

HOUSING AND REGENERATION ACT 2008

EXPLANATORY NOTES

STRUCTURE OF THE ACT

Part 1 - the Homes and Communities Agency

Chapter 4 - Other functions of the HCA

General

Section 28 - Business

56. In order for the HCA to operate effectively, it may be necessary for it to carry on a business in the open market. This section enables the HCA to do so.

Section 29 - Powers to form companies etc.

57. This section allows the HCA, with the consent of the Secretary of State, to establish or acquire an interest in a company.

Section 30 - Community services

58. This section allows the HCA to act in a supportive capacity in order to provide or facilitate the provision of such services for communities as it considers appropriate. These may include services such as encouraging, or developing new businesses; providing employment; providing business or employment services; providing safe and attractive environments; or contributing to the prevention or reduction of anti-social behaviour or crime, or the fear of anti-social behaviour or crime.

Social housing

Section 31 - Duties in relation to social housing

59. This section requires the HCA when -
- acquiring, constructing or converting any housing or land for use as low cost rental accommodation, (*subsections (1) and (2)*);
 - disposing of housing or land on the condition that low cost rental accommodation is provided (*subsections (3) and (4)*);
 - providing infrastructure on condition that low cost rental accommodation is provided (*subsections (5) and (6)*); or
 - giving financial assistance on condition that low cost rental accommodation is provided (*subsections (7) and (8)*),

to ensure that when the accommodation is made available for rent the landlord is a “relevant provider of social housing”. A “relevant provider” is a registered provider of social housing (as defined by section 80(2)(a)), an English local housing authority (or a person controlled by such an authority), or a county council in England. Low cost

rental accommodation is accommodation which is made available for rent, the rent is below the market rate and the accommodation is made available in accordance with rules designed to ensure that the accommodation is made available to people whose needs are not adequately served by the commercial housing market. If the HCA is proposing to give financial assistance on condition that the recipient provides low cost home ownership accommodation (as defined by section 70) the HCA must consult the Regulator of Social Housing about the proposals.

Section 32 – Recovery etc. of social housing assistance

60. This section gives the HCA powers in relation to a person who has received financial assistance for the provision of social housing. The HCA may-
- reduce, suspend or cancel grant payments (or other financial assistance); or
 - direct the recipient of financial assistance 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.
61. The aggregate of the amounts specified in directions given in respect of that grant cannot be greater than the amount of grant received by that person, although interest may be added to the original amount (see section 33).
62. The powers to recover financial assistance may only be exercised in accordance with principles determined by the HCA.
63. These powers enable the HCA to operate a system similar to the Housing Corporation's "Recycled Capital Grant Fund" operated under section 27 of the Housing Act 1996. This enables the Housing Corporation to require, as a condition of grant that, for example, when a property grant-funded by the Corporation is disposed of, a sum specified by the Corporation (which could be the amount of original grant, or a proportion of the property value) is either repaid to the Corporation, or is applied by the grant recipient to a purpose specified by the Corporation, such as the provision of new social housing.
64. *Subsection (11)* requires the HCA to notify the Regulator of Social Housing 14 days before exercising any power under section 32(2), (3) or (4) to reduce, suspend or cancel grant, or require repayment or reapplication of specified sums, in relation to a registered provider of social housing.
65. The HCA must determine in advance of (or at the time of) providing the financial assistance the events in which (and the principles according to which) it will exercise its powers to recover the assistance.

Section 33: interest and successors in title

66. *Subsections (1) to (5)* provide that the HCA may add interest to sums to be repaid under section 32 and enter into agreements with recipients of grants which include arrangements for sharing equity uplift between the HCA and the recipient. It also has power to suspend or reduce interest. This section replicates the provisions in sections 27(4) and (5) of the Housing Act 1996.
67. *Subsections (6) and (7)* provide that a person acquiring social housing from the recipient of social housing assistance will also be subject to the HCA's powers of recovery under section 32. This section replicates section 27(6) of the Housing Act 1996.
68. This section also requires that any determination on the principles of adding interest or entering into an equity sharing agreement have to be made at or before the award of grant funding.

Section 34 – Determinations under sections 32 and 33

69. This section sets out the process for determinations under sections 32 and 33. A determination could define the “relevant events” which would trigger these requirements (e.g. the disposal of a grant-funded property), or it could specify the purposes to which sums may be applied (e.g. the provision of similar properties, the refurbishment of others, etc.).
70. *Subsection (1)* prohibits the HCA from making a general determination without the consent of the Secretary of State. And *subsection (2)* requires the HCA, before making such a determination, to consult the Regulator of Social Housing, and other appropriate persons.
71. The HCA may vary or revoke a determination but, in varying or revoking a determination, the HCA cannot override the provision that events and principles according to which it exercises its powers to recover grants must be predetermined.

Section 35 - Duty to give financial assistance in respect of certain disposals

72. **Section 35** broadly replicates the effect of the duties placed on the Housing Corporation under sections 20 and 21 of the Housing Act 1996.
73. It places a statutory duty on the HCA to provide financial assistance by way of grant to a registered provider of social housing or a registered social landlord in respect of discount provided to a tenant exercising their right to acquire under the right to acquire provisions in Part 2 of the Act (or under section 16 of the Housing Act 1996, where a Welsh social landlord is disposing of a dwelling in England). The requirement also applies if a tenant entitled to the right to acquire chooses to purchase an alternative property in England offered by their landlord.
74. The grant given to a person in any one year is limited to the total value of the discounts given by the person in that year. The HCA is required to specify the procedure to be followed in relation to applications for the grant; the method for calculating and any other limitations on the amount of grant; the manner and timing of payment and any other terms and conditions under which the grant will be given.
75. The purpose of this duty is to ensure that providers of social housing receive the market value for the properties they are required to sell to tenants at a discount. This duty ensures that they receive full market value for the property while the disposal proceeds fund system ensures that proceeds are spent on replacement social housing.

Section 36 - Information in relation to social housing

76. This section enables the Secretary of State to make an order requiring the HCA to produce information about its provision of accommodation for the purposes of social housing and the consequences of that accommodation being social housing. For example, the intention is that where funding is provided by the HCA for the purposes of providing housing, the HCA would be required to notify the Regulator of Social Housing about which housing will be low cost rental accommodation and thus should be transferred to a registered provider of social housing, if the recipient of the funding is not such a provider.

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

77. Under this section the HCA is required to co-operate and consult with the Regulator of Social Housing on matters of general interest. For example, the HCA should take account of the regulator’s views when it proposes to invest in the provision of social housing. The Regulator of Social Housing is under a corresponding duty to co-operate with the HCA by virtue of section 105.

Information, education and guidance etc.

Sections 38 and 39 - Information services; Advice, education and training

78. These sections allow the HCA to publish, provide, disseminate or facilitate ideas or information. It can also undertake research and provide, or facilitate the provision of, education and training services. This for example might include providing accreditation or sponsorship programmes, running conferences or developing training modules.
79. **Section 24** enables the HCA to charge a reasonable amount for such services. The intention is that the amount charged will not exceed the cost of providing the service.

Section 40 - Guidance

80. In addition to providing information and training, the HCA can also provide guidance (or vary existing guidance) about matters relating to its work. However, before doing so, the HCA must consult appropriate persons and then bring the published guidance to the notice of those affected by it.
81. The HCA can revoke its guidance, but, prior to revocation, it must consult those affected by the guidance and, upon revocation, inform those affected by it.

Functions in relation to companies and other persons

Section 41 - Control of subsidiaries

82. A subsidiary of the HCA will not have the power to engage in an activity that the HCA itself would not be required or permitted to carry out unless the subsidiary has the consent of the Secretary of State.
83. The HCA must take steps to ensure that its subsidiaries do not borrow money from anyone other than the HCA, nor issue shares or stocks to anyone other than the HCA, without the consent of the Secretary of State.

Sections 42 and 43 - Agency arrangements with urban development corporations; Acting with, or for other persons: general

84. With the consent of the Secretary of State, the HCA can appoint an urban development corporation (“UDC”) to carry out functions on its behalf (other than its functions in connection with Chapter 3 of Part 1 (financial provision)). The UDC must act within the terms specified in the appointment. The UDC may arrange for any of its property or staff to be made available to the HCA, if requested, and if the purpose of the request is to assist the HCA to exercise its functions.
85. The HCA can form partnerships or enter into working arrangements in conjunction with others, or enter into arrangements to act on behalf others.

Section 44 – Local government involvement

86. **Section 44** requires the HCA to consult with such representatives of local government as it considers appropriate about how it pursues its objects and to publish a statement about how it proposes to do that (having consulted with such persons as it considers appropriate).

Other

Section 45 - Support services

87. The HCA may provide or facilitate the provision of services in support of a project. In particular, this could include seconding staff, providing consultants, or providing technical and financial resources.