

HOUSING AND REGENERATION ACT 2008

EXPLANATORY NOTES

STRUCTURE OF THE ACT

Part 2 – Regulation of Social Housing

Chapter 6 – Regulatory powers

Section 192 - Overview

542. *Section 192* describes the contents of Chapter 6.

Standards

Section 193 – Provision of social housing

543. *Subsection (1)* of section 193 gives the regulator the power to set standards for registered providers in respect of the social housing that they own. These standards may be in relation to the nature, extent and quality of accommodation, facilities and services provided by them in connection with social housing.

544. *Subsection (2)* of this section further provides that the standards that the regulator sets under subsection (1) may incorporate rules in relation to the matters set out in paragraphs (a) to (j) of subsection (2) as follows:

- 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 of increase or decrease of rent),
- d) maintenance and repair,
- 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,
- h) policies and procedures required by section 218A of the 1996 Act 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.

545. *Subsection (3)* provides that in setting standards, the regulator must have regard to the desirability of registered providers being free to choose how to provide services and conduct business.

Section 194 - Management

546. This section gives the regulator the power to set standards that relate to the financial viability and management of the organisation, and other affairs. *Subsection (2)* provides that these powers also extend to profit-making providers, although only in relation to their provision of social housing. *Subsection (3)* provides that in setting standards, the regulator must have regard to the desirability of registered providers being free to choose how to provide services and conduct business.

Section 195 - Code of Practice

547. *Subsection (1)* of this section gives the regulator a power to issue a code of practice which relates to, clarifies or amplifies standards issued under sections 193 and 194.
548. *Subsection (2)* of this section gives the regulator the power to have regard to codes of practice issued under subsection (1) when considering whether registered providers have met the requirements of standards issued under sections 193 and 194.
549. *Subsection (3)* of this section gives the regulator the power to revise or withdraw a code of practice issued under subsection (1).
550. *Subsection (4)* of this section requires the regulator to bring a code of practice issued under subsection (1) to the attention of registered providers.

Section 196 - Consultation

551. *Subsection (1)* provides that the regulator, before it sets standards, or issues, revises or withdraws a code of practice, must consult bodies representative of registered providers, and the tenants of registered providers, and the secured creditors of registered provider, the Audit Commission; and one or more bodies appearing to the regulator to represent the interests of local housing authorities, the HCA and the Secretary of State, or ensure that they have been consulted.
552. *Subsection (2)* requires that before setting a standard which would apply, or before issuing, revising or withdrawing a code of practice which applies or would apply to charities, the regulator must consult the Charity Commission.

Section 197 - Direction by Secretary of State

553. *Subsection (1)* gives the Secretary of State power to direct the regulator to set a standard under section 193 or about the content of a standard under that section, or for the regulator to have regard to specified objectives when setting a standard under sections 193 or 194.
554. *Subsection (2)* gives the Secretary of State the power to give a direction under *subsection (1)(a)* or *(b)* only if it relates in the Secretary of State's opinion to one of three issues: the quality of accommodation, rent, or involvement by tenants in the management by registered providers of accommodation.
555. *Subsection (3)* requires the Secretary of State to have particular regard to the regulator's objectives in deciding whether to give a direction.
556. *Subsection (4)* requires the Secretary of State to consult the regulator, the HCA, the Audit Commission; and one or more bodies appearing to the Secretary of State to represent the interests of local housing authorities and bodies appearing to the Secretary of State to represent the interests of tenants and of registered providers before giving a direction.
557. *Subsection (5)* requires that before giving a direction about a standard which would apply to charities, the regulator must consult the Charity Commission.

558. *Subsection (6)* allows a direction to disapply the requirement for the regulator to consult under section 196 in relation to specified matters.
559. *Subsection (7)* provides that the regulator must comply with any direction given and *subsection (8)* requires that the Secretary of State publish each proposed direction for consultation; each response to a consultation; and each direction.

Section 198 – Supplemental

560. *Subsection (1)* specifies that failure to meet standards set under sections 193 or 194 will be grounds for exercising the powers of the regulator to intervene and enforce compliance as set out in Chapter 7.
561. *Subsection (2)* of this section specifies that the regulator, having set standards, must make arrangements to bring them to the attention of those registered providers to whom the standards apply.
562. *Subsection (3)* of this section gives the regulator the power to revise or withdraw standards that have been previously set under powers in sections 193 and 194. If this power is exercised by the regulator, the same requirements for consultation that are set out in section 196 will apply as when standards are originally set.
563. *Subsection (4)* makes clear that standards may be expressed by reference to documents prepared by others. This recognises that other bodies, or stakeholders acting as a group, may propose and consult on documents, which the regulator may then approve and issue.
564. *Subsection (5)* of this section provides that standards set by the regulator under sections 193 and 194 may apply generally or may be limited in their application, and that the standards may be different for different cases, circumstances or areas.

Monitoring

Section 199 - Survey

565. *Subsection (1)* specifies that this section applies where the regulator suspects that a registered provider is failing to maintain the premises to be surveyed, in accordance with standards, as specified under sections 193 or 194 of this Part.
566. *Subsection (2)* gives the regulator the power to arrange for the survey of the condition of identified homes by a person authorised by it.
567. *Subsection (3)* defines “authorised person” for the purposes of subsection (2) as a member of the regulator’s staff or any other person who has been authorised in writing by the regulator for the purposes of carrying out a survey under this power.
568. *Subsection (4)* provides that the authorised person may enter the premises at any reasonable time to carry out the survey.
569. *Subsection (5)* specifies that the authorised person must give the registered provider a minimum of 28 days’ notice of the survey.
570. *Subsection (6)* requires that the registered provider who has received the notice required under subsection (5) must then give each occupier of the premises to be surveyed a minimum of 7 days’ notice of the survey.
571. *Subsection (7)* requires the authorised person to provide a written report of their survey.
572. *Subsection (8)* requires the regulator to provide the registered provider of the premises surveyed with a copy of the report produced under subsection (7).

Section 200 - Survey: supplemental

573. *Subsection (1)* provides that the authorised person carrying out the survey, or seeking entry to the premises to carry out the survey must, when requested by the occupier, provide to that person a copy of the authorisation to carry out the survey.
574. *Subsection (2)* provides that the regulator may require the registered provider to pay some or all of the costs of the survey and the report.
575. *Subsection (3)* specifies that a registered provider who fails without a reasonable excuse to comply with the requirement to give occupiers due notice of a survey under section 199 subsection (6) commits an offence. Similarly, a registered provider or an officer of a registered provider who obstructs an authorised person exercising the power to survey premises under section 199 also commits an offence.
576. *Subsection (5)* specifies that a person guilty of offences under subsections (3) or (4) is liable on summary conviction to a fine not exceeding level 3 (currently £1000) on the standard scale.
577. *Subsection (6)* provides that proceedings for an offence under this section may only be brought by or with the consent of either the regulator or the Director of Public Prosecutions.

Section 201 - Inspection

578. *Subsection (1)* allows the regulator to arrange for a person to inspect a registered provider's performance in relation to provision of social housing or its financial and other affairs.
579. *Subsection (2)* prohibits the person appointed from being a member of the regulator's staff.
580. *Subsection (3)* requires that where the purpose of an inspection is to assess a registered provider's performance by reference to standards under section 193 (that is, in relation to management of social housing), the regulator must invite the Audit Commission to carry out the inspection. The regulator may appoint any person it wishes if the Audit Commission declines, or for inspections whose purpose is not as set out in *subsection (3)*.
581. *Subsection (4)* specifies that the regulator may direct the person carrying out an inspection to discontinue it.
582. *Subsection (5)* provides that an inspection may either be general or specific.
583. *Subsection (6)* requires that the regulator reimburse costs incurred by the Audit Commission in carrying out an inspection.
584. *Subsection (7)* specifies that if a person other than the Audit Commission carries out an inspection, the arrangements may include provision for payments.

Section 202 – Inspections – supplemental

585. *Subsection (1)* requires that the person carrying out the inspection produce a written report.
586. *Subsection (2)* requires the regulator to provide the registered provider with a copy of the written report and provides that the regulator may publish the inspection report and any related information.
587. *Subsection (3)* makes it clear that a person who carries out an inspection may publish the inspection report and any related information (whether or not the regulator has done so)

588. *Subsection (4)* provides that the Secretary of State may by order authorise the regulator to charge fees for inspections.
589. *Subsection (5)* provides that the registered provider must pay any fees charged.
590. *Subsection (6)* provides before making an order the Secretary of State shall consult the regulator, one or more bodies representative of registered providers, the Audit Commission and any other persons considered appropriate.
591. *Subsection (7)* requires the regulator to prescribe a scale of fees for inspections. Before doing so, it must have consulted the Secretary of State, one or more bodies representative of registered providers, and the Audit Commission.

Section 203 - Inspector's powers

592. This section specifies the powers conferred on an inspector, as defined in subsection (12). In particular these include powers to require provision of documents or information, and enter premises and inspect, copy or take away documents.
593. *Subsections (1) to (3)* provide that an inspector may by notice require a person to provide specified documents or information. The inspector may require documents and information of a kind in respect of which the regulator can impose a requirement under section 107(1), which specifies that the regulator must have reason to believe that it may be in the person's possession, and relates to the financial or other affairs of a registered provider or activities which are or may be carried out by a person who is or has applied to become a registered provider. A requirement under subsection (1) is subject to the provisions in section 107(3) to (7) and section 108 with any necessary modifications.
594. *Subsections (4) to (6)* provide that an inspector may at any reasonable time enter premises occupied by the registered provider being inspected, and inspect, copy or take away any documents found there. They also specify that 'documents' includes documents stored on computers or electronic storage devices on the premises or accessible by computers on the premises, and that the inspector may inspect any computer or electronic storage device on which such documents have been created or stored.
595. *Subsections (7) and (8)* provide that the inspector may require any person on the premises to provide facilities or assistance as the inspector reasonably requests. This includes requiring assistance from any person in charge of a computer as the inspector reasonably requests for the purposes of *subsections (5) and (6)*.
596. *Subsections (9) to (11)* specify that it is an offence for a person without reasonable excuse to obstruct an inspector carrying out an inspection. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 (currently £1000) on the standard scale. Proceedings for an offence under this section may only be brought by or with the consent of either the regulator or the Director of Public Prosecutions.
597. *Subsection (12)* provides that an 'inspector' means a person who is authorised in writing by the Audit Commission to exercise powers under this section for the purposes of an inspection carried out under section 201 or a person who is authorised in writing by the regulator to exercise powers under this section for the purpose of carrying out any inspections under section 201.

Section 204 - Performance information

598. *Subsection (1)* gives the regulator a power to require a registered provider to prepare an annual report containing an assessment of its performance in relation to any standards the regulator has set under sections 193 and 194, and to send that report to the regulator within a specified period.

599. Subsection (2) provides that the regulator can specify in detail what the reports prepared by registered providers must cover.
600. Subsection (3) specifies that it is an offence not to comply with a requirement made by the regulator under this section without a reasonable excuse.
601. Subsection (4) provides that the penalty for any person found guilty of that offence on summary conviction will be a fine of up to level 5 (currently £5000) on the standard scale.
602. Subsection (5) provides that proceedings for an offence under this section may only be brought by or with the consent of either the regulator or the Director of Public Prosecutions.

Section 205 - Publication of performance information

603. This section requires the regulator to publish at least once a year information about the performance of registered providers. This must include information likely to be useful to tenants, potential tenants and local authorities.

Section 206 - Inquiry

604. This section gives the regulator the power to hold an inquiry where it believes that the affairs of a registered provider may have been mismanaged.
605. Subsections (2) to (5) specify who the regulator may appoint to manage the inquiry. The regulator must appoint one or more individuals, all of whom must be independent of the regulator. Individuals are independent of the regulator if they and members of their family are not currently members or employees of the regulator and have not been within the previous five years. Consultants, defined as individuals providing services to the regulator other than by employment or appointment under this section, are also not considered independent where they are currently providing services.

Section 207 - Inquiry: supplemental

606. Subsection (1) provides that individuals appointed by the regulator to conduct the inquiry will determine the procedure for the inquiry.
607. Subsection (2) provides that they may consider the affairs of a profit-making registered provider only so far as related to social housing.
608. Subsection (3) provides that they may consider the affairs of any body that, at the time with which the regulator is concerned, was a subsidiary or associate of a registered provider. The meanings of “subsidiary” and “associate” are defined in section 271.
609. Subsections (4) to (6) provide that the inquirers may make interim reports. They must make a final report on the matters to which they have been directed by the regulator. The regulator may arrange for the publication of all or part of either interim reports or the final report produced by the inquirers.
610. Subsection (7) also provides that local authorities may contribute to the costs of an inquiry held by the regulator under these sections.

Section 208 - Inquiry: evidence

611. Subsection (1) gives the inquirer the power, by giving a notice, to require persons to provide specified documents and information.
612. Subsection (2) explains that the notice may require evidence to be given on oath (and the inquirer may administer oaths for that purpose).

613. *Subsection (3)* limits the power in subsection (1) so that it can only be exercised over documents or information that the regulator would have a power over under section 107.
614. *Subsection (4)* specifies that the provisions of section 107 (3) to (7), and section 108 apply to this section modified as necessary to the specific purpose of the section.

Section 209 – Inquiry: charities

615. This section provides that an inquiry can only be held in relation to a registered charity if it has received ‘public assistance’, may only relate to its housing activities, and that the Charity Commission must be notified of the inquiry.

Section 210 – Extraordinary audit

616. This section broadly replicates the effect of paragraph 22 of Schedule 1 to the 1996 Act.
617. *Subsection (1)* specifies that where the regulator has decided to hold an inquiry 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.
618. *Subsection (2)* defines “qualified auditor” for the purposes of this section.
- Subsection (3)* requires the auditor appointed under subsection (1) to report to the regulator on the matters and in the form determined by the regulator, once the audit has been completed
619. *Subsection (4)* limits the use of inquiries in respect of registered providers which are also registered charities. This is equivalent to paragraph 28 of Schedule 1 to the 1996 Act. This ensures the independence of charities while respecting the Charity Commission’s own role as regulator of charities in their non-housing activities.
620. *Subsection (5)* specifies that the cost of the audit, including the auditor’s remuneration, will be met by the registered provider.

Management and constitution

Sections 211 - 214

621. These sections re-enact the powers of the Housing Corporation in paragraphs 9 to 11 of Schedule 1 to the 1996 Act as powers of the regulator. These powers relate to changes to the constitutions of non-profit registered providers of social housing.

Section 211 - Non-profit providers only

622. This section restricts the application of sections 211 to 214 to non-profit registered providers as provided for by the regulator’s designation on the register under section 115.

Section 212 - Industrial and provident society: change of rules

623. This section applies only to industrial and provident societies. *Subsection (2)* provides that an amendment of the society’s rules requires consent if it alters the society’s objects, provides about the distribution of assets to members, or enables the society to become, or cease to be, a subsidiary or associate of another body.
624. *Subsection (3)* provides that an amendment which requires consent is effective only if the regulator has first given consent in writing. *Subsection (4)* provides that the regulator may not consent to an amendment which it thinks would turn the society into a profit making organisation. *Subsection (5)* provides that a society must notify the regulator of any amendment which does not require consent.

625. *Subsection (6)* provides that, in relation to an amendment which requires consent, the requirement to send copies of amendments of rules to the Financial Services Authority under section 10(1) of the Industrial and Provident Societies Act 1965 is only satisfied if it is accompanied by a copy of the regulator's consent under subsection (3).
626. *Subsection (7)* provides that this section shall also be treated as if it were part of the Industrial and Provident Societies Act.
627. *Subsection (8)* gives the Secretary of State power, by order, to amend the list in subsection (2).

Section 213 - Charity: change of objects

628. This section broadly replicates the effect of paragraph 10 of Schedule 1 to the 1996 Act and applies only to registered charities that are not registered companies.
629. *Subsection (2)* provides that the Charity Commission must first consent in writing to any amendment of the charity's objects if such a change is to be effective.
630. *Subsection (3)* provides that the Charity Commission must consult the regulator before giving consent under subsection (2).

Section 214 - Companies: change of articles

631. This section broadly replicates the effect of paragraph 11 of Schedule 1 to the 1996 Act. It applies only to registered companies.
632. *Subsection (2)* provides that an amendment of the company's articles of association requires consent if it alters the company's objects, provides about the distribution of assets to members, or enables the company to become or cease to be a subsidiary or associate of another body.
633. *Subsection (3)* provides that an amendment of the articles of association which requires consent is effective only if the regulator has first given consent in writing.
634. *Subsection (4)* prohibits the regulator from permitting any changes to the constitution of a registered provider which is a company which the regulator believes would turn it into a profit-making organisation.
635. *Subsection (5)* provides that the company must notify the regulator of an amendment of the articles of association which does not require consent, or a change to its name or registered office.
636. *Subsection (6)* provides that, in relation to an amendment which requires consent, the requirement to send copies of resolutions to the registrar of companies under section 30 of the Companies Act 2006 is only satisfied if it is accompanied by a copy of the regulator's consent under subsection (3). Failure to comply with the requirement to send copies of resolutions under section 30 of the Companies Act 2006 is an offence.
637. *Subsection (7)* gives the Secretary of State power, by order, to amend the list in subsection (2).

Guidance

Section 215 - Use of intervention powers

638. *Subsection (1)* requires that the regulator must publish guidance on complaints to the regulator about the performance of registered providers, and guidance on how it uses and intends to use powers under Chapters 6 and 7.
639. *Subsection (2)* requires that guidance on complaints to the regulator about the performance of registered providers must in particular specify the procedure to be

followed where a person makes a complaint, the criteria to be used by the regulator in deciding whether to investigate a complaint, and periods in which the regulator aims to inform complainants of the result of complaints.

640. *Subsection (3)* requires that the regulator must have regard to guidance under this section.

Section 216 - Consultation

641. Before giving guidance under section 215, the regulator must consult one or more bodies representative of registered providers, one or more bodies representative of the interests of the tenants of social housing, one or more bodies representative of the interests of local housing authorities, the Audit Commission, and the Homes and Communities Agency.

Managers of social housing

Section 217 - Accreditation

642. This section allows the regulator to operate a scheme for the purpose of accrediting persons who provide services in connection with the management of social housing.
643. *Subsection (2)* provides that the regulator may approve a scheme operated by someone else – a trade body for example. *Subsection (3)* provides that approval may be withdrawn.
644. *Subsection (6)* provides that standards set under section 193 may refer to accreditation.