal of land in Wales, the Welsh Ministers.”,
  - (c) after subsection (1A) insert—
    - “(1B) This section does not apply to a disposal of land by a registered provider of social housing unless the land is social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008.”,
  - (d) in subsection (3)(c) (modification of certain provisions applied for the purposes of section 133) after “this section,” insert “ any reference to the appropriate national body shall be construed as a reference to the appropriate authority and ”,
  - (e) in subsection (5) (consultation of tenants) for “Secretary of State” substitute “ appropriate authority ”,
  - (f) in subsection (5)(a) for “himself” substitute “ itself ”, and
  - (g) omit subsection (6) (consultation of Housing Corporation).
- (4) In section 173 of the Local Government and Housing Act 1989 (c. 42) (consent to certain disposals of housing obtained from new town corporations)—
- (a) in subsection (1)(a) (consent) for “Secretary of State” substitute “ appropriate authority ”,
  - (b) after subsection (1) insert—
    - “(1A) In this section “the appropriate authority” means—
    - (a) in relation to a disposal of land in England by a registered provider of social housing, the Regulator of Social Housing,
    - (b) in relation to any other disposal of land in England, the Secretary of State, and
    - (c) in relation to a disposal of land in Wales, the Welsh Ministers.”,



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- (c) in subsection (5) (consultation of tenants) for “Secretary of State” substitute “ appropriate authority ”,
- (d) in subsection (5)(a) for “himself” substitute “ itself ”, and
- (e) omit subsection (6) (consultation of Housing Corporation).

## CHAPTER 6

### REGULATORY POWERS

#### 192 Overview

This Chapter—

- (a) allows the regulator to set standards for the provision of social housing (sections 193 to 198),
- (b) gives the regulator powers to monitor compliance (sections 199 to 210),
- (c) gives the regulator a degree of control over the governance of non-profit registered providers (sections 211 to 214),
- (d) requires the regulator to give guidance about complaints relating to registered providers and about the use of its powers under this Chapter and Chapter 7 (sections 215 and 216), and
- (e) allows the regulator to arrange for the accreditation of managers of social housing (section 217).

#### Commencement Information

**I74** S. 192 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

#### *Standards*

#### 193 Provision of social housing

- (1) The regulator may set standards for registered providers as to the nature, extent and quality of accommodation, facilities or services provided by them in connection with social housing.
- (2) Standards under subsection (1) may, in particular, require registered providers to comply with specified rules about—
  - (a) criteria for allocating accommodation,
  - (b) terms of tenancies,
  - (c) levels of rent (and the rules may, in particular, include provision for minimum or maximum levels of rent or levels of increase or decrease of rent),
  - (d) maintenance,
  - (e) procedures for addressing complaints by tenants against landlords,
  - (f) methods for consulting and informing tenants,
  - (g) methods of enabling tenants to influence or control the management of their accommodation and environment,

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- (h) policies and procedures required by section 218A of the Housing Act 1996 (c. 52) in connection with anti-social behaviour,
  - (i) landlords' contribution to the environmental, social and economic well-being of the areas in which their property is situated, and
  - (j) estate management.
- (3) In setting standards the regulator shall have regard to the desirability of registered providers being free to choose how to provide services and conduct business.

**Commencement Information**

**I75** S. 193 in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 3\(1\)](#)

## 194 Management

- (1) The regulator may set standards for registered providers in matters relating to the management of their financial and other affairs.
- (2) In respect of profit-making registered providers, standards may be made in relation to the management of their affairs only so far as relating to the provision of social housing.
- (3) In setting standards the regulator shall have regard to the desirability of registered providers being free to choose how to provide services and conduct business.

**Commencement Information**

**I76** S. 194 in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 3\(1\)](#)

## 195 Code of practice

- (1) The regulator may issue a code of practice which—
- (a) relates to a matter addressed by a standard, and
  - (b) amplifies the standard.
- (2) In considering whether standards have been met the regulator may have regard to a code of practice.
- (3) The regulator may revise or withdraw a code of practice.
- (4) The regulator shall make arrangements for bringing a code of practice to the attention of registered providers.

**Commencement Information**

**I77** S. 195 in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 3\(1\)](#)

## 196 Consultation

- (1) Before setting standards, or issuing, revising or withdrawing a code of practice, the regulator shall consult the following or ensure that they have been consulted—

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- (a) one or more bodies appearing to it to represent the interests of registered providers,
  - (b) one or more bodies appearing to it to represent the interests of secured creditors of registered providers,
  - (c) one or more bodies appearing to it to represent the interests of tenants of social housing,
  - (d) the Audit Commission for Local Authorities and the National Health Service in England,
  - (e) one or more bodies appearing to it to represent the interests of local housing authorities,
  - (f) the HCA, and
  - (g) the Secretary of State.
- (2) Before setting a standard which would apply to charities, or issuing, revising or withdrawing a code of practice which applies or would apply to charities, the regulator must consult the Charity Commission.

#### Commencement Information

**I78** S. 196 in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 3\(1\)](#) (with [art. 3\(3\)\(4\)](#))

### 197 Direction by Secretary of State

- (1) The Secretary of State may direct the regulator—
  - (a) to set a standard under section 193,
  - (b) about the content of standards under section 193, or
  - (c) to have regard to specified objectives when setting standards under section 193 or 194.
- (2) The Secretary of State may give a direction under subsection (1)(a) or (b) only if it relates, in the Secretary of State's opinion, to—
  - (a) quality of accommodation,
  - (b) rent, or
  - (c) involvement by tenants in the management by registered providers of accommodation.
- (3) In deciding whether to give a direction the Secretary of State shall, in particular, have regard to the regulator's fundamental objectives.
- (4) Before giving a direction the Secretary of State must consult—
  - (a) the regulator,
  - (b) the HCA,
  - (c) the Audit Commission for Local Authorities and the National Health Service in England,
  - (d) one or more bodies appearing to the Secretary of State to represent the interests of local housing authorities,
  - (e) one or more bodies appearing to the Secretary of State to represent the interests of tenants of social housing, and
  - (f) one or more bodies appearing to the Secretary of State to represent the interests of registered providers.

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- (5) Before giving a direction about a standard which would apply to charities the Secretary of State must consult the Charity Commission.
- (6) A direction may disapply the requirement to consult under section 196 in relation to specified matters.
- (7) The regulator shall comply with any direction.
- (8) The Secretary of State shall publish—
  - (a) each proposed direction that is the subject of a consultation,
  - (b) each response to a consultation, and
  - (c) each direction.

#### Commencement Information

**I79** S. 197 in force at 8.9.2008 by S.I. 2008/2358, **art. 3(1)** (with **art. 3(3)(4)**)

### 198 Supplemental

- (1) Failure to meet a standard is a ground for exercising a power in this Chapter or Chapter 7.
- (2) The regulator shall make arrangements for bringing standards to the attention of registered providers.
- (3) The regulator may revise or withdraw standards; and section 196 applies to revising or withdrawing standards as to setting standards.
- (4) Standards may be expressed by reference to documents prepared by others.
- (5) Standards—
  - (a) may make provision generally or only in relation to specified cases, circumstances or areas, and
  - (b) may make different provision for different cases, circumstances or areas.

#### Commencement Information

**I80** S. 198(2)-(5) in force at 8.9.2008 by S.I. 2008/2358, **art. 3(1)**

### Monitoring

VALID FROM 01/04/2010

### 199 Survey

- (1) This section applies where the regulator suspects that a registered provider may be failing to maintain premises in accordance with standards under section 193.
- (2) The regulator may arrange for a survey of the condition of the premises by an authorised person.

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- (3) In subsection (2) “authorised person” means a member of the regulator's staff, or another person, authorised in writing by the regulator for the purposes of this section.
- (4) An authorised person may enter the premises at any reasonable time and carry out the survey.
- (5) Before carrying out the survey an authorised person must give the registered provider at least 28 days' notice.
- (6) A registered provider who receives notice of a survey must give each occupier of the premises at least 7 days' notice.
- (7) After carrying out a survey an authorised person must produce a written report.
- (8) The regulator must give the registered provider a copy of the report.

VALID FROM 01/04/2010

## 200 Survey: supplemental

- (1) An authorised person carrying out a survey, or seeking to enter premises in order to carry out a survey, must produce a copy of the authorisation on request by an occupier.
- (2) The regulator may require the registered provider to pay some or all of the costs of the survey and report.
- (3) A registered provider who fails without reasonable excuse to comply with section 199(6) commits an offence.
- (4) A registered provider, or an officer of a registered provider, who obstructs an authorised person in exercising a power under section 199 commits an offence.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) Proceedings for an offence under this section may be brought only by or with the consent of—
  - (a) the regulator, or
  - (b) the Director of Public Prosecutions.

VALID FROM 01/04/2010

## 201 Inspections

- (1) The regulator may arrange for a person to inspect—
  - (a) a registered provider's performance of its functions in relation to the provision of social housing, or
  - (b) the financial or other affairs of a registered provider.
- (2) The person must not be a member of the regulator's staff.

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- (3) If the purpose (or main purpose) of an inspection is to assess a registered provider's performance by reference to standards under section 193 the regulator—
  - (a) shall invite the Audit Commission to carry out the inspection, and
  - (b) may arrange for another person to carry out the inspection only if the Audit Commission declines.
- (4) The regulator may direct a person carrying out an inspection to discontinue it.
- (5) An inspection may be general or specific.
- (6) The regulator shall reimburse costs incurred by the Audit Commission in carrying out an inspection.
- (7) If the regulator arranges for a person other than the Audit Commission to carry out an inspection the arrangements may include provision about payments.
- (8) In this section and sections 202 and 203 “the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England.

## 202 Inspections: supplemental

- (1) After carrying out an inspection under section 201 the person carrying out the inspection must produce a written report.
- (2) The regulator—
  - (a) must give the registered provider a copy of the report, and
  - (b) may publish the report and related information.
- (3) The person who carried out the inspection may publish the report and related information (whether or not the regulator has done so).
- (4) The Secretary of State may by order authorise the regulator to charge fees for inspections.
- (5) An inspected registered provider must pay any fee charged.
- (6) Before making an order the Secretary of State shall consult—
  - (a) the regulator,
  - (b) one or more bodies appearing to the Secretary of State to represent the interests of registered providers,
  - (c) the Audit Commission, and
  - (d) such other persons as the Secretary of State thinks appropriate.
- (7) The regulator shall prescribe a scale of fees for inspections, having consulted—
  - (a) the Secretary of State,
  - (b) one or more bodies appearing to the regulator to represent the interests of registered providers, and
  - (c) the Audit Commission.

### Commencement Information

**181** S. 202(4)(6)(7) in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

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VALID FROM 01/04/2010

### 203 Inspector's powers

- (1) An inspector may by notice require a person to provide specified documents or information.
- (2) The power under subsection (1) may be exercised only in relation to documents and information of a kind in respect of which the regulator can impose a requirement under section 107.
- (3) Sections 107(3) to (7) and 108 apply for the purposes of subsection (1) (with any necessary modifications).
- (4) An inspector may at any reasonable time—
  - (a) enter premises occupied by the registered provider which is being inspected, and
  - (b) inspect, copy or take away documents found there.
- (5) The reference to documents found on premises includes—
  - (a) documents stored on computers or electronic storage devices on the premises, and
  - (b) documents stored elsewhere which can be accessed by computers on the premises.
- (6) The power to inspect documents includes the power to inspect any computer or electronic storage device on which they have been created or stored.
- (7) An inspector may require any person on the premises to provide such facilities or assistance as the inspector reasonably requests.
- (8) For the purposes of subsections (5) and (6) an inspector may require any person having charge of a computer to provide such assistance as the inspector reasonably requests.
- (9) It is an offence for a person without reasonable excuse to obstruct an inspector exercising the powers conferred by subsections (4) to (8).
- (10) A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) Proceedings for an offence may be brought only by or with the consent of—
  - (a) the regulator, or
  - (b) the Director of Public Prosecutions.
- (12) In this section “inspector” means—
  - (a) a person authorised in writing by the Audit Commission to exercise the powers under this section for the purpose of an inspection carried out by the Audit Commission under section 201, or
  - (b) a person authorised in writing by the regulator to exercise the powers under this section for the purpose of any other inspection under that section.



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**204 Performance information**

- (1) The regulator may require a registered provider—
  - (a) to prepare an annual report assessing the provider's performance by reference to standards under section 193 or 194, and
  - (b) to send the report to the regulator within a specified period.
- (2) A requirement may specify matters to be covered by a report.
- (3) Failure to comply with a requirement without reasonable excuse is an offence.
- (4) A person guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Proceedings for an offence may be brought only by or with the consent of—
  - (a) the regulator, or
  - (b) the Director of Public Prosecutions.

VALID FROM 01/04/2010

**205 Publication of performance information**

- (1) The regulator shall publish, at least once a year, information about the performance of registered providers.
- (2) In particular, the regulator shall include information likely to be useful to—
  - (a) tenants,
  - (b) potential tenants, and
  - (c) local authorities.

VALID FROM 01/04/2010

**206 Inquiry**

- (1) If the regulator suspects that the affairs of a registered provider may have been mismanaged, the regulator may hold an inquiry.
- (2) The regulator shall appoint one or more individuals to conduct the inquiry.
- (3) An individual is eligible for appointment only if the individual is independent of the regulator.
- (4) Individuals are independent of the regulator if they and the members of their family—
  - (a) are not members, employees or consultants of the regulator, and
  - (b) have not been members or employees of the regulator within the previous five years.

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- (5) “Consultant” means an individual providing services to the regulator otherwise than by virtue of employment with the regulator or an appointment under this section.

VALID FROM 01/04/2010

**207 Inquiry: supplemental**

- (1) The individual or individuals conducting an inquiry (“the inquirer”) shall determine its procedure.
- (2) The inquirer may consider the affairs of a profit-making registered provider only so far as relating to social housing.
- (3) The inquirer may consider affairs of a body which at the material time was a subsidiary or associate of the registered provider.
- (4) The inquirer may make interim reports.
- (5) The inquirer shall make a final report on matters specified by the regulator.
- (6) The regulator may arrange for the publication of all or part of an interim or final report.
- (7) A local authority may contribute to the regulator's expenses in connection with an inquiry.

VALID FROM 01/04/2010

**208 Inquiry: evidence**

- (1) The inquirer may by notice require a person to provide specified documents or information.
- (2) The notice may, in particular, require evidence to be given on oath (and the inquirer may administer oaths for that purpose).
- (3) The power under subsection (1) may be exercised only in relation to documents and information of a kind in respect of which the regulator can impose a requirement under section 107.
- (4) Sections 107(3) to (7) and 108 apply for the purposes of this section (with any necessary modifications).

VALID FROM 01/04/2010

**209 Inquiry: charities**

- (1) An inquiry may be held in relation to a registered charity only if it has received public assistance.

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- (2) An inquiry in relation to a registered charity may only relate to its activities relating to housing.
- (3) If an inquiry is held in relation to a registered charity the regulator shall notify the Charity Commission.

VALID FROM 01/04/2010

### **210 Extraordinary audit**

- (1) Where an inquiry in respect of a registered provider is being held, or has been held, under section 206, the regulator may require the registered provider to allow its accounts and balance sheet to be audited by a qualified auditor appointed by the regulator.
- (2) “Qualified auditor” means a person eligible for appointment as auditor of the registered provider's ordinary accounts.
- (3) On completion of the audit, the auditor shall report to the regulator about such matters and in such form as the regulator determines.
- (4) The revenue accounts of a registered charity may be audited under this section only insofar as they relate to its housing activities.
- (5) The registered provider shall pay the costs of the audit (including the auditor's remuneration).

### *Management and constitution*

VALID FROM 01/04/2010

### **211 Non-profit providers only**

This group of sections applies only to non-profit registered providers.

### **212 Industrial and provident society: change of rules**

- (1) This section applies to an industrial and provident society.
- (2) An amendment of the society's rules requires consent if it—
  - (a) alters the society's objects,
  - (b) makes provision about the distribution of assets to members, or
  - (c) enables the society to become, or cease to be, a subsidiary or associate of another body.
- (3) An amendment of the rules which requires consent is effective only if the regulator has first consented.

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- (4) The regulator may not consent to an amendment which it thinks would turn the society into a profit-making organisation.
- (5) The society must notify the regulator of an amendment of the rules which does not require consent.
- (6) In relation to an amendment which requires consent the requirement in section 10(1) of the Industrial and Provident Societies Act 1965 (c. 12) (sending copies of amendment of rules to FSA) is satisfied only if the copies are accompanied by a copy of the regulator's consent.
- (7) The preceding provisions of this section shall be treated as if they formed part of that Act as well as of this Act.
- (8) The Secretary of State may by order amend the list in subsection (2).

#### Commencement Information

**182** S. 212(2)(8) in force at 8.9.2008 by [S.I. 2008/2358](#), [art. 3\(1\)](#)

VALID FROM 01/04/2010

#### **213** Charity: change of objects

- (1) This section applies to a registered charity which is not a registered company.
- (2) An amendment of the charity's objects is effective only if the Charity Commission has first consented.
- (3) Before giving consent the Charity Commission must consult the regulator.

#### **214** Companies: change of articles

- (1) This section applies to a registered company.
- (2) An amendment of the company's articles of association requires consent if it—
  - (a) alters the company's objects,
  - (b) makes provision about the distribution of assets to members, or
  - (c) enables the company to become, or cease to be, a subsidiary or associate of another body.
- (3) An amendment of the articles of association which requires consent is effective only if the regulator has first consented.
- (4) The regulator may not consent to an amendment which it thinks would turn the company into a profit-making organisation.
- (5) The company must notify the regulator—
  - (a) of an amendment of the articles of association which does not require consent, or
  - (b) of a change to its name or registered office.

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(6) In relation to an amendment which requires consent the requirement in section 30 of the Companies Act 2006 (c. 46) (sending copy of resolution to registrar) is satisfied only if the copy is accompanied by a copy of the regulator's consent.

(7 The Secretary of State may by order amend the list in subsection (2).

#### Commencement Information

**183** S. 214(2)(7) in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

### Guidance

#### 215 Use of intervention powers

(1 The regulator shall publish—

- (a) guidance about complaints to the regulator about the performance of registered providers, and
- (b) guidance about how it uses and intends to use powers under this Chapter and Chapter 7.

(2 Guidance under subsection (1)(a) must, in particular, specify—

- (a) the procedure to be followed in making a complaint,
- (b) the criteria used by the regulator in deciding whether to investigate a complaint, and
- (c) periods within which the regulator aims to inform complainants of the result of complaints.

(3) The regulator shall have regard to guidance under this section.

#### Commencement Information

**184** S. 215(1)(2) in force at 8.9.2008 by S.I. 2008/2358, art. 3(1)

#### 216 Consultation

Before giving guidance under section 215 the regulator must consult—

- (a) one or more bodies appearing to it to represent the interests of registered providers,
- (b) one or more bodies appearing to it to represent the interests of tenants,
- (c) one or more bodies appearing to it to represent the interests of local housing authorities,
- (d) the Audit Commission for Local Authorities and the National Health Service in England, and
- (e) the HCA.

#### Commencement Information

**185** S. 216 in force at 8.9.2008 by S.I. 2008/2358, art. 3(1) (with art. 3(3)(4))

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VALID FROM 01/04/2010

### *Managers of social housing*

#### **217 Accreditation**

- (1) The regulator may operate a scheme for the purpose of accrediting persons who provide services in connection with the management of social housing.
- (2) The regulator may approve a scheme operated by someone else for that purpose.
- (3) Approval may be withdrawn.
- (4) A scheme may include provision about—
  - (a) eligibility for accreditation;
  - (b) standards to be met by accredited persons (which may operate by reference to standards under section 193);
  - (c) monitoring compliance;
  - (d) complaints against accredited persons;
  - (e) renewal, suspension and withdrawal of accreditation.
- (5) Accreditation, or continued accreditation, may be conditional on the payment of fees.
- (6) Standards under section 193 may refer to accreditation under this section.

VALID FROM 01/04/2010

## **CHAPTER 7**

### **ENFORCEMENT POWERS**

#### *General*

#### **218 Exercise of enforcement powers**

- (1) This section applies where the regulator is deciding—
  - (a) whether to exercise a power under this Chapter,
  - (b) which power under this Chapter to exercise, or
  - (c) how to exercise a power under this Chapter.
- (2) The regulator shall consider—
  - (a) the desirability of registered providers being free to choose how to provide services and conduct business;
  - (b) whether the failure or other problem concerned is serious or trivial;
  - (c) whether the failure or other problem is a recurrent or isolated incident;
  - (d) the speed with which the failure or other problem needs to be addressed.

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### *Enforcement notice*

#### **219 Overview**

This group of sections allows the regulator to require a registered provider to take specified action to resolve a specified failure or other problem.

#### **220 Grounds for giving notice**

- (1) The regulator may give an enforcement notice to a registered provider if the regulator is satisfied that—
  - (a) any of the following cases applies, and
  - (b) giving an enforcement notice is appropriate (whether it is likely to be sufficient in itself or a prelude to further action).
- (2) Case 1 is where the registered provider has failed to meet a standard [<sup>F15</sup>applicable to it] under section 193 or 194.
- (3) Case 2 is where the affairs of the registered provider have been mismanaged.
- (4) Case 3 is where the registered provider has failed to comply with an earlier enforcement notice.
- (5) Case 4 is where the registered provider has failed to publish information in accordance with a requirement under section 228(3) or 240(3).
- (6) Case 5 is where the interests of tenants of the registered provider require protection.
- (7) Case 6 is where [<sup>F16</sup>the registered provider is a private registered provider and its assets] require protection.
- (8) Case 7 is where the registered provider has given an undertaking under section 125 and failed to comply with it.
- [<sup>F17</sup>(9) Case 8 is where the registered provider has failed to pay—
  - (a) in the case of a private registered provider, an annual fee under section 117(1)(b);
  - (b) in the case of a local authority, an initial fee or an annual fee under section 117(1)(a) or (b).]
- (10) Case 9 is where an offence under this Part has been committed by the registered provider.
- (11) Case 10 is where the registered provider has failed to comply with an order made by an ombudsman appointed by virtue of section 124.
- (12) Where the regulator is satisfied that an offence under this Part has been committed in respect of a registered provider but by another person (such as a member, employee or agent of the registered provider)—
  - (a) Case 9 applies,
  - (b) the regulator may give an enforcement notice to the other person, and
  - (c) this Chapter applies with the substitution of references to that other person for references to the registered provider.



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### Textual Amendments

- F15** Words in s. 220(2) inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 1 para. 56(2)**
- F16** Words in s. 220(7) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 1 para. 56(3)**
- F17** S. 220(9) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 1 para. 56(4)**

### Commencement Information

- I86** S. 220 in force at 1.4.2010 by [S.I. 2010/862](#), **art. 2** (with Sch.)

## 221 Content

- (1) An enforcement notice must—
- specify the grounds on which it is given,
  - specify the action the regulator wants the registered provider to take in response to the notice,
  - specify when the action is to be taken (which may be immediately on receipt of the notice), and
  - explain the effect of sections 223 to 225.
- (2) The action specified in an enforcement notice may include publishing the notice in a specified manner.

## 222 Notifying HCA

If the regulator gives an enforcement notice it must send a copy to the HCA.

## 223 Appeal

A registered provider who is given an enforcement notice may appeal to the High Court.

## 224 Withdrawal

The regulator may withdraw an enforcement notice by notice to the registered provider.

## 225 Sanction

- (1) If a registered provider does not comply with an enforcement notice the regulator shall consider exercising another power under Chapter 6 or this Chapter.
- (2) In the case of an enforcement notice given to a person other than the registered provider by virtue of section 220(12), the regulator may only—
- exercise the power to issue a penalty notice to the person in accordance with the next group of sections, or
  - take steps to have the person prosecuted for the offence by reference to which the enforcement notice was given.

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- (3) A person to whom an enforcement notice is given on the ground in Case 9 of section 220 may not be prosecuted for the offence by reference to which the enforcement notice was given unless the person fails to comply with the enforcement notice.

VALID FROM 01/04/2009

### *Penalty*

VALID FROM 01/04/2010

#### **226 Overview**

This group of sections allows the regulator to penalise failures on the part of registered providers by the imposition of fines.

VALID FROM 01/04/2010

#### **227 Grounds for imposition**

- (1) The regulator may require a registered provider to pay a penalty if the regulator is satisfied that—
  - (a) any of the following cases applies, and
  - (b) the imposition of a penalty is appropriate (whether or not as part of a response including other action).
- (2) Case 1 is where the registered provider has failed to meet a standard under section 193 or 194.
- (3) Case 2 is where the affairs of the registered provider have been mismanaged.
- (4) Case 3 is where the registered provider has failed to comply with an enforcement notice.
- (5) Case 4 is where the registered provider has given an undertaking under section 125 and failed to comply with it.
- (6) Case 5 is where the registered provider has failed to pay an annual fee under section 117(2).
- (7) Case 6 is where an offence under this Part has been committed by the registered provider.
- (8) Where the regulator is satisfied that an offence under this Part has been committed in respect of a registered provider but by another person (such as a member, employee or agent of the registered provider)—
  - (a) Case 6 applies,
  - (b) the regulator may require the other person to pay a penalty, and

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- (c) this Chapter applies with the substitution of references to that other person for references to the registered provider.
- (9) In order to rely on Case 6 the regulator must be satisfied beyond reasonable doubt that it applies.

## 228 Imposition

- (1) A penalty is imposed by the regulator giving notice (a “penalty notice”) to the registered provider.
- (2) The notice must specify—
  - (a) the grounds on which the penalty is imposed,
  - (b) the amount of the penalty,
  - (c) how the penalty must be paid,
  - (d) a period within which it must be paid, and
  - (e) any interest or additional penalty which, by virtue of section 234(2), is payable in the event of late payment.
- (3) The notice may require the registered provider to publish information about the penalty in a specified manner.
- (4) The notice must explain the effect of sections 234(1), (3) and (6) and 235.
- (5) The Secretary of State—
  - (a) shall make regulations about the period under subsection (2)(d),
  - (b) may make other regulations about the form and content of a penalty notice, and
  - (c) may make regulations about the manner in which a penalty notice is given.

VALID FROM 01/04/2010

## 229 Amount

- (1) The amount of a penalty imposed on the ground specified in Case 6 of section 227 may not exceed the maximum amount of fine that a magistrates' court could impose for the relevant offence.
- (2) The amount of a penalty imposed on the ground specified in any other Case of that section may not exceed £5,000.
- (3) The Secretary of State may by order amend the amount specified in subsection (2).

VALID FROM 01/04/2010

## 230 Warning

- (1) Before giving a penalty notice to a registered provider the regulator must give the provider a notice (a “pre-penalty warning”)—

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- (a) specifying grounds on which the regulator thinks a penalty could be imposed,
  - (b) warning the provider that the regulator is considering imposing a penalty,
  - (c) including any indication that the regulator is able to give of the likely amount of any penalty, and
  - (d) explaining the effect of sections 231, 234(1), (3) and (6) and 235.
- (2) If the regulator gives a pre-penalty warning it must send a copy to—
- (a) the HCA, and
  - (b) any other persons it thinks appropriate.
- (3) For the purposes of subsection (2)(b) the regulator shall consider, in particular, any person who provided information as a result of which the pre-penalty warning is given.
- (4) A pre-penalty warning must—
- (a) refer to section 125 (voluntary undertaking), and
  - (b) indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, a penalty.
- (5) A pre-penalty warning may be combined with notice under one or more of sections 242, 248, 250 and 252.

VALID FROM 01/04/2010

### 231 Representations

- (1) A pre-penalty warning must specify a period during which the registered provider may make representations to the regulator.
- (2) The period must—
- (a) be a period of at least 28 days, and
  - (b) begin with the date on which the registered provider receives the pre-penalty warning.
- (3) Representations may concern—
- (a) whether a penalty should be imposed;
  - (b) the amount of any penalty that may be imposed.
- (4) After the end of the period specified under subsection (1) the regulator shall—
- (a) consider any representations made, and
  - (b) decide whether to impose a penalty.

VALID FROM 01/04/2010

### 232 Notifying HCA

If the regulator imposes a penalty it must send a copy of the penalty notice to the HCA.

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VALID FROM 01/04/2010

### 233 Destination

- (1) This section applies where the regulator receives money by way of penalty.
- (2) The regulator may deduct a sum which represents—
  - (a) the direct costs to the regulator of imposing and enforcing the penalty, and
  - (b) a reasonable share of expenditure by the regulator which is indirectly referable to the imposition and enforcement of the penalty.
- (3) Any excess shall be paid to the HCA, to be used for purposes which appear to it to amount to investment in social housing.

### 234 Enforcement

- (1) A penalty shall be treated as a debt owed to the regulator.
- (2) The Treasury may make regulations authorising the regulator—
  - (a) to charge interest on penalty not paid during the period specified under section 228(2)(d);
  - (b) to impose one or more additional penalties where a penalty is not paid during that period.
- (3) Interest and additional penalty shall be treated as penalty (and may have the effect of increasing the penalty above a limit set by section 229).
- (4) Regulations under subsection (2)(a) may provide for an interest rate to be—
  - (a) set by a specified person, or
  - (b) determined in accordance with the regulations.
- (5) A penalty notice may include provision allowing a discount if the penalty is paid on or before a date specified in the notice (falling within the period specified under section 228(2)(d)).
- (6) A person to whom a penalty notice is given on the ground in Case 6 of section 227 may not be prosecuted for the offence by reference to which the penalty notice was given.

VALID FROM 01/04/2010

### 235 Appeal

- A registered provider who is given a penalty notice may appeal to the High Court against—
- (a) the imposition of the penalty,
  - (b) its amount, or
  - (c) both.

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VALID FROM 01/04/2009

## Compensation

VALID FROM 01/04/2010

### 236 Overview

This group of sections allows the regulator to award compensation to a victim of a failure on the part of a registered provider.

VALID FROM 01/04/2010

### 237 Grounds for award

- (1) The regulator may require a registered provider to pay compensation if the regulator is satisfied that—
  - (a) either of the following cases applies, and
  - (b) the award of compensation is appropriate (whether or not as part of a response including other action).
- (2) Case 1 is where the registered provider has failed to meet a standard under section 193 or 194.
- (3) Case 2 is where the registered provider has given an undertaking under section 125 and failed to comply with it.

VALID FROM 01/04/2010

### 238 Nature

- (1) Compensation in respect of a failure may be awarded to one or more persons who have suffered as a result of the failure.
- (2) But an award may be made only to—
  - (a) a specified tenant of social housing provided by the registered provider,
  - (b) each member of a specified class of tenants of social housing provided by the registered provider, or
  - (c) each member of the class of tenants of social housing provided by the registered provider.

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VALID FROM 01/04/2010

### **239 Housing ombudsman compensation**

- (1) The regulator may not award compensation to a person in respect of a matter if an ombudsman appointed by virtue of section 124 has awarded compensation to the person in respect of the matter.
- (2) But if compensation awarded by an ombudsman by virtue of section 124 has not been paid as required, the regulator may award compensation.

### **240 Award**

- (1) Compensation is awarded by the regulator giving notice (a “compensation notice”) to—
  - (a) the registered provider, and
  - (b) the person to be compensated.
- (2) The notice must specify—
  - (a) the grounds on which the compensation is awarded,
  - (b) the amount of the compensation,
  - (c) the person to be compensated,
  - (d) any interest or additional compensation which, by virtue of section 244(2), is payable in the event of late payment, and
  - (e) a period within which it must be paid.
- (3) The notice may require the registered provider to publish information about the compensation award in a specified manner.
- (4) The notice must explain the effect of sections 244(1) and (3) and 245.
- (5) The Secretary of State—
  - (a) shall make regulations about the period under subsection (2)(e),
  - (b) may make other regulations about the form and content of a compensation notice, and
  - (c) may make regulations about the manner in which a compensation notice is given.

VALID FROM 01/04/2010

### **241 Impact**

- (1) This section applies when the regulator is considering—
  - (a) whether to award compensation, or
  - (b) the amount of compensation to award.
- (2) The regulator must take account of any information available to it about the financial situation of the registered provider.



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- (3) The regulator must consider the likely impact of the compensation on the registered provider's ability to provide services.
- (4) In particular, the regulator must aim to avoid—
  - (a) jeopardising the financial viability of the registered provider,
  - (b) preventing the registered provider from honouring financial commitments, or
  - (c) preventing the registered provider from taking action to remedy the matters on the grounds of which the compensation might be awarded.

VALID FROM 01/04/2010

## 242 Warning

- (1) Before giving a compensation notice to a registered provider the regulator must give the provider a notice (a “pre-compensation warning”)—
  - (a) specifying grounds on which the regulator thinks compensation could be awarded,
  - (b) warning the provider that the regulator is considering awarding compensation to a specified person,
  - (c) including any indication that the regulator is able to give of the likely amount of any compensation, and
  - (d) explaining the effect of sections 243, 244(1) and (3) and 245.
- (2) Before giving a pre-compensation warning the regulator must consult the person appointed by virtue of section 124 as the ombudsman for the scheme of which the registered provider is a member.
- (3) If the regulator gives a pre-compensation warning it must send a copy to—
  - (a) the HCA, and
  - (b) any other persons it thinks appropriate.
- (4) For the purposes of subsection (3)(b) the regulator shall consider, in particular, any person who provided information as a result of which the pre-compensation warning is given.
- (5) A pre-compensation warning must—
  - (a) refer to section 125 (voluntary undertaking), and
  - (b) indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, awarding compensation.
- (6) A pre-compensation warning may be combined with notice under one or more of sections 230, 248, 250 and 252.

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VALID FROM 01/04/2010

### 243 Representations

- (1) A pre-compensation warning must specify a period during which the registered provider may make representations to the regulator.
- (2) The period must—
  - (a) be a period of at least 28 days, and
  - (b) begin with the date on which the registered provider receives the pre-compensation warning.
- (3) Representations may address—
  - (a) whether compensation should be awarded;
  - (b) the amount of any compensation that may be awarded.
- (4) After the end of the period specified under subsection (1) the regulator shall—
  - (a) consider any representations made, and
  - (b) decide whether to award compensation.

### 244 Enforcement

- (1) Compensation shall be treated as a debt owed to the person to whom it is awarded.
- (2) The Treasury may make regulations authorising the regulator—
  - (a) to award interest on compensation not paid during the period specified under section 240(2)(e);
  - (b) to award additional compensation where compensation is not paid during that period.
- (3) Interest and additional compensation shall be treated as compensation.
- (4) Regulations under subsection (2)(a) may provide for an interest rate to be—
  - (a) set by a specified person, or
  - (b) determined in accordance with the regulations.

VALID FROM 01/04/2010

### 245 Appeal

- A registered provider who is given a compensation notice may appeal to the High Court against—
- (a) the award of compensation,
  - (b) its amount, or
  - (c) both.

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### *Management etc.*

#### **246 Overview**

This group of sections gives the regulator various powers in relation to the management and constitution of registered providers.

#### **247 Management tender**

- (1) This section applies if the regulator is satisfied that—
  - (a) a registered provider has failed to meet a standard [<sup>F18</sup>applicable to it] under section 193 or 194, or
  - (b) the affairs of a registered provider have been mismanaged in relation to social housing.
- (2) The regulator may require the registered provider to implement a process specified by the regulator for the purpose of—
  - (a) inviting persons to apply to undertake management functions of the registered provider, and
  - (b) selecting from the applications and making an appointment.
- (3) A requirement may relate to—
  - (a) the registered provider's affairs generally in so far as they relate to social housing, or
  - (b) specified affairs relating to social housing.
- (4) A requirement must include—
  - (a) provision about the constitution of a selection panel (which must include provision for ensuring representation of tenants' interests),
  - (b) provision for ensuring best procurement practice [<sup>F19</sup>(and consistent with any applicable procurement law)], and
  - (c) provision about the terms and conditions on which the manager is to be appointed (including provision about—
    - (i) setting, monitoring and enforcing performance standards, and
    - (ii) resources).

#### **Textual Amendments**

**F18** Words in s. 247(1)(a) inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 64\(2\)](#)

**F19** Words in s. 247(4)(b) inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 64\(3\)](#)

#### **Commencement Information**

**I87** S. 247 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

#### **248 Section 247: supplemental**

- (1) Before acting under section 247(2) the regulator must give the registered provider a notice—

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- (a) specifying grounds on which action might be taken under that section,
  - (b) warning the provider that the regulator is considering action under that section, and
  - (c) explaining the effect of this section.
- (2) The notice must specify a period during which the registered provider may make representations to the regulator.
- (3) The period must—
  - (a) be a period of at least 28 days, and
  - (b) begin with the date on which the registered provider receives the notice.
- (4) The regulator must send a copy of a notice under subsection (1) to—
  - (a) the HCA, and
  - (b) any other persons it thinks appropriate (having regard, in particular, to any person who provided information as a result of which the notice is given).
- (5) A notice under subsection (1) must—
  - (a) refer to section 125 (voluntary undertaking), and
  - (b) indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, action under section 247(2).
- (6) Notice under subsection (1) may be combined with notice under one or more of sections 230, 242, 250 and 252.
- (7) In imposing a requirement the regulator must have regard to views of—
  - (a) relevant tenants,
  - (b) the registered provider,
  - (c) the HCA, and
  - (d) if the regulator thinks it appropriate, any relevant local housing authority.
- (8) If the regulator imposes a requirement it must send a copy to the HCA.
- (9) A registered provider may appeal to the High Court against a requirement under section 247(2).

## **249 Management transfer**

- (1) This section applies if as a result of an inquiry under section 206 or an audit under section 210 the regulator is satisfied that—
  - (a) the affairs of a registered provider have been mismanaged in relation to social housing, or
  - (b) a transfer of certain of a registered provider's management functions would be likely to improve the management of some or all of its social housing.
- (2) The regulator may require the registered provider to transfer management functions to a specified person.
- (3) A requirement to transfer management functions may be imposed only with the Secretary of State's consent (both as to the transfer and the terms).
- (4) A requirement may relate to—
  - (a) the registered provider's affairs generally in so far as they relate to social housing, or

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(b) specified affairs relating to social housing.

(5) Transfer shall be on terms and conditions (including as to remuneration) specified in, or determined in accordance with, the requirement.

(6) A transferee manager shall have—

- (a) any power specified in the requirement, and
- (b) any other power in relation to the registered provider's affairs required by the manager for the purposes specified in the requirement (including the power to enter into agreements and take other action on behalf of the registered provider).

## **250 Section 249: supplemental**

(1) Before acting under section 249(2) the regulator must give the registered provider a notice—

- (a) specifying grounds on which action might be taken under that section,
- (b) warning the provider that the regulator is considering action under that section, and
- (c) explaining the effect of this section.

(2) The notice must specify a period during which the registered provider may make representations to the regulator.

(3) The period must—

- (a) be a period of at least 28 days, and
- (b) begin with the date on which the registered provider receives the notice.

(4) The regulator must send a copy of a notice under subsection (1) to—

- (a) the HCA, and
- (b) any other persons it thinks appropriate (having regard, in particular, to any person who provided information as a result of which the notice is given).

(5) A notice under subsection (1) must—

- (a) refer to section 125, and
- (b) indicate whether or to what extent the regulator would accept a voluntary undertaking under that section instead of, or in mitigation of, action under section 249(2).

(6) Notice under subsection (1) may be combined with notice under one or more of sections 230, 242, 248 and 252.

(7) In imposing a requirement the regulator must have regard to views of—

- (a) relevant tenants,
- (b) the registered provider,
- (c) the HCA, and
- (d) if the regulator thinks it appropriate, any relevant local housing authority.

(8) If the regulator imposes a requirement it must send a copy to the HCA.

(9) A registered provider may appeal to the High Court against a requirement under section 249(2).

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## 251 Appointment of manager <sup>F20</sup> of private registered provider]

- (1) This section applies if the regulator is satisfied that—
  - (a) a <sup>F21</sup>private registered provider] has failed to meet a standard under section 193 or 194, or
  - (b) the affairs of a <sup>F22</sup>private registered provider] have been mismanaged in relation to social housing.
- (2) The regulator may—
  - (a) appoint an individual as a manager of the registered provider, or
  - (b) require the registered provider to appoint an individual as a manager.
- (3) An appointment or requirement may relate to a manager—
  - (a) of the registered provider's affairs generally in so far as they relate to social housing, or
  - (b) of specified affairs relating to social housing.
- (4) Appointment shall be on terms and conditions (including as to remuneration) specified in, or determined in accordance with, the appointment or requirement.
- (5) A manager shall have—
  - (a) any power specified in the appointment or requirement, and
  - (b) any other power in relation to the registered provider's affairs required by the manager for the purposes specified in the appointment or requirement (including the power to enter into agreements and take other action on behalf of the registered provider).

### Textual Amendments

- F20** Words in s. 251(1)(b) inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 68\(b\)](#)
- F21** Words in s. 251(1)(a) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 68\(a\)](#)
- F22** Words in s. 251(1)(b) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 68\(a\)](#)

### Commencement Information

- I88** S. 251 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

## 252 Section 251: supplemental

- (1) Before acting under section 251(2) the regulator must give the registered provider a notice—
  - (a) specifying grounds on which action might be taken under that section,
  - (b) warning the provider that the regulator is considering action under that section, and
  - (c) explaining the effect of this section.
- (2) The notice must specify a period during which the registered provider may make representations to the regulator.
- (3) The period must—

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- (a) be a period of at least 28 days, and
  - (b) begin with the date on which the registered provider receives the notice.
- (4) The regulator must send a copy of a notice under subsection (1) to—
- (a) the HCA, and
  - (b) any other persons it thinks appropriate (having regard, in particular, to any person who provided information as a result of which the notice is given).
- (5) A notice under subsection (1) must—
- (a) refer to section 125 (voluntary undertaking), and
  - (b) indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, action under section 251(2).
- (6) Notice under subsection (1) may be combined with notice under one or more of sections 230, 242, 248 and 250.
- (7) The regulator must notify the HCA of an appointment or requirement under section 251(2).
- (8) The regulator may require a manager to report to the regulator on the affairs specified in the appointment or requirement under section 251(3).
- (9) A registered provider may appeal to the High Court against an appointment or requirement under section 251(2).

### **253 Transfer of land [F<sup>23</sup> by private registered provider]**

- (1) This section applies if as a result of an inquiry under section 206 or an audit under section 210 the regulator is satisfied that—
- (a) the affairs of a [F<sup>24</sup>private registered provider] have been mismanaged in relation to social housing, or
  - (b) a transfer of land by a [F<sup>25</sup>private registered provider] would be likely to improve the management of the land.
- (2) The regulator may require the registered provider to transfer specified land—
- (a) to the regulator, or
  - (b) to another specified [F<sup>26</sup>private registered provider].
- (3) A requirement may be imposed on a profit-making registered provider only in relation to its social housing and associated land.
- (4) For the purposes of subsection (3) land is associated with social housing if the regulator thinks that it is used in connection with the social housing or its management.
- (5) A requirement may not be imposed on a non-profit registered provider requiring it to transfer land to a profit-making registered provider.
- (6) A requirement may not be imposed on a registered charity.
- (7) A requirement may be imposed on a charity which is not registered (C1), but only for transfer to another charity (C2) whose objects the regulator thinks are similar to those of C1.



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### Textual Amendments

- F23** Words in s. 253 inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 1 para. 71(c)**
- F24** Words in s. 253(1)(a) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 1 para. 71(a)**
- F25** Words in s. 253(1)(b) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 1 para. 71(a)**
- F26** Words in s. 253(2)(b) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 1 para. 71(b)**

### Commencement Information

- I89** S. 253 in force at 1.4.2010 by [S.I. 2010/862](#), **art. 2** (with Sch.)

## 254 Section 253: supplemental

- (1) A transfer under section 253 shall be on terms specified in, or determined in accordance with, the requirement.
- (2) The price shall be not less than an amount certified by the district valuer as the amount the property would fetch if sold by a willing seller to another registered provider.
- (3) The terms shall include provision as to the payment of any debts or liabilities in respect of the land (whether or not secured on it).
- (4) A requirement to transfer land may be imposed only with the Secretary of State's consent (both as to the transfer and the terms).
- (5) Where land is transferred to the regulator under section 253(2)(a)—
  - (a) the regulator may dispose of it only to a registered provider, and
  - (b) if it is transferred by a non-profit registered provider, the regulator may dispose of it only to a non-profit registered provider.

## 255 Amalgamation

- (1) This section applies if as a result of an inquiry under section 206 or an audit under section 210 the regulator is satisfied that—
  - (a) the affairs of a non-profit registered provider which is an industrial and provident society have been mismanaged in relation to social housing, or
  - (b) the management of social housing owned by a non-profit registered provider which is an industrial and provident society would be improved if the provider were amalgamated with another industrial and provident society.
- (2) The regulator may make and execute on behalf of the society an instrument providing for the amalgamation of the society with another industrial and provident society.
- (3) The regulator may act under subsection (2) only with the Secretary of State's consent.
- (4) An instrument providing for the amalgamation of a society (“S1”) with another has the same effect as a resolution by S1 under section 50 of the Industrial and Provident Societies Act 1965 (c. 12) (amalgamation of societies by special resolution).

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- (5) A copy of an instrument shall be sent to and registered by the Financial Services Authority.
- (6) An instrument does not take effect until the copy is registered.
- (7) The copy must be sent for registration during the period of 14 days beginning with the date of execution; but a copy registered after that period is valid.
- (8) Any body created by virtue of an amalgamation—
  - (a) must be registered by the regulator and designated as a non-profit organisation, and
  - (b) pending registration shall be treated as registered and designated as a non-profit organisation.

*Restrictions on dealings [F27] by non-profit registered providers]*

#### Textual Amendments

**F27** Words in cross-heading before s. 256 inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 72](#)

### 256 Restrictions on dealings during inquiry

- (1) The regulator may make an order under this section if—
  - (a) an inquiry under section 206 is in progress in respect of a non-profit registered provider, and
  - (b) either of the following cases applies.
- (2) Case 1 applies if the regulator has reasonable grounds for believing—
  - (a) that the affairs of the registered provider have been mismanaged, and
  - (b) that the interests of tenants of the registered provider, or its assets, require protection.
- (3) Case 2 applies if as a result of an inquirer's interim report under section 207 the regulator is satisfied that the affairs of the registered provider have been mismanaged.
- (4) The regulator may order a bank or other person who holds money or securities on behalf of the registered provider not to part with the money or securities without the regulator's consent.
- (5) The regulator may make an order restricting—
  - (a) the transactions that may be entered into by the registered provider, or
  - (b) the nature and amounts of payments that may be made by it.
- (6) An order under subsection (5) may in particular provide that transactions may not be entered into or payments made without the regulator's consent.
- (7) The regulator may make an order in respect of a registered provider that is a registered charity only if it has received public assistance.
- (8) An order ceases to have effect at the end of the period of 6 months beginning with the day on which the inquirer's final report under section 207 is made.

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- (9) But the regulator—
- (a) may revoke the order before that time;
  - (b) may by order extend it for a specified period of up to 6 months.

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**Commencement Information**

**190** S. 256 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

**257 Restrictions on dealings following inquiry**

- (1) This section applies if as a result of an inquiry under section 206 or an audit under section 210 the regulator is satisfied that the affairs of a non-profit registered provider have been mismanaged.
- (2) The regulator may order a bank or other person who holds money or securities on behalf of the registered provider not to part with the money or securities without the regulator's consent.
- (3) The regulator may make an order restricting—
  - (a) the transactions that may be entered into by the registered provider, or
  - (b) the nature and amounts of payments that may be made by it.
- (4) An order under subsection (3) may in particular provide that transactions may not be entered into or payments made without the regulator's consent.
- (5) The regulator may make an order in respect of a registered provider that is a registered charity only if it has received public assistance.
- (6) An order under this section has effect until revoked by the regulator.

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**Commencement Information**

**191** S. 257 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

**258 Restrictions on dealings: supplemental**

- (1) Before making an order under section 256 or 257 the regulator must take all reasonable steps to give notice to—
  - (a) the registered provider, and
  - (b) in the case of an order under section 256(4) or 257(2), the person to whom the order is directed.
- (2) Contravention of an order under section 256(4) or 257(2) is an offence.
- (3) A person guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Proceedings for an offence may be brought only by or with the consent of—
  - (a) the regulator, or
  - (b) the Director of Public Prosecutions.

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#### Commencement Information

**I92** S. 258 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

*Suspension and removal of officers [<sup>F28</sup>of non-profit registered providers]*

#### Textual Amendments

**F28** Words in cross-heading before s. 259 inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), [art. 1\(2\)](#), [Sch. 1 para. 73](#)

### 259 Suspension during inquiry

- (1) The regulator may make an order under this section if—
  - (a) an inquiry under section 206 is in progress in respect of a non-profit registered provider, and
  - (b) either of the following cases applies.
- (2) Case 1 applies if the regulator has reasonable grounds for believing—
  - (a) that the affairs of the registered provider have been mismanaged, and
  - (b) that the interests of tenants of the registered provider, or its assets, require protection.
- (3) Case 2 applies if as a result of an inquirer's interim report under section 207 the regulator is satisfied that the affairs of the registered provider have been mismanaged.
- (4) The regulator may by order suspend any officer, employee or agent of the registered provider who it thinks has contributed to the failure or mismanagement.
- (5) The regulator may suspend an officer, employee or agent of a registered charity only if the charity has received public assistance.
- (6) An order ceases to have effect at the end of the period of 6 months beginning with the day on which the inquirer's final report under section 207 is made.
- (7) But the regulator may revoke an order before the end of that period.
- (8) The regulator shall notify the Charity Commission if it suspends an officer, employee or agent of a registered charity.

#### Commencement Information

**I93** S. 259 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

### 260 Removal or suspension following inquiry

- (1) This section applies if as a result of an inquiry under section 206 or an audit under section 210 the regulator is satisfied that the affairs of a non-profit registered provider have been mismanaged.

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- (2) The regulator may by order remove any officer, employee or agent of the registered provider who it thinks has contributed to the failure or mismanagement.
- (3) Pending a decision whether to remove an officer, employee or agent, the regulator may by order suspend the person for a specified period of up to 6 months.
- (4) The regulator may remove or suspend an officer, employee or agent of a registered charity only if the charity has received public assistance.
- (5) Before making an order the regulator must take all reasonable steps to give at least 14 days' notice to—
  - (a) the person, and
  - (b) the registered provider.
- (6) The regulator shall notify the Charity Commission if it removes or suspends an officer, employee or agent of a registered charity.

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**Commencement Information**

**I94** S. 260 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

**261 Suspension under section 259 or 260: supplemental**

- (1) This section applies where the regulator suspends an officer, employee or agent of a registered provider under section 259 or 260.
- (2) The regulator may give directions to the registered provider about—
  - (a) the performance of the suspended person's functions, and
  - (b) any other matter arising from the suspension.
- (3) The regulator may appoint a person to perform the suspended person's functions.

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**Commencement Information**

**I95** S. 261 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

**262 Disqualification of removed person**

- (1) A person is disqualified from acting as an officer of a registered provider if the person has been removed under—
  - (a) section 260, or
  - (b) paragraph 24(2)(a) of Schedule 1 to the Housing Act 1996 (c. 52), section 30(1)(a) of the Housing Associations Act 1985 (c. 69) or section 20(1)(a) of the Housing Act 1974 (c. 44) (other similar provisions).
- (2) The regulator may waive a disqualification either generally or in relation to a particular registered provider or class of registered providers.
- (3) A waiver may be granted only on an application by the disqualified person.
- (4) The regulator shall notify a person whose disqualification is waived.

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- (5) If a disqualified person acts as an officer of a registered provider, the person's acts are not invalid by reason only of the disqualification.

**Commencement Information**

**196** S. 262 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

**263 Register of disqualified persons**

- (1) The regulator shall maintain a register of persons disqualified under section 262.
- (2) The register must show details of any waivers.
- (3) The regulator shall make the register available for inspection by the public.

**Commencement Information**

**197** S. 263 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

**264 Acting while disqualified: offence**

- (1) It is an offence for a person to act as an officer of a registered provider in respect of which the person is disqualified under section 262.
- (2) A person guilty of an offence is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (3) Proceedings for an offence may be brought only by or with the consent of—
- (a) the regulator, or
  - (b) the Director of Public Prosecutions.
- (4) In relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (short sentences) the reference in subsection (2)(a) to 12 months shall have effect as if it were a reference to 6 months.

**Commencement Information**

**198** S. 264 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

**265 Acting while disqualified: other consequences**

- (1) This section applies where the regulator is satisfied that a person—
- (a) has acted as an officer of a registered provider in respect of which the person is disqualified under section 262, and
  - (b) in doing so, has received payments or other benefits from the registered provider.

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- (2) The regulator may require the person to repay the sum or, as the case may be, a specified amount representing the whole or part of the value of the benefit.
- (3) If a person fails to comply with a requirement the registered provider may recover the sum or specified amount as a debt.

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**Commencement Information**

**199** S. 265 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

**266 Removal of officers**

- (1) The regulator may by order remove an officer of a non-profit registered provider if a Case listed in this section applies to the officer.
- (2) Case 1 applies to a person who has been adjudged bankrupt.
- (3) Case 2 applies to a person who has made an arrangement with creditors.
- (4) Case 3 applies to a person who is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46) or equivalent legislation in Northern Ireland.
- (5) Case 4 applies to a person who is subject to an order under section 429(2) of the Insolvency Act 1986 (c. 45) (disabilities on revocation of county court administration order).
- (6) Case 5 applies to a person who is disqualified under section 72 of the Charities Act 1993 (c. 10) from being a charity trustee.
- (7) Case 6 applies to a person who is incapable of acting by reason of mental disorder.
- (8) Case 7 applies to a person who is impeding the proper management of the registered provider by reason of absence or failure to act.

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**Commencement Information**

**1100** S. 266 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

**267 Section 266: supplemental**

- (1) Before making an order under section 266 in respect of an officer the regulator must take all reasonable steps to give at least 14 days' notice to—
  - (a) the officer, and
  - (b) the registered provider.
- (2) An order may be made in respect of an officer of a registered charity only if the charity has received public assistance.

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**Commencement Information**

**1101** S. 267 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))



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## 268 Appeal against removal or suspension

A person removed or suspended under section 259, 260 or 266 may appeal to the High Court.

### Commencement Information

**I102** S. 268 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

## 269 Appointment of new officers

- (1) The regulator may by order appoint a person as an officer of a non-profit registered provider—
  - (a) to replace an officer removed by order under section 266,
  - (b) where there are no officers, or
  - (c) if the regulator thinks an additional officer is necessary for the proper management of the body's affairs.
- (2) The regulator may appoint more than a minority of the officers of a registered provider only if—
  - (a) the provider has fewer officers than required by its constitution, or
  - (b) its constitution does not specify a minimum number of officers.
- (3) Subsection (1) overrides any restriction on eligibility or numbers of officers imposed by the body's constitution.
- (4) An order appointing an officer shall specify the period for which, and the terms on which, the office is to be held; but—
  - (a) on expiry the regulator may by order renew the appointment, and
  - (b) the officer may resign or retire in accordance with the registered provider's constitution.
- (5) An officer appointed by order has the same rights, powers and obligations as an officer appointed under the registered provider's constitution.
- (6) The regulator may exercise the power in subsection (1) in respect of a registered charity only if—
  - (a) a condition in section 274 is satisfied, and
  - (b) the regulator has consulted the Charity Commission.

### Commencement Information

**I103** S. 269 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))



**Status:** Point in time view as at 22/09/2008. This version of this Act contains provisions that are not valid for this point in time.  
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## CHAPTER 8

### GENERAL

#### *Interpretation*

VALID FROM 01/04/2010

#### **270 Officer**

The Table gives the meaning of “officer” in relation to registered providers.

<b><i>Registered provider</i></b>	<b><i>Meaning of “officer”</i></b>
Registered charity which is not a registered company	Trustee, secretary or treasurer
Industrial and provident society	“Officer” within the meaning given by section 74 of the Industrial and Provident Societies Act 1965 (including a person co-opted to serve on the society's committee)
Registered company	“Officer” within the meaning given by section 1173 of the Companies Act 2006

VALID FROM 01/04/2010

#### **271 Subsidiary and associate**

- (1) A company is a “subsidiary” of a person if any of the following conditions is satisfied.
- (2) Condition 1 is that the person—
  - (a) is a member of the company, and
  - (b) has power, independent of any other person, to appoint or remove all or a majority of the board of directors.
- (3) Condition 2 is that the person holds more than half in nominal value of the company's equity share capital.
- (4) Condition 3 is that the company is a subsidiary, within the meaning of the Companies Act 2006 (c. 46) or the Friendly and Industrial and Provident Societies Act 1968 (c. 55), of a company which is a subsidiary of the person by virtue of Condition 1 or 2.
- (5) In relation to a company which is an industrial and provident society a reference to the board of directors is a reference to the committee of management.
- (6) “Associate” of a provider means—
  - (a) a body of which the provider is a subsidiary, and
  - (b) any other subsidiary of that body.

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VALID FROM 01/04/2010

## 272 Family

- (1) For the purposes of this Part one person is a member of the family of another if—
  - (a) they are, or live together as if they were, spouses or civil partners, or
  - (b) one is the parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece of the other.
- (2) For those purposes—
  - (a) a relationship by marriage or civil partnership shall be treated as a relationship by blood (and, in particular, P's stepchild shall be treated as P's child), and
  - (b) a relationship by half-blood shall be treated as a relationship by whole blood.

VALID FROM 01/04/2010

## 273 Disposal

- (1) In this Part a reference to disposing of property is a reference to—
  - (a) selling it,
  - (b) leasing it,
  - (c) mortgaging it,
  - (d) making it subject to a charge, and
  - (e) disposing of it, or of any interest in it, in any other way.
- (2) Granting an option to require a disposal shall be treated as making a disposal.

VALID FROM 01/04/2010

## 274 Charities that have “received public assistance”

- (1) For the purposes of this Part a registered charity has received public assistance if at least one of the following conditions is satisfied.
- (2) Condition 1 is that the charity has received financial assistance from the HCA under section 19.
- (3) Condition 2 is that the charity has received financial assistance under section 24 of the Local Government Act 1988 (c. 9) (assistance for privately let housing accommodation).
- (4) Condition 3 is that the charity has had housing transferred to it pursuant to—
  - (a) a large scale disposal, within the meaning of section 34 of the Housing Act 1985 (c. 68), for which consent was required under section 32 or 43 of that Act, or
  - (b) a qualifying disposal that was made under section 135 of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28).

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- (5) Condition 4 is that the charity has received a grant or loan under—
- (a) section 18 of the Housing Act 1996 (c. 52) (social housing grants),
  - (b) section 22 of that Act (assistance from local authorities),
  - (c) section 58 of the Housing Associations Act 1985 (c. 69) (grants or loans by local authorities),
  - (d) section 50 of the Housing Act 1988 (c. 50), section 41 of the Housing Associations Act 1985 or any enactment replaced by that section (housing association grant),
  - (e) section 51 of the Housing Act 1988 (c. 50) or section 54 or 55 of the Housing Associations Act 1985 (c. 69) (revenue deficit grant or hostel deficit grant),
  - (f) section 79 of the Housing Associations Act 1985 (loans by Housing Corporation),
  - (g) section 31 of the Housing Act 1974 (c. 44) (management grants), or
  - (h) any enactment mentioned in paragraph 2 or 3 of Schedule 1 to the Housing Associations Act 1985 (pre-1974 grants and certain loans).

## 275 General

In this Part, except where the context requires otherwise—

“action” includes inaction, proposed action and decision,

“assured agricultural occupancy” has the same meaning as in Part 1 of the Housing Act 1988,

“assured tenancy” has the same meaning as in that Part,

“the Charity Commission” means the Charity Commission for England and Wales,

“committee”, in relation to an industrial and provident society, means the committee of management or other directing body of the society (including any person co-opted to serve on the committee, whether a member of the society or not),

“consent” means written consent,

“constitution” includes rules,

“conveyance” includes grant, assignment and any other instrument,

“district valuer” has the meaning given by section 622 of the Housing Act 1985 (c. 68),

“dwelling”—

(a) means a house, flat or other building or part of a building occupied or intended to be occupied as a separate dwelling, and

(b) includes any garden, yard, outhouse or other appurtenance belonging to, or usually enjoyed with, the dwelling,

“the HCA” means the Homes and Communities Agency,

“industrial and provident society” means a society registered under the Industrial and Provident Societies Act 1965 (c. 12),

“local authority” has the same meaning as in the Housing Associations Act 1985,

“local housing authority” has the same meaning as in the Housing Act 1985,

“maintenance” includes repair,

“mismanagement”, in relation to the affairs of a registered provider, means—

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- (a) managed in contravention of a provision of this Part or of anything done under this Part, or
- (b) otherwise conducted improperly or inappropriately,
  - “non-registrable charity” means a charity which is not required to be registered, in accordance with section 3A of the Charities Act 1993 (c. 10),
  - “notice” means written notice (and to “notify” means to give written notice),
  - “preferential creditor” and “preferential debt” have the same meaning as in the Insolvency Act 1986 (c. 45),
  - “price” includes premium,
  - “registered charity” means a charity registered under the Charities Act 1993 (c. 10),
  - “registered company” means a company within the meaning of the Companies Act 2006 (c. 46),
  - “rent” includes payments under a licence to occupy accommodation,
  - “representations” means written representations,
  - “secure tenancy” has the same meaning as in Part 4 of the Housing Act 1985 (c. 68),
  - “secured creditor” means a creditor who holds a mortgage or charge (including a floating charge) over—
    - (a) land held by a registered provider, or
    - (b) a present or future interest of a registered provider in rents or other receipts from land,
  - “tenant” in relation to social housing includes other occupiers, and
  - “working day” means a day other than—
    - (a) a Saturday or Sunday,
    - (b) Christmas Day or Good Friday, or
    - (c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 (c. 80).

#### Commencement Information

**I104** S. 275 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

## 276 Index of defined terms

The Table lists expressions defined in this Part.

<i>Expression</i>	<i>Section</i>
Appointed member	Section 82
Associate	Section 271
Assured agricultural occupancy	Section 275
Assured tenancy	Section 275
Charity Commission	Section 275
Committee (industrial and provident society)	Section 275

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Compensation notice	Section 240
Consent	Section 275
Constitution	Section 275
Conveyance	Section 275
Disposal	Section 273
District valuer	Section 275
Dwelling	Section 275
Enforcement notice	Sections 219 to 225
Equity percentage arrangements	Section 70(5)
Family	Section 272
Financial year	Section 104
Fundamental objectives	Section 86
The HCA	Section 275
Industrial and provident society	Section 275
Local authority	Section 275
Local housing authority	Section 275
Low cost home ownership accommodation	Section 70
Low cost rental accommodation	Section 69
Maintenance	Section 275
Mismanagement	Section 275
Non-profit organisation	Section 115
Non-registrable charity	Section 275
Notice	Section 275
Officer	Section 270
Penalty notice	Section 228
Pre-compensation warning	Section 242
Pre-penalty warning	Section 230
Preferential creditor	Section 275
Preferential debt	Section 275
Price	Section 275
Profit-making organisation	Section 115
Provider (of social housing)	Section 80
Received public assistance (charities)	Section 274
Registered charity	Section 275

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Registered company	Section 275
Registered provider (of social housing)	Section 80
The regulator	Section 81
The Regulator of Social Housing	Section 81
Rent	Section 275
Representations	Section 275
Secure tenancy	Section 275
Secured creditor	Section 275
Shared ownership arrangements	Section 70(4)
Shared ownership trust	Section 70(6)
Social housing	Section 68
Subsidiary	Section 271
Tenant	Section 275
Working day	Section 275

#### Commencement Information

**I105** S. 276 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

#### Miscellaneous

#### 277 Consequential amendments

Schedule 9 (which contains amendments of enactments) has effect.

#### Commencement Information

**I106** S. 277 in force at 8.9.2008 for specified purposes by [S.I. 2008/2358](#), [art. 3\(1\)](#)

VALID FROM 01/04/2010

#### 278 Transitional

- (1) The regulator shall include in the register under section 111 on its establishment anyone—
  - (a) who was registered under section 1 of the Housing Act 1996 (c. 52) (register of social landlords) immediately before section 61 came into force, and
  - (b) in relation to whom the Relevant Authority was the Housing Corporation (in accordance with section 56 of that Act).
- (2) A person registered under this section shall be designated as a non-profit organisation.

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## PART 3

### OTHER PROVISIONS

PROSPECTIVE

## CHAPTER 1

### SUSTAINABILITY CERTIFICATES

#### *General*

#### **279 Certificates for new homes**

- (1) A person who is selling a residential property as a new property must supply the purchaser with—
  - (a) a sustainability certificate, or
  - (b) a written statement to the effect that there is no sustainability certificate for the property.
- (2) If the seller is to supply a sustainability certificate, the seller must supply it before the sale is agreed if it is reasonably practicable to do so.
- (3) If it is not reasonably practicable to do so, the seller must—
  - (a) supply an interim certificate before the sale is agreed, and
  - (b) supply the sustainability certificate at such time, or within such period, as may be prescribed.
- (4) If the seller is to supply a statement, the seller must supply it before the sale is agreed.
- (5) The appropriate national authority may by regulations require sellers to supply certificates or statements to purchasers earlier than required by subsection (2), (3)(a) or (4).
- (6) The appropriate national authority may by regulations provide for exceptions from any duty imposed by virtue of subsections (1) to (5) in such cases and circumstances, and to such extent, as may be specified in the regulations.
- (7) Regulations under subsection (6) may impose alternative duties in relation to the supply of certificates or statements.
- (8) The seller is not required to comply with a requirement imposed by virtue of this section if the seller has a reasonable excuse for not complying with the requirement.
- (9) The seller may not charge for supplying a certificate or statement by virtue of this section.
- (10) The power conferred by subsection (3)(b) may, in particular, be exercised so as to prescribe a time, or a period which ends, after the completion of the sale.
- (11) In this Chapter—

“interim certificate” means a document which—

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- (a) contains an interim assessment of the sustainability of a residential property, and
  - (b) complies with the requirements of regulations under this Chapter,
- “sustainability certificate” means a document which—
- (a) contains a final assessment of the sustainability of a residential property, and
  - (b) complies with the requirements of regulations under this Chapter.

## **280 Meaning of sustainability**

- (1) For the purposes of this Chapter the sustainability of a residential property relates to the extent to which—
  - (a) the materials used in the property,
  - (b) other aspects of the design and construction of the property, and
  - (c) any services, fittings and equipment provided in, or in connection with, the property,
 meet any sustainability standards.
- (2) Sustainability standards are standards prescribed by the appropriate national authority for any of the following purposes—
  - (a) ensuring the health, safety, welfare and convenience of persons in or about the property and of others who may be affected by the property or matters connected with it,
  - (b) furthering the efficient management of the property and of its construction,
  - (c) furthering energy efficiency,
  - (d) furthering the efficient use of water and minimising flood risk,
  - (e) furthering efficient waste management,
  - (f) furthering the protection or enhancement of the environment, and
  - (g) furthering the prevention or detection of crime.
- (3) The appropriate national authority may by regulations amend subsection (2) so as to add, remove or alter purposes for the time being contained there.
- (4) The references in this section to the construction of the property include references to any related demolition and any off-site activities relating to the construction or demolition.

## **281 Authorised assessors**

- (1) The assessment of the sustainability of a residential property is to be carried out for the purposes of this Chapter by an authorised assessor.
- (2) The appropriate national authority may by regulations make provision about authorised assessors.
- (3) The regulations must specify the persons or descriptions of persons who are to be authorised assessors.
- (4) Subsections (5) to (9) apply if regulations under subsection (2) provide for authorised assessors to be persons accredited under an approved accreditation scheme.
- (5) The regulations may make provision about accreditation schemes.



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- (6) The regulations may, in particular, provide for—
- (a) the approval by the appropriate national authority of one or more accreditation schemes (whether established by the appropriate national authority or another person),
  - (b) the withdrawal by the appropriate national authority of any such approval,
  - (c) the charging of fees under accreditation schemes.
- (7) Any regulations of the kind mentioned in subsection (6)(a) must require the appropriate national authority to be satisfied, before approving an accreditation scheme, that the scheme contains appropriate provision—
- (a) for ensuring that members of the scheme are fit and proper persons who are qualified (by their education, training and experience) to carry out assessments,
  - (b) for ensuring that a code of conduct for members of the scheme is maintained and published,
  - (c) for ensuring that members of the scheme have in force suitable indemnity insurance,
  - (d) for facilitating the resolution of complaints against members of the scheme,
  - (e) for requiring certificates or other documents given by members of the scheme to be entered on a register under section 282,
  - (f) for the keeping of a public register of the members of the scheme, and
  - (g) for such other purposes as may be specified in the regulations.
- (8) Subsection (7) does not limit the matters which the regulations may require the appropriate national authority to be satisfied about before approving an accreditation scheme.
- (9) Regulations under subsection (5) may, in particular, require or authorise an approved accreditation scheme to contain provision about any matter relating to sustainability certificates or other documents with which the scheme is concerned (including the terms on which members of the scheme may undertake to produce such documents).

## **282 Register of certificates**

- (1) The appropriate national authority may by regulations make provision about a register of sustainability certificates.
- (2) The regulations may, in particular, make provision of the kind mentioned in subsections (3) to (7).
- (3) The regulations may provide for a register to be kept—
  - (a) by (or on behalf of) the appropriate national authority, or
  - (b) by such other person as the regulations may specify or describe.
- (4) The regulations may require a person wishing to enter a document onto a register to pay such fee as may be prescribed.
- (5) No person may disclose—
  - (a) a register or any document (or part of a document) contained in it, or
  - (b) any information contained in, or derived from, a register,except in accordance with any provision of the regulations which authorises or requires such a disclosure to be made.

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- (6) The regulations may make provision as to circumstances in which, or purposes for which, a person or a person of a prescribed description—
- (a) may (on payment of such fee, if any, as may be prescribed)—
    - (i) inspect a register or any document (or part of a document) contained in it,
    - (ii) take or be given copies of a register or any document (or part of a document) contained in it, or
    - (iii) be given information contained in, or derived from, a register, or
  - (b) may disclose anything obtained by virtue of provision made under paragraph (a).
- (7) The purposes which may be so prescribed may be public purposes or purposes of private undertakings or other persons.
- (8) A person who contravenes subsection (5) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (9) The appropriate national authority may by regulations provide for interim certificates or other documents to be included on a register.
- (10) In such a case, subsections (1) to (8) apply in relation to the interim certificates or other documents concerned as they apply in relation to sustainability certificates.

### *Enforcement*

#### **283 Enforcement authorities**

- (1) Every local weights and measures authority is an enforcement authority for the purposes of this Chapter.
- (2) It is the duty of each enforcement authority to enforce in its area the duties imposed by virtue of section 279.

#### **284 Power to require production of certificates or statements**

- (1) Subsection (2) applies if an authorised officer of an enforcement authority believes that a person is, or has been, subject to a duty imposed by virtue of section 279 to supply a certificate or statement in relation to a particular property.
- (2) The officer may require the person to produce for inspection a copy of the certificate or statement.
- (3) The power conferred by subsection (2) includes power—
  - (a) to require the production of a legible hard copy of any certificate or statement which is held in electronic form, and
  - (b) to take copies of any hard copy produced for inspection.
- (4) A requirement under this section may not be imposed more than 6 months after the last day for supplying the certificate or statement concerned in pursuance of the duty imposed by virtue of section 279.
- (5) A person is not required to comply with a requirement under this section if the person has a reasonable excuse for not complying with the requirement.

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- (6) Subject to this, a person subject to such a requirement must comply with it within the period of 7 days beginning with the day after that on which it is imposed.

### **285 Penalty charge notices**

- (1) An authorised officer of an enforcement authority may give a penalty charge notice to a person if the officer believes that the person has committed a breach of—
- (a) any duty imposed by virtue of section 279, or
  - (b) any duty under section 284.
- (2) A penalty charge notice may not be given after the end of the period of 6 months beginning with the day (or, in the case of a continuing breach, the last day) on which the breach of duty was committed.
- (3) Schedule 10 (which makes further provision about penalty charge notices) has effect.

### **286 Offences relating to enforcement officers**

- (1) A person who, without reasonable excuse, obstructs an officer of an enforcement authority who is acting in pursuance of duties imposed by virtue of this Chapter is guilty of an offence.
- (2) A person who, not being an authorised officer of an enforcement authority, purports to act as such in pursuance of section 284 or 285 is guilty of an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### *Supplementary*

### **287 Grants**

- (1) The appropriate national authority may make grants towards expenditure incurred by any person in connection with the development of proposals for, or the operation of—
- (a) a register under section 282, or
  - (b) accreditation schemes or any other provision which may be made by regulations under this Chapter.
- (2) A grant under this section may be made on conditions, which may include (among other things)—
- (a) conditions as to the purposes for which the grant or any part of it may be used, and
  - (b) conditions requiring the repayment (with or without interest) of the grant or any part of it in such circumstances as may be specified in the conditions.

### **288 Suspension of duties**

- (1) The appropriate national authority may by regulations suspend (or later revive) the operation of any duty imposed by virtue of section 279.
- (2) Such regulations may provide for the suspension of a duty to take effect only for a period specified in the regulations.

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- (3) A duty which is (or is to any extent) revived after being suspended may be suspended again.

## 289 Disclosure of certificates etc.

- (1) The appropriate national authority may by regulations make provision about the disclosure of—
- (a) sustainability certificates, interim certificates or statements of the kind mentioned in section 279(1)(b),
  - (b) copies of any such documents,
  - (c) any information contained in, or derived from, any such documents or copies, or
  - (d) any information collected by an authorised assessor for the purposes of preparing a sustainability certificate or an interim certificate.
- (2) A person who, without reasonable excuse, discloses anything whose disclosure is prohibited by regulations under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## 290 General powers to make regulations

- (1) The appropriate national authority may by regulations make such provision as the authority considers appropriate—
- (a) for the general purposes, or any particular purpose, of this Chapter,
  - (b) in consequence of any provision made by virtue of this Chapter or for giving full effect to it.
- (2) Such regulations may, in particular, provide for—
- (a) the form and content of sustainability certificates and interim certificates,
  - (b) the form and content of written statements of the kind mentioned in section 279(1)(b),
  - (c) ways in which sustainability standards may be met,
  - (d) the issue of guidance for the purposes of this Chapter,
  - (e) the relationship between any provision made by virtue of this Chapter and any provision<sup>F29</sup>... in relation to energy performance certificates.
- (3) Regulations made by virtue of subsection (2)(a) or (b) may, in particular, provide for the form or content of the documents concerned to be such as may be approved by the appropriate national authority.
- (4) In subsection (2)(e) “energy performance certificate” has the same meaning as in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991) (see regulation 2(1)) or any corresponding subsequent regulations.

### Textual Amendments

**F29** Words in s. 290(2)(e) repealed (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(1)(k), Sch. 18 para. 3, [Sch. 25 Pt. 29](#)

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## **291 Powers to extend Chapter**

- (1) The appropriate national authority may by regulations provide for this Chapter to apply, with or without prescribed modifications, to—
  - (a) buildings which are not residential properties, or
  - (b) prescribed descriptions of buildings falling within paragraph (a),as it applies to residential properties.
- (2) The appropriate national authority may by regulations provide for this Chapter to apply, with or without prescribed modifications, to—
  - (a) newly converted residential properties,
  - (b) newly converted buildings which are not residential properties, or
  - (c) prescribed descriptions of residential properties falling within paragraph (a) or buildings falling within paragraph (b),as it applies to new residential properties.
- (3) For the purposes of this Chapter a residential property or other building is newly converted if—
  - (a) it has been converted but has never been used for its intended purpose,
  - (b) it is being converted, or
  - (c) its conversion is being designed.
- (4) The appropriate national authority may by regulations provide for circumstances in which a residential property or other building is to be treated as having been converted.
- (5) The references in subsections (1)(a) and (b), (2)(b) and (c) and (3) and (4) to buildings include references to—
  - (a) ancillary land, and
  - (b) buildings and ancillary land which are being designed or constructed or are to be constructed.
- (6) The appropriate national authority may by regulations amend the definition of “purchaser” in section 292(1).
- (7) Regulations under subsection (6)—
  - (a) must ensure that the descriptions of persons falling within the definition on the passing of this Act continue to fall within the definition (but this is without prejudice to the power to amend the text of the definition), and
  - (b) may, in particular, ensure that descriptions of persons who are taking steps with a view to deciding whether to purchase residential properties are included within the definition.

## **292 Chapter 1: interpretation etc.**

- (1) In this Chapter—
  - “ancillary land”, in relation to a building, means any land intended to be occupied and enjoyed together with the building,
  - “appropriate national authority” means—
    - (a) in relation to England, the Secretary of State, and
    - (b) in relation to Wales, the Welsh Ministers,
  - “building” includes part of a building,

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“modifications” includes omissions,

“prescribed” means prescribed by regulations made by the appropriate national authority,

“purchase”, in relation to a residential property, means acquire, or agree to acquire, by way of purchase a relevant interest in the property,

“purchaser”, in relation to a residential property, means a person who has—

- (a) made an offer to purchase it, or
- (b) purchased it,

“relevant interest”, in relation to a residential property, means—

- (a) the freehold interest in the property,
- (b) such leasehold interests as may be prescribed, or
- (c) an option to acquire the freehold interest or any such prescribed leasehold interest,

“residential property” means a building which is, or is intended to be, occupied as a separate dwelling (including one that is being designed or constructed or is to be constructed) and includes any ancillary land, but it does not include a newly converted residential property,

“sell”, in relation to a residential property, means—

- (a) dispose, or agree to dispose, by way of sale of a relevant interest in the property, or
- (b) offer such an interest for sale,

“sustainability”, in relation to residential properties, is to be read in accordance with section 280.

- (2) Any reference in subsection (1) or (5) to the disposal of a relevant interest includes a reference to the creation of such an interest.
- (3) For the purposes of this Chapter a person who is selling a residential property is to be treated as selling it as a new property if, at the time in question—
  - (a) the property is being designed,
  - (b) the property is being constructed, or
  - (c) the construction of the property has been finished but the property has never been occupied as a dwelling.
- (4) For the purposes of this Chapter, the construction of a residential property is to be treated as finished if the property—
  - (a) is wind and weather proof,
  - (b) is safe and sanitary for any occupiers or visitors,
  - (c) has facilities for the supply of space heating, hot and cold water and electricity,
  - (d) has washing and drainage facilities, and
  - (e) meets any other prescribed requirements.
- (5) For the purposes of this Chapter a sale is agreed—
  - (a) in the case of a legally binding agreement to dispose by way of sale, when the agreement is entered into, and
  - (b) in the absence of such an agreement, when the disposal is made.
- (6) Any requirement imposed by virtue of section 279 to supply a certificate or statement—
  - (a) may be met by supplying a copy of the certificate or statement, and

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- (b) may be met by supplying the certificate or statement (or copy) in electronic form if the intended recipient consents to receiving it in that form.
- (7) For the purposes of this Chapter a certificate, statement or copy supplied in electronic form is only to be treated as being received if the recipient is readily able (using equipment available to the recipient)—
- (a) to view the document in a form that is legible, and
- (b) to produce hard copies of it in a legible form.
- (8) The sale or purchase of a residential property is not invalid merely because of a failure to comply with any requirement imposed by virtue of this Chapter.

### 293 Index of defined expressions: Chapter 1

In this Chapter, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision</i>
Agreed (in relation to a sale)	Section 292(5)
Ancillary land	Section 292(1)
Appropriate national authority	Section 292(1)
Building	Section 292(1)
Enforcement authority	Section 283(1)
Finished (in relation to construction of residential property)	Section 292(4)
Interim certificate	Section 279(11)
Modifications	Section 292(1)
Newly converted	Section 291(3)
Prescribed	Section 292(1)
Purchase	Section 292(1)
Purchaser	Section 292(1)
Relevant interest	Section 292(1)
Residential property	Section 292(1)
Sell	Section 292(1)
Sell as new property	Section 292(3)
Supply (in relation to certificates or statements)	Section 292(6) and (7)
Sustainability	Section 280
Sustainability certificate	Section 279(11)



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## CHAPTER 2

### LANDLORD AND TENANT MATTERS

#### *Tenant empowerment*

PROSPECTIVE

#### **294 Ballots before certain disposals to private landlords**

(1) Schedule 3A to the Housing Act 1985 (c. 68) (consultation before disposal to private sector landlord) is amended as follows.

(2) After paragraph 3(3) insert—

“(4) When a notice has been served under sub-paragraph (3) the authority shall arrange a ballot of the tenants in accordance with sub-paragraph (5) to establish whether or not the tenants wish the disposal to proceed.

(5) The authority shall—

- (a) make arrangements for such person as they consider appropriate to conduct the ballot in such manner as that person considers appropriate; or
- (b) conduct the ballot themselves.

(6) After the ballot has been held the authority shall serve a notice on each tenant (whether or not he voted in the ballot) informing him—

- (a) of the ballot result; and
- (b) if the authority intend to proceed with the disposal, that he may within 28 days after the service of the notice make representations to the Secretary of State or (as the case may be) the Welsh Ministers.”

(3) In paragraph 5(1)—

- (a) for “it appears to him” substitute “ the result of a ballot arranged under paragraph 3(4) shows ”, and
- (b) after “relates” insert “ who voted in the ballot ”.

(4) After paragraph 5 insert—

#### **5A “Guidance**

- (1) The appropriate person must give guidance to local authorities about complying with the requirements of paragraph 3 as to consultation.
- (2) The appropriate person must publish guidance given under this paragraph as soon as reasonably practicable after giving it.
- (3) Local authorities must, in complying with the requirements of paragraph 3 as to consultation, have regard to the guidance for the time being in force under this paragraph.
- (4) The appropriate person may revoke guidance given under this paragraph.



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- (5) References in this paragraph to giving guidance include references to giving guidance by varying existing guidance.
- (6) In this paragraph “the appropriate person” means—
- (a) in relation to England, the Secretary of State, and
  - (b) in relation to Wales, the Welsh Ministers.”
- (5) Subsections (2) to (4) do not apply to consultations begun before the coming into force of those subsections.
- (6) For the purposes of subsection (5) a consultation has begun when a notice has been served under paragraph 3(2) of Schedule 3A to the Act of 1985.

VALID FROM 01/12/2008

#### **295 Management agreements: extending requirements to co-operate**

- (1) Section 27AB of the Housing Act 1985 (c. 68) (management agreements with tenant management organisations) is amended as follows.
- (2) In subsection (2), after paragraph (b), insert—
- “(ba) to provide to the organisation such information or descriptions of information, in connection with the proposal, as may be prescribed in the regulations;
  - (bb) to take, in circumstances prescribed in the regulations, such other steps as may be so prescribed to co-operate with the organisation in connection with the proposal;”.
- (3) In subsection (4)—
- (a) in paragraph (a) after “authority” insert “ or the person making the regulations ”,
  - (b) after paragraph (b), insert—
    - “(ba) setting time-limits for the carrying out of requirements under the regulations;”, and
  - (c) in paragraph (c) after “guidance” insert “ or directions ”.

VALID FROM 01/12/2008

#### **296 Requirements to co-operate in relation to certain disposals of land**

After section 34 of the Housing Act 1985 (c. 68) (consents in relation to disposals of land held for housing purposes) insert—

##### **“34A Requirements to co-operate in relation to certain disposals**

- (1) The appropriate person may make regulations for imposing requirements on a local housing authority in any case where a tenant group serves written notice on the authority proposing that the authority should dispose

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of particular land held by them for the purposes of this Part, or a particular description of such land, to a relevant housing provider.

- (2) The regulations may make provision requiring the authority—
  - (a) to provide, or finance the provision of, such office accommodation and facilities, and such training, as the tenant group reasonably requires for the purpose of pursuing the proposal;
  - (b) to arrange for such feasibility studies with respect to the proposal as may be determined by or under the regulations to be conducted by such persons as may be so determined;
  - (c) to provide to the tenant group such information or descriptions of information, in connection with the proposal, as may be prescribed in the regulations;
  - (d) to take, in circumstances prescribed in the regulations, such other steps as may be so prescribed to co-operate with the tenant group in connection with the proposal;
  - (e) to arrange for such ballots or polls with respect to the proposal as may be determined by or under the regulations to be conducted by such persons as may be so determined; and
  - (f) in such circumstances as may be prescribed by the regulations, to enter into an agreement for the disposal.
- (3) The regulations may make provision—
  - (a) for determining the houses and other land to which the disposal should relate, and the amounts which should be paid in respect of the disposal;
  - (b) requiring the agreement for the disposal to be in such form as may be approved by the appropriate person and to contain such provisions as may be prescribed by the regulations.
- (4) The regulations may make such procedural, incidental, supplementary and transitional provisions as may appear to the appropriate person necessary or expedient, and may in particular make provision—
  - (a) for particular questions arising under the regulations to be determined by the authority or the appropriate person;
  - (b) setting time-limits for the carrying out of requirements under the regulations;
  - (c) requiring any person exercising functions under the regulations to act in accordance with any guidance or directions given by the appropriate person.
- (5) Nothing in subsections (2) to (4) is to be taken as prejudicing the generality of subsection (1).
- (6) Any regulations which provide for the appropriate person to approve a proposal for a local housing authority to dispose of land must ensure that the authority has the opportunity to make representations to the appropriate person before the appropriate person decides whether or not to approve the proposal.
- (7) This section does not affect any requirement under section 32 or 33 for the consent of the Secretary of State or the Welsh Ministers.

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(8) Regulations 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) are to be made by statutory instrument which—
  - (i) in the case of an instrument made by the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament; and
  - (ii) in the case of an instrument made by the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(9) In this section—

“appropriate person” means—

- (a) in relation to England, the Secretary of State; and
- (b) in relation to Wales, the Welsh Ministers;

“relevant housing provider” means—

- (a) in relation to England, a registered provider of social housing; and
- (b) in relation to Wales, a registered social landlord; and

“tenant group” means a body or other person which satisfies such conditions as may be determined by or under the regulations.”

VALID FROM 01/12/2008

*Family intervention tenancies*

VALID FROM 01/01/2009

**297 Family intervention tenancies: general**

- (1) In Schedule 1 to the Housing Act 1985 (c. 68) (tenancies which are not secure tenancies) after paragraph 4 insert—

**“Family intervention tenancies**

- 4ZA (1) A tenancy is not a secure tenancy if it is a family intervention tenancy.
- (2) But a tenancy mentioned in sub-paragraph (1) becomes a secure tenancy if the landlord notifies the tenant that it is to be regarded as a secure tenancy.
- (3) In this paragraph “a family intervention tenancy” means, subject to sub-paragraph (4), a tenancy granted by a local housing authority in respect of a dwelling-house—
- (a) to a person (“the new tenant”) against whom a possession order under section 84 in respect of another dwelling-house—

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- (i) has been made, in relation to a secure tenancy, on ground 2 or 2A of Part 1 of Schedule 2;
    - (ii) could, in the opinion of the authority, have been so made in relation to such a tenancy; or
    - (iii) could, in the opinion of the authority, have been so made if the person had had such a tenancy; and
  - (b) for the purposes of the provision of behaviour support services.
- (4) A tenancy is not a family intervention tenancy for the purposes of this paragraph if the local housing authority has failed to serve a notice under sub-paragraph (5) on the new tenant before the new tenant entered into the tenancy.
- (5) A notice under this sub-paragraph is a notice stating—
- (a) the reasons for offering the tenancy to the new tenant;
  - (b) the dwelling-house in respect of which the tenancy is to be granted;
  - (c) the other main terms of the tenancy (including any requirements on the new tenant in respect of behaviour support services);
  - (d) the security of tenure available under the tenancy and any loss of security of tenure which is likely to result from the new tenant agreeing to enter into the tenancy;
  - (e) that the new tenant is not obliged to enter into the tenancy or (unless otherwise required to do so) to surrender any existing tenancy or possession of a dwelling-house;
  - (f) any likely action by the local housing authority if the new tenant does not enter into the tenancy or surrender any existing tenancy or possession of a dwelling-house.
- (6) The appropriate national authority may by regulations made by statutory instrument amend sub-paragraph (5).
- (7) A notice under sub-paragraph (5) must contain advice to the new tenant as to how the new tenant may be able to obtain assistance in relation to the notice.
- (8) The appropriate national authority may by regulations made by statutory instrument make provision about the type of advice to be provided in such notices.
- (9) Regulations under this paragraph may contain such transitional, transitory or saving provision as the appropriate national authority considers appropriate.
- (10) A statutory instrument containing (whether alone or with other provision) regulations under this paragraph which amend or repeal any of paragraphs (a) to (f) of sub-paragraph (5) may not be made—
- (a) by the Secretary of State unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament; and

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(b) by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

(11) Subject to this, a statutory instrument containing regulations made under this paragraph—

(a) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament; and

(b) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(12) In this paragraph—

“appropriate national authority”—

(a) in relation to England, means the Secretary of State; and

(b) in relation to Wales, means the Welsh Ministers;

“behaviour support agreement” means an agreement in writing about behaviour and the provision of support services made between the new tenant and the local housing authority concerned (or between persons who include those persons);

“behaviour support services” means relevant support services to be provided by any person to—

(a) the new tenant; or

(b) any person who is to reside with the new tenant;

for the purpose of addressing the kind of behaviour which led to the new tenant falling within sub-paragraph (3)(a);

“family intervention tenancy” has the meaning given by sub-paragraph (3);

“the new tenant” has the meaning given by sub-paragraph (3)(a);

“relevant support services” means support services of a kind identified in a behaviour support agreement and designed to meet such needs of the recipient as are identified in the agreement.”

(2) In Part 1 of Schedule 1 to the Housing Act 1988 (c. 50) (tenancies which cannot be assured tenancies) after paragraph 12 insert—

**“Family intervention tenancies**

12ZA (1) A family intervention tenancy.

(2) But a family intervention tenancy becomes an assured tenancy if the landlord notifies the tenant that it is to be regarded as an assured tenancy.

(3) In this paragraph “a family intervention tenancy” means, subject to sub-paragraph (4), a tenancy granted by a registered provider of social housing or a registered social landlord (“the landlord”) in respect of a dwelling-house—

(a) to a person (“the new tenant”) against whom a possession order under section 7 in respect of another dwelling-house—

(i) has been made, in relation to an assured tenancy, on ground 14 or 14A of Part 2 of Schedule 2;

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- (ii) could, in the opinion of the landlord, have been so made in relation to such a tenancy; or
    - (iii) could, in the opinion of the landlord, have been so made if the person had had such a tenancy; and
  - (b) for the purposes of the provision of behaviour support services.
- (4) A tenancy is not a family intervention tenancy for the purposes of this paragraph if the landlord has failed to serve a notice under sub-paragraph (5) on the new tenant before the new tenant entered into the tenancy.
- (5) A notice under this sub-paragraph is a notice stating—
- (a) the reasons for offering the tenancy to the new tenant;
  - (b) the dwelling-house in respect of which the tenancy is to be granted;
  - (c) the other main terms of the tenancy (including any requirements on the new tenant in respect of behaviour support services);
  - (d) the security of tenure available under the tenancy and any loss of security of tenure which is likely to result from the new tenant agreeing to enter into the tenancy;
  - (e) that the new tenant is not obliged to enter into the tenancy or (unless otherwise required to do so) to surrender any existing tenancy or possession of a dwelling-house;
  - (f) any likely action by the landlord if the new tenant does not enter into the tenancy or surrender any existing tenancy or possession of a dwelling-house.
- (6) The appropriate national authority may by regulations made by statutory instrument amend sub-paragraph (5).
- (7) A notice under sub-paragraph (5) must contain advice to the new tenant as to how the new tenant may be able to obtain assistance in relation to the notice.
- (8) The appropriate national authority may by regulations made by statutory instrument make provision about the type of advice to be provided in such notices.
- (9) Regulations under this paragraph may contain such transitional, transitory or saving provision as the appropriate national authority considers appropriate.
- (10) A statutory instrument containing (whether alone or with other provision) regulations under this paragraph which amend or repeal any of paragraphs (a) to (f) of sub-paragraph (5) may not be made—
- (a) by the Secretary of State unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament; and
  - (b) by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

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(11) Subject to this, a statutory instrument containing regulations made under this paragraph—

- (a) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament; and
- (b) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(12) In this paragraph—

“appropriate national authority”—

- (a) in relation to England, means the Secretary of State; and
- (b) in relation to Wales, means the Welsh Ministers;

“behaviour support agreement” means an agreement in writing about behaviour and the provision of support services made between the new tenant, the landlord and the local housing authority for the district in which the dwelling-house which is to be subject to the new tenancy is situated (or between persons who include those persons);

“behaviour support services” means relevant support services to be provided by any person to—

- (a) the new tenant; or
- (b) any person who is to reside with the new tenant;

for the purpose of addressing the kind of behaviour which led to the new tenant falling within sub-paragraph (3)(a);

“family intervention tenancy” has the meaning given by sub-paragraph (3);

“landlord” has the meaning given by sub-paragraph (3);

“local housing authority” (and the reference to its district) has the same meaning as in the Housing Act 1985 (see sections 1 and 2(1) of that Act);

“the new tenant” has the meaning given by sub-paragraph (3)(a);

“registered social landlord” has the same meaning as in Part 1 of the Housing Act 1996;

“relevant support services” means support services of a kind identified in a behaviour support agreement and designed to meet such needs of the recipient as are identified in the agreement.”

- (3) This section does not apply to any tenancy granted before the coming into force of this section.

## 298 Certain family intervention tenancies: termination

(1) A local housing authority must not serve a notice to quit on the tenant of a family intervention tenancy unless—

- (a) the authority has served a notice under subsection (2) on the tenant, and
- (b) either—

- (i) the tenant has not requested a review of the kind mentioned in subsection (2)(e) within the period of 14 days beginning with the service of the notice,



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- (ii) any such request has been withdrawn, or
  - (iii) the authority has served a notice on the tenant under subsection (4) (b).
- (2) A notice under this subsection is a notice in writing stating—
- (a) that the authority has decided to serve a notice to quit on the tenant,
  - (b) the effect of serving a notice to quit,
  - (c) the reasons for the authority's decision,
  - (d) when the authority is intending to serve the notice to quit, and
  - (e) that the tenant has the right to request, within the period of 14 days beginning with the service of the notice under this subsection, a review of the authority's decision.
- (3) Subsection (4) applies if the tenant requests a review of the kind mentioned in subsection (2)(e) within the period of 14 days beginning with the service of the notice under subsection (2) and the request is not withdrawn.
- (4) The local housing authority must—
- (a) review its decision to serve a notice to quit on the tenant, and
  - (b) serve a notice on the tenant informing the tenant of the decision of the authority on the review and the reasons for it.
- (5) The appropriate national authority may by regulations make provision about the procedure to be followed in connection with such a review.
- (6) Regulations under subsection (5) may, in particular—
- (a) specify the description of person who is to make the decision on a review,
  - (b) specify the circumstances in which the tenant is entitled to an oral hearing on a review,
  - (c) specify whether, and by whom, the tenant is entitled to be represented at such a hearing.
- (7) A notice under subsection (2), and a notice to quit, served by a local housing authority in respect of a family intervention tenancy must contain advice to the tenant as to how the tenant may be able to obtain assistance in relation to the notice.
- (8) The appropriate national authority may by regulations make provision about the type of advice to be provided in such notices.
- (9) In this section—
- “appropriate national authority” means—
    - (a) in relation to England, the Secretary of State, and
    - (b) in relation to Wales, the Welsh Ministers,
  - “family intervention tenancy” has the same meaning as in paragraph 4ZA of Schedule 1 to the Housing Act 1985 (c. 68),
- and other expressions used in this section and in paragraph 4ZA of that Schedule have the same meaning as in that paragraph.
- (10) This section does not apply to any tenancy granted before the coming into force of this section.



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### Commencement Information

**1107** S. 298(5)(6)(8)(9) in force at 1.12.2008 for specified purposes by [S.I. 2008/3068](#), [art. 4\(3\)](#) (with [arts. 6-13](#))

VALID FROM 01/12/2008

### *Possession orders*

#### **299 Possession orders relating to certain tenancies**

Schedule 11 (which makes provision about possession orders and their effect on secure tenancies, assured tenancies, introductory tenancies and demoted tenancies including provision about the status of existing occupiers) has effect.

VALID FROM 01/12/2008

### *Leasehold enfranchisement*

VALID FROM 07/09/2009

#### **300 Right to acquire freehold: abolition of low rent test**

- (1) In section 1(1) of the Leasehold Reform Act 1967 (c. 88) (right to enfranchisement or extension of long leaseholds)—
- (a) in paragraph (a) omit “at a low rent”,
  - (b) before “and” at the end of paragraph (a) insert—
    - “(aa) in the case of a right to acquire an extended lease, his long tenancy is a tenancy at a low rent;”, and
  - (c) in paragraph (b) after “he has” insert “—
    - (i) in the case of a right to acquire the freehold, been tenant of the house under a long tenancy for the last two years; and
    - (ii) in the case of a right to acquire an extended lease,”.
- (2) In that Act—
- (a) in section 1(1A) (excluded tenancies)—
    - (i) for “subsection (1)(a) and (b)” substitute “ subsection (1) ”, and
    - (ii) omit “at a low rent”, and
  - (b) omit—
    - (i) section 1A(2) (certain deemed low rent tenancies),
    - (ii) section 1AA (additional right to enfranchisement where tenancy not low rent tenancy), and

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(iii) section 4A (alternative rent limits for purposes of section 1A(2)).

### 301 Shared ownership leases: protection for certain leases

(1) After paragraph 3 of Schedule 4A to the Leasehold Reform Act 1967 (exclusion from enfranchisement for certain shared ownership leases granted by housing associations) insert—

“3A (1) A lease which does not fall within paragraph 3 is excluded from the operation of this Part of this Act if the lease—

- (a) meets the conditions mentioned in sub-paragraph (2);
- (b) meets any other prescribed conditions; and
- (c) does not fall within any prescribed exemptions.

(2) The conditions referred to in sub-paragraph (1)(a) are that the lease—

- (a) was granted for a term of 99 years or more and is not (and cannot become) terminable except in pursuance of a provision for re-entry or forfeiture;
- (b) was granted at a premium, calculated by reference to the value of the house or the cost of providing it, of not less than 25 per cent, or such other percentage as may be prescribed, of the figure by reference to which it was calculated;
- (c) provides for the tenant to acquire additional shares in the house on terms specified in the lease and complying with such requirements as may be prescribed;
- (d) does not restrict the tenant's powers to mortgage or charge his interest in the house;
- (e) if it enables the landlord to require payment for outstanding shares in the house, does so only in such circumstances as may be prescribed;
- (f) provides for the tenant to acquire the landlord's interest on terms specified in the lease and complying with such requirements as may be prescribed; and
- (g) states the landlord's opinion that by virtue of this paragraph the lease is excluded from the operation of this Part of this Act.

(3) In any proceedings the court may, if it considers that it is just and equitable to do so, treat a lease as meeting the conditions mentioned in sub-paragraph (2) despite the fact that the condition specified in paragraph (g) of that sub-paragraph is not met.

Certain leases for the elderly ”.

(2) For the italic heading before paragraph 3 of that Schedule to that Act substitute— “  
Certain housing association and other leases ”.

#### Commencement Information

**I108** S. 301 in force at 1.12.2008 for specified purposes by [S.I. 2008/3068](#), [art. 4\(5\)](#) (with [arts. 6-13](#))

**Status:** Point in time view as at 22/09/2008. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Housing and Regeneration Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

### 302 Shared ownership leases: protection for hard to replace houses

- (1) After paragraph 4 of Schedule 4A to the Leasehold Reform Act 1967 (c. 88) (exclusion from enfranchisement for certain shared ownership leases for the elderly) insert—

#### “Certain leases in protected areas

- 4A (1) A lease which does not fall within paragraph 3 or 3A is excluded from the operation of this Part of this Act if—
- (a) the lease meets the conditions mentioned in sub-paragraph (2);
  - (b) any provision in the lease for the tenant to acquire the landlord's interest provides for the tenant to acquire the interest on terms specified in the lease and complying with such requirements as may be prescribed;
  - (c) the lease meets any other prescribed conditions;
  - (d) the lease does not fall within any prescribed exemptions; and
  - (e) the house is in a protected area.
- (2) The conditions referred to in sub-paragraph (1)(a) are that the lease—
- (a) was granted for a term of 99 years or more and is not (and cannot become) terminable except in pursuance of a provision for re-entry or forfeiture;
  - (b) was granted at a premium, calculated by reference to the value of the house or the cost of providing it, of not less than 25 per cent, or such other percentage as may be prescribed, of the figure by reference to which it was calculated;
  - (c) provides for the tenant to acquire additional shares in the house on terms specified in the lease and complying with such requirements as may be prescribed;
  - (d) does not restrict the tenant's powers to mortgage or charge his interest in the house;
  - (e) if it enables the landlord to require payment for outstanding shares in the house, does so only in such circumstances as may be prescribed; and
  - (f) states the landlord's opinion that by virtue of this paragraph the lease is excluded from the operation of this Part of this Act.
- (3) The appropriate national authority may by order made by statutory instrument designate an area as a protected area if it considers it appropriate to do so to support the provision in the area of houses, or descriptions of houses, which are available for occupation in accordance with shared ownership arrangements.
- (4) The appropriate national authority must publish the criteria for the time being in force which are to be taken into account by it in deciding whether to designate an area as a protected area.
- (5) Before making an order under sub-paragraph (3) the appropriate national authority must take such steps as it considers to be reasonable to consult those likely to be affected by the order.

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- (6) In any proceedings the court may, if it considers that it is just and equitable to do so, treat a lease as meeting the conditions mentioned in sub-paragraph (2) despite the fact that the condition mentioned in paragraph (f) of that sub-paragraph is not met.
- (7) An order under this paragraph may contain such incidental, supplementary, transitory, transitional or saving provisions as the appropriate national authority considers appropriate.
- (8) In this paragraph “shared ownership arrangements” has the same meaning as in section 70 of the Housing and Regeneration Act 2008.
- (9) An instrument containing—
- (a) an order of the Secretary of State under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) an order of the Welsh Ministers under this paragraph is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- (2) In paragraph 5 of that Schedule to that Act (power to prescribe matters by regulations)
- (a) in sub-paragraph (1) for “Secretary of State” substitute “ appropriate national authority ”, and
  - (b) in sub-paragraph (2)—
    - (i) in paragraph (b) for “Secretary of State” substitute “ appropriate national authority ”,
    - (ii) after “which” insert “ , in the case of regulations made by the Secretary of State,” and
    - (iii) after “Parliament” insert “ and, in the case of regulations made by the Welsh Ministers, shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales ”.
- (3) After paragraph 6 of that Schedule to that Act (interpretation) insert—
- “7 In this Schedule “appropriate national authority” means—
- (a) in relation to England, the Secretary of State; and
  - (b) in relation to Wales, the Welsh Ministers.”

#### Commencement Information

**1109** S. 302 in force at 1.12.2008 for specified purposes by [S.I. 2008/3068](#), [art. 4\(5\)](#) (with [arts. 6-13](#))

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### *Service charges*

#### **303 Service charges: provision of information and designated accounts**

Schedule 12 (which relates to the provision of information about service charges and to service charge funds) has effect.

#### **Commencement Information**

**I110** S. 303 in force at 1.12.2008 for specified purposes by S.I. 2008/3068, art. 4(6)(7) (with arts. 6-13)

### *Right to buy etc: miscellaneous*

#### **304 Exclusion of the right to buy: possession orders**

(1) For section 121(1) of the Housing Act 1985 (c. 68) (circumstances in which the right to buy cannot be exercised) substitute—

“(1) The right to buy cannot be exercised if the tenant is subject to an order of the court for possession of the dwelling-house.”

(2) Subsection (1) does not apply where the tenant has served a notice under section 122 of that Act (tenant's notice claiming to exercise right to buy) before the coming into force of subsection (1) above and the notice is not withdrawn.

#### **305 Exclusion of the right to buy: demolition notices**

Schedule 13 (which makes provision about demolition notices) has effect.

#### **306 Review of determination of value**

(1) The Housing Act 1985 is amended as follows.

(2) After section 128 (determination of value by district valuer) insert—

##### **“128A Determination of value: review notices**

(1) Subsection (2) applies if the value of a dwelling-house has been determined or re-determined under section 128 (“the section 128 determination”).

(2) The district valuer may—

(a) on the valuer's own initiative; or

(b) at the request of the landlord or the tenant of the dwelling-house;

serve on the landlord and the tenant a notice of intention to review the section 128 determination giving reasons for the intention (“a review notice”).

(3) A request under subsection (2)(b) must—

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- (a) be in writing;
  - (b) state the reason it is being made; and
  - (c) confirm that the landlord has not made to the tenant a grant of the kind mentioned in section 138(1) in respect of the claim by the tenant to exercise the right to buy in respect of the dwelling-house.
- (4) The landlord or the tenant may not make a request under subsection (2)(b) after the end of the period of 28 days beginning with the section 128(5) service date.
- (5) The district valuer must, before the end of the period of 14 days beginning with the day on which such a request is made, serve on the landlord and the tenant—
- (a) a review notice; or
  - (b) a notice stating—
    - (i) that the request was made;
    - (ii) that the district valuer has decided not to comply with it; and
    - (iii) the reasons for the decision.
- (6) A review notice may not be served after the end of the period of 42 days beginning with the section 128(5) service date.
- (7) A review notice may not be served in relation to a determination which is subject to a re-determination required in pursuance of section 128(3) (but this does not prevent the service of a review notice in relation to the re-determination).
- (8) A review notice may not be served if the landlord has made a grant of the kind mentioned in subsection (3)(c).
- (9) A person who makes a request under subsection (2)(b) must inform the district valuer if a grant of the kind mentioned in subsection (3)(c) is made during the period of 14 days mentioned in subsection (5).
- (10) Subsection (11) applies if the district valuer is considering whether to serve a review notice on the valuer's own initiative.
- (11) The landlord or the tenant must, if requested by the district valuer, inform the valuer whether a grant of the kind mentioned in subsection (3)(c) has been made.
- (12) In this section and section 128B—
- “a review notice” has the meaning given by subsection (2);
  - “the section 128 determination” has the meaning given by subsection (1);
  - “the section 128(5) service date” means the day on which the landlord serves a notice on the tenant under section 128(5) in relation to the section 128 determination.

### **128B Review of determination of value**

- (1) The district valuer must review the section 128 determination as soon as reasonably practicable after serving a review notice.

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- (2) Subsection (3) applies if, following the review, the district valuer decides that neither of the withdrawal conditions is met.
- (3) The district valuer must, as soon as reasonably practicable, serve on the landlord and the tenant a notice stating—
  - (a) the decision;
  - (b) the reasons for it; and
  - (c) that no further determination or (as the case may be) re-determination is to be made under this section.
- (4) Subsection (5) applies if, following the review, the district valuer decides that either withdrawal condition is met or both are met.
- (5) The district valuer must—
  - (a) as soon as reasonably practicable, withdraw the section 128 determination by serving a further determination notice on the landlord and the tenant; and
  - (b) make a further determination or (as the case may be) re-determination of the value of the dwelling-house at the relevant time.
- (6) Before making such a determination or re-determination, the district valuer must consider any representation made to the valuer by the landlord or the tenant before the end of the period of 14 days beginning with the day on which the further determination notice was served.
- (7) As soon as practicable after such a determination or re-determination has been made, the landlord must serve on the tenant a determination effect notice.
- (8) A determination effect notice is a notice stating—
  - (a) the effect of the further determination or (as the case may be) re-determination; and
  - (b) the matters mentioned in section 125(2) and (3).
- (9) For the purposes of this section, the withdrawal conditions are—
  - (a) that a significant error was made in the section 128 determination; or
  - (b) that the district valuer did not comply with section 128(4) in relation to the section 128 determination.
- (10) This section does not apply to a determination which is subject to a re-determination required in pursuance of section 128(3) (but this does not prevent this section applying to the re-determination).
- (11) In this section—

“a further determination notice” is a notice stating—

  - (a) that the section 128 determination is withdrawn;
  - (b) the reasons for the withdrawal; and
  - (c) that a further determination or (as the case may be) re-determination of the value of the dwelling-house at the relevant time will be made;

“significant error”, in relation to the section 128 determination, means an error of fact, or a number of such errors, made in the section 128 determination as a result of which the value of the dwelling-house



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determined or (as the case may be) re-determined was at least 5% more or less than it would otherwise have been.”

- (3) In section 125D(2) (period for serving tenant's notice of intention), in paragraph (b), for the words from “, the service” to the end substitute “ (or where the landlord exercises his right to have the value of the dwelling-house re-determined by the district valuer), the relevant event ”.
- (4) After section 125D(2) (period for serving tenant's notice of intention) insert—
- “(3) In subsection (2)(b) “the relevant event” means—
- (a) where a review notice was capable of being served under section 128A in relation to the determination or re-determination but no such notice was served during the period permitted by that section, the service of the notice under section 128(5) stating the effect of the determination or re-determination,
  - (b) where a review notice was served under section 128A in relation to the determination or re-determination and section 128B(3) applied, the service on the tenant of the notice under section 128B(3), and
  - (c) where a review notice was served under section 128A in relation to the determination or re-determination and section 128B(5) applied, the service of the notice under section 128B(7).”
- (5) In section 128(2) (power of tenant to require determination or re-determination of value) omit “, or as the case may be re-determined,”.
- (6) In section 128(5) (notice of determination or re-determination) for the words from “stating” to the end substitute “stating—
- (a) the effect of the determination or re-determination,
  - (b) the matters mentioned in section 125(2) and (3) (terms for exercise of right to buy), and
  - (c) the effect of section 128A(2) (right of district valuer to serve review notice and of landlord and tenant to request that such a notice is served).”
- (7) After section 128(5) (notice of determination or redetermination) insert—
- “(5A) The landlord shall, as soon as practicable, serve a copy of the notice on the district valuer if—
- (a) the district valuer requests it; or
  - (b) the landlord requests a review of the determination or re-determination under section 128A(2)(b).
- (5B) The tenant shall, as soon as practicable, serve a copy of the notice on the district valuer if the tenant requests a review of the determination or re-determination under section 128A(2)(b).
- (5C) For the purposes of subsections (5A) and (5B) it does not matter whether the request in question was made before, on or after the service of the notice in accordance with subsection (5).”
- (8) In section 136(2) (period for serving notice of intention where there is a change of secure tenant), in paragraph (b), for the words from “, the service” to the end substitute “ (or where the right to have the value of the dwelling-house re-determined by the district valuer is or has been exercised by the landlord), the relevant event ”.

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(9) After section 136(2) (period for serving notice of intention where there is a change of secure tenant) insert—

“(2A) In subsection (2)(b) “the relevant event” means—

- (a) where a review notice was capable of being served under section 128A in relation to the determination or re-determination but no such notice was served during the period permitted by that section, the service of the notice under section 128(5) stating the effect of the determination or re-determination,
- (b) where a review notice was served under section 128A in relation to the determination or re-determination and section 128B(3) applied, the service on the new tenant or (as the case may be) the former tenant of the notice under section 128B(3), and
- (c) where a review notice was served under section 128A in relation to the determination or re-determination and section 128B(5) applied, the service of the notice under section 128B(7).”

(10) In section 140(4) (circumstances in which landlord's first notice to complete may not be served), after paragraph (a), insert—

- “(aa) a review notice (within the meaning of section 128A) has been served in relation to such a determination or re-determination, section 128B applies and the district valuer has neither—
- (i) served a notice under section 128B(3) (refusal to make further determination), nor
  - (ii) served a notice under section 128B(7) (a determination effect notice),
- (ab) no such review notice has been served but such a notice may still be served under section 128A,”.

(11) In section 181(1) (jurisdiction of county court) after “128” insert “, 128B”.

(12) This section does not apply to any determination or re-determination under section 128 of the Housing Act 1985 (c. 68) which was required before the coming into force of this section.

### **307 Approved lending institutions**

(1) In section 156 of the Housing Act 1985 (liability to repay is a charge on the premises)

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- (a) in subsection (4) for “and any body specified, or of a class or description specified, in an order made by the Secretary of State” substitute— “ an authorised mortgage lender. ”, and
  - (b) omit subsections (5) and (6).

(2) In section 622(1) of that Act (minor definitions: general), after the definition of “authorised insurer”, insert—

““authorised mortgage lender” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to enter into a regulated mortgage contract as lender,

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- (b) an EEA firm of the kind mentioned in paragraph (5)(b) of Schedule 3 to that Act who has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to enter into a regulated mortgage contract as lender, or
  - (c) a Treaty firm within the meaning of Schedule 4 to that Act who has permission under paragraph 4 of that Schedule (as a result of qualifying for authorisation under paragraph 2 of that Schedule) to enter into a regulated mortgage contract as lender;”.
- (3) In section 622(2) of that Act (interpretation of “authorised deposit taker” and “authorised insurer”) for “and “authorised insurer”” substitute “ “ , “authorised insurer”and “authorised mortgage lender” ”.
- (4) In section 36(4) of that Act (priority of charges: approved lending institutions) for the words from “and any body” to the end substitute— “ an authorised mortgage lender. ”
- (5) In section 151B(5) of that Act (priority of charges: approved lending institutions) for the words from “and any body” to the end substitute— “ an authorised mortgage lender. ”
- (6) In paragraph 2(5) of Schedule 11 to the Housing Act 1988 (c. 50) (priority of charges: approved lending institutions) for paragraph (e) substitute—
- “ (e) an authorised mortgage lender (within the meaning of the Housing Act 1985 (see section 622 of that Act)). ”
- (7) In section 12(5) of the Housing Act 1996 (c. 52) (priority of charges: approved lending institutions) for paragraph (c) substitute—
- “ (c) an authorised mortgage lender (within the meaning of the Housing Act 1985 (see section 622 of that Act)). ”

VALID FROM 01/12/2008

### 308 Former right to buy and other flats: service charge loans

- (1) In section 450C(4) of the Housing Act 1985 (c. 68) (loans in respect of service charges on former right to buy flats and other housing authority flats)—
- (a) in paragraph (a) for “as regards the rate of interest payable on” substitute “ in a case where a rate of interest is payable on some or all of ”, and
  - (b) after paragraph (a) insert—
    - “(aa) in a case where amounts calculated by reference to the market value of the flat are payable instead of (or as well as) interest, make provision about calculating the market value of the flat (including imposing charges for the services of district valuers);”.
- (2) The powers conferred by section 450C(3) of that Act include, in relation to loans made before the coming into force of subsection (1) above, the power to prescribe terms, or (as the case may be) make provision, of the kind envisaged by subsection (1) (b) above.

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- (3) But any such terms or provision are not to apply to any particular loan made before the coming into force of subsection (1) above unless the landlord and tenant agree that they are to apply in that case.

VALID FROM 01/12/2008

### 309 Former right to buy and other flats: equity share purchases

After section 450C of the Housing Act 1985 (c. 68) (loans in respect of service charges) insert—

*“Other financial assistance in respect of service charges*

#### **450D Purchase of equitable interests**

- (1) The appropriate national authority may by regulations provide that where—
- (a) a housing authority is the landlord of a flat under a long lease granted or assigned by the housing authority or another housing authority, and
  - (b) the tenant is liable under the terms of the lease to pay service charges in respect of repairs or improvements (whether to the flat, the building in which it is situated or any other building or land),
- the landlord may, with the agreement of the tenant and in such circumstances as may be prescribed, purchase an equitable interest in the flat for the purpose of assisting the tenant to meet some or all of the service charge payments.
- (2) Regulations under this section shall ensure that the purchase price is to be met by the landlord reducing or (as the case may be) cancelling the service charge payable to the landlord by the tenant to such extent as corresponds to the amount concerned.
- (3) Regulations under this section may, in particular—
- (a) provide that the power to purchase an equitable interest does not arise in the case of particular descriptions of landlord;
  - (b) make provision about calculating the purchase price (including provision about any discounts and about imposing charges for the services of district valuers);
  - (c) provide for—
    - (i) the tenant to be liable for the administrative expenses of the landlord in connection with the purchase;
    - (ii) such expenses not to exceed such amount (if any) as may be specified in the regulations;
    - (iii) the purchase price to include, at the option of the purchaser, a deduction for such expenses;
  - (d) provide for an alteration, as a result of the purchase of the equitable interest, in the liability of the tenant for future service charges or improvement contributions.

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- (4) Regulations under this section may not contain provision for cases where the Secretary of State or the Welsh Ministers are the landlord unless the Welsh Ministers are the landlord—
- (a) as the result of the exercise by them of functions under Part 3 of the Housing Associations Act 1985; or
  - (b) as the result of—
    - (i) the exercise by the former National Assembly for Wales, the Secretary of State, Housing for Wales or the Housing Corporation of functions under Part 3 of the Act of 1985; and
    - (ii) the transfer of the flat to the Welsh Ministers by virtue of paragraph 39 of Schedule 11 to the Government of Wales Act 2006.
- (5) For the purposes of this section a long lease granted or assigned by—
- (a) the Welsh Ministers, or
  - (b) in a case falling within subsection (4)(b), the former National Assembly for Wales, the Secretary of State, Housing for Wales or the Housing Corporation,
- shall be taken to have been granted or assigned by a housing authority if (but only if) the person concerned granted or assigned it in exercise of its powers under section 90 of the Housing Associations Act 1985.
- (6) This section does not affect any other power of the landlord to purchase an equitable interest in the flat for the purpose of assisting the tenant to meet some or all of the service charge payments.
- (7) Regulations under this section may apply whenever the lease concerned was granted or assigned and whenever the service charge concerned became payable.
- (8) Regulations under this section—
- (a) are to be made by statutory instrument;
  - (b) may make different provision for different cases or descriptions of case including different provision for different areas;
  - (c) may contain such incidental, supplementary and transitional provisions as the appropriate national authority considers appropriate.
- (9) An instrument containing regulations made under this section—
- (a) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (10) In this section—
- “appropriate national authority” means—
- (a) in relation to England, the Secretary of State; and
  - (b) in relation to Wales, the Welsh Ministers;
- “former National Assembly for Wales” means the Assembly constituted by the Government of Wales Act 1998;

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“housing authority”—

- (a) does not include a registered provider of social housing, or a registered social landlord, which is a co-operative housing association;
- (b) includes a co-operative housing association which is neither a registered provider of social housing nor a registered social landlord;

“improvement contribution” has the same meaning as in Part 5 (see section 187);

“repairs” includes works for making good a structural defect.”

#### Commencement Information

1111 S. 309 in force at 1.12.2008 for specified purposes by S.I. 2008/3068, art. 4(9) (with arts. 6-13)

### 310 Other amendments

- (1) In paragraph 11(5B) of Schedule 5 to the Housing Act 1985 (c. 68) (exceptions to the right to buy for certain accommodation for the elderly: appeals etc. to the High Court possible by virtue of disapplication of section 231(4) of the Housing Act 2004 (c. 34)) for “Section 231” substitute “ Section 231(1), (2), (3) and (5) ”.
- (2) Subsection (1) does not apply to—
  - (a) appeals begun, or cases stated and signed, before the coming into force of that subsection, or
  - (b) rights of appeal, or rights to have a case stated and signed, which have accrued before that time.
- (3) In paragraph 5 of Schedule 5A to the Housing Act 1985 (service of initial demolition notices) for “Schedule 13” substitute “ Schedule 5 ”.

*Other*

VALID FROM 01/12/2008

### 311 Disposals of dwelling-houses by local authorities

Schedule 14 (which makes provision about the requirements for consent for disposals of dwelling-houses by local authorities) has effect.

### 312 Financial assistance for information and other services

- (1) In section 94(1) of the Housing Act 1996 (c. 52) (financial assistance for provision of general legal advice about residential tenancies and advice about estate management schemes in connection with enfranchisement)—
  - (a) after “person of” insert “ information, training or ”,
  - (b) after “about” insert “ , or a dispute resolution service in connection with ”,
  - (c) at the end of paragraph (a), after “tenancies,”, insert—

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- “(aa) any other matter relating to residential tenancies,”, and  
 (d) in paragraph (b), at the beginning, insert “ any matter relating to ”.

- (2) In the heading of section 94 of that Act (and the italic cross-heading before it) for “legal advice” substitute “ advice etc. ”.

## CHAPTER 3

### HOUSING FINANCE AND OTHER PROVISIONS

#### *Housing Revenue Account subsidy*

#### **313 Exclusions from subsidy arrangements**

- (1) After section 80A of the Local Government and Housing Act 1989 (c. 42) (housing finance: Housing Revenue Account subsidy) insert—

##### **“80B Agreements to exclude certain authorities or property**

- (1) Subsection (2) applies if an agreement is in force between the appropriate person and a local housing authority for sections 79 to 80A not to apply in relation to—
- (a) the authority; or
  - (b) specified property, or specified descriptions of property, of the authority.
- (2) Sections 79 to 80A do not apply in relation to the authority or (as the case may be) property for each year provided for in the agreement.
- (3) Such an agreement may, in particular, contain terms and conditions about—
- (a) the period of years for which sections 79 to 80A are not to apply (whether a fixed or indefinite period);
  - (b) payments to the authority by the appropriate person or by the authority to the appropriate person;
  - (c) the levels of rent for specified property or specified descriptions of property (in the case of an agreement of the kind mentioned in subsection (1)(b));
  - (d) the provision of information;
  - (e) the variation or termination of the agreement (whether on the occurrence of particular events, at the discretion of the appropriate person or otherwise).
- (4) The appropriate person may give directions about supplementary, incidental, consequential or transitional matters relating to the variation or termination of an agreement of the kind mentioned in subsection (1).
- (5) Such directions may not override any provision made on the subject by the agreement unless the directions are given with the consent of the local housing authority concerned.



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- (6) The provision made by the directions or the agreement may, in particular, include transitional provision about the terms and conditions on which the authority or (as the case may be) property is to become subject to sections 79 to 80A after the termination of the agreement.
- (7) This section does not restrict the circumstances in which Housing Revenue Account subsidy is otherwise not payable to a local housing authority, or in respect of particular property, by virtue of this Part.
- (8) In this section—  
“property” means land, houses, dwellings, buildings or property of a kind falling within paragraphs (a) to (f) of section 74(1) (property within the Housing Revenue Account); and includes future property;  
“specified”, in relation to an agreement, means specified in the agreement.”
- (2) In section 88(1)(aa)(ii) of that Act (construction of Part 6: meaning of “appropriate person”) for “National Assembly for Wales” substitute “Welsh Ministers”.
- (3) In Part 3 of Schedule 4 to that Act (the keeping of the Housing Revenue Account: special cases) in paragraph 2—  
(a) at the beginning insert “(1)”, and  
(b) at the end insert—  
“(2) Sub-paragraph (1) does not apply to a local housing authority in respect of a year if, by virtue of section 80B(2), sections 79 to 80A do not apply in relation to the authority for that year.”

VALID FROM 01/12/2008

*Homelessness and allocation of housing*

VALID FROM 02/03/2009

**314 Ineligible persons from abroad: statutory disregards**

Schedule 15 (which amends Parts 6 and 7 of the Housing Act 1996 (c. 52) in relation to certain ineligible persons from abroad and which makes related provision, including provision for Scotland and Northern Ireland) has effect.

**315 Armed forces: local connection test**

In section 199 of the Housing Act 1996 (local connection test for homelessness and housing allocation purposes: different treatment of armed forces) omit—

- (a) subsection (2),  
(b) in subsection (3), paragraph (a) and the “or” following it,  
(c) subsection (4), and  
(d) in subsection (5), the word “other”.

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#### Commencement Information

**II12** S. 315 in force at 1.12.2008 for specified purposes by [S.I. 2008/3068](#), [art. 4\(10\)](#) (with [arts. 6-13](#))

#### Other

VALID FROM 07/09/2009

#### **316 Amendments to Housing Act 1985: lending institutions**

In section 622(1) of the Housing Act 1985 (c. 68) (minor definitions: general)—

- (a) in the definition of “authorised deposit taker”, in paragraph (b), for “12(1)” substitute “ 12 ”, and
- (b) in the definition of “authorised insurer”, in paragraph (b), for “12(1)” substitute “ 12 ”.

#### **317 Building regulations: time limit for prosecutions**

- (1) Section 35A of the Building Act 1984 (c. 55) (time limit for prosecution for contravention of certain building regulations) is amended as follows.
- (2) In the heading omit “certain”.
- (3) In subsection (1) for “a relevant offence” substitute “ an offence under section 35 above ”.
- (4) Omit subsections (2), (3) and (6).
- (5) Subsections (1) to (4) above do not apply to offences committed before the coming into force of this section.

#### Commencement Information

**II13** S. 317 in force at 22.9.2008 by [S.I. 2008/2358](#), [art. 4\(a\)](#)

VALID FROM 30/04/2011

#### **318 Protected mobile home sites to include sites for gypsies and travellers**

In section 5(1) of the Mobile Homes Act 1983 (c. 34) (interpretation), in the definition of “protected site”, omit the words from “does not include” to “that,”.

#### **319 Financial assistance for certain services about commonhold**

- (1) In section 62(1) of the Commonhold and Leasehold Reform Act 2002 (c. 15) (financial assistance for general advice about an aspect of the law of commonhold land so far as relating to residential matters)—

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- (a) after “person of” insert “ information, training or ”,
  - (b) for “about an” substitute “about, or a dispute resolution service in connection with—
    - (a) any”, and
  - (c) after “matters” insert “, or
    - (b) any other matter relating to commonhold land and residential matters”.
- (2) In the heading of section 62 of that Act after “advice” insert “ etc. ”.

## PART 4

### SUPPLEMENTARY AND FINAL PROVISIONS

#### 320 Orders and regulations

- (1) The power of the Secretary of State, the Treasury or the Welsh Ministers to make orders or regulations under this Act—
- (a) is exercisable by statutory instrument,
  - (b) may be exercised so as to make provision generally or subject to exceptions or only in relation to specified cases or circumstances or descriptions of case,
  - (c) may be exercised so as to make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas, and
  - (d) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.
- (2) Subsection (1) does not apply to orders under—
- (a) paragraph 3 of Schedule 3, or
  - (b) Schedule 4.
- (3) An instrument containing—
- (a) an order under section 13, 114 or 229,
  - (b) an order of the Secretary of State under section 321,
  - (c) an order of the Secretary of State under paragraph 19(4), 21(2) or (4) or 24 of Schedule 11,
  - (d) regulations under section 70 or 72, or
  - (e) regulations of the Secretary of State under section 280(3) or 291,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Subsection (3) does not apply to an instrument containing an order under section 321 if the order does not amend or repeal a provision of a public general Act.
- (5) If a draft of an instrument containing an order under section 13 would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

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- (6) An instrument containing an order under section 23 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (7) An instrument containing—
- (a) an order under section 36 or Part 2 (excluding sections 114 and 229),
  - (b) an order of the Secretary of State under section 321 to which subsection (3) above does not apply,
  - (c) an order of the Secretary of State under paragraph 16(7), 18(4), 22(2) or 23(2) of Schedule 11,
  - (d) regulations under Part 2 (excluding sections 70 and 72),
  - (e) regulations of the Secretary of State under Chapter 1 of Part 3 (including Schedule 10 but excluding sections 280(3) and 291),
  - (f) regulations of the Secretary of State under section 298, or
  - (g) regulations under Part 3 of Schedule 3,
- is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) An instrument containing—
- (a) an order of the Welsh Ministers under section 321,
  - (b) an order of the Welsh Ministers under paragraph 19(4), 21(2) or (4) or 24 of Schedule 11, or
  - (c) regulations of the Welsh Ministers under section 280(3) or 291,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (9) Subsection (8) does not apply to an instrument containing an order under section 321 if the order does not amend or repeal a provision of a public general Act.
- (10) An instrument containing—
- (a) an order of the Welsh Ministers under section 321 to which subsection (8) above does not apply,
  - (b) an order of the Welsh Ministers under paragraph 16(7), 18(4), 22(2) or 23(2) of Schedule 11,
  - (c) regulations of the Welsh Ministers under Chapter 1 of Part 3 (including Schedule 10 but excluding section 280(3) or 291), or
  - (d) regulations of the Welsh Ministers under section 298,
- is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

### **321 Consequential amendments and repeals**

- (1) Schedule 16 (which contains repeals and revocations including repeals of spent enactments) has effect.
- (2) The Secretary of State may by order make such supplementary, incidental or consequential provision as the Secretary of State considers appropriate for the general purposes, or any particular purpose, of this Act or in consequence of any provision made by or under this Act or for giving full effect to this Act or any such provision.

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- (3) The power conferred by subsection (2) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (including this Act and any Act passed in the same Session as this Act).
- (4) The power conferred by subsections (2) and (3) is also exercisable by the Welsh Ministers so far as it is exercisable in relation to matters with respect to which functions are exercisable by the Welsh Ministers.

#### Commencement Information

- I114** S. 321 partly in force; s. 321(2)-(4) in force at Royal Assent see s. 325(6); s. 321(1) in force for specified purposes at 22.9.2008 see s. 325(1)(2)(b)
- I115** S. 321(1) in force at 22.9.2008 for specified purposes by S.I. 2008/2358, art. 4(b)

### 322 Transitional, transitory or saving provision

- (1) The Secretary of State may by order make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act other than a Welsh provision.
- (2) The Welsh Ministers may by order make such transitional, transitory or saving provision as the Welsh Ministers consider appropriate in connection with the coming into force of any Welsh provision.
- (3) In this section “Welsh provision” means any provision of this Act so far as it is to be brought into force by an order of the Welsh Ministers.

### 323 Financial provisions

- (1) There is to be paid out of money provided by Parliament—
  - (a) any expenditure incurred by a Minister of the Crown by virtue of this Act, and
  - (b) any increase attributable to this Act in the sums payable by virtue of any other Act out of money so provided.
- (2) There is to be paid into the Consolidated Fund any sums received by a Minister of the Crown by virtue of this Act (apart from any sums required to be paid into the National Loans Fund).

### 324 Extent

- (1) Subject as follows, Parts 1 to 3 (including Schedules 1 to 15) and Schedule 16 extend to England and Wales only.
- (2) Any amendment, repeal or revocation made by this Act, other than one falling within subsection (3), has the same extent as the provision to which it relates.
- (3) The following fall within this subsection—
  - (a) the repeal in section 5 of the Mobile Homes Act 1983 (c. 34),
  - (b) the repeals of sections 50 and 51 of the Housing Act 1988 (c. 50), and
  - (c) the amendments of sections 52 to 54 and 59 of that Act.

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### **325 Commencement**

- (1) Subject as follows, this Act comes into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes or different areas.
- (2) The following provisions—
  - (a) sections 294, 304 to 307, 310, 312, 313 and 319 and Schedule 13, and
  - (b) section 321(1), and Schedule 16, so far as relating to the repeals in sections 125D(2), 128(2) and 136(2) of, and paragraph 13(5) of Schedule 5 to, the Housing Act 1985 (c. 68),
 come into force at the end of the period of 2 months beginning with the day on which this Act is passed.
- (3) Subsection (4) applies to the following provisions—
  - (a) Chapter 1 of Part 3 (including Schedule 10),
  - (b) sections 295 to 298, 300 to 303, 308, 309, 315 and 318 and Schedule 12, and
  - (c) section 321(1), and Schedule 16, so far as relating to repeals and revocations which are connected to the provisions mentioned in paragraph (b) above.
- (4) The provisions to which this subsection applies come into force—
  - (a) in relation to England, on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes or different areas, and
  - (b) in relation to Wales, on such day as the Welsh Ministers may by order appoint; and different days may be appointed for different purposes or different areas.
- (5) The Secretary of State must consult the Welsh Ministers before making an order under subsection (1) in relation to section 50(2) and Schedule 5 or section 299 and Schedule 11.
- (6) Subsection (1) does not apply to sections 320, 321(2) to (4), 322, 323 and 324, this section and section 326.

### **326 Short title**

This Act may be cited as the Housing and Regeneration Act 2008.

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