

*These notes refer to the Housing and Regeneration Bill  
as introduced in the House of Commons on 15th November 2007 [Bill 8]*

# **HOUSING AND REGENERATION BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Housing and Regeneration Bill as introduced in the House of Commons on 15th November 2007. They have been prepared by the Department for Communities and Local Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND SUMMARY**

3. The Housing and Regeneration Bill gives effect to the Government's proposals to create the Homes and Communities Agency (HCA) and the Office for Tenants and Social Landlords. The Prime Minister's statement to Parliament of 11th July 2007 on the draft legislative programme set out the context for the Bill. The Queen's Speech on 6th November 2007 confirmed that "Available and affordable housing is one of my Government's main priorities. Legislation will be introduced to create a new Homes and Communities Agency that will deliver more social and affordable housing, and promote regeneration."

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4. Professor Martin Cave began an independent review of social housing regulation on 14th December 2006. Professor Cave's remit was to establish a clear set of objectives for the regulation of social housing to underpin any new regulatory system, present options for reform and make recommendations about institutional arrangements. His report *Every Tenant Matters: A review of social housing regulation*, was published on 19th June 2007. On the same day, the Government launched the consultation paper *Delivering Housing and Regeneration: Communities England and the future of social housing regulation*. This paper took forward Professor Cave's recommendations and set out proposals on the role, responsibilities and operation of Communities England, now the HCA. The Minister for Housing and Planning, Yvette Cooper MP, made a statement to Parliament on 15th October 2007, which set out further detail on the new social housing regulator, the Office for Tenants and Social Landlords. The Government's Housing Green Paper *Homes for the future: more affordable, more sustainable*, published on 23rd July 2007, set out the role of the HCA in the context of the proposals set out in the Green Paper.

5. This Bill follows from these reviews, consultations and statements.

6. Part 1 of the Bill creates the HCA and sets out its objects and powers. The main objects of the HCA will be to improve the supply and quality of housing in England; to secure the regeneration or development of land or infrastructure in England; and to support in other ways the creation, regeneration or development of communities in England or their continued well-being. The Bill also abolishes the predecessor organisations of the Urban Regeneration Agency and the Commission for the New Towns, which operated under the joint name of English Partnerships. The powers of the HCA are modelled to a large extent on those of the Urban Regeneration Agency. The HCA will take on the functions of those organisations and also certain functions of the Housing Corporation, related to investment in housing.

7. Part 2 of the Bill creates the new social housing regulator, the Office for Tenants and Social Landlords, and sets out its objectives and powers. The new regulator will regulate social housing in England provided by registered providers (which will include current Registered Social Landlords (RSLs), along with other bodies who choose to register). The new regulator will take on the regulation functions of the Housing Corporation. The Bill also abolishes the Housing Corporation.

8. The Bill will also give effect to other measures in relation to housing services which were proposed in or alongside the Housing Green Paper *Homes for the future: more affordable, more sustainable* on 23rd July 2007:

- proposals to enable certain local housing authorities, on application to the Secretary of State, to keep rental income from new supply dwellings (included in the Housing Green Paper);

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- proposals to enable certain local housing authorities, on application to the Secretary of State, to opt out of the Housing Revenue Account Subsidy system (included in the Housing Green Paper); and
  - proposals that a mandatory rating against prescribed sustainability standards should be introduced for new homes, indicating whether the home has been assessed and, if it has, the performance of the home against the standards (proposed in *The future of the Code for Sustainable Homes - Making a rating mandatory*, published on 23rd July alongside the Housing Green Paper).
9. The Bill will also give effect to a number of measures in the consultation paper *Tenant Empowerment: A Consultation Paper*, published on 11th July, which set out proposals to increase tenant empowerment. The Bill will give effect to proposals to:
- introduce a requirement for a local authority to hold a statutory ballot to ascertain tenants' views before seeking consent from the Secretary of State in relation to England or the Welsh Ministers in relation to Wales to transfer its housing stock to a private sector landlord; and
  - give local authority tenants powers to consider the options for the future management of their housing stock and, if they desire, to effect a change of a landlord (subject to certain conditions).
10. The Bill will also give effect to other measures in relation to housing services:
- to allow local authorities and RSLs to offer tenancies which are not secure or assured to families referred to Family Intervention Projects;
  - minor amendments to the way the Right to Buy scheme works, as set out in *Clarifying the Right to Buy rules: a consultation paper*, published on 22nd August 2007;
  - to enable service personnel to establish a local connection with the district in which they serve, for the purpose of applying to a local housing authority for an allocation of social housing or homelessness assistance;
  - to remove the requirement on local housing authorities that they be accepted by the Secretary of State for inclusion on an annual disposals programme before seeking her consent to a large scale transfer of housing to the private sector;

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- to widen the existing power for the Secretary of State in relation to England and Welsh Ministers in relation to Wales to provide financial assistance for the giving of general advice in respect of residential landlord and tenant law;
- to extend from six months to two years the time limit for local authorities to prosecute those who breach any provision of building regulations to which section 35 (penalty for contravening building regulations) of the Building Act 1984 applies, as set out in *Longer time limits for prosecution of breaches of Building Regulations – Consultation*, published on 31st July 2007;
- to provide the same security of tenure, and other rights and responsibilities, to Gypsies and Travellers on local authority sites as Gypsies and Travellers on private sites, and occupants of other types of residential caravan site, such as park home sites. This is in response to the European Court of Human Rights ruling in the case of *Connors v United Kingdom*. The ruling can be found on the European Court of Human Rights Portal at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=699671&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>;
- to widen the existing power for the Lord Chancellor to provide financial assistance for the giving of general advice in respect of the law relating to commonhold land relating to residential matters.

## **STRUCTURE OF THE BILL**

11. The Bill is set out as follows:

- **Part 1 – The Homes and Communities Agency**

**Chapter 1 – General**

**Chapter 2 – Land and infrastructure**

**Chapter 3 – Financial provision**

**Chapter 4 – Other functions of the HCA**

**Chapter 5 – Supplementary**

- **Part 2 – Regulation of social housing**

**Chapter 1 – Introduction**

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**Chapter 2 – The Social Housing Regulator**

**Chapter 3 – Registration**

**Chapter 4 – Registered providers**

**Chapter 5 – Disposal of property**

**Chapter 6 – Regulatory powers**

**Chapter 7 – Enforcement powers**

**Chapter 8 – General**

- **Part 3 – Other provisions**

**Chapter 1 – Sustainability certificates**

**Chapter 2 – Landlord and tenant matters**

**Chapter 3 – Housing finance and other provisions**

- **Part 4 – Supplementary and final provisions**

**Schedule 1 – The Homes and Communities Agency**

**Schedule 2 – Acquisition of land**

**Schedule 3 – Main powers in relation to land of the HCA**

**Schedule 4 – Powers in relation to, and for, statutory undertakers**

**Schedule 5 – Amendments to the New Towns Act 1981**

**Schedule 6 – Transfer schemes**

**Schedule 7 – Amendments of enactments: Part 1**

**Schedule 8 – Penalty charge notices**

**Schedule 9 – Disposals of dwelling-houses by local authorities**

**Schedule 10 - Repeals**

## **TERRITORIAL EXTENT**

12. The Bill extends to England and Wales only, save for some consequential matters which may extend to Scotland and Northern Ireland also. Parts 1 and 2 of the Bill generally apply to England only, although some consequential matters will apply to Wales and some may extend and apply to Scotland also. Part 3 of the Bill applies to England and Wales.

13. There are no matters dealt with by the Bill which would require a Sewel motion in the Scottish Parliament. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

## **TERRITORIAL APPLICATION: WALES**

14. Part 1 of the Bill mainly applies to England only but consequential amendments apply in Wales. The HCA will operate in England only and so any functions of the Secretary of State in relation to the agency will apply in England only. This Part also abolishes the Commission for New Towns. Functions of the Commission for New Towns in England are being transferred to the HCA. Functions of the Commission for New Towns in Wales are being transferred to the Welsh Ministers and any residual assets of the Commission for New Towns in Wales are also being transferred to Welsh Ministers.

15. Part 2 of the Bill mainly applies to England only but consequential amendments apply in Wales. The Office for Tenants and Social Landlords will operate in England only and so any functions of the Secretary of State in relation to the regulator will apply in England only.

16. Part 3 of the Bill applies to England and Wales. Powers will be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales. Further detail for Part 3 is contained in Annex A to these Explanatory Notes.

## **COMMENTARY ON SECTIONS**

### **PART 1 - THE HOMES AND COMMUNITIES AGENCY**

#### **Chapter 1 - General**

##### **Clause 1 - Establishment and constitution**

17. This clause establishes the Homes and Communities Agency (“HCA”) and introduces Schedule 1.

##### **Clauses 2-4 - Objects, Principal Powers, Powers: general**

18. The HCA will operate across England, with a view to meeting the needs of people in England, by:

- improving the supply and quality of housing;
- securing the regeneration or development of land or infrastructure; and
- supporting in other ways the creation, regeneration or development of communities or their continued well-being.

19. These objects are broadly drawn to reflect the wide range of activities that the HCA will undertake at a national level. It will work to improve housing supply, including tackling housing shortages, and to improve the quality of housing including the condition of housing. It will also undertake the regeneration and development of any type of land or infrastructure; and will have a more general role supporting the overall well-being of communities, in relation to which it will be able to establish new communities or work to regenerate or develop existing communities. The HCA will also act as the residuary body for the development corporations for new towns established under the New Towns Act 1981 and for urban development corporations (which is currently the function of the Commission for the New Towns), as set out in clause 54.

20. Generally, the HCA may do anything it considers appropriate for the purposes of its objects or for purposes incidental to them and its specific powers are set out in Chapters 2 to 4 of Part 1. Many of these powers are modelled on the powers available to the Urban Regeneration Agency, the Commission for the New Towns and the Housing Corporation.

21. The powers of the HCA are to be exercised for the purposes of the objects (or for purposes incidental to them) only. Those powers may be exercised independently of each other or together. Where the HCA is designated as the local planning authority, it will not be constrained by its objects in exercising those powers (but, in this situation, it will function in accordance with existing planning legislation).

## **Chapter 2 - Land and infrastructure**

### ***General***

#### **Clauses 5-7 – Powers to provide housing or other land; Powers for regeneration, development or effective use of land; Powers in relation to infrastructure**

22. Clause 5 enables the HCA to provide or facilitate the provision of housing or other land. *Subsection (3)* explains the meaning of “provide” in this context.

23. Clause 6 enables the HCA, directly or indirectly, to regenerate or develop land and bring land into more effective use.

24. Clause 7 enables the HCA to provide or facilitate the provision of infrastructure. Infrastructure is defined in clause 2(3) and includes, for example, utilities such as water, electricity, gas, transport facilities, retail and other business facilities. *Subsection (3)* explains the meaning of “provide” in this context.

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

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

25. The HCA will be able to acquire, hold, improve, manage, reclaim, repair or dispose of housing or other land or property, or facilitate these activities. It will also be able to carry out building and other operations, including the demolition or conversion of buildings, or facilitate such operations. These powers are modelled on those of the Urban Regeneration Agency.

#### **Clause 9 - Acquisition of land**

26. The HCA may need to own land in order to regenerate or develop it or facilitate its regeneration or development. The HCA will therefore be able to purchase land by agreement or may, where authorised to do so by the Secretary of State, acquire land and new rights over land compulsorily. This clause is modelled on the powers given to the Urban Regeneration Agency under section 162 of the Leasehold Reform, Housing and Urban Development Act 1993.

27. This clause also introduces Schedule 2.

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

28. The HCA is not permitted to dispose of land for less than the best market value it can reasonably expect to obtain, unless the Secretary of State consents. This restriction does not apply where the HCA proposes to dispose of land by granting or assigning a short tenancy, that is to say of a term of seven years or less.

29. Unless the Secretary of State consents, the HCA is not permitted to dispose of land that it has acquired by way of compulsory purchase. Such a disposal would also be subject to the restrictions on disposal at less than best consideration. Aside from this, the HCA may dispose of land held by it in any way it considers appropriate.

### ***Powers in relation to acquired land***

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

30. Clause 11 introduces Schedule 3.

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

31. Clause 12 introduces Schedule 4.

### ***Planning***

#### **Clauses 13 -17 - Power of Secretary of State to make designation orders; The HCA as the local planning authority; Adoption of private streets; Appeals against adoption of private streets: Traffic regulation orders for private streets**

32. Under clause 13, the Secretary of State has the power to designate an area in England where the Secretary of State is of the opinion that the area is suitable for development and that one of two conditions are fulfilled. Condition 1 is that it is appropriate for the HCA to be the local planning authority in relation to that area for all or particular permitted purposes in relation to all or particular kinds of development and Condition 2 is that it is appropriate for the provisions in clauses 15 and 16 or 17, or both sets of provisions to apply in relation to that area.

33. The designation of an area is to be made by order and before making such an order the Secretary of State is required to consult a variety of bodies.

34. Where a designation order is made in accordance with Condition 1, clause 14 sets out the functions which may be conferred on the HCA in relation to that designated area. In particular the designation order may provide that the HCA is to be the local planning authority in relation to development control under Part 3 of the Town and Country Planning Act 1990, it may be given responsibilities in relation to the preparation and maintenance of Local Development Frameworks under Part 2 of the Planning and Compulsory Purchase Act 2004, it may be the local planning authority in relation to applications for listed building and conservation area consent and it may be the hazardous substances authority for the designated area.

35. Where the functions of the local planning authority and hazardous substances authority are conferred upon the HCA in relation to a designated area, it will have the power to charge fees in relation to certain applications. The Secretary of State is given the power to prescribe in regulations fees payable for certain applications, including applications for planning permission and hazardous substances consent. The power to set fees in relation to applications for planning permission is found in s.303 of the Town and Country Planning Act 1990. Regulations made under this

section are subject to the affirmative resolution procedure. In relation to applications for hazardous substances consent, the power of the Secretary of State to prescribe fees is found in s.26A of the Planning (Hazardous Substances) Act 1990. The Secretary of State also has the power to prescribe for the making of reasonable charges for the provision of copies of documents required by or under Part 2 of the Planning and Compulsory Purchase Act 2004. Whilst there is no express restriction on the regulation making powers to restrict fees to cover costs, the intention is that the power will be so exercised.

36. A designation order under clause 13 may provide that clauses 15 and 16 should apply in relation to the designated area, or that clause 17 should apply in relation to that area, or that all clauses should apply.

37. Clause 15 confers a power on the HCA to serve an adoption notice on the street works authority, where works have been executed on a private street within the designated area. The adoption notice requires the street works authority to declare the street to be a highway maintainable at public expense.

38. Clause 16 gives the street works authority the power to appeal to the Secretary of State against an adoption notice served by the HCA under clause 15. Where an appeal is made the Secretary of State must consider any representations made by the HCA and street works authority and has the power to confirm the notice, with or without modifications, or set it aside. The Secretary of State also has the power to impose conditions, including financial conditions, upon the HCA which they must comply with for the notice to take effect.

39. Clause 17 gives the Secretary of State the power to make traffic regulation orders in relation to any private street within a designated area, where the HCA has made representations to the Secretary of State that an order should be made and the Secretary of State considers that the traffic authority responsible for that private street do not intend to make the suggested order.

#### **Clause 18 - Regional planning**

40. Where a regional planning body is to exercise certain of its functions (in particular the preparation of a draft revision, or review, of the regional spatial strategy and monitoring of the implementation of that strategy throughout the region, under section 4 of the Planning and Compulsory Purchase Act 2004) the regional planning body is required to seek the advice of any county council, metropolitan district council, district council for an area for which there is no county council and national park authority which is within the region. Clause 18 adds the HCA to this list of bodies from whom the regional planning body must seek advice, where the HCA is the local planning authority for a designated area.

***Other powers etc. in relation to land***

**Clauses 19 and 20 - Power to enter and survey land; Section 19: supplementary**

41. If the HCA wishes to acquire land, or there is compensation to be determined for the acquisition of that land, a person authorised by the HCA may at a reasonable time enter the land to estimate its value or survey it. The authorised person must, if asked and before entering the land, produce evidence to show the authority to enter that land. The authorised person cannot demand entry on to the land unless the HCA has given at least 28 days notice of the intended entry. Should the land suffer any damage as a result of the authorised person gaining entry to the land, persons with an interest in that land can recover compensation from the HCA. A person commits an offence if they intentionally obstruct another person in the exercise of that other person's powers under clause 19. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale, which is currently a fine not exceeding £500.

42. In order to estimate land value it may be necessary to establish the nature of the subsoil or the presence of minerals in it. Before carrying out this type of inspection notice has to be given of the intention to carry it out. This must be done in the notice described above. Also, if the land is held by a statutory undertaker and the inspection would seriously interfere with the carrying out of their functions, the appropriate Minister's consent is needed for the inspection to take place. These powers are modelled on those of the Urban Regeneration Agency.

**Clause 21 - Powers to connect private streets to highways**

43. This clause enables the HCA to serve a connection notice on the local highway authority requiring it to connect a private street to an existing highway. This clause sets out the requirements as to what the notice should contain, who should be consulted and how appeals to the Secretary of State can be made. Upon appeal the Secretary of State must consider the representations made to him by the HCA and local highway authority and determine the appeal by confirming the connection (with or without modifications) or setting the notice aside.

**Chapter 3 - Financial provision**

***Powers to give financial assistance***

**Clause 22 - Financial assistance**

44. This clause provides a power for the HCA to give financial assistance to any person, in pursuit of its objects and subject to the consent of the Secretary of State. The financial assistance may be given in any form, and on such terms and conditions as the HCA considers appropriate, including provision for repayment, with or without interest.

### ***Borrowing powers of the HCA***

#### **Clause 23 - Powers to borrow**

45. This clause enables the HCA to borrow on a short-term basis, such as by overdraft, from any person. If the borrowing is not on a short term basis the HCA may borrow only from the Secretary of State or the European Investment Bank. The HCA may only borrow in sterling.

#### **Clause 24 - Loans by the Secretary of State**

46. The Secretary of State may lend money to the HCA.

47. The Secretary of State will decide when the loan should be repaid, in what manner and at what level of interest.

#### **Clause 25 - Guarantees by the Secretary of State**

48. If the HCA takes out a loan with anyone other than the Secretary of State under clause 23, the Secretary of State may guarantee the repayment of this loan, including any interest payable on it.

49. The guarantee may be subject to such terms and conditions as the Secretary of State may consider appropriate. In respect of any sums paid out under the guarantee, the Secretary of State may direct the HCA to repay such amounts as she may direct towards repayment of those sums and towards interest, at such rates of interest as she may direct.

50. The Secretary of State must lay a statement of the guarantee before Parliament immediately after giving the guarantee annually until all liability under the guarantee is discharged.

#### **Clause 26 - Financial limits**

51. The HCA's total borrowings must not exceed £2,300 million unless the Secretary of State provides for an increase to this limit by order, up to a maximum ceiling of £3,000 million. These limits are the same as for the Housing Corporation.

### ***Other***

#### **Clause 27 - Power to charge for certain activities**

52. The HCA can charge a reasonable amount for information services, advice, education and training, and support services. The intention is to limit the amount that may be charged so that it does not exceed the costs incurred in providing the services.

#### **Clause 28 - Directions as to surplus funds**

53. The Secretary of State may direct the HCA to pay such sums as specified to the Secretary of State, following consultation with the HCA.

54. If surplus capital is paid to the Secretary of State, it must be paid into the Consolidated Fund. The Secretary of State may decide to treat the whole or part of any payment as part repayment of the principal of any loans borrowed from the Secretary of State under clause 24.

**Clause 29 - Duty to act as agent in respect of regeneration and development**

55. The HCA may be appointed to act as agent for the Secretary of State for the purpose of giving financial assistance to regeneration and development activities, under sections 126 to 128 of the Housing Grants, Construction and Regeneration Act 1996. If so appointed, the HCA will be bound to act in accordance with the terms and conditions of the appointment, as set out by the Secretary of State.

**Clause 30 - Duty to act as agent in respect of derelict land etc.**

56. The HCA may be appointed to act as the Secretary of State's agent in connection with specified derelict land functions. This may include providing grant for reclaiming, improving or bringing such land back into use. The Secretary of State may specify the terms and conditions of this appointment and the HCA must act in accordance with those terms and conditions.

**Chapter 4 - Other functions of the HCA**

***General***

**Clause 31 - Business**

57. In order for the HCA to operate effectively, it may be necessary for it to carry on a business in the open market. This clause therefore enables the HCA to trade.

**Clause 32 - Powers to form companies etc.**

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

**Clause 33 - Community services**

59. This clause allows the HCA to act in a supportive capacity in order to provide or facilitate the continued well-being of communities, including encouraging, or developing new businesses; providing employment; providing business or employment services; providing safe and attractive environments; preventing or reducing anti-social behaviour or crime, or the fear of anti-social behaviour or crime; and providing certain community services.

**Clause 34 - Sustainable development**

60. In carrying out its activities, the HCA may facilitate or contribute towards the achievement of sustainable development.

## ***Social housing***

### **Clause 35 - Duties in relation to social housing**

61. This clause requires the HCA when -

- acquiring or constructing low cost rental accommodation, or converting a building into such 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 it 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 clause 79(2)(a)), an English local housing 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 for eligibility designed to ensure that the accommodation is occupied by people who cannot afford to buy or rent at a market rate.

### **Clause 36 – Recovery etc. of social housing assistance**

62. This clause 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 to:
  - a) apply or appropriate for such purposes as the HCA may specify, or
  - b) pay to the HCA,

such amount as the HCA may specify.

63. These powers may only be exercised in accordance with principles determined by the HCA.

64. 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.

**Clause 37 – Section 36: interest and successors in title**

65. *Subsections (1) to (4)* provide that the HCA may add interest to sums to be repaid under clause 36. It also has power to suspend or reduce that interest. This clause replicates the provisions in sections 27(4) and (5) of the 1996 Act.

66. *Subsections (5) to (7)* provide that a person acquiring social housing from the recipient of social housing assistance will also be subject to the direction to repay under clause 36. This clause replicates section 27(6) of the 1996 Act.

**Clause 38 – Determinations under sections 36 and 37**

67. This clause sets out the process for determinations under clauses 36 and 37. 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.).

68. *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.

**Clause 39 - Information in relation to social housing**

69. This clause 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.

**Clause 40 - Duty to co-operate with Regulator of Social Housing**

70. Under this clause 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 clause 102.

***Information, education and guidance etc.***

**Clauses 41 and 42 - Information services; Advice, education and training**

71. These clauses 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.

72. Clause 27 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.

**Clause 43 - Guidance**

73. 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.

74. 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***

**Clause 44 - Control of subsidiaries**

75. A subsidiary of the HCA will not have the power to do anything the HCA itself cannot do. Nor will the subsidiary be allowed to do anything the HCA has itself been prevented from doing by the Secretary of State under clause 49 (which gives the Secretary of State power to direct the HCA on how it should exercise its functions).

76. The exception to this is that a subsidiary of the HCA may determine staff appointments and terms and conditions etc without seeking the Secretary of State's approval, which would otherwise be the case under paragraph 4 of Schedule 1.

77. 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.

**Clause 45 and 46 - Agency arrangements with UDCs; Acting with, or for, other persons: general**

78. 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.

79. The HCA can form partnerships or enter into working arrangements in conjunction with others, or enter into arrangements to act on behalf others.

***Other***

**Clause 47 - Support services**

80. 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.

**Chapter 5 - Supplementary**

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

**Clause 48 - Guidance by the Secretary of State**

81. This clause gives the Secretary of State power, following consultation with appropriate persons, to give guidance to the HCA about how to carry out its functions. The guidance must be published as soon as is reasonably practical after it has been given. If the guidance is to be revoked, the same consultation and notification process must be followed.

82. The HCA is required to have regard to any guidance issued to it by the Secretary of State which is in force.

**Clause 49 - Directions by the Secretary of State**

83. This clause gives the Secretary of State power to give general or specific directions to the HCA as to how it should carry out its functions. It requires that those directions must be published as soon as practicable. If the Secretary of State revokes those directions, that fact must also be published. Publication of the making or revocation of directions does not apply to directions given in connection with the HCA’s own, or its committees’, procedure.

84. The HCA is required to comply with the Secretary of State’s directions.

*These notes refer to the Housing and Regeneration Bill  
as introduced in the House of Commons on 15th November 2007 [Bill 8]*

**Clause 50 - Consents by the Secretary of State**

85. Where certain provisions of Part 1 require the Secretary of State to give consent, the Secretary of State may give this consent with or without conditions, or, depending upon the circumstances, in either general or specific terms.

86. A consent may be varied or revoked, except where something has already been done on the authority of that consent. A variation or revocation only takes effect once the Secretary of State has given notice of it to the HCA or anyone else to whom the consent was given.

***Abolition of existing bodies***

**Clauses 51 and 52 - Abolition of the Urban Regeneration Agency; Abolition of the Commission for the New Towns**

87. These clauses enable the Secretary of State to make an order dissolving the Urban Regeneration Agency and the Commission for the New Towns on a specified date.

88. Clause 52 also introduces Schedule 5.

**Clause 53 - Property etc. transfers to the HCA and the Welsh Ministers**

89. This clause makes provision for the transfer of property, rights or liabilities in connection with the dissolution of the Urban Regeneration Agency and the Commission for the New Towns, and also for the transfer of property, rights or liabilities of the Department for Communities and Local Government to the HCA.

90. Clause 53 also introduces Schedule 6.

**Clause 54 - Role of the HCA in relation to former CNT functions**

91. This clause sets out the role of the HCA in relation to functions which were formerly undertaken by the Commission for the New Towns. In relation to any property, rights or liabilities which are transferred to it from the Commission for the New Towns (on its abolition) and any property, rights or liabilities of a new town development corporation or an urban development corporation which are transferred to it on the dissolution of those corporations, the HCA will have to exercise its powers for the purposes of its objects. However, the HCA is not compelled to do so if it does not consider it appropriate to exercise its powers in that way, having regard to the purposes for which those property, rights or liabilities were held by the original bodies. The HCA must then exercise its powers as it considers appropriate, having regard to its objects and to the purposes for which the property, rights or liabilities were held by the body concerned.

*These notes refer to the Housing and Regeneration Bill  
as introduced in the House of Commons on 15th November 2007 [Bill 8]*

### **Clause 55 - Interim arrangements**

92. This clause gives the Secretary of State the power to require the Urban Regeneration Agency or the Commission for the New Towns to provide staff, premises or other facilities, on a temporary basis to the HCA or Welsh Ministers.

93. This power can be used during any period of transition between the establishment of the HCA and the dissolution of the Urban Regeneration Agency and the Commission for the New Towns.

### ***Other***

### **Clause 56 - Validity of transactions**

94. This clause is intended to cover the situation where persons enter into agreements with the HCA and it subsequently transpires that the HCA acted unlawfully in carrying out its powers, or in contravention of directions given by the Secretary of State. The agreements are not invalidated by reason of such circumstances.

### **Clause 57 - Notices**

95. There are various references to serving notices throughout Part 1. A notice is served if it is delivered to the person concerned, left at the person's proper address or sent by post to that person at that address. If the notice is to be served on a business, it can be served on an officer of the body or if the business is a partnership on a partner of the business.

### **Clauses 58 - 60 - Consequential amendments: Part 1; Interpretation: Part 1; Index of defined expressions: Part 1**

96. Clause 58 introduces Schedule 7.

97. Clauses 59 and 60 set out the definitions of key terms used throughout Part 1.

## **PART 2 – REGULATION OF SOCIAL HOUSING**

### **Chapter 1 - Introduction**

#### ***Preliminary***

#### **Clause 61 – Purpose**

98. Clause 61 specifies the purpose of Part 2 which is to regulate the provision of social housing by English bodies. "Social housing" is defined in clauses 67 to 76. "English body" is defined in clause 78.

**Clause 62 - Structural overview**

99. *Subsection (1)* provides that the system set out in Part 2 replaces the previous system for regulation of registered social landlords (RSLs) in England and Wales under Part 1 of the Housing Act 1996. RSLs are non-profit making providers of social housing, registered by the Housing Corporation.

100. *Subsection (2)* specifies that Part 1 of the Housing Act 1996 will continue to operate in respect of Welsh RSLs as set out in clause 63.

101. *Subsection (3)* specifies that certain provisions of the Housing Act 1996 are applied in England (these are specified in clause 167) or are preserved for although they apply only in England (see clause 120).

102. *Subsection (4)* sets out the contents and their organisation in this Part of the Bill which are:

- Chapter 1: Introduction, including definitions of social housing, the regulator, English and Welsh bodies and registered providers of social housing
- Chapter 2: Establishment of the Office for Tenants and Social Landlords as the regulator of social housing, including its constitution, objectives and its general powers
- Chapter 3: Establishment of a register of providers of social housing, including provisions as to eligibility of providers, their profit or non profit designation, the procedure for registration and removal from the register, and the payment of registration fees
- Chapter 4: Sets out a range of provisions which govern the constitutional arrangements of registered providers, including requirements for accounting, the operation of a moratorium where steps are taken in respect of insolvency of registered providers, and controls on constitutional changes which result in their restructuring or dissolution
- Chapter 5: Makes a number of provisions in relation to the disposal of property by registered providers, and the regulator's powers in relation to such disposals
- Chapter 6: Sets out the regulator's regulatory powers including the scope of its powers to set standards, the Secretary of State's power to issue directions to the regulator in respect of standards and the regulator's powers for survey, inspection, specifying performance information and carrying out inquiries

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- Chapter 7: Gives the regulator various powers of enforcement, including the power to issue enforcement notices, direct the payment of fines or compensation and make provision in relation to the management and constitution of registered providers
- Chapter 8: Sets out provisions to assist the interpretation of Part 2 and also makes provision for repeals and consequential amendments

**Clause 63 - Restriction of “registered social landlord” system to Wales**

103. This clause operates so as to retain Part 1 of the Housing Act 1996 (“the 1996 Act”), but to restrict its application to Wales.

104. It does this by amending certain provisions of Part 1 of the 1996 Act.

105. *Subsection (1)* introduces the amendments in the following subsections and retitles Part 1 of the 1996 Act “Social Rented Sector in Wales”

106. *Subsection (2)* inserts into the 1996 Act section A1 which describes the new purpose of Chapter 1 which is that “it provides for the registration of social landlords in Wales”.

107. *Subsection (3)* substitutes “Welsh Ministers” for references to “the Relevant Authority”, and omits subsections (1A) and (1B) of section 1 of the 1996 Act.

108. *Subsection (4)* inserts section 1A after section 1 of the 1996 Act. This new section defines “Welsh body” as a charity whose address is in Wales and which is registered with the Charity Commission, or an industrial and provident society whose registered office is in Wales, or a Companies Act company whose registered office is in Wales.

109. *Subsection (5)* amends section 2 of the 1996 Act to restrict eligibility for registration to bodies that are:

- Welsh bodies,
- Bodies that are principally concerned with Welsh housing (and a new subsection (2A) is inserted to give power to Welsh Ministers to decide when a body is principally concerned with Welsh housing)

110. The relevant authority for the purposes of registration under this Part of the 1996 Act is the Welsh Ministers.

111. *Subsections (6) to (8)* set out a number of consequential amendments.

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112. *Subsection (9)* refers to clauses 64 and 65 which make consequential amendments.

**Clause 64 - References to Welsh Ministers**

113. This clause sets out in a table those provisions of the 1996 Act where “Welsh Ministers” is to be substituted for references to the “Secretary of State”. These amendments are consequential on clause 63.

**Clause 65 - References to National Assembly for Wales**

114. This clause sets out in a table those provisions of the 1996 Act where “the National Assembly for Wales” is to be substituted for references to the “either House of Parliament” principally to reflect the effects of clause 63.

**Clause 66 - Dissolution of Housing Corporation**

115. This clause makes provision for the dissolution of the Housing Corporation by order of the Secretary of State including provision for the transfer of property, rights and liabilities, and consequential amendments of enactments referring to the Housing Corporation.

***Social housing***

**Clause 67 - Basic principle**

116. This clause defines social housing for the purposes of this Bill. Under this Bill registered providers (defined at clause 79) are only regulated in respect of their provision of social housing (and in the case of non-profit providers, their governance and financial viability arrangements). The definition ensures that registered bodies will not be regulated in respect of their other activities, e.g. provision of housing for sale on the open market.

117. *Subsection (1)* explains that there are two types of social housing – (a) low cost rental accommodation (defined by clause 68) and (b) low cost home ownership accommodation (defined by clause 69).

118. *Subsection (2)* states that accommodation which becomes “social housing” by satisfying subsection (1)(a) or (b) remains “social housing” unless an event specified in clauses 72 to 75 occurs (e.g. sale to a tenant, expiry of a lease, or disposal with the Regulator’s consent). This subsection ensures that, once designated as social housing, accommodation continues to be social housing and subject to the regulator’s standards (e.g. on rents and management) and enforcement powers unless one of the specified events occurs.

119. *Subsection (3)* refers to clause 76 which ensures that certain accommodation is to be treated as “social housing” whether or not it satisfies subsection (1)(a) or (b). This will ensure that accommodation provided by existing RSLs is designated as “social housing” even if, for example, rents are not below market rents. This will ensure that homes subject to regulation under the existing regulation system remain regulated under the new one.

**Clause 68 - Low cost rental**

120. This clause defines low cost rental accommodation. Low cost rental accommodation is one of the two types of social housing referred to in clause 67. This definition is intended to capture homes provided for “social rent”, a term which is not currently defined in law. It makes that definition by reference to a rent below the market rate (paragraph (b)) and rules for eligibility designed to ensure that it is occupied by people who cannot afford to buy or rent at market rate (paragraph (c)).

121. Subsection (2) of clause 67 provides that accommodation which becomes social housing by satisfying this definition remains social housing unless an event specified at clauses 72-75 occurs.

**Clause 69 - Low cost home ownership**

122. This clause defines low cost home ownership accommodation.

123. *Subsection (1)* defines low cost home ownership accommodation as that which meets two conditions.

124. *Subsection (2)* defines condition 1 as accommodation made available on the basis of a shared ownership arrangement, an equity percentage arrangement or shared ownership trust.

125. *Subsection (3)* defines condition 2, which refers to rules for eligibility designed to ensure that it is occupied by people who cannot afford to buy or rent at market rate.

126. *Subsection (4)* defines “shared ownership arrangements” as arrangements for rental under a lease which:

- is granted on the purchase of an initial share, the price of which is calculated by reference to a percentage of the value of the accommodation or the cost of providing it; and
- provides that the tenant (i.e. the purchaser) is entitled to a sum calculated by reference to the value of the accommodation. This means that when the property is sold, the purchaser is entitled to a sum in proportion to the share he or she has purchased.

127. This description is intended to capture traditional shared ownership schemes, such as the current New Build HomeBuy scheme, also described as “part-buy, part-rent”, where the purchaser buys a share in a property, and pays rent to the freeholder on the unowned share.

128. *Subsection (5)* defines “equity percentage arrangements”. These work on similar principles to traditional shared ownership but do not involve a shared ownership lease. The key features are that the owner of the property sells it (conveys it) to the purchaser in exchange for:

- an initial sum equivalent to a percentage of the value of the property at the time of sale,
- an agreement to pay further sums also calculated by reference to a percentage of the value of the property, and

the liability to make any payments under this arrangement is secured by a mortgage.

129. This description is intended to capture schemes such as the current First Time Buyers Initiative. Under this scheme, the purchaser makes an initial payment based on a percentage of the value of the property (as in a traditional shared ownership arrangement). Unlike a shared ownership arrangement, however, the purchaser owns the property outright. The provider’s interest in the property is secured through a mortgage which would normally be a second charge, sitting behind the purchaser’s conventional mortgage loan.

130. *Subsection (6)* defines “shared ownership trusts” as having the same meaning as in Schedule 9 to the Finance Act 2003.

131. *Subsection (7)* allows the Secretary of State to make regulations amending the definition of low cost home ownership accommodation, or any of the sub-categories specified in that definition. This is to ensure that innovative low cost home ownership schemes, not anticipated here, can be brought within the scope of regulation.

#### **Clause 70 - Shared ownership low cost rental**

132. This clause makes it clear that accommodation which satisfies both the definitions of low cost rental accommodation and low cost shared ownership accommodation is to be treated as low cost shared ownership accommodation. This clarification is necessary because shared ownership arrangements will generally include the payment of a sub-market rent on the share retained by the registered provider, and will also have eligibility criteria which will mean that they satisfy the definition of low cost rental as well as that of low cost shared ownership.

#### **Clause 71 – Regulations**

133. *Subsection (1)* allows the Secretary of State to make regulations providing that specified accommodation (or a specified class of accommodation) is or is not to be

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treated as social housing. This allows the Secretary of State to ensure, for example, that all homes funded through public investment are designated as social housing. This is necessary to allow decisions on the classification of new types of social housing (in particular low cost home ownership arrangements) which are likely to be developed in future.

134. *Subsection (2)* states that the regulations may provide for accommodation to be social housing despite not satisfying clause 67(1)(a) or (b) – i.e. not meeting the definitions of low cost rental accommodation or low cost home ownership accommodation – where the Secretary of State thinks the accommodation 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. This may, for example, cover housing for vulnerable people.

135. *Subsection (3)* states that the regulations:

- may override clause 67(2)
- are subject to clause 67(3) and clause 76
- are subject to clauses 68 and 69 (but may clarify doubt about the application of those clauses).

136. *Paragraph (a)* means that the Secretary of State can make regulations which specify that certain accommodation is not social housing, even if it had previously satisfied clause 67(1)(a) or (b). This power is necessary to correct any errors of classification that become apparent over time.

137. *Paragraph (b)* means that the regulations cannot override clauses 67(3) and 76 which ensure that homes currently regulated by the Housing Corporation under the 1996 Act are regulated under the new system.

138. *Paragraph (c)* means that the regulations can clarify the application of the definitions of low cost rental and low cost home ownership, but cannot fundamentally alter them. Note, however, that clause 69(7) separately allows the Secretary of State to make regulations amending the definition of low cost home ownership.

139. *Subsection (4)* states that the regulations may make provision by reference to-

- the opinion of the regulator or another specified person;
- designation, agreement or other action by the regulator or another specified person.

140. This could, for example, include accommodation funded under an agreement with the HCA and designated by the HCA as social housing.

**Clause 72 - Leaving the social housing stock: sale**

141. This clause states that a dwelling ceases to be social housing if it is sold to the tenant.

142. *Subsections (2) and (3)* state that the low cost rental accommodation and shared ownership accommodation are “sold to the tenant” when the tenant exercises a statutory or contractual right and as a result becomes the owner of either the freehold or the leasehold previously owned by the registered provider.

143. *Subsection (4)* states that low cost home ownership accommodation of the equity percentage kind is “sold to the tenant” when the buyer exercises a statutory or contractual right as the result of which the equity percentage arrangements come to an end.

144. *Subsection (5)* states that low cost home ownership accommodation of the shared ownership trust kind comes to an end when the purchaser exercises a statutory or contractual right as a result of which the trust comes to an end.

**Clause 73 - Leaving the social housing stock: expired lease**

145. This clause states that a dwelling ceases to be social housing if the provider holds a leasehold interest in the dwelling, and the leasehold interest expires.

146. *Subsection (2)* makes it clear that a lease from an associate or subsidiary of the provider is disregarded.

**Clause 74 - Leaving the social housing stock: disposal with consent**

147. This clause states that a dwelling ceases to be social housing if it is disposed of with the regulator’s consent in accordance with Chapter 5.

**Clause 75 - Leaving the social housing stock: regulator’s direction**

148. This clause allows the regulator to direct that a specific dwelling which has ceased to be low cost rental accommodation or low cost home ownership accommodation is to cease to be social housing.

149. The regulator may make a direction only on application of the provider.

**Clause 76 - Housing stock under Housing Act 1996**

150. This clause ensures that properties owned by an RSL immediately before the coming into force of clause 67 are defined as social housing under this Bill.

151. *Subsection (2)* clarifies that such properties are social housing even if they do not satisfy the definitions of low cost rental or low cost home ownership accommodation in clauses 68 and 69. As with other social housing, it remains

social housing until an event specified in clauses 72 to 75 (sales to tenants, expiry of lease, disposal with regulator's consent, etc) occurs.

### ***Other key concepts***

#### **Clause 77 – Regulator of Social Housing**

152. Clause 77 specifies that for this Part “the regulator” means the Office for Tenants and Social Landlords as specified in clause 80.

#### **Clause 78 - English bodies**

153. This clause provides a definition of “English body”. An English body is either:

- a registered charity with the Charity Commission, or
- an industrial and provident society whose registered office is in England, or
- a company which has a registered office is in England, or
- any other person, whether or not a corporate body, that is not a Welsh body, and that makes available, or intends to make available, accommodation in England

154. Clause 63(4) defines “Welsh body”.

#### **Clause 79 - Provider of social housing**

155. This clause refers to the provisions in Chapter 3 that establish the register of providers of social housing.

156. It specifies that persons listed on the register under the provisions of Chapter 3 are referred to in this Part as “registered providers”, and in other primary or secondary legislation as “registered providers of social housing”.

## **Chapter 2 – The Social Housing Regulator**

### ***Constitution***

#### **Clause 80 - Establishment**

157. This clause establishes the regulator, which is to be responsible for carrying out the functions of the social housing regulator as set out in this Bill.

#### **Clause 81 – Membership**

158. This clause makes provision for the Board of the regulator. The Board is to consist of not less than three members and up to a maximum of 11 members (including the Chair who is appointed by the Secretary of State) and a Chief

Executive (appointed under clause 83). The Secretary of State must consult the Chair before appointing other members. *Subsection (4)* makes clear that former Board members of the Housing Corporation can become members of the regulator.

**Clause 82 – Tenure**

159. This clause sets out the tenure of appointment of appointed Board members and the circumstances where the Secretary of State may dismiss a Board member (eg absence, bankruptcy or misbehaviour). Board appointment terms cannot exceed 5 years although members may be reappointed for additional terms. Board members can resign by written notice to the Secretary of State.

**Clause 83 – Chief executive**

160. This clause sets out the appointment process of a Chief Executive. The first Chief Executive will be directly appointed by the Secretary of State after consulting the Chair. Subsequent appointments will be made by the regulator subject to approval by the Secretary of State.

**Clause 84 – Other staff**

161. This clause provides the regulator with the power to appoint employees.

**Clause 85 – Consequential amendments**

162. *Subsection (1)* of this clause inserts the regulator into Schedule 1 of the Public Records Act 1958 so that it is listed as a body whose records are public records.

163. *Subsection (2)* of this clause inserts the regulator into Schedule 1 of the House of Commons Disqualification Act 1975 so that it is listed as a body of which all members are disqualified from taking up a seat in House of Commons.

164. *Subsection (3)* of this clause inserts the regulator into Schedule 1 of the Freedom of Information Act 2000 so that it is listed as a public body or office that comes under the Act for the disclosure of information held by public authorities.

***Proceedings***

**Clause 86 - Fundamental objectives**

165. Clause 86 sets out the fundamental objectives of the regulator. These objectives are separately identified in *subsections (2) to (11)*. The regulator must perform its functions with a view to achieving these objectives so far as possible.

166. *Subsection (2)* specifies the first objective: to encourage and support a supply of well-managed social housing of appropriate quality and sufficient to meet reasonable needs. Social housing is defined in clause 67(1).

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167. *Subsection (3)* specifies the second objective: to provide an appropriate degree of choice and protection for current and potential future tenants of social housing in relation to their homes.

168. *Subsection (4)* specifies the third objective: to ensure that tenants have the opportunity to be involved in the management of their social housing.

169. *Subsection (5)* specifies the fourth objective: to promote the efficient, effective and economic performance of landlord functions by registered providers of social housing.

170. *Subsection (6)* specifies the fifth objective: to ensure that registered providers are financially viable and properly managed.

171. *Subsection (7)* specifies the sixth objective: to encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas in which their property is situated.

172. *Subsection (8)* specifies the seventh objective: to encourage investment in social housing. This means investment both in respect of the provision of new social housing, and in continuing investment in the existing social housing that it already owns in order to ensure that it continues to be of a good quality.

173. *Subsection (9)* specifies the eighth objective: to avoid creating either as a direct or indirect consequence of its actions an unreasonable burden on public funds.

174. *Subsection (10)* specifies the ninth objective: to guard against the misuse of public funds.

175. *Subsection (11)* specifies the tenth objective: to regulate in such a way as to minimise administrative burdens, consistent with its ability to achieve its other objectives. *Subsection (12)* provides that this will include compliance with the Regulators' Compliance Code issued under the provisions of the Legislative and Regulatory Reform Act 2006.

176. *Subsection (13)* indicates that there is no significance to the order in which the objectives are listed in the clause. It is for the regulator to balance these objectives in carrying out each of its functions as it deems appropriate.

**Clauses 87 and 88 – Procedure and conflict of interest**

177. Clause 87 provides for the regulator to determine its own procedures and for the manner in which those procedures are made public. Clause 88 states that these procedures must include a provision for dealing with conflicts of interest of members or employees.

**Clauses 89 and 90 – Committees and delegation**

178. Clauses 89 and 90 provide for the regulator to authorise a committee, a sub-committee, a member or an employee to exercise a function on its behalf. All committees or sub-committees will need to include at least one member of the regulator (but may also include non-members).

**Clause 91 - Annual report**

179. This clause requires the regulator to prepare and publish an annual report, as soon as is reasonably practicable after the end of each financial year.

180. The contents must be a report on the performance of its functions during the preceding financial year. In particular, it will include a statement of the regulator's accounts, and specify any direction that it has been given by the Secretary of State during the preceding year under clause 177.

181. Having prepared the report, the regulator will send a copy of the report to the Secretary of State, who will then lay a copy before Parliament.

***Powers***

**Clause 92 - General**

182. This clause gives the regulator power to 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. In particular the regulator may do anything it thinks appropriate for advancing its fundamental objectives.

**Clause 93 - Studies**

183. This clause gives the regulator a power to commission studies or to carry them out itself with the objective of improving the economy, efficiency and effectiveness of registered providers. Where the regulator carries out or commissions such studies, it may publish a report.

**Clause 94 - Financial assistance**

184. This clause gives the regulator a power to give financial assistance to another person for the purpose of advancing its fundamental objectives as set out in clause 86.

185. *Subsection (1)* gives the regulator power to give financial assistance in connection with research, guidance, best practice and tenant involvement.

186. *Subsection (3)* gives the regulator a separate power to give financial assistance to a registered provider by lending money or giving a guarantee or indemnity. Such assistance may only be given with the consent of the Secretary of State (*subsection (4)*) and with the approval of the Treasury.

**Clause 95 – Evidence**

187. This clause provides that the regulator may, in considering whether to exercise a power, have regard to information from any source including, in particular, from tenants, bodies representing tenants, local housing authorities, or the Housing Ombudsman.

**Money**

**Clause 96 – Remuneration**

188. This clause provides for the regulator to make payments to appointed members and employees. *Subsection (1)* enables the regulator to pay remuneration, allowances and pensions to Board members although *subsection (2)* makes clear that rates and eligibility will be determined by the Secretary of State. *Subsection (3)* provides for the regulator to make compensation payments on Board members ceasing in their functions in special circumstances and at a level determined by the Secretary of State.

189. *Subsection (4)* gives the regulator the power to pay its employees remuneration, allowances and pensions.

**Clause 97 – Charging**

190. This clause allows the regulator to charge for giving advice, conducting research or providing other services. This replaces the power of the Housing Corporation under section 77 of the Housing Associations Act 1985.

**Clause 98 – Assistance by Secretary of State**

191. This clause enables the Secretary of State to make payments to the regulator by way of grant or loan, and for those payments to be subject to conditions.

**Clause 99 – Borrowing**

192. This clause specifies that the regulator may borrow by way of an overdraft or otherwise, for the short-term management of its finances, or from the Secretary of State. It may not borrow otherwise.

193. This replaces the wider borrowing powers of the Housing Corporation under section 92 of the Housing Associations Act 1985. Those powers will not be needed by the regulator as it will not be investing in affordable housing.

**Clauses 100 and 101 – Accounts and Financial year**

194. Clause 100 sets out provisions for ensuring that the regulator maintains and publishes its accounts, the form of which will be directed by the Secretary of State. These accounts are to be sent to the Secretary of State and the Comptroller and Auditor General. Clause 101 deals with the definition of the regulator's financial year.

### ***Relationship with other bodies***

#### **Clause 102 - Co-operation with the HCA**

195. *Subsection (1)* requires the regulator to co-operate with the HCA.

196. *Subsection (2)* requires the regulator to consult the HCA on matters likely to interest it.

#### **Clause 103 - Direction to the HCA**

197. This clause gives the regulator a power to direct the HCA not to give financial assistance to a specified registered provider. The regulator's direction is only in respect of the HCA's power to give financial assistance under section 23, and only where the purpose of that financial assistance is in connection with social housing.

198. The purpose of this power is to prevent financial assistance from being given to a registered provider where there are serious concerns about mismanagement or about the viability of the organisation. This power is to be used in the most serious interventions by the regulator, as described in *subsection (2)*:

- the regulator has decided to hold an inquiry into affairs of the registered provider under clause 183 (and the inquiry is not concluded),
- the regulator has received notice in respect of the registered provider under clause 137 (moratorium), or
- the regulator has appointed an officer of the registered provider under clause 233 (and the person appointed has not vacated office).

199. *Subsection (3)* states that 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). This means that the regulator could prohibit some forms of financial assistance but not others. It also means that the regulator could prohibit financial assistance even where, for example, a funding agreement is already in place.

200. *Subsection (4)* states that a direction shall have effect until withdrawn.

### ***Information***

#### **Clause 104 - Collection**

201. Clause 104 gives the regulator, for the purposes connected with its functions, the power to require documents or information from any person about the financial or other affairs of registered providers or the activities of a registered provider or a person who has applied to become a registered provider.

202. The regulator will wish to require routine data and regulatory information from all registered providers periodically to help it determine where intervention may be needed. It may also wish to follow up information provided by tenants, local authorities or others about poor performance by asking for specific information from the provider.

203. *Subsection (2)* makes it clear that in the case of for-profit registered providers, these powers relate only to their affairs and activities concerning the provision of social housing. This is because for-profit registered providers, unlike non-profit providers, are likely to have significant interests outside the provision of social housing, with which the regulator is not normally concerned.

204. *Subsection (3)* specifies that the regulator must make requests for information under this power in writing specifying the form and manner in which it is to be provided and when and where it is to be provided.

205. *Subsection (4)* permits the regulator to copy or record the documents or information required by him under this clause.

206. *Subsection (5)* specifies that it will be an offence to fail to comply with a request for information made by the regulator under this power unless the provider has a reasonable excuse. *Subsection (3)* of clause 105 provides that a person guilty of this offence is liable on summary conviction to a fine up to level 5 (currently £5000) on the standard scale.

207. *Subsection (6)* further specifies that it will also be an offence intentionally to alter, suppress or destroy information or documents to which a request for information by the regulator under this clause relates. *Subsection (4)* of clause 104 provides that a person guilty of this offence is liable either on summary conviction to a fine up to the statutory maximum (currently £5000), or on conviction on indictment to imprisonment for a term of no more than 2 years, or a fine, or both.

208. *Subsection (7)* provides that if a person who has been required to provide information by the regulator under this power fails to comply, then the regulator may apply to the High Court for an order to remedy that person's failure to provide the information required. *Subsection (5)* of clause 105 provides that such an order may include a provision for costs.

#### **Clause 105 – Section 104: supplemental**

209. *Subsection (1)* of clause 105 limits the power to require information in clause 104 such that a regulator's requirement for information cannot extend to a requirement that if it were High Court proceedings the person would be entitled to refuse to disclose on the grounds of legal professional privilege.

*These notes refer to the Housing and Regeneration Bill  
as introduced in the House of Commons on 15th November 2007 [Bill 8]*

210. Similarly *subsection (2)* specifies that a requirement for information does not require a banker to breach a duty of confidentiality owed to a person other than a registered provider or the subsidiary or associate of a registered provider.

#### **Clause 106 - Disclosure**

211. Clause 106 governs the way in which information may be disclosed to and disclosed by the regulator in certain circumstances.

212. *Subsection (1)* provides that a public authority may disclose information to the regulator provided that it is for a purpose connected with the regulator's functions. *Subsection (6)* defines a "public authority" as a person with functions of a public nature, without restriction as to the location where those functions are carried out.

213. *Subsection (2)* provides for the regulator to disclose information to a public authority (as defined in *subsection (6)*) for any purpose that is either connected with the regulator's own function, or with the functions of the public authority to which the information is disclosed.

214. *Subsections (3) to (5)* provide that such disclosures may be subject to restrictions on further disclosure and that any disclosure in contravention of such a restriction is an offence. A person who is guilty of this offence will be liable on conviction to a fine not exceeding level 3 (currently £1000) on the standard scale.

### **Chapter 3 - Registration**

#### ***Introduction***

#### **Clause 107 - Overview**

215. This clause describes the purpose of this Chapter which is to establish a register of providers of social housing.

#### **Clause 108 – The register**

216. *Subsection (1)* of clause 108 requires the regulator to keep a register of persons providing social housing. Only those persons on the register will be subject to regulation by the social housing regulator. This duplicates the current requirement on the Housing Corporation under section 1 of the 1996 Act.

217. *Subsection (2)* of clause 108 requires the regulator to make the register publicly available. This replaces the more restrictive provision in section 1(1) of the 1996 Act that the register is made available at reasonable times at the Housing Corporation's head office.

## ***Eligibility***

### **Clause 109 - Eligibility for registration**

218. *Subsection (1)* of clause 109 indicates that an English body is eligible for registration if it satisfies the conditions of this clause, and does not fall within the exceptions specified in clause 110. “English body” is defined in clause 78.

219. This clause removes the restrictions that applied under section 2 of the 1996 Act on the constitutional form and objectives of RSLs in England, but which continue to apply in respect of Welsh bodies.

220. Registration is not compulsory for persons that provide social housing as defined by clause 67.

221. *Subsection (2)* requires that a body must be a provider of social housing in England, or intend to become one as a condition of registration.

222. *Subsection (3)* makes it a condition that the regulator thinks that the social housing provided by the body is only or mainly in England, or will be so. *Subsection (4)* specifies that if a body has been registered in reliance on the condition in subsection (3), it may remain registered even though it does not meet that condition.

223. *Subsection (5)* requires that the body must satisfy any relevant criteria that have been set by the regulator in respect of:

- its financial situation
- its constitution, and
- other arrangements for its management.

224. *Subsection (6)* requires that before the regulator sets any criteria for eligibility for registration, the regulator must consult:

- the HCA
- bodies representative of the interests of registered providers, and
- bodies representative of the interests of tenants.

### **Clause 110 - Local authority non-registrable bodies**

225. *Subsection (1)* says that this clause sets out the exceptions to clause 109.

*These notes refer to the Housing and Regeneration Bill  
as introduced in the House of Commons on 15th November 2007 [Bill 8]*

226. *Subsection (2)* specifies that local housing authorities, as defined in section 1 of the Housing Act 1985, are not eligible for registration.

227. *Subsection (3)* specifies that county councils are not eligible for registration.

228. *Subsection (4)* specifies that a person controlled by an authority that is within the meaning of either subsections (2) or (3) is not eligible for registration.

229. *Subsection (5)* gives the Secretary of State the power to make regulations prescribing classes of person who are or are not to be treated as being eligible to be a registered provider of social housing under subsection (4).

**Clause 111 - Profit-making and non-profit organisations**

230. *Subsection (1)* of this clause provides that the register kept under clause 108 must designate each registered person as either a non-profit organisation or a profit-making organisation. The restriction in section 2(2) of the 1996 Act that requires RSLs to be non-profit making is not replicated.

231. *Subsections (2) to (6)* define what is a non-profit organisation.

232. *Subsection (2)* specifies a registered or non-registrable charity as a non-profit organisation.

233. *Subsection (3)* specifies that a body is also a non-profit organisation if it meets the conditions specified in subsections (4) to (6). These conditions are-

- that it does not trade for profit or that its constitution prohibits it from issuing capital with interest or dividend in excess of the specified rate (this condition re-enacts the definition of non-profit organisation in section 2(3) of the 1996 Act); and
- a purpose of the body is the provision or management of housing; and
- any other purposes of the body are connected with or incidental to the provision of housing.

234. *Subsection (7)* gives the Secretary of State the power to make regulations providing that a specified purpose is, or is not, connected with or incidental to the provision of housing.

235. *Subsection (8)* defines a profit-making organisation as any organisation which is not a non-profit organisation.

236. These definitions are the basis on which the regulator will make the designation in the register provided for in subsection (1).

237. *Subsection (9)* requires the regulator to change the designation in the register where a profit-making organisation becomes a non-profit organisation as defined in this clause.

### ***Procedure***

#### **Clause 112 - Entry**

238. *Subsection (1)* of this clause provides that the regulator shall register any person who is eligible for registration as defined in clause 109 and who applies to the regulator to be registered.

239. *Subsection (2)* gives the regulator the power to specify how an application should be made, including the form it should take, what information it should contain, and how it should be submitted. The regulator can also specify what will happen if an applicant for registration fails to comply with the regulator's requirements under this subsection.

240. *Subsection (3)* specifies that this clause is subject to clause 113 (fees).

241. *Subsection (4)* provides that once a body has been registered, it will remain registered unless and until it is removed under the provisions of clause 114 or 115.

242. *Subsection (5)* specifies that a person entered in the register is to be presumed for all purposes to be eligible for registration while they remain on the register, regardless of whether or not they are later removed from the register, and the reason for that removal.

#### **Clause 113 - Fees**

243. This clause gives the regulator the power to set fees for registration. The regulator may make the initial registration under clause 112 conditional on payment of a fee, and may make continued registration conditional upon payment of annual fees.

244. *Subsection (3)* gives the regulator the power to set the amount of the fee to be charged under this clause, and to make provisions for the arrangements for annual fees, both when they are paid, and in respect of which period.

245. *Subsection (4)* gives the regulator the power to set fees on a differential basis according to different cases or circumstances. For example, the regulator may, if it chooses, set a variable fee scale according to the number of homes owned, or relate it to the amount of income a provider receives in an annual period.

246. *Subsection (5)* provides that fees will be set in accordance with principles which aim to ensure that so far as is reasonably practicable -

- a) aggregate fee income the regulator receives matches the amount of expenditure it incurs in performing its 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.

247. *Subsection (6)* specifies that the principles for setting fees may provide for specified or potential expenditure under clause 94 (financial assistance) to be disregarded.

248. *Subsection (7)* specifies that in preparing the principles, the regulator shall consult the Secretary of State and persons representing the interests of fee-payers.

249. *Subsection (8)* specifies that the regulator's accounts shall show both fees received and fees outstanding.

**Clause 114 - De-registration: compulsory**

250. *Subsection (1)* gives the regulator the power to remove a body from the register, if it thinks that-

- it is no longer eligible (as provided for in clauses 109 and 110)
- it has ceased to carry out activities, or
- it has ceased to exist.

251. *Subsection (2)* requires the regulator in the cases of subsection (1)(a) or (b) to take all reasonable steps to give the body it proposes to de-register 14 days' notice of its action, and to consider any representations that the body may make during that period.

**Clause 115 - De-registration: voluntary**

252. *Subsection (1)* allows registered providers to ask the regulator to remove them from the register.

253. *Subsection (2)* gives the regulator the power to comply with a request under subsection (1) where one or more of the specified conditions applies as follows:

- the registered provider no longer is, or does not intend to continue to be a provider of social housing in England

*These notes refer to the Housing and Regeneration Bill  
as introduced in the House of Commons on 15th November 2007 [Bill 8]*

- the registered provider is subject to regulation by another authority whose control the regulator believes to be sufficient, or
- other grounds that the regulator believes to be sufficient to justify deregistration.

254. *Subsection (3)* requires the regulator to consult any local authority (as defined in the Housing Associations Act 1985) in whose area the registered provider carries out its activities before deciding whether or not to comply with a request under subsection (1).

255. *Subsection (4)* provides that, once the regulator has decided whether or not to comply with a request under subsection (1) it must notify both the registered provider that has made the request, and any authority that it has consulted under subsection (3).

#### **Clause 116 - Notice**

256. This clause requires the regulator to take certain actions as soon as reasonably possible after it has registered or deregistered a body. These actions are to notify other registrars who have related duties or powers depending on the constitutional form of the body that the regulator has registered or de-registered. Therefore, the regulator notifies:

- the Charity Commission, if the registered provider is a registered charity,
- the Financial Services Authority, if the registered provider is an industrial and provident society,
- the registrar of companies for England and Wales, if the registered provider is a registered company.

257. *Subsection (2)* provides that in notifying these bodies, the regulator will advise whether the body has been registered with a profit-making or non-profit designation under clause 111(1).

258. *Subsection (3)* provides that if the regulator changes the designation under clause 111(8), the regulator will also advise the relevant bodies.

259. *Subsection (4)* provides that a person to whom notice is given by the regulator under this clause must keep a record of that notice.

#### **Clause 117 - Appeal**

260. *Subsection (1)* gives a body the right of appeal to the High Court against a decision of the regulator:

- to refuse to register that body

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as introduced in the House of Commons on 15th November 2007 [Bill 8]*

- to deregister that provider
- to refuse to deregister that provider.

261. *Subsection (2)* prohibits the regulator from deregistering a body while an appeal to the High Court is pending.

## **Chapter 4 – Registered providers**

### ***General provisions***

#### **Clause 118 - Payments to members etc.**

262. This clause derives from paragraph 1 of Part 1 of Schedule 1 to the 1996 Act.

263. *Subsection (1)* restricts the making of gifts and the payment of dividends and bonuses by a non-profit registered provider to –

- a member or former member of the registered provider,
- a member of the family of a member or former member,
- a company which has as a director such a person.

264. *Subsection (2)* states that gifts may only be made, or dividends or bonuses paid if it falls within the three classes defined in *subsections (3) to (5)*.

265. *Subsections (3) to (5)* directly replace paragraphs 1(2)(a) to (c) of the Part mentioned above.

266. *Subsection (6)* states that if a registered company or industrial and provident society contravenes this section –

- it may recover the wrongful gift or payment as a debt from the recipient; and
- the regulator may require it to take action to recover the gift or payment.

#### **Clause 119 - Disposal of property**

267. This clause cross-refers to the provisions in Chapter 5 (disposal of property).

#### **Clause 120 – Complaints**

268. This clause specifies that the Housing Ombudsman schemes, as established by section 51 of, and Schedule 2 to the 1996 Act, continue to have effect, with the consequential amendments specified.

**Clause 121 - Voluntary undertaking**

269. This clause sets out the nature of voluntary undertakings made to the regulator by registered providers.

270. A registered provider may make an undertaking in respect of any matter concerning social housing.

271. The regulator must have regard to any undertaking made in this way by a registered provider when exercising a power under Chapters 6 or 7 of this Part of the Bill. The regulator may also take into account the extent to which undertakings having been made in this way by a registered provider, have been honoured by the provider, when deciding whether to exercise powers under Chapters 6 or 7.

272. The purpose of this provision is to enable registered providers to formally notify the regulator of actions that they propose to take, and believe are necessary to ensure that their affairs are managed in accordance with the standards set by the regulator under clauses 173 and 174. It provides a mechanism by which such commitments can be brought to the attention of the regulator, and require the regulator to take account of those undertakings when determining whether to investigate the performance of providers, and to take enforcement action where providers have not complied with regulatory requirements.

**Clause 122 – Sustainable community strategies**

273. This clause specifies that a registered provider must co-operate with a local authority if invited to participate in the preparation or modification of a sustainable community strategy under section 4 of the Local Government Act 2000.

***Accounts***

274. Clauses 123 to 134 broadly replicate the powers of the Housing Corporation in Part III of Schedule 1 to the 1996 Act (as amended by paragraphs 17 to 23 of Schedule 11 to the Housing Act 2004). These powers are conferred on the regulator.

These powers relate to the accounting requirements for non-profit registered providers of social housing.

**Clause 123 - Directions**

275. *Subsections (1) and (2)* give the regulator the power to give directions to non-profit registered providers about the preparation of accounts for the purpose of ensuring that accounts are prepared in a proper form and that they present a true and fair view of a registered provider's state of affairs as far as it concerns social housing, including its present and past social housing assets and funds. This replaces paragraph 16(1) of Schedule 1 to the 1996 Act.

276. *Subsection (3)* provides that a direction may provide specifically for how registered providers that are charities should distinguish in their accounts between social housing activities and other matters. This replaces paragraph 16(2) of Schedule 1 to the 1996 Act.

277. *Subsection (4)* provides that directions under this power may make general provisions, or provisions specific to particular cases, and that provisions may vary according to different cases or types of provider.

278. *Subsection (5)* provides that where directions relate to more than one provider, those directions must first be consulted on by the regulator with bodies appearing to represent the interests of registered providers, and require the Secretary of State's consent. In such case, *subsection (6)* requires the regulator to make arrangements to ensure that providers to whom the directions apply are made aware of their requirements.

#### **Clause 124 - Submission to regulator**

279. This clause replaces paragraphs 16(5) to 16(8) of Schedule 1 to the 1996 Act. It requires all non-profit registered providers to send a copy of their accounts to the regulator within six months of the end of the year to which they relate. These accounts must be accompanied by an auditor's report, or, if an enactment requires a report other than an auditor's report, a report of the kind that is so specified. The report must specify whether the accounts comply with any relevant directions under clause 123.

#### **Clause 125 - Non-audited industrial and provident society**

280. This clause replaces paragraph 17 of Schedule 1 to the 1996 Act. *Subsection (1)* provides that this clause applies only to industrial and provident societies. *Subsection (2)* provides that an accountant's report is required even where the society's turnover does not exceed a sum specified in the Friendly and Industrial and Provident Societies Act 1968, that would otherwise allow the society to disapply the requirement for an accountant's report.

281. *Subsections (3)* and *(4)* give the regulator a power to require the society to appoint a qualified auditor to audit their accounts, and to send to the regulator a copy of the auditor's report, when the society has disapplied the requirement to appoint a qualified auditor under section 4A of the Friendly and Industrial and Provident Societies Act 1968. The regulator may only use this power in the year following the year to which the accounts relate.

282. *Subsection (5)* defines "qualified auditor" and "year of account" for the purposes of this clause.

#### **Clause 126 - Charity**

283. This clause replaces part of paragraph 18 of Schedule 1 to the 1996 Act

284. *Subsection (1)* specifies that this clause relates to non-profit registered providers that are registered charities. *Subsection (2)* requires such providers to keep accounting records and maintain systems of control in relation to housing activities.

285. *Subsection (3)* requires such providers to prepare a revenue account giving a true and fair view of its housing activities and a balance sheet giving a true and fair view of its activities as a whole for each accounting period. *Subsection (4)* requires that the reports specified in subsection (3) must be signed by at least two of the provider's directors or trustees.

286. *Subsection (5)* defines "period of account" for the purposes of this clause.

287. *Subsection (6)* specifies that this clause does not override other provisions relating to charity accounts in Charities Act 1993.

#### **Clause 127 - Charity: audit**

288. This clause replaces part of paragraph 18 of Schedule 1 to the 1996 Act (as amended by paragraph 20(4) of Schedule 11 to the Housing Act 2004).

289. The purpose of this clause is to define whether a charity must appoint an auditor to produce a report under clause 128 or a reporting accountant to produce a report under clause 129 on the accounts required under subsection (3) of clause 126.

290. *Subsection (2)* specifies that if either of the conditions specified in subsection (4) or subsection (5) are met, then the requirements for an auditor's report under clause 128 apply. Otherwise, the requirements for an accountant's report under clause 129 apply.

291. *Subsection (4)* is the first condition which is that the charity's gross income in relation to housing activities for a period exceeds the amount specified in section 43(1)(a) of the Charities Act 1993.

292. *Subsection (5)* is the second condition which is that the charity's gross income in relation to housing activities for a period is greater than the amount specified in section 43(1) of the Charities Act 1993, and that, at the end of that period, the aggregate value of assets (before deduction of liabilities) that relate to housing is greater than the sum specified in section 43(1)(b) of the Charities Act 1993.

293. *Subsections (6) and (7)* define "gross income" and "qualified person" for the purposes of this clause.

#### **Clause 128 - Charity: auditor's report**

294. This clause replaces part of paragraph 18 of schedule 1 to the 1996 Act.

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as introduced in the House of Commons on 15th November 2007 [Bill 8]*

295. Where an auditor has been appointed under either clause 127 or 130, the auditor's report on the charity's accounts must meet the requirements of this clause.

296. *Subsection (2)* requires that the report must state whether the revenue account gives a true and fair view of the charity's income and expenditure in relation to its housing activities, and whether the balance sheet also gives a true and fair view of the charity's state of affairs at the end of the period to which it relates.

297. *Subsection (3)* requires the report to give the auditor's name and for it to be signed.

298. *Subsection (4)* specifies that the auditor will carry out such investigations as are necessary to reach an opinion on whether the charity has complied with clause 126 (2), and whether the accounts are consistent with the accounting records that the charity is required to keep.

299. *Subsection (5)* requires the auditor to state in the auditor's report if the opinion arising from investigations under *subsection (4)* is that the requirements specified there have not been complied with.

300. *Subsection (6)* requires that where the auditor has not obtained all of the information or explanations that the auditor thinks necessary for the purposes of the audit, this must be stated in the auditor's report.

**Clause 129 - Charity: accountant's report**

301. This clause replaces paragraph 18A of Schedule 1 to the 1996 Act.

302. The clause specifies the requirements for an accountant's report on the charity's accounts as required by clause 126(3).

303. *Subsection (2)* specifies that the report must say whether the accounts are consistent with the accounting records of the charity. *Subsection (3)* specifies that the report must say whether, on the basis of the accounting records, the accounts comply with the requirements of the Charities Act 1993 and that the basis on which an accountant's report rather than an auditor's report is permitted, as set out in clause 127, has been correctly established.

304. *Subsection (4)* requires the report to give the reporting accountant's name and for it to be signed.

305. *Subsection (5)* requires that where the reporting accountant has not obtained all of the information or explanations that the reporting accountant thinks necessary for the purposes of the report, this must be stated in the report.

**Clause 130 - Charity: extraordinary audit**

306. Where under clause 127(3) the charity is required to appoint a reporting accountant, this clause provides that the regulator has the power to require the charity also to appoint a qualified auditor to audit the accounts, and to send to the regulator a copy of the auditor's report. The regulator may only use this power in the year following the year to which the accounts relate.

307. *Subsection (4)* defines "qualified auditor" and "year of account" for the purposes of this clause.

**Clause 131 - Charity: auditor's powers**

308. This clause requires that a charity must give a person appointed to prepare a report on the charity's accounts under clause 126, whether they are an auditor or a reporting accountant, access to documents that relate to the charity's social housing activities, and must provide to that person such information or explanation as they require.

**Clause 132 - Offences**

309. This clause replaces certain subsections of paragraph 19 of Schedule 1 to the 1996 Act.

310. *Subsection (1)* specifies that the following are offences committed by a registered provider if it has no reasonable excuse:

- failing to comply with a regulator's direction under clause 123
- failing to submit accounts in accordance with clause 124
- failing to comply with provisions of clause 125 which relates to the disapplication of audit requirements for industrial and provident societies, and the regulator's powers where there has been such disapplication
- failing to comply with requirements on charities in subsections (2) and (3) of clause 126 to maintain proper accounting records and systems of control, and to prepare a report on accounts
- failing to comply with the provisions of clause 127 in respect of the appointment of qualified persons to audit or report on the accounts of charities.
- failing to either appoint a qualified auditor to audit and prepare a report on accounts or to provide a copy of that report to the regulator by the specified date as required by clause 130.

311. *Subsection (4)* specifies that where one of the offences in subsection (1) is committed by a registered provider, then every officer of the registered provider is guilty of that offence. *Subsection (5)* specifies that it is a defence for an officer

to show that he or she has done everything that could be reasonably expected to ensure compliance by the registered provider.

312. *Subsection (6)* provides that a person guilty of an offence in subsection (1) is liable on summary conviction to a fine not exceeding level 5 (currently £5000) on the standard scale.

313. *Subsection (7)* provides that proceedings for the offences in subsection (1) may only be brought by, or with the consent of, either the regulator or the Director of Public Prosecutions.

### **Clause 133 - High Court**

314. This clause replaces subparagraph (5) of paragraph 19 of Schedule 1 to the 1996 Act.

315. Where a registered provider has failed to do one of the things listed in clause 132(1), the regulator may apply to the High Court for an order for the purpose of remedying the failure. A High Court order for this purpose may make provision for costs.

### **Clause 134 - Disclosure**

316. This clause replaces paragraph 19A of Schedule the 1996 Act, concerning the disclosure of information by auditors and reporting accountants.

317. *Subsection (1)* specifies that this clause applies to information that a person has received while acting either as an auditor or a reporting accountant of a non-profit registered provider.

318. *Subsection (2)* permits persons in receipt of information as described in *subsection (1)* to disclose that information to the regulator for a purpose connected with the regulator's functions even if there is otherwise a duty of confidentiality on those persons, and regardless of whether or not the regulator has requested the information.

319. *Subsection (3)* clarifies that disclosure of information in this way includes expression of an opinion on that information.

320. *Subsection (4)* defines "reporting accountant" for the purposes of this clause.

### ***Insolvency etc.***

321. These clauses replace the provisions in sections 39 to 45 of the 1996 Act.

**Clause 135 – Non-profit providers only**

322. This specifies that clauses 135 to 149 apply only to non-profit registered providers.

**Clause 136 - Preparatory steps: notice**

323. This clause provides that specified steps are effective only if the person specified in respect of those steps has given the regulator written notice. The steps and the persons who must give notice in respect of those steps are set out in the table in this clause. This clause replaces the provisions of sections 40(1) to 40(5) of the 1996 Act.

324. The steps and the relevant persons who must give notice are as follows.

325. Any step to enforce security over land held by a registered provider must be notified by the person taking that step. The description of this step provides that steps of this kind are prescribed for the purposes of this clause by the Secretary of State by order. This provision for order making replaces section 39(3) of the 1996 Act.

326. The presenting of a petition for the winding up of a registered provider that is either a registered company or an industrial and provident society must be notified by the petitioner.

327. The passing of a resolution for the winding up of a registered provider that is a registered company or an industrial and provident society must be notified by the registered provider. The exception to this is the passing of a resolution for winding up that requires the regulator's consent under clauses 152 or 154. This exception replaces section 40(5) of the 1996 Act.

328. An application for an administration order in respect of a registered provider that is a registered company under paragraph 12 of Schedule B1 to the Insolvency Act 1986 must be notified by the applicant for the administration order.

329. The appointment of an administrator in respect of a registered provider that is a registered company, under paragraph 14 (i.e. the holder of a qualifying floating charge) or paragraph 22 (i.e. the company itself or its directors) of Schedule B1 to the Insolvency Act 1986 must be notified by the person making the appointment.

330. The filing with the court of a copy of a notice of intention to appoint an administrator in respect of a registered provider that is a registered company under paragraph 14 or paragraph 22 of Schedule B1 to the Insolvency Act 1986 must be notified by the person filing the notice.

**Clause 137 - Moratorium**

331. *Subsection (1)* of this clause and clause 138 provide that a moratorium on the disposal of land by a registered provider begins when one of the specified steps is taken in respect of that registered provider. This replaces the provision of section 42(1) of the 1996 Act.

332. The steps and the person taking them are set out in a table in this clause. This table replaces the provisions of section 42(2) to 42(4) of the 1996 Act.

333. *Subsection (2)* requires that where a step specified in the table in this clause is taken in respect of a registered provider, the person specified in the table for that kind of step must give the regulator written notice that they have taken that step as soon as reasonably practicable. This replaces the provision of section 41(1) of the 1996 Act.

334. *Subsection (3)* provides that the step taken is not itself invalidated if the notice required in subsection (2) is not given to the regulator but that the end of the moratorium period specified in clause 138(2) depends upon the notice being given to the regulator. This subsection replaces the provision of section 41(5) of the 1996 Act.

335. The steps and the relevant persons who must give notice are as follows.

336. Any step to enforce security over land held by a registered provider must be notified by the person taking that step. The description of this step provides that steps of this kind are prescribed for the purposes of this clause by the Secretary of State by order. This provision for order making replaces section 39(3) of the 1996 Act.

337. The making of an order for the winding up of a registered provider that is a registered company or an industrial and provident society must be notified by the petitioner.

338. The passing of a resolution for the winding up of a registered provider that is a registered company or an industrial and provident society must be notified by the registered provider.

339. The making of an administration order in respect of a registered provider that is a registered company in accordance with paragraph 13 of Schedule B1 to the Insolvency Act 1986 must be notified by the person who applied for the administration order.

340. The appointment of an administrator in respect of a registered provider that is a registered company, under paragraph 14 (i.e. the holder of a qualifying floating charge) or paragraph 22 (i.e. the company itself or its directors) of Schedule B1 to the Insolvency Act 1986 must be notified by the person making the appointment.

**Clause 138 - Duration of moratorium**

341. This clause replaces the provisions of sections 43(1) to 43(6) of the 1996 Act.
342. *Subsection (1)* specifies that the moratorium begins when one of the steps specified in clause 137 is taken.
343. *Subsection (2)* specifies that the moratorium ends 28 days after the regulator has received notice under clause 137(2) unless the moratorium is extended as provided for in subsection (3) of this clause or cancelled as provided for in subsection (5) of this clause.
344. *Subsection (3)* allows the regulator to extend the moratorium for a specified period provided that all of the registered provider's secured creditors (as defined in clause 238) have consented to the extension. There is no limit to the number of extensions that may occur provided the secured creditors consent to those extensions.
345. *Subsection (4)* requires that, when the moratorium is extended, the regulator must notify the registered provider, and any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land.
346. *Subsection (5)* allows the regulator to cancel the moratorium if it is satisfied that it is unnecessary to make proposals under clause 142.
347. *Subsection (6)* requires the regulator to consult the person who took the step specified in clause 137 that triggered the moratorium before cancelling the moratorium as provided for in subsection (5).
348. *Subsection (7)* requires the regulator to give notice to the registered provider and its secured creditors when the moratorium ends and to provide an explanation of the effects of clause 139. The latter requirement does not apply where the regulator has cancelled the moratorium under subsection (5).
349. *Subsection (8)* specifies that any further steps specified in the table in clause 137 do not have the effect of either starting a new moratorium or of altering the existing moratorium's duration as defined in this clause.

**Clause 139 - Further moratorium**

350. This clause replaces the provisions of sections 43(7) to 43(8) of the 1996 Act.
351. *Subsection (1)* of the clause defines when the provisions of this clause apply. It applies if a moratorium ends other than by cancellation by the regulator under clause 138(5), and a further step specified in clause 137 is taken in relation to the same registered provider within 3 years from the end of that moratorium.

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as introduced in the House of Commons on 15th November 2007 [Bill 8]*

352. *Subsection (2)* provides that a further step of this kind does not automatically trigger a further moratorium.

353. *Subsection (3)* allows the regulator to impose a further moratorium for a specified period but only if all of the registered providers' secured creditors consent to that further moratorium.

354. *Subsection (4)* requires the regulator to notify the registered provider, and any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land if it imposes a further moratorium under subsection (3).

355. *Subsection (5)* provides that all of the provisions in clauses 135 to 149 apply to a further moratorium imposed by the regulator under this clause as they would to a first moratorium, except for clause 138(2).

#### **Clause 140 - Effect of moratorium**

356. This clause together with clause 141 replaces the provisions of section 42(2) to 42(6) of the 1996 Act.

357. *Subsection (1)* provides that the registered provider's land may not be disposed of without the regulator's prior written consent during a moratorium.

358. *Subsection (2)* provides that clause 141 sets out the exceptions to subsection (1), and are therefore disposals which do not require the regulator's prior written consent during a moratorium.

359. *Subsection (3)* provides that the regulator's consent may be given before the moratorium begins and may be subject to conditions.

360. *Subsection (4)* provides that the requirement for the regulator's prior written consent under this clause does not prevent a liquidator from disclaiming land as onerous property during a moratorium.

361. *Subsection (5)* includes within the definition of "land" in this clause any present or future interest in rent or other receipts arising from land.

#### **Clause 141 - Exempted disposals**

362. *Subsection (1)* provides that the list of exceptions set out in this clause do not require the regulator's prior written consent under clause 140. This replaces the provision of section 42(3) of the 1996 Act.

363. *Subsections (2) to (8)* set out the seven exceptions as follows:

- a letting under an assured tenancy or an assured agricultural occupancy
- a letting under what would be an assured tenancy or an assured agricultural occupancy but for the provisions of paragraphs 4 to 8 and 12(1)(h) of Schedule 1 to the Housing Act 1988 (this schedule sets out tenancies which cannot be assured tenancies)
- a letting under a secure tenancy
- a letting under what would be a secure tenancy but for any of paragraphs 2-12 of Schedule 1 to the Housing Act 1985 (this schedule sets out tenancies which are not secure tenancies)
- a disposal to which section 81 or 133 of the Housing Act 1988 applies (which are disposals that require the Secretary of State's consent)
- a disposal under Part V of the Housing Act 1985 (which relates to the right to buy)
- a disposal under the right conferred by section 16 of the 1996 Act (which relates to a tenant's right to acquire social housing).

364. This list of exceptions replicates the effect of section 42(3) of the 1996 Act.

#### **Clause 142 - Proposals**

365. *Subsection (1)* gives the regulator the power to make proposals about the future ownership and management of the registered provider's property during a moratorium with the objective of ensuring that the property will be properly managed by a registered provider. This replaces the provision of section 44(1) of the 1996 Act.

366. *Subsection (2)* specifies that, when making proposals, the regulator must:

- have regard to the interests of all of the registered providers' creditors (replaces section 44(2)(b) of the 1996 Act),
- as far as reasonably possible, avoid making the position of unsecured creditors worse (replaces section 44(5) of the 1996 Act).

367. *Subsection (3)* allows the proposals to include the appointment of a manager as described in clause 145 to implement some or all of the regulator's proposals.

368. *Subsection (4)* specifies things that the regulator's proposals must not include. This replaces section 44(4) of the 1996 Act. The things that may not be included in proposals are:

- a preferential debt being paid other than in priority to a non-preferential debt,
- any preferential creditor being paid a lesser proportion of their preferential debt than any other preferential creditor.

369. *Subsection (5)* provides that where the registered provider is a charity, the regulator's proposals may not require the charity to act outside the terms of its trusts, and that the proposals may provide for the disposal of the registered provider's accommodation only to another charity whose objects are similar to those of the registered provider. This clause replaces the provisions of section 44(6) of the 1996 Act.

#### **Clause 143 - Proposals: procedure**

370. *Subsection (1)* requires the regulator to consult the following before making proposals:

- the registered provider (replaces section 44(2)(a) of the 1996 Act),
- its tenants as far as it is reasonably practicable (replaces section 44(2)(a) of the 1996 Act),
- the Financial Services Authority, if the registered provider is an industrial and provident society (replaces section 44(3)(a) of the 1996 Act),
- the Charity Commission, if the registered provider is a registered charity (replaces section 44(3)(b) of the 1996 Act).

371. *Subsection (2)* requires the regulator to send a copy of its proposals to-

- the registered provider,
- its secured creditors, and
- any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land.

372. *Subsection (3)* requires the regulator to make arrangements for the proposals to be brought to the attention of –

- the members and officers of the registered provider,

*These notes refer to the Housing and Regeneration Bill  
as introduced in the House of Commons on 15th November 2007 [Bill 8]*

- its tenants, and
  - its unsecured creditors.
373. Subsections (2) and (3) replace the provisions of section 44(7) of the 1996 Act.
374. *Subsection (4)* specifies that the regulator's proposals have effect if all of the registered provider's secured creditors agree to those proposals by giving written notice to that effect to the regulator.
375. *Subsection (5)* provides that further modifications to the proposals may be made by the regulator and that these shall also have effect if all of the registered provider's secured creditors agree to those modifications by giving written notice to that effect to the regulator.
376. Subsections (4) and (5) replace the provisions of section 45(1) of the 1996 Act.
377. *Subsection (6)* requires the regulator to send a copy of the proposals agreed under subsections (4) or (5) to the following:
- the registered provider,
  - its secured creditors,
  - any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land,
  - the Financial Services Authority, if the registered provider is an industrial and provident society,
  - the Charity Commission, if the registered provider is a registered charity.
378. *Subsection (7)* requires the regulator to make arrangements for bringing the agreed proposals to the attention of the following:
- the members and officers of the registered provider,
  - its tenants, and
  - its unsecured creditors.

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as introduced in the House of Commons on 15th November 2007 [Bill 8]*

379. Subsections (6) and (7) replace the provisions of section 45(4) of the 1996 Act.

380. *Subsection (8)* allows for the proposals to be amended by agreement between the regulator and the secured creditors. Where such amendments are made and agreed, the provisions of clauses 142 and 143 apply to the amended proposals as they did to the original proposals. This replaces section 45(5) of the 1996 Act.

**Clause 144 - Proposals: effect**

381. *Subsection (1)* lists those who are obliged to implement the proposals agreed under clause 143. This replaces section 45(2) of the 1996 Act. The list is as follows:

- the regulator,
- the registered provider,
- its secured creditors,
- any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land.

382. *Subsection (2)* lists those who are obliged to co-operate with the implementation of the agreed proposals. They are the members of the governing body of the registered providers as follows:

- for a registered charity, its trustees,
- for an industrial and provident society, its committee members, and
- for a registered company, its directors.

383. *Subsection (3)* provides that subsection (2) does not oblige or permit those who are expected to co-operate to breach a fiduciary duty to the registered provider or other duty.

384. Subsections (2) and (3) replace the provisions of sections 45(2) and 45(3) of the 1996 Act.

**Clause 145 - Manager: appointment**

385. This clause replaces the provisions of section 46 of the 1996 Act.

386. *Subsection (1)* provides that this clause applies where proposals made under clause 142 and 143 provide for the appointment of a manager.

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as introduced in the House of Commons on 15th November 2007 [Bill 8]*

387. *Subsection (2)* specifies that the proposals must provide for the manager to be paid reasonable remuneration and expenses.

388. *Subsection (3)* provides that the regulator will appoint the manager.

389. *Subsection (4)* provides that the regulator may give directions to the manager which may be general or specific in nature, or both.

390. *Subsection (5)* provides that the manager may apply to the High Court for directions, and that the directions of the regulator under subsection (4) are subject to directions of the High Court.

391. *Subsection (6)* provides that the regulator must notify the Charity Commission that a manager has been appointed, if the registered provider is a charity.

392. *Subsection (7)* provides that the regulator may appoint a new manager in place of a person who ceases to be a manager under this clause for whatever reason, and that the new manager's terms of appointment will be as specified in the proposals, or as determined by the regulator.

**Clause 146 - Manager: powers**

393. This clause replaces the provisions of section 47 of the 1996 Act.

394. *Subsection (1)* expresses the manager's general powers as follows:

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

395. *Subsection (2)* sets out a list of the specific powers that the terms of a manager's appointment may confer as follows:

- 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;

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- 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).

396. *Subsection (3)* requires the manager to consult and inform the registered provider's tenants as far as it is reasonably practicable to do so about any exercise of power that is likely to affect them.

**Clause 147 - Manager of industrial and provident society: extra powers**

397. This clause replaces the provisions of section 48 of the 1996 Act.

398. *Subsection (1)* specifies that this clause applies to a manager appointed under clause 145 to implement proposals where the registered provider is an industrial and provident society.

399. *Subsection (2)* specifies that the appointment of the manager may include the power to make and execute on behalf of the registered provider an instrument that has the effect of transferring its engagements.

400. *Subsection (3)* provides that such an instrument for transferring engagements has the same effect as a transfer of engagements under sections 51 and 52 of the Industrial and Provident Societies Act 1965.

401. *Subsection (4)* requires a copy of the resolution in subsection (2) to be sent to and registered by the Financial Services Authority, and specifies that the instrument takes effect when it is registered.

402. *Subsection (5)* specifies that the copy in subsection (4) must be sent to the Financial Services Authority for registration within 14 days of the execution of the instrument in subsection (2), but that the copy registered is not invalid if it is registered after that time.

**Clause 148 - Assistance by regulator**

403. This clause replaces the provisions of section 49 of the 1996 Act.

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as introduced in the House of Commons on 15th November 2007 [Bill 8]*

404. *Subsection (1)* gives the regulator the power to give financial or other assistance to a registered provider for the purpose of maintaining its position while the regulator develops proposals under clause 142.

405. *Subsection (2)* gives the regulator the power to give financial or other assistance either to a registered provider or to a manager appointed under clause 145 to assist or facilitate the implementation of proposals agreed in accordance with clause 143.

406. *Subsection (3)* specifies that such assistance under subsections (1) and (2) may include the regulator lending staff or arranging the payment of a manager's remuneration and expenses.

407. *Subsection (4)* specifies a list of things that the regulator may do by way of giving assistance that require the consent of the Secretary of State. Those things are:

- making grants,
- making loans,
- indemnifying a manager,
- making payments in connection with secured loans, and
- guaranteeing payments in connection with secured loans.

**Clause 149 - Applications to court**

408. This clause replaces the provisions of section 50 of the 1996 Act.

409. *Subsection (1)* gives the registered provider the right to apply to the High Court where it thinks that an action taken by a manager appointed under clause 145 is not in accordance with proposals agreed in accordance with clause 143.

410. *Subsection (2)* gives a similar right to a creditor of a registered provider.

411. *Subsection (3)* provides that where an application is made to the High Court under subsection (1) or (2), the High Court can:

- confirm, annul, or modify an act of the manager
- give the manager directions,
- make any other order.

412. *Subsection (4)* gives a person who is bound by proposals as defined in clause 144 the right to apply to the High Court if that person thinks that another person bound by the same provisions in clause 144 has breached the requirements of that clause.

413. *Subsection (5)* provides that where an application is made to the High Court under subsection (4), the High Court can:

- confirm the action, modify the action or annul it,
- grant relief by way of injunction, damages or otherwise.

### ***Restructuring and dissolution***

#### **Clauses 150 to 156**

414. These clauses re-enact the powers of the Housing Corporation in paragraphs 12 to 14 of Schedule 1 to the 1996 Act as powers of the regulator. These powers relate to the restructuring and dissolution of non-profit registered providers of social housing.

#### **Clause 150 - Company: arrangements and reconstructions**

415. *Subsection (1)* specifies that the effect of this clause is restricted to non-profit registered providers that are companies.

416. The effect of *subsections (2) to (4)* is to render the arrangements under various statutory provisions ineffective without the consent of the regulator. *Subsections (2) to (4)* specify that the regulator's consent must be in writing.

417. The arrangements in this clause for which the regulator's consent is required are:

- voluntary arrangements made by the directors of a company with its creditors under Part 1 of the Insolvency Act 1986. (This re-enacts section 13(5) of Schedule 1 to the 1996 Act).
- an agreement or compromise with creditors that has been sanctioned by a court order in accordance with section 899 of the Companies Act 2006 (this replaces paragraph 13(2) of Schedule 1 to the 1996 Act which relates to the such arrangements made under section 425 of the Companies Act 1985). *Subsection (3)(b)* also requires that a copy of the consent should be delivered to the registrar of companies before the court order is effective.
- an agreement under section 900 of the Companies Act 2006 where the application to the court for an order sanctioning an agreement under section 899 Companies Act 2006 is in respect of an agreement to

reconstruct a company or amalgamate two or more companies and it provides for the transfer of the whole or part of the undertaking or property of one or more of the companies involved in the scheme (this replaces the first sentence of paragraph 13(3) of Schedule 1 to the 1996 Act which related to the such arrangements made under section 427 of the Companies Act 1985).

418. *Subsection (5)* provides that a court order for the arrangements in subsection (4), and which section 900(6) of the Companies Act 2006 requires to be sent to the registrar of companies, must also be accompanied by a copy of the regulator's consent (this replaces the second sentence of paragraph 13(3) of Schedule 1 to the 1996 Act which related to the such arrangements made under section 427 of the Companies Act 1985).

**Clause 151 - Company: conversion into industrial and provident society**

419. *Subsection (1)* specifies that the effect of this clause is restricted to non-profit registered providers that are companies.

420. *Subsection (2)* specifies that where there is a resolution to convert a company into an industrial and provident society under section 53 of the Industrial and Provident Societies Act 1965, the registrar of companies may only register that resolution if the regulator has consented in writing to the resolution and a copy of that consent accompanies the resolution sent to the registrar of companies. This re-enacts paragraph 13(4) of Schedule 1 to the 1996 Act.

421. *Subsection (3)* requires that where an industrial and provident society is created by such a resolution, the regulator must register the body created and designate it as a non-profit organisation on the register as provided for in clause 111(1).

422. *Subsection (4)* further provides that the effects of subsection (3) will be immediate for the purposes of the regulator's functions and powers, pending the completion of the registration process by the regulator. This re-enacts paragraph 13(8) of Schedule 1 to the 1996 Act.

**Clause 152 - Company: winding up**

423. *Subsection (1)* specifies that the effect of this clause is restricted to non-profit registered providers that are companies.

424. *Subsection (2)* provides that the regulator must first consent in writing before a special resolution for the voluntary winding up of a company under the Insolvency Act 1986 is effective. This replaces paragraph 13(6)(a) of Schedule 1 to the 1996 Act.

425. *Subsection (3)* provides that the requirement to send a copy of the special resolution to the registrar of companies under section 30 of the Companies Act 2006 is satisfied only if a copy of the regulator's consent accompanies the special resolution. Failure to comply with section 30 of the Companies Act 2006 is an

offence. Subsection (3) replaces paragraph 13(6)(b) of Schedule 1 to the 1996 Act which referred to the earlier equivalent provision in section 380 of the Companies Act 1985.

**Clause 153 - Industrial and provident society: restructuring**

426. *Subsection (1)* specifies that the effect of this clause is restricted to non-profit registered providers that are industrial and provident societies.

427. *Subsections (2) and (3)* re-enact paragraph 12(2) of Schedule 1 to the 1996 Act.

428. *Subsection (2)* provides that the Financial Services Authority, which is the registrar for industrial and provident societies, may register resolutions passed by an industrial provident society for the purposes of the restructuring provisions identified in subsection (3), only if the regulator has consented in writing to the dissolution, and a copy of that consent accompanies the resolution sent to the Financial Services Authority.

429. *Subsection (3)* identifies the restructuring provisions for industrial and provident societies for the purposes of this clause as the following sections of the Industrial and Provident Societies Act 1965:

- section 50 which is for the amalgamation of two or more societies,
- section 51 which is for the transfer of engagements from one society to another,
- section 52 which is for the conversion into, amalgamation with or transfer of engagements to, a company by an industrial and provident society.

430. *Subsection (4)* re-enacts paragraph 12(3) of Schedule 1 to the 1996 Act. It provides that where a resolution is registered by the Financial Services Authority, any body that is created by the resolution, or to which there is a transfer of engagements as a result of the resolution, will be:

- registered by the regulator as a registered provider, and be designated as a non-profit provider in accordance with clause 111, and that
- for the purposes of the regulator's functions and powers, pending the completion of the registration process by the regulator of the new body, the new body will be treated as if it were registered already as a non-profit organisation.

**Clause 154 - Industrial and provident society: winding up**

431. *Subsection (1)* specifies that the effect of this clause is restricted to non-profit registered providers that are industrial and provident societies.

432. *Subsections (2) and (3)* re-enact paragraph 12(4) of Schedule 1 to the 1996 Act.

433. *Subsection (2)* provides that the regulator must first consent in writing before a resolution for the voluntary winding up of a company under the Insolvency Act 1986 is effective.

434. *Subsection (3)* refers to the requirement to send a copy of a winding up resolution to the Financial Services Authority under section 30 of the Companies Act 2006. It specifies that this requirement is only satisfied if the resolution is accompanied by a copy of the regulator's consent. This requirement of the Companies Act 2006 is applied to industrial and provident societies by section 55 of the Industrial and Provident Societies Act 1965, and section 84(3) of the Insolvency Act 1986. Failure to comply with section 30 of the Companies Act 2006 is an offence.

**Clause 155 - Industrial and provident society: dissolution**

435. This clause re-enacts the provisions in paragraph 12(5) of Part II of Schedule 1 to the 1996 Act.

436. *Subsection (1)* specifies that the effect of this clause is restricted to non-profit registered providers that are both industrial and provident societies and are to be dissolved by an instrument of dissolution as defined in section 58 of the Industrial and Provident Societies Act 1965.

437. *Subsection (2)* provides that the instrument of dissolution may only be registered by the Financial Services Authority under section 58(5) of the Industrial and Provident Societies Act 1965 or be advertised by the authority as it is required to do under section 58(6) of the same Act if the regulator has first consented in writing to the dissolution, and that a copy of the consent has accompanied the instrument of dissolution sent to the Financial Services Authority.

**Clause 156 - Winding up petition by the regulator**

438. This clause re-enacts the provisions in paragraph 14 of Schedule 1 to the 1996 Act.

439. *Subsection (1)* specifies that the effect of this clause is restricted to non-profit registered providers that are either registered companies.

440. *Subsection (2)* provides that the regulator may present a petition for the registered provider to be wound up under the Insolvency Act 1986 on one of the grounds specified in subsections (3) to (5) which are that:

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- the registered provider is not carrying out the objects specified in its constitution, or
- the registered provider is unable to pay its debts as that inability is defined in section 123 of the Insolvency Act 1986, or
- the regulator has directed the registered provider to transfer its land to another person under the power conferred on it by clause 229.

441. Clauses 157 to 159 re-enact the powers of the Housing Corporation in paragraph 15 of Schedule 1 to the 1996 Act as powers of the regulator. These powers relate to the transfer of assets on dissolution of non-profit registered providers of social housing.

**Clause 157 - Transfer of property**

442. *Subsection (1)* specifies that the provisions of this clause apply where a non-profit registered provider-

- that is an industrial and provident society has dissolved in accordance with sections 55(a) or 55(b) of the Industrial and Provident Societies Act 1965, or
- that is a registered company that has wound up under the Insolvency Act 1986.

443. *Subsection (2)* provides that in either of the two cases in subsection (1), any surplus property remaining after the registered provider's liabilities have been satisfied will either be transferred to the regulator, or, if the regulator directs, to another registered provider that it specifies.

444. *Subsection (3)* provides that that if the registered provider that has been dissolved or wound up under subsection (1) must sell any of its lands in order to satisfy its liabilities, the regulator may discharge those liabilities instead so as to ensure that the land that would otherwise have to be sold is instead transferred as provided for in subsection (2).

445. *Subsection (4)* provides that if the registered provider dissolved or wound up under subsection (1) is a charity, the registered provider that the regulator may specify as the recipient of surplus assets after its liabilities have been satisfied must also be a charity whose objects the regulator is satisfied are similar to those of the charity being dissolved or wound up.

446. *Subsection (5)* specifies that the provisions of this clause override any provisions in the following legislation:

- Industrial and Provident Societies Act 1965,

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as introduced in the House of Commons on 15th November 2007 [Bill 8]*

- Insolvency Act 1986,
- Companies Act 2006.

447. It also specifies that the clause overrides any provisions in the constitution of the registered provider that is being dissolved or wound up.

**Clause 158 - Section 157: supplemental**

448. *Subsection (1)* specifies that this clause applies to property transferred to the regulator in accordance with clause 157(2)(a).

449. *Subsection (2)* specifies that the regulator may only dispose of property transferred to it under clause 157(2)(a) to another registered provider.

450. *Subsection (3)* applies if the registered provider dissolved or wound up under clause 157(1) is a charity. It specifies that any property transferred to the regulator under clause 157(2)(a) from a charity may only be disposed of to a registered provider that is both a charity and has objects that are similar to those of the charity from which the property was transferred to the regulator.

451. *Subsection (4)* provides that if the property transferred to the regulator from the charity wound up or dissolved under clause 157(1) is subject to a mortgage or charge, the regulator may either dispose of that land subject to that mortgage or charge, or subject to a new mortgage or charge in favour of the regulator.

**Clause 159 - Extension of clauses 157 and 158**

452. This clause reserves a power for the Secretary of State to provide, through regulations, for the application of clauses 157 and 158 in respect of registered providers that are charities, but are not registered companies, either in specified circumstances or with specified modifications.

**Chapter 5 - Disposal of property**

***Introductory***

**Clause 160 - Overview**

453. This clause provides an overview of the Chapter.

**Clause 161 - Power to dispose**

454. This clause states that a registered provider may dispose of land, subject to the following provisions of this Chapter, including those which require the regulator's consent for certain disposals.

455. This clause replaces section 8 of the 1996 Act which gives RSLs power to dispose of land subject to section 9 of that Act. Note that the reference in section 8(2) of the 1996 Act to section 39 of the Settled Land Act 1925 is replaced by clause 170 of this Bill.

### ***Regulator's consent***

#### **Clause 162 - Requirement of consent**

456. *Subsection (1)* states that any disposal of land by a non-profit registered provider requires the regulator's consent unless it falls within an exception.

457. This re-enacts section 9(1) of the 1996 Act.

458. *Subsection (2)* states that any disposal of social housing by a profit-making registered provider requires the regulator's consent unless it falls within an exception. It only applies to social housing, rather than any land, because profit-making registered companies may be involved in other activities which are not social housing and which are not therefore within the scope of regulation.

#### **Clause 163 - Exceptions**

459. This clause lists exceptions to the requirement of consent in clause 162.

460. *Subsection (2)* states that consent is not required for disposal by way of:

- (a) an assured tenancy,
- (b) an assured agricultural occupancy,
- (a) an agreement that would be an assured tenancy of an assured agricultural occupancy but for any of paragraphs 4 to 8 or paragraph 12(1)(h) of Schedule 1 to the Housing Act 1988 (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 (exclusions).

461. This makes clear that consent is not required for residential tenancies. It replaces section 10(1) of the 1996 Act.

462. *Subsection (3)* states that consent is not required for a disposal to which section 81 or 133 of the Housing Act 1988 applies (disposals requiring consent of Secretary of State). This replaces section 10(2) of the 1996 Act.

463. *Subsection (4)* states that consent is not required for a disposal under Part V of the Housing Act 1985 (right to buy).

464. *Subsection (5)* states that consent is not required for a disposal in pursuance of a tenant's right to acquire under section 16 of the 1996 Act.

465. *Subsections (4) and (5)* together replace section 10(3) of the 1996 Act.

#### **Clause 164 - Procedure**

466. This clause sets out the procedure for the regulator giving his consent to disposals.

467. *Subsection (1)* states that consent may be either general or specific. Together with *subsection (4)* (which states that consent may be conditional), this replaces section 9(2) of the 1996 Act. This allows the regulator to give consent either for a broad class of disposals, or for individual properties, or properties belonging to an individual landlord.

468. *Subsection (2)* states that consent may be retrospective.

469. *Subsection (3)* states that consent may be expressed by reference to a policy for disposal submitted by a registered provider.

470. *Subsection (5)* requires the regulator, in giving a consent, to 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.

471. *Subsection (6)* states that subsection (5) does not apply to specific consent relating only to one or more particular registered providers or properties. The regulator would therefore have to consult the bodies listed before giving a general consent which covered a wide range of properties, or properties owned by a large number of bodies, but not when giving a specific consent.

#### **Clause 165 - Disposal without consent**

472. This clause states that a disposal by a registered provider is void if it required the regulator's consent and that consent had not been given, unless the disposal is by a non-profit registered provider, of a single dwelling, and the provider reasonably believes at the time of the disposal that the buyer intends to use the property as their principal residence. This replaces the provision in section 9(4) of the 1996 Act and aims to protect individual purchasers if they unwittingly purchased a home from a registered provider who did not have consent to dispose of the property.

### ***Proceeds***

#### **Clause 166 - Separate accounting**

473. This clause provides for certain disposal proceeds to be paid into a separate “disposal proceeds fund”. It sets out which proceeds are “net disposal proceeds” and gives the regulator power to determine net proceeds of sale and the method of constituting the fund and showing it in the accounts.

### ***Tenants’ rights and duties***

#### **Clause 167 - Application of Housing Act 1996**

474. This clause provides that sections 11 to 15 and 16 to 17 of the 1996 Act continue to have effect in relation to social housing in England, except for the modifications set out in subsection (3) which replace the terms “RSL and “Relevant Authority” with “Registered provider” and “The regulator” respectively.

### ***Miscellaneous***

#### **Clause 168 - Unregistered housing associations**

475. This clause amends sections 9(1A)(a) and (6)(a), and 10(1)(a) of the Housing Associations Act 1985 to substitute “the Regulator of Social Housing” for “the Housing Corporation”. This means that the regulator takes on the Housing Corporation’s functions in relation to the disposal of grant-funded properties by unregistered housing associations.

#### **Clause 169 - Former registered providers**

476. This clause ensures that clauses 161 to 165 (provisions on disposals) continue to apply in respect of any property owned by a person at the time it was registered. This is equivalent to section 9(6) of the Housing Act 1996.

#### **Clause 170 – Trustees**

477. This clause replaces the first sentence of section 8(2) of the 1996 Act.

#### **Clause 171 – Charities**

478. This clause makes it clear that nothing in this Chapter authorises a charity to effect a disposal which it would otherwise not have power to effect. This replaces the second sentence of section 8(2) of the 1996 Act.

### **Chapter 6 – Regulatory powers**

#### **Clause 172 - Overview**

479. Clause 172 describes the contents of Chapter 6.

## **Standards**

### **Clause 173 – Provision of social housing**

480. *Subsection (1)* of clause 173 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 and extent of the social housing provided by them, and to the nature, extent and quality of accommodation, facilities and services provided by them in connection with social housing.

481. *Subsection (2)* of this clause 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 (l) of subsection (2) as follows:

- a) the nature of the housing demands to be addressed,
- b) the extent to which demand is to be supplied,
- c) criteria for allocating accommodation,
- d) terms of tenancies,
- e) 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),
- f) maintenance and repair,
- g) procedures for addressing complaints by tenants against landlords,
- h) methods for consulting and informing tenants,
- i) methods of enabling tenants to influence or control the management of their accommodation and environment,
- j) anti-social behaviour,
- k) landlords' contribution to the environmental, social and economic well-being of the areas in which their property is situated, and
- l) estate management.

### **Clause 174 - Management**

482. This clause gives the regulator the power to set standards that relate to the financial viability and management of the organisation, and to its governance arrangements. These standards will apply only to registered non-profit providers. The regulator will not be able to set standards on governance and financial viability for profit-making providers.

### **Clause 175 - Code of Practice**

483. *Subsection (1)* of this clause gives the regulator a power to issue a code of practice which relates to, clarifies or amplifies standards issued under clauses 173 and 174.

484. *Subsection (2)* of this clause 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 clauses 173 and 174.

485. *Subsection (3)* of this clause gives the regulator the power to revise or withdraw a code of practice issued under subsection (1).

486. *Subsection (4)* of this clause requires the regulator to bring a code of practice issued under subsection (1) to the attention of registered providers.

#### **Clause 176 - Consultation**

487. This clause provides that the regulator, before he sets standards under his powers in clauses 173 and 174, must consult bodies representative of both registered providers and the tenants of registered providers, the HCA and the Secretary of State, or ensure that they have been consulted.

#### **Clause 177 - Direction by Secretary of State**

488. *Subsection (1)* gives the Secretary of State power to direct the regulator to set a standard under clause 173 or about the content of a standard under that clause. *Subsection (3)* provides that the regulator must comply with any direction given and *subsection (4)* requires that the direction must be published.

489. *Subsection (2)* requires the Secretary of State to consult the regulator, the HCA, and bodies appearing to the Secretary of State to represent the interests of tenants and of registered providers before giving a direction. *Subsection (5)* states that the requirement for the regulator to consult before setting a standard (set out in clause 176) does not apply if and in so far as the regulator is complying with a direction.

490. There is a much broader provision in section 76 of the Housing Associations Act 1985 which enables the Secretary of State to “give directions to the Corporation as to the exercise of its functions”. Under the new system, the Secretary of State’s direction-making power is limited to the setting of standards.

#### **Clause 178 – Supplemental**

491. *Subsection (1)* specifies that failure to meet standards set under clauses 173 or 174 will be grounds for exercising the powers of the regulator to intervene and enforce compliance as set out in Chapter 7.

492. *Subsection (2)* of this clause 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.

493. *Subsection (3)* of this clause gives the regulator the power to revise or withdraw standards that have been previously set under powers in clauses 173 and 174. If this power is exercised by the regulator, the same requirements for consultation that are set out in clause 176 will apply as when standards are originally set.

494. *Subsection (4)* of this clause provides that standards set by the regulator under clauses 173 and 174 may apply generally or may be limited in their application, and that the standards may be different for different cases, circumstances or areas.

### **Monitoring**

#### **Clause 179 - Survey**

495. *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 clauses 173 or 174 of this Part.

496. *Subsection (2)* gives the regulator the power to arrange for the survey of the condition of identified homes by a person authorised by it.

497. *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.

498. *Subsection (4)* provides that the authorised person may enter the premises at any reasonable time to carry out the survey.

499. *Subsection (5)* specifies that the authorised person must give the registered provider a minimum of 28 days’ notice of the survey.

500. *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.

501. *Subsection (7)* requires the authorised person to provide a written report of their survey.

502. *Subsection (8)* requires the regulator to provide the registered provider of the premises surveyed with a copy of the report produced under subsection (7).

#### **Clause 180 - Survey: supplemental**

503. *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, provider to that person a copy of the authorisation to carry out the survey.

504. *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.

505. *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 clause 179 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 a premises under clause 179 also commits an offence.

506. *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.

### **Clause 181 - Inspection**

507. This clause provides for the regulator to inspect registered providers to ascertain their performance in respect of standards of social housing provision.

508. *Subsection (2)* provides that such an inspection may either be general or specific. A general inspection may consider a range of the activities related to social housing provision. A specific inspection may be in respect of only one of those tasks, or may be in respect of only specific parts of a registered provider's social housing stock. For example, following information from a tenant or local authority that a provider is not meeting compulsory repair standards on an estate, the regulator may authorise a specific inspection of repairs on that estate to determine if intervention is needed.

509. *Subsection (3)* specifies that the regulator must prepare a report of the inspection, must provide a copy of that report to the registered provider, and may publish the report and related information, but is not obliged to do so.

510. *Subsection (4)* provides that the Secretary of State may by order authorise the regulator to charge fees for inspections carried out under this clause.

511. *Subsection (5)* requires a registered provider to pay any fee charged for inspection.

512. *Subsection (6)* provides that the Secretary of State must consult with the regulator and bodies representative of registered providers before making an order under subsection (4).

513. *Subsection (7)* requires the regulator to set out a scale of fees for inspections having consulted the Secretary of State and bodies representative of registered providers.

### **Clause 182 - Performance information**

514. This clause gives the regulator a power to require registered providers to prepare an annual report containing an assessment of its performance in relation to any standards the regulator has set under clauses 173 and 174, and to send that report to the regulator within a specified period.

515. The regulator can specify in detail what the reports prepared by registered providers must cover.

516. *Subsection (3)* specifies that it is an offence not to comply with a requirement made by the regulator under this clause without a reasonable excuse.

517. 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. Either the regulator or the Director of Public Prosecutions must bring proceedings for this offence, or must consent to such proceedings.

### **Clause 183 - Inquiry**

518. This clause gives the regulator the power to hold an inquiry if it believes that there may have been mismanagement by a registered provider of its affairs in relation to social housing. “Mismanagement” is defined in clause 238.

519. *Subsections (2) to (4)* provide that the regulator will appoint one or more individuals to conduct the inquiry, of which at least one must be independent of the regulator. These individuals are the “inquirers” for the purpose of these clauses. Individuals are independent of the regulator if they are not members or employees of the regulator now or at any point within the previous five years.

### **Clause 184 - Inquiry: supplemental**

520. The individuals appointed by the regulator to conduct the inquiry will determine the procedure for the inquiry.

521. 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 clause 235.

522. 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 publish all or part of either interim reports or the final report produced by the inquirers.

523. *Subsection (6)* also provides that local authorities may contribute to the costs of an inquiry held by the regulator under these clauses.

### **Clause 185 - Inquiry: evidence**

524. *Subsection (1)* gives the inquirer the power, by giving a notice, to require persons to attend at a specified time and place and either give evidence, or produce documents specified in the notice, or both of these.

525. *Subsection (2)* gives the inquirer the power to take evidence on oath, and to administer oaths for that purpose

*These notes refer to the Housing and Regeneration Bill  
as introduced in the House of Commons on 15th November 2007 [Bill 8]*

526. *Subsection (3)* limits the power in subsection (1) so that it can only be exercised over persons or information that the regulator would have a power over under clause 104.

527. *Subsection (4)* specifies that the provisions of clause 104 (4) to (7),, and clause 105 apply to this clause modified as necessary to the specific purpose of the clause.

#### **Clause 186 – Extraordinary audit**

528. This clause replaces paragraph 22 of Schedule 1 to the 1996 Act.

529. *Subsection (1)* specifies that where the regulator has decided to hold an inquiry under clause 183, 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.

530. *Subsection (2)* defines “qualified auditor” for the purposes of this clause.

531. *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.

532. *Subsection (4)* specifies that the cost of the audit, including the auditor’s remuneration, will be met by the registered provider.

#### ***Management and constitution***

#### **Clauses 187 - 190**

533. These clauses 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.

#### **Clause 187 - Non-profit providers only**

534. This clause restricts the application of clauses 188 to 190 to non-profit registered providers as provided for by the regulator’s designation on the register under clause 111.

#### **Clause 188 - Industrial and provident society: change of rules**

535. This clause re-enacts paragraph 9 of Schedule 1 to the 1996 Act.

536. *Subsection (1)* provides that this clause applies only to industrial and provident societies.

537. *Subsection (2)* provides that a society must notify the regulator if it changes either its name or its registered office.

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as introduced in the House of Commons on 15th November 2007 [Bill 8]*

538. *Subsection (3)* provides that no other amendment of an industrial and provident society's rules is effective unless the regulator has first given consent in writing.

539. *Subsection (4)* provides that 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).

540. *Subsection (5)* provides that this clause shall be treated as if it were part of the Industrial and Provident Societies Act, as well as this Bill.

**Clause 189 - Charity: change of objects**

541. This clause re-enacts paragraph 10 of Schedule 1 to the 1996 Act.

542. *Subsection (1)* provides that this clause applies only to registered charities that are not registered companies.

543. *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.

544. *Subsection (3)* provides that the Charity Commission must consult the regulator before giving consent under subsection (2).

**Clause 190 - Companies: change of articles**

545. This clause re-enacts paragraph 11 of Schedule 1 to the 1996 Act.

546. *Subsection (1)* provides that this clause applies only to registered companies.

547. *Subsection (2)* provides that a company must notify the regulator if it changes either its name or its registered office.

548. *Subsection (3)* provides that no amendment of a company's articles of association is effective unless the regulator has first given consent in writing.

549. *Subsection (4)* provides that 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.

**Guidance**

**Clause 191 - General**

550. This clause gives the regulator the power to give guidance to registered

providers. The clause does not specify limitations as to the scope or content of such guidance.

551. Guidance is not binding on registered providers, but the regulator may have regard to compliance with guidance by registered providers when exercising, or contemplating the use of, its powers under Chapters 6 and 7 of this Part

**Clause 192 - Use of intervention powers**

552. The regulator must produce guidance for registered providers on how it uses, and intends to use the powers that it has under the provisions of Chapters 6 and 7. It will have regard to this guidance in using those same powers.

553. This provision reflects the relevant requirement of the Regulators' Compliance Code issued under the Legislative and Regulatory Reform Act 2006.

**Clause 193 - Consultation**

554. Before giving guidance under clause 191, the regulator must consult bodies representative of registered providers, bodies representing the interests of the tenants of social housing, and the HCA.

***Managers of social housing***

**Clause 194 - Accreditation**

555. This clause allows the regulator to operate a scheme for the purpose of accrediting persons who provide services in connection with the management of social housing.

556. *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.

557. *Subsection (6)* provides that standards under clause 173 may require a registered provider to ensure that anyone providing services in connection with the management of its social housing is accredited.

**Chapter 7 – Enforcement powers**

***Enforcement notice***

558. Clauses 195 to 202 describe the regulator's power to issue an enforcement notice.

**Clause 195 - Overview**

559. This clause describes what an enforcement notice is. It is to require a registered provider to do (or not do, or to stop doing) certain things in order to resolve specified failures or other problems.

**Clause 196 - Grounds for giving notice**

560. This clause specifies the grounds on which the regulator may give an enforcement notice. *Subsection (1)* specifies that the regulator must be satisfied that one of the grounds for issuing an enforcement notice applies and that an enforcement notice is the appropriate intervention power to use, whether alone or as a potential precursor to further action. As the regulator must be satisfied that there are grounds to use an enforcement notice, it will have to have established the facts to a degree that justifies it directing a registered provider to act in a specified way.

561. *Subsections (2) to (7)* specify the cases where an enforcement notice is applicable as required by subsection (1)(a) as follows:

- that a registered provider has failed to meet a standard of social housing established by the regulator under clauses 173 or 174,
- that the affairs of a registered provider have been mismanaged,
- that it is required to protect the interests of tenants,
- that it is necessary to protect the assets of a registered provider,
- that a registered provider has failed to comply with an undertaking that it has given to the regulator as provided for in clause 121,
- that an offence under this Part has been committed by a registered provider.

562. *Subsection (8)* provides that where the regulator is satisfied that an offence has been committed in respect of a registered provider by an individual, the grounds for imposing an enforcement notice are as in subsection (7), and the regulator may serve an enforcement notice on the individual rather than the provider. This subsection also provides that, in such cases, references in this Part of the Bill to registered provider can be read as references to that person.

**Clause 197 - Content**

563. This clause sets out what an enforcement notice must include. It must specify which of the cases in clause 196 are the grounds for the enforcement notice, the specific action which the registered provider must take which is the substance of the notice, the date by when the specified action must be taken, and the effect of clauses 200 to 202.

**Clause 198 - Warning**

564. This clause sets out a warning procedure which it calls a “pre-enforcement warning”. This process must be carried out before an enforcement notice as specified in clause 197 can be issued. This warning must be given to the registered provider, and must:

*These notes refer to the Housing and Regeneration Bill  
as introduced in the House of Commons on 15th November 2007 [Bill 8]*

- set out the grounds which the regulator is satisfied are the basis for an enforcement notice,
- warn the provider that the regulator is considering issuing an enforcement notice in respect of the matters which form the grounds for the notice,
- specify the action that the enforcement notice may require the registered provider to take, and
- explain the effect of clauses 199 to 202, which detail arrangements for:
  - a) making representations,
  - b) making an appeal,
  - c) withdrawal of an enforcement notice, and
  - d) sanctions for breach of an enforcement notice.

565. The regulator must send a copy of the warning issued under this clause to the HCA, and any other person or body whom it thinks appropriate. In respect of the latter, *subsection (3)* requires that the regulator will give particular consideration to any person who has provided information that has directly or indirectly established the grounds for giving the warning.

566. The warning must also draw to the attention of the registered provider the provisions of clause 121 which permit the regulator to consider and accept voluntary undertakings from registered providers, and to indicate whether, and to what extent, such a voluntary undertaking relevant to the failing specified in the warning would be accepted instead of, or in mitigation of, the actions which the regulator is considering specifying in an enforcement notice.

567. *Subsection (5)* provides that a notice under this section may be combined with notices under other sections that give the regulator other types of intervention power. The effect of this is that the regulator may, where appropriate, consider using more than one intervention power to deal with a failing by a registered provider.

### **Clause 199 - Representations**

568. In addition to the contents of an enforcement notice specified in clause 197, this clause requires the pre-enforcement warning to specify a minimum period during which the registered provider who has been served with a warning under clause 198 may make written representations to the regulator.

569. *Subsection (2)* specifies that the minimum period will be at least 28 days, beginning on the date on which the registered provider receives the pre-enforcement warning.

570. At the end of the period the regulator will consider any such written representations and decide whether it will issue an enforcement notice or not.

**Clause 200 - Appeal**

571. This clause provides that a registered provider who has been served with an enforcement notice may appeal against it to the High Court.

**Clause 201 - Withdrawal**

572. This clause gives the regulator the power to withdraw an enforcement notice at any time by giving written notice to the registered provider on whom the enforcement notice has been served.

**Clause 202 - Sanction**

573. *Subsection (1)* gives the regulator the power to consider the use of its other intervention powers if the registered provider has not complied with the contents of an enforcement notice that the regulator has issued.

574. *Subsection (2)* provides that where the enforcement notice has been served on a person under clause 196 subsection (8), the regulator may only either use the powers to require the payment of a fine as set out in clauses 203 to 212, or take steps to instigate a prosecution in relation to the offence which provided grounds for service of the enforcement notice.

575. *Subsection (3)* provides that a person who has been served with an enforcement notice under clause 196(8) may be prosecuted for the offence which gave grounds for the enforcement notice only if they have not complied with that enforcement notice.

***Penalty***

**Clause 203 - Overview**

576. This clause describes the power to impose fines to penalise failures by registered providers.

**Clause 204 - Grounds for imposition**

577. This clause specifies the grounds on which the regulator may decide to require registered providers to pay fines. As well as being satisfied that one of the grounds specified in this clause applies, the regulator must also be satisfied that a fine is the appropriate penalty for the identified problem.

578. *Subsections (2) to (6)* of this clause specify the cases where the regulator may issue a fine. These cases are where:

- the registered provider has failed to meet a standard of social housing

established under clauses 173 or 174,

- the affairs of the registered provider have been mismanaged,
- the registered provider has failed to comply with an enforcement notice,
- the registered provider has failed to comply with an undertaking that it has given to the regulator, and
- where offences under this Part of the Bill have been committed by the registered provider.

579. *Subsection (7)* provides that where the regulator is satisfied that an offence has been committed in respect of a registered provider by an individual, the grounds for imposing a penalty are as in subsection (6), and the regulator may require the individual rather than the provider to pay the fine. This subsection also provides that, in such cases, references in this Part of the Bill to a registered provider can be read as references to that person.

580. *Subsection (8)* requires that the regulator must be satisfied beyond reasonable doubt in respect of the grounds at subsection (6).

#### **Clause 205 - Imposition**

581. This clause provides that a penalty is imposed by a written notice being served on a registered provider. *Subsection (2)* requires the notice to specify which of the cases listed in subsections (2) to (6) of clause 204 is the basis for the notice, the amount of the penalty that must be paid, and the deadline for the payment of that fine.

582. *Subsection (3)* provides for the Secretary of State to make further regulations about the period for payment of fines, the content of the penalty notice and the way in which a penalty notice may be served.

#### **Clause 206 - Impact**

583. This clause sets out matters that the regulator must take into account when considering whether a registered provider should pay a penalty. These matters are the financial condition of the registered provider and the impact that any fine may have on the provider's ability to provide services. The regulator's considerations of these matters will particularly seek to avoid jeopardising a registered provider's financial viability or its ability to honour financial commitments it has made, or pre-empting the financial resources it requires to remedy the failures which are the grounds on which the penalty is being considered.

#### **Clause 207 - Amount**

584. *Subsection (1)* provides that the regulator must consider the matters set out in clause 206(2) to (4) when deciding on the level of the fine.

585. *Subsection (2)* provides that the amount of the fine for a case covered by the ground in clause 204(6) may be no more than the maximum amount that the court could impose in those cases.

586. *Subsection (3)* specifies that, other than where the ground for imposition is set out in clause 204(6), the maximum amount of penalty that the regulator may impose is £5,000.

587. *Subsection (4)* gives the Secretary of State the power to amend the maximum penalty specified in subsection (5) by order.

### **Clause 208 - Warning**

588. This clause sets out a warning procedure which it calls a “pre-penalty warning”. This process must be carried out before a fine can be imposed by a penalty notice as set out in clause 205. The pre-penalty warning must be given to the provider concerned and must include the following-

- the grounds which the regulator is satisfied are met and are the basis for the fine,
- a warning that the regulator is considering imposing a fine on the specified grounds,
- an indication, if the regulator is able to give one, of the likely amount of the fine,
- an explanation of the arrangements specified in clauses 209 to 212 for:
  - a) making representations concerning the contents of the warning,
  - b) what is done with the proceeds of the fine,
  - c) how a penalty notice may be enforced; and
  - d) rights of appeal.

### **Clause 209 - Representations**

589. This clause allows providers issued with a warning to make representations to the regulator about its proposed action. The warning issued under clause 208 must provide for a minimum period for the provider to make representations to the regulator.

590. *Subsection (2)* specifies that the minimum period will be at least 28 days, beginning on the date on which the registered provider receives the pre-penalty warning.

591. The representations may pertain to any matter connected with the contents of the warning, but in particular with whether a fine should be imposed, or the likely amount of the fine.

592. *Subsection (4)* provides that at the end of the period for representations the regulator must consider any representations that have been made, and then decide whether to impose the fine.

#### **Clause 210 - Destination**

593. This clause specifies what the regulator must do with money that it receives from fines it has imposed on registered providers. *Subsection (2)* provides for the regulator to deduct from that money the direct costs of administering the penalty procedure, and a share of its overall expenditure that is proportionate to the effort and resource required for administration of the penalty procedure. *Subsection (3)* provides that any balance remaining will be paid to the HCA to be used, at the HCA's discretion, for investment in social housing.

#### **Clause 211 - Enforcement**

594. This clause specifies how fines will be enforced, and makes provision for late payment or non-payment of fines. Fines are treated as a debt to the regulator once a penalty notice is issued under clause 205.

595. *Subsection (2)* gives the Treasury a power to make regulations permitting the regulator to charge interest on fines that are not paid by the date specified in the penalty notice and to impose additional fines where the original fine is not paid by the specified deadline. In such cases, *subsection (3)* provides that the additional sums are also treated as fines, and that these additional amounts may have the effect of increasing the penalty above the limit set by clause 207.

596. *Subsection (4)* provides for how interest rates may be set for interest charges on late payment of penalties as provided for in subsection (2).

597. *Subsection (5)* gives a discretionary power to the regulator to offer an early payment discount if the provider pays the fine in advance of the date specified in the penalty notice.

598. *Subsection (6)* specifies that if the penalty notice is served on a person under clause 204 subsection (7), he or she may not be prosecuted for the offence which is the ground for requiring the payment of a fine.

#### **Clause 212 - Appeal**

599. This clause gives a provider who has been served with a penalty notice the right to appeal to the High Court against the regulator's imposition of the penalty, or its amount, or both.

### **Compensation**

600. Clauses 213 to 221 describe the arrangements for the regulator to exercise a power to require a registered provider to pay compensation to certain classes of people.

#### **Clause 213 - Overview**

601. This clause describes the nature of the power to require a registered provider to pay compensation.

#### **Clause 214 - Grounds for award**

602. This clause specifies the grounds on which the regulator may require a registered provider to pay compensation. The regulator must be satisfied either that the registered provider has failed to meet a standard of social housing established by the regulator under clauses 173 or 174 of this Part, or that the registered provider has failed to comply with an undertaking that it has given to the regulator.

603. The regulator must also be satisfied that requiring a registered provider to pay compensation is appropriate, whether alone or in combination with the use of one or more of the regulator's other enforcement powers.

#### **Clause 215 - Nature**

604. This clause indicates those circumstances under which compensation may be awarded. *Subsection (1)* provides that it should be awarded to a person or persons who have suffered as a result of the failure that forms the basis for awarding compensation as defined by clause 214.

605. *Subsection (2)* restricts the person or persons eligible for compensation to those who are tenants or occupiers of social housing, but provides that compensation can be made to individual tenants or occupiers of a registered provider, or to groups of them, or to all of a provider's tenants or occupiers.

#### **Clause 216 - Social housing ombudsman compensation**

606. This clause provides for the regulator's power to require a provider to pay compensation to be co-ordinated with the arrangements for approved ombudsman schemes. All registered providers must be a member of an approved ombudsman scheme under clause 120 and those schemes may provide for the ombudsman to determine that one of its members should pay compensation in respect of a case brought by an individual against that member.

607. *Subsection (1)* provides that where this is the case, the regulator may not direct a registered provider to pay compensation to the same person for the same reason.

608. *Subsection (2)* however permits the regulator to direct the provider to pay compensation in such cases where the ombudsman has awarded compensation, but the provider has not paid it.

### **Clause 217 - Imposition**

609. This clause specifies the process and content for imposing a direction to a provider to pay compensation. The direction to pay compensation is done by the regulator giving a written notice, which is called a “compensation notice”, both to the registered provider who must pay the compensation, and to the person or persons who are to be compensated.

610. *Subsection (2)* provides that compensation notices must set out:

- the grounds on which compensation is awarded, which must be one or more of the grounds specified in clause 214,
- the amount of the compensation award,
- the person or persons who are to be compensated, and
- the period within which that compensation must be paid.

611. *Subsection (3)* requires the Secretary of State to make regulations about the period within which compensation must be paid, and gives the Secretary of State the power to make regulations about the form and content of compensation notices and the manner in which a compensation notice may be given.

### **Clause 218 - Warning**

612. This clause sets out a warning procedure which it calls a “pre-compensation warning”. This process must be carried out before compensation can be imposed by a compensation notice as set out in clause 217. *Subsection (1)* requires that the pre-compensation warning must be given to the registered provider concerned and must include the following-

- the grounds which the regulator is satisfied are met and are the basis for awarding compensation,
- a warning that the regulator is considering awarding compensation to specified persons,
- an indication, if the regulator is able to give one, of the likely amount of the compensation award,
- an explanation of the arrangements specified in clauses 219 to 221 for:
  - making representations concerning the contents of the warning,
  - how a compensation notice may be enforced; and
  - rights of appeal.

613. *Subsection (2)* requires the regulator to give the HCA, and any other person that it thinks appropriate, a copy of the pre-compensation warning. In doing so, it should particularly take into account, when considering to whom it would be appropriate to send a copy, any person who has provided information as a result of which the regulator is considering making an award of compensation.

614. *Subsection (4)* provides that the regulator may combine the pre-compensation warning with warnings about the use of its other enforcement powers.

#### **Clause 219 - Representations**

615. This clause makes arrangements for providers issued with a warning to make representations to the regulator about its proposed action. The warning issued under clause 218 must provide for a minimum period for the provider to make representations to the regulator.

616. *Subsection (2)* specifies that the minimum period must be at least 28 days beginning with the date on which the registered provider receives the pre-compensation warning.

617. The representations may pertain to any matter connected with the contents of the warning, but in particular with whether compensation should be awarded, and the likely amount of the compensation.

618. *Subsection (4)* provides that at the end of the period for representations the regulator must consider any representations that have been made, and then decide whether to direct the registered provider to pay compensation.

#### **Clause 220 - Enforcement**

619. This clause specifies how compensation notices will be enforced, and makes provisions for late payment or non-payment of compensation. Compensation is treated as a debt to the person or persons to whom it has been awarded.

620. *Subsection (2)* gives the Treasury a power to make regulations permitting the regulator to charge interest on compensation that is not paid by the date specified in the compensation notice and to award additional compensation where the original compensation award is not paid by the specified deadline. *Subsection (3)* provides that in such cases, the additional sums are also treated as compensation.

621. *Subsection (4)* provides for how interest rates may be set for interest charges on late payment of penalties as provided for in subsection (2).

#### **Clause 221 - Appeal**

622. This clause gives a provider who has been served with a compensation notice the right to appeal to the High Court against the regulator's award of compensation, or the amount of compensation awarded, or both.

***Management etc.***

**Clause 222 - Overview**

623. This clause describes the powers in this Chapter as being enforcement powers in relation to how providers manage their affairs or are constituted.

**Clause 223 - Management tender**

624. *Subsection (1)* specifies that the regulator may use this power where it is satisfied that a registered provider has failed to meet standards set under either clause 173 or 174, or that its affairs in relation to social housing have been mismanaged, as defined in clause 238.

625. If the regulator is satisfied that one of the conditions in subsection (1) is met, *subsections (2) and (3)* gives it the power to require the registered provider to tender out the management of its social housing, in whole or in part. The regulator will specify the process that the provider is to follow in putting the services out to tender and making an appointment as a result of that process.

626. The extent of the services to be tendered out may be restricted either by reference to the type of services concerned, or in relation to a specific part or parts of the social housing stock owned by the registered provider.

627. The regulator must specify certain matters if it exercises this power, as follows:

- the constitution of the panel which has the responsibility for selection, which must include the manner in which tenants' interests will be represented on that panel,
- provision for ensuring that the procurement process follows best practice, and
- the terms and conditions on which the manager is to be appointed, that will include the setting of the required standards, how those standards will be monitored and enforced, and resources.

**Clause 224 - Section 223: Supplemental**

628. *Subsection (1)* requires that the regulator, before it requires a registered provider to undertake a tender of its management functions under clause 222(2), must give the registered provider a notice which:

- states the grounds on which it may decide to require the provider to tender out its management functions,

- formally warns the provider that it is considering using this power, and
- explains the effect of this section.

629. *Subsection (2)* specifies that the provisions in clause 199 concerning a pre-enforcement notice apply to a notice under subsection (1) with any modifications that are necessary to make it effective for this power.

630. The notice served under clause 224(1) must be copied to the HCA, and to any other person that the regulator thinks appropriate. In determining who the regulator thinks is appropriate for this purpose, it must have regard to any person who has provided information that has directly or indirectly led the regulator to satisfying itself that the use of this power is warranted.

631. The notice served under clause 224(1) must advise the registered provider on whom it is served about the provisions for the provider to make voluntary undertakings to the regulator under clause 121, and the extent to which it would accept an undertaking instead of using this power.

632. *Subsection (5)* allows the regulator to use this enforcement power in conjunction with some of the other enforcement powers that it has under Chapter 7.

633. *Subsection (6)* provides that in deciding whether to require a management tender, the regulator must have regard to the views of the relevant tenants, the registered provider, the HCA and, if appropriate, any relevant local housing authority.

634. A registered provider served with a notice by the regulator under this clause has a right of appeal to the High Court.

#### **Clause 225 - Management transfer**

635. The powers set out in these clauses are exercisable following an inquiry as provided for under clause 184, or an audit under clause 186.

636. *Subsection (2)* provides that the regulator may require a registered provider to transfer the management of some or all of its management functions to another specified person.

637. The regulator may use this power where it is satisfied that one of the conditions specified in *subsection (1)* is met, which are that-

- a registered provider has failed to meet the requirements of a standard set by the regulator under clause 173 or 174,
- the affairs of the registered provider have been mismanaged, in respect of social housing,

- some or all of a registered provider's management of its social housing is likely to be improved by the transfer of those management functions.

638. *Subsections (3) to (5)* set out the nature of the requirement that will be specified by the regulator.

639. *Subsection (3)* provides that the regulator may determine the scope of the requirement to transfer management.

640. *Subsection (4)* provides that the requirement will specify the terms and conditions of the appointment, including the remuneration of the person to whom the management is to be transferred, and that these will be determined in accordance with the scope of the management functions to be transferred.

641. *Subsection (5)* gives the person to whom the management functions are to be transferred the powers necessary to carry out the activities specified in the requirement. The powers may be specified by the regulator in the requirement. In addition the person to whom management is transferred by the requirement will have any other powers in relation to the registered provider's business that are necessary to give effect to the requirement.

**Clause 226 - Section 225: supplemental**

642. This clause specifies the process by which the power in clause 225 is exercised. Following a statutory inquiry, and having decided that it should direct the transfer of management, *subsection (1)* requires the regulator to serve the registered provider with a notice specifying-

- which of the grounds set out in clause 225(1) applies,
- that it is considering directing the transfer of the registered provider's management functions as a consequence, and
- setting out the effects of this clause.

643. *Subsection (2)* specifies that the provisions in clause 199 concerning a pre-enforcement notice apply to a notice under subsection (1) with any necessary modifications to make it effective for this power.

644. The regulator must send a copy of that notice to the HCA and to any other person that it thinks appropriate, with particular consideration to any person who has been involved in identifying to the regulator the matters that form the basis for the regulator's use of this power.

645. The notice must draw to the registered provider's attention the provisions of clause 121 which provide for a registered provider to make a voluntary undertaking to the regulator at any time on any matter, and the notice must also indicate the

extent to which the provision of a voluntary undertaking under that provision would be accepted instead of, or in mitigation of, the direction to transfer management which the regulator is considering.

646. The notice may be combined with notices about the use of other enforcement powers available under Chapter 7.

647. *Subsection (6)* gives the registered provider subject to a requirement under clause 225 subsection 2 the right of appeal to the High Court.

#### **Clause 227 - Appointment of manager**

648. These sections give the regulator the power either to appoint a manager of the registered provider or to require the registered provider to appoint a manager as set out in *subsection (2)*.

649. The regulator may do this if it is satisfied that a registered provider has failed to meet a standard set out in either clause 173 or 174, or that its affairs have been mismanaged in relation to social housing.

650. *Subsections (3) to (5)* set out the nature of the requirement or the appointment that will be specified by the regulator.

651. *Subsection (3)* provides that the regulator may determine the scope of the appointment of a manager of the requirement to appoint a manager.

652. *Subsection (4)* provides that the appointment of a manager, or the requirement to appoint a manager, will specify the terms and conditions of appointment, including the remuneration of the manager, and that these will be determined in accordance with the scope of the appointment of the manager, or the requirement to appoint a manager under subsection (3).

653. *Subsection (5)* gives the appointed manager the powers necessary to carry out the activities specified in the requirement or the appointment. The powers may be specified by the regulator in the requirement of the appointment. In addition, the appointed manager will have any other powers in relation to the registered provider's business that are necessary to give effect to the requirement of the terms of the manager's appointment.

#### **Clause 228 - Section 227 supplemental**

654. Before it makes a requirement under subsection (2) of clause 228 the regulator must serve a notice on the registered provider specifying which of the grounds listed in subsection (1) of that clause apply, warning that it is considering the use of the power set out in this clause, and explaining the provisions of this clause.

655. *Subsection (2)* specifies that the provisions in clause 199 concerning a pre-enforcement notice apply to a notice under subsection (1) with any necessary modifications to make it effective for this power.

656. *Subsection (3)* provides that the regulator must send a copy of that notice to the HCA and to any other person that it thinks appropriate, with particular consideration to any person who has been involved in identifying to the regulator the matters that form the basis for the regulator's use of this power.

657. *Subsection (4)* provides that the notice must draw to the registered provider's attention the provisions of clause 121 which provide for a registered provider to make a voluntary undertaking to the regulator at any time on any matter, and the notice must also indicate the extent to which the provision of a voluntary undertaking under that provision would be accepted instead of, or in mitigation of, the appointment of a manager or the direction to appoint a manager which the regulator is considering.

658. *Subsection (5)* provides that the notice may be combined with notices about the use of other enforcement powers available under Chapter 7.

659. *Subsection (6)* gives the regulator the power to require the appointed manager to report to it in relation to matters specified in the manager's appointment.

660. *Subsection (7)* gives the registered provider the right of appeal to the High Court.

661. Clauses 229 and 230 replace paragraph 27 and 29 of Schedule 1 to the 1996 Act.

#### **Clause 229 - Transfer of land**

662. This clause applies to non-profit registered providers only.

663. *Subsection (1)* sets out the cases where this clause applies. These cases are:

- the provider has failed to meet a standard under clauses 173 or 174,
- there has been mismanagement of a provider's affairs in relation to social housing,
- transfer of the land of a provider would be likely to improve the management of that land.

664. *Subsection (2)* gives the regulator power to require that the registered provider should transfer its land either to the regulator or to another specified registered provider.

665. *Subsection (3)* specifies that this power may not be used in respect of a registered charity.

666. *Subsection (4)* provides that this power may be used in respect of a charity that is not registered with the Charity Commission, but that the charity's land may only be transferred to another charity whose objects the regulator thinks are similar to those of the transferring charity.

**Clause 230 - Section 229: supplemental**

667. *Subsection (1)* provides that a transfer under clause 229 shall be on terms specified in or determined in accordance with the regulator's formal requirement.

668. *Subsection (2)* specifies that the price attached to the transfer shall be at least the amount certified by the district valuer as the amount that the property to be transferred would fetch if sold by a willing seller to another non-profit registered provider.

669. *Subsection (3)* provides that the terms of the transfer will include provision for the payment of debts or liabilities in respect of the land to be transferred, whether or not they are secured by a charge on the land.

670. *Subsection (4)* requires that the Secretary of State must consent to a requirement for a transfer of land under clause 229, both in respect of the transfer itself, and the terms of that transfer.

**Clause 231 Removal of officers**

671. This clause replicates the effect of paragraphs 4 and 5 of Schedule 1 to the 1996 Act.

672. The clause gives the regulator the power to remove officers from the governing bodies of registered providers that have been designated as non-profit providers by the regulator.

673. *Subsection (2)* defines an officer for each of the constitutional forms of a non-profit provider, which are a registered charity, an industrial and provident society or a registered company.

674. *Subsections (3) to (9)* specify the seven cases under which the regulator may remove an officer, which are:

- where the officer has been adjudged to be bankrupt,
- where the officer has made an arrangement with creditors,
- where the officer has been subject to a disqualification order or a disqualification undertaking under the Company Directors

*These notes refer to the Housing and Regeneration Bill  
as introduced in the House of Commons on 15th November 2007 [Bill 8]*

Disqualification Act 1986 (or the equivalent statutory provision for Northern Ireland),

- where the officer has been subject to an order under section 429(2) of the Insolvency Act 1986 (which occurs where a person fails to make a payment under a county court administration order under the County Courts Act 1984),
- where the officer is disqualified under section 72 of the Charities Act 1993 from being a charity trustee (whether this is in relation to their position as an officer of a registered provider that is a charity or as officer of a different charity),
- where the officer is incapable of acting by reason of mental disorder,
- where the officer is impeding the proper management of the registered provider by reason of absence or failure to act.

**Clause 232 - Section 231: supplemental**

675. This clause sets out the procedure that the regulator must follow when using the power in clause 231.

676. *Subsection (1)* requires the regulator to take all reasonable steps to give at least 14 days' notice both to the officer to be removed, and the registered provider of which he or she is an officer.

677. *Subsection (2)* gives the officer whom the regulator wishes to remove a right of appeal to the High Court.

678. *Subsection (3)* applies only in respect of officers of a registered charity. This specifies that the regulator may only serve an order to remove an officer of a registered charity if at least one of the conditions listed in this subsection apply. Those conditions are:

- that the charity has received financial assistance under section 24 of the Local Government Act 1988 (which relates to assistance for privately let housing accommodation), or
- that the charity has received a transfer of property on a qualifying disposal under section 135 of the Leasehold Reform, Housing and Urban Development Act 1993 (disposals of housing by local authorities), or
- that the charity has received a grant or loan under one of the listed provisions (all of which relate to financial assistance in relation to social housing).

679. The effect of this subsection is that officers of a registered charity can only be removed by the regulator if that registered charity has received either homes or

financial assistance that is relevant to the functions of the regulator.

**Clause 233 - Appointment of new officers**

680. This clause replicates the effect of paragraphs 6, 7 and 8 of Schedule 1 to the 1996 Act.

681. This clause gives the regulator the power to appoint a person as an officer of a non-profit registered provider. The regulator does this by order.

682. *Subsection (1)* specifies that the regulator may do this where:

- it is to replace an officer removed under clause 231,
- the registered provider has no officers on its governing body, or
- the regulator thinks that the additional officer is necessary for the proper management of the registered provider's affairs.

683. *Subsection (2)* specifies that "officer" for this clause has the same meaning as in clause 231.

684. *Subsection (3)* says that the regulator's power in subsection (1) overrides any restrictions in the registered provider's constitution on the eligibility requirements for officers, or the number of officers that the registered provider may have.

685. *Subsection (4)* requires that an order made by the regulator under subsection (1) must specify the period for which, and the terms on which, the person is appointed as an officer. It also provides that the regulator may renew the appointment when the period specified in the order under subsection (1) expires, and that the new officer appointed by the regulator may resign or retire as allowed in the registered provider's constitution.

686. *Subsection (5)* provides that an officer appointed by the regulator under subsection (1) has the same standing, in terms of rights, powers and responsibilities, as if he or she had been appointed as an officer under the constitution of the provider.

687. *Subsection (6)* provides that the regulator may only make an appointment in relation to a registered charity if one of the conditions in clause 232(3) is fulfilled (which are the conditions that the registered charity has received either homes or financial assistance that are relevant to the functions of the regulator under the specified statutory provisions), and the regulator has consulted the Charity Commission before making the order under subsection (1).

## **Chapter 8 – General**

### ***Interpretation***

#### **Clause 234 - Officer**

688. This clause defines “officer” in relation to registered providers.

#### **Clause 235 - Subsidiary and associate**

689. This clause defines the terms “subsidiary” and “associate” for the purposes of this Part.

#### **Clause 236 - Family**

690. This clause clarifies when a person is considered to be a member of the family of another person, for the purposes of this Part.

#### **Clause 237 - Disposal**

691. This clause defines what is a disposal of a property for the purposes of this Part.

692. *Subsection (2)* makes it clear that granting an option to require a disposal at some point in the future will be treated as making a disposal.

#### **Clause 238 - General**

693. This clause defines a number of terms, either directly or by reference to other Acts.

#### **Clause 239 - Index of defined terms: Part 2**

694. This clause sets out a table listing expressions defined within this Part.

### ***Miscellaneous***

#### **Clause 240 - Consequential amendments**

695. This clause states that in secondary legislation made before the commencement of this Part a reference to ‘registered social landlords’ will be treated as including a reference to ‘registered providers of social housing’.

#### **Clause 241 – Transitional**

696. This clause ensures that registered social landlords currently regulated by the Housing Corporation are to be entered on the register as non-profit registered providers.

## **PART 3 – OTHER PROVISIONS**

### **Chapter 1 - Sustainability certificates**

#### ***General***

697. This Chapter provides for the introduction of mandatory sustainability rating for new homes in England and Wales. This will be information in the form of either a certificate showing the results of assessment against sustainability standards, or a statement that there is no certificate because no assessment has been made. Sustainability standards already exist in the Code for Sustainable Homes (“the Code”). Since April 2007, the Code has operated on a voluntary basis in England only. The purpose of sustainability standards is to improve the sustainability of new homes during both the construction and the lifetime of the home.

698. The Chapter includes provision for extension of the provisions to conversions of existing buildings and to non-residential properties, although there are no present proposals to use those powers.

699. The Chapter applies to England and Wales. Any power to make delegated legislation under the Chapter is to be exercised by the appropriate national authority: the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales.

#### **Clause 242 - Certificates for new homes**

700. This clause places a duty on a person selling a newly constructed residential property to give the purchaser of the property information about the sustainability of the new property free of charge before the sale is agreed. This information is in the form of either a sustainability certificate or a statement that there is no sustainability certificate for the property (*subsections (1), (2), (4) and (9)*).

701. The sustainability certificate can be given as either an interim certificate (if the property has not been completed yet) or a final certificate (available after the property has been built and assessed). Where an interim certificate is given before sale, the final certificate must be given at a later point to be prescribed in regulations, which may be after the sale is completed (*subsections (3), (10) and (11)*)

702. The clause provides for powers to make regulations to bring forward the point at which a sustainability certificate or statement of non-assessment must be supplied, to make exceptions to the duties under the clause, and to provide for alternative duties where such exceptions apply (*subsections (5), (6) and (7)*). There is a defence of reasonable excuse for not complying with any of duties in this clause (*subsection (8)*).

**Clause 243 - Meaning of sustainability**

703. This clause defines the sustainability of a residential property in relation to the materials used in the property, other aspects of its design and construction, and any services, fittings and equipment provided in or in connection with the property (as well as related demolition and off site activities). Sustainability is the extent to which prescribed sustainability standards are met in these respects (*subsections (1) and (4)*).

704. Sustainability standards will be prescribed in regulations by the appropriate national authority for ensuring or furthering the following listed purposes (*subsection (2)*):

- a) health, safety, welfare and convenience of people in or about the property, and others who may be affected by it;
- b) efficient management of the property and of its construction;
- c) energy efficiency;
- d) water efficiency and minimising flood risk;
- e) efficient waste management;
- f) protecting or enhancing the environment; and
- g) preventing or detecting crime.

705. The appropriate national authority can by regulations amend this list of purposes from time to time by adding to, removing or altering the items listed (*subsection (3)*).

**Clause 244 - Authorised assessors**

706. This clause ensures that assessments of sustainability for residential properties are carried out only by authorised assessors. The appropriate national authority must by regulations specify who are to be authorised assessors, and may make further provision about them (*subsections (1), (2) and (3)*).

707. Regulations may specify that authorised assessors be accredited under an accreditation scheme established or approved by the appropriate national authority, and may provide for the charging of fees under accreditation schemes (*subsections (4), (5) and (6)*).

708. Regulations concerning accreditation schemes must require the appropriate national authority to be satisfied that any scheme approved contains adequate provision for -

- a) ensuring that members of the scheme are fit and proper persons who are qualified to carry out assessments;
- b) ensuring that a code of conduct for members of the scheme is maintained and published;
- c) ensuring that members of the scheme have suitable indemnity insurance;
- d) facilitating the resolution of complaints against members;

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as introduced in the House of Commons on 15th November 2007 [Bill 8]*

- e) requiring certificates issued by members to be entered into the register of certificates (see paragraph on clause 245;
- f) keeping a public register of members of the scheme; and
- g) such other purposes as may be specified in the regulations (*subsections (7) and (8)*).

709. Regulations may also provide for accreditation schemes to contain provision about certificates and other documents within the scope of the scheme including the terms on which they may be provided (*subsection (9)*).

#### **Clause 245 - Register of certificates**

710. This clause empowers the appropriate national authority to make regulations about a register of sustainability certificates (*subsection (1)*). Regulations may also provide for interim certificates and other documents to be included on the register (*subsections (9) and (10)*).

711. The regulations under *subsection (1)* may provide in particular (*subsection (2)*) for:

- the register to be kept by or on behalf of the appropriate national authority or by such other person as the regulations may specify (*subsection (3)*);
- the payment of a fee to enter a document onto the register (*subsection (4)*); and
- preventing the disclosure of the register or documents or information in it except in accordance with the regulations (*subsection (5)*);
- the circumstances in or purposes for which the register may, on payment of any fee, be inspected, documents or information may be copied or given, and disclosure made of anything so obtained (*subsections (6) and (7)*),

712. Contravention of a prohibition on disclosure from the register is a summary offence punishable by a fine not exceeding level 5 on the standard scale, currently £5,000 (*subsection (8)*).

#### ***Enforcement***

##### **Clause 246 - Enforcement authorities**

713. This clause provides for every local weights and measures authority to enforce the duties in clause 242 in its area.

##### **Clause 247 - Power to require production of certificates or statements**

714. This clause empowers officers of an enforcement authority to require a seller of a newly constructed residential property to produce for inspection (or to provide a hard copy) of the sustainability certificate or statement of non-assessment (*subsections (1) to (3)*). The request may be made up to six months after the last

day on which the person concerned could have complied with the duty under clause 242, and must be complied with within 7 days (*subsections (4) and (6)*). The duty in this clause is subject to a defence of reasonable excuse for not complying with it (*subsection (5)*).

#### **Clause 248 - Penalty charge notices**

715. This clause provides for enforcement officers to give a penalty charge notice to a person the officer believes has committed a breach of the duties set out in clause 242 or any regulations made under it or in clause 247. The notice may be given up to six months from the commission of the breach (*subsections (1) and (2)*). Schedule 8 has effect in relation to penalty charge notices (*subsection (3)*).

#### **Clause 249 - Offences relating to enforcement officers**

716. This clause provides for offences of obstructing an enforcement officer acting in pursuance of his duties under the Chapter (*subsection (1)*), and of impersonating an enforcement officer by purporting to act as one in pursuance of either clause 247 or clause 248 (*subsection (2)*). Both are punishable on summary conviction with a fine not exceeding level 5 on the standard scale, currently £5,000 (*subsection (3)*).

#### **Supplementary**

#### **Clause 250 - Grants**

717. This clause allows the appropriate national authority to make grants towards the development and subsequent operation of a register under clause 245 (*subsection (1)(a)*). Grants may also be made towards the development and operation of accreditation schemes or any other provision to be made in regulations under the Chapter (*subsection (1)(b)*). Such a grant may be subject to conditions including conditions for the purposes for which it may be used, and for full or partial repayment of it in specified circumstances (*subsection (2)*).

#### **Clause 251 - Suspension of duties**

718. This clause allows the appropriate national authority, by regulations, to suspend and revive the operation of any duty imposed by clause 242 (*subsection (1)*). Suspension may be for a specified time only, and a duty that has been revived may be suspended again (*subsections (2) and (3)*).

#### **Clause 252 - Disclosure of certificates**

719. This clause empowers the appropriate national authority to make regulations about the disclosure of sustainability and interim certificates, statements of non-assessment, any information derived from such documents, and any information collected by an authorised assessor in preparing a certificate (*subsection (1)*). The disclosure without reasonable excuse of anything whose disclosure is prohibited by regulations under *subsection (1)* is a summary offence punishable by a fine not exceeding level 5 on the standard scale, currently £5,000 (*subsection (2)*).

**Clause 253 – General powers to make regulations**

720. This clause allows the appropriate national authority to make provision for the general purposes, or any particular purpose of the Chapter, or in consequence of any provision made under the Chapter or for giving full effect to it (*subsection (1)*). Such regulations may in particular provide for:

- the form and content of certificates and statements of non-assessment, or for the form and content of such documents to be such as the appropriate national authority may approve;
- ways in which sustainability standards can be met;
- the issue of guidance; and
- any interaction between provision under the Chapter with provision made by other enactments in relation to home information packs or energy performance certificates (*subsections (2) to (4)*).

**Clause 254 - Powers to extend Chapter**

721. This clause allows the appropriate national authority to extend the provisions of the Chapter to:

- non-residential buildings;
- newly converted buildings, both residential and non-residential ; or
- prescribed descriptions of properties within any of these categories (*subsections (1), (2) and (5)*).

722. A property is newly converted for the purposes of the Chapter if it has been converted but not yet used for its intended purpose, is being converted, or its conversion is being designed (*subsection (3)*), and regulations may provide for the circumstances in which a building is to be treated as converted (*subsection (4)*).

723. The clause further allows for the appropriate national authority to broaden by regulations the definition of a purchaser in clause 255(1) so as to include descriptions of persons who are taking steps with a view to deciding whether to purchase residential properties (*subsections (6) and (7)*).

**Clause 255 - Chapter 1: interpretation etc.**

724. This clause provides for definitions of terms and phrases used in the Chapter (*subsections (1) to (7)*). *Subsection (1)* defines a purchaser as a person who has made an offer to purchase a property or has purchased it. Non-compliance with any requirement of the Chapter does not invalidate a sale or purchase of a property (*subsection (8)*).

**Clause 256 – Index of defined expressions: Chapter 1**

725. This clause presents the main definitions in the Chapter in tabular form.

**Chapter 2 – Landlord and tenant matters**

*Tenant empowerment*

**Clause 257 - Ballots before certain disposals to private landlords**

726. Clause 257 makes amendments to Schedule 3A to the Housing Act 1985. Schedule 3A outlines the consultation process necessary before a local housing authority can seek the consent of the Secretary of State to transfer ownership of occupied council housing to a private sector landlord (eg a housing association). The amendments add the requirement that the local authority must hold a ballot of affected tenants as part of the consultation process, and that a vote in such a ballot against transfer will prevent the Secretary of State granting consent to the transfer. The powers of the Secretary of State are exercisable in Wales by the Welsh Ministers.

727. *Subsection (2)* sets out at what stage in the consultation process the ballot should take place, requires the local authority to conduct the ballot themselves or appoint an appropriate person to do so, and requires that, once the result of the ballot is known, the local authority must inform tenants of the result and, where the local authority intends proceeding with the transfer, inform them that they can, within 28 days, raise any concerns with the Secretary of State or (as the case may be) the Welsh Ministers.

728. *Subsection (3)* establishes that the Secretary of State cannot grant consent to a transfer where the majority of those voting in the ballot vote against the proposal.

729. *Subsections (4) and (5)* establish that these new provisions do not apply to consultations that have already begun, and make clear at what point a consultation can be deemed to have begun.

**Clause 258 - Management agreements: extending requirements to co-operate**

730. Clause 258 amends section 27AB of the Housing Act 1985. Section 27AB provides powers to the Secretary of State to make regulations requiring local housing authorities to enter into agreements with tenant management organisations over the management of their council housing. The amendments extend the list of what those regulations might include, and make other minor provisions. The powers of the Secretary of State are exercisable in Wales by the Welsh Ministers.

731. *Subsection (2)* permits the regulations to require the local authority to submit certain information to the tenant management organisation, and to require permits that the local authority co-operate in certain ways with that organisation.

732. *Subsection (3)* permits the regulations to determine that particular questions be determined by the person making the regulations as well as the authority, to set time

limits on carrying out the requirements of the regulations, and to require that persons exercising functions under the regulations act in accordance with guidance or directions issued by the Secretary of State.

**Clause 259 - Requirements to co-operate in relation to certain disposals of land**

733. Clause 259 adds a new section 34A to the Housing Act 1985.

734. Section 34A(1) gives the appropriate person (in England the Secretary of State, in Wales the Welsh Ministers) powers to make regulations where a local housing authority has been served a notice by a group of tenants requesting a transfer of occupied council housing from ownership of the local housing authority to a named registered private sector landlord (e.g. a housing association).

735. Section 34A(2) sets out requirements that may be placed on the local housing authority in the regulations. These comprise:

- providing assistance to the tenants (which could be financial support, accommodation, other facilities or training);
- arranging a feasibility study to look into the tenants' proposals;
- providing information to the tenants;
- co-operating in certain ways with the tenants;
- arranging ballots with respect to the proposals; and
- entering into an agreement for the disposal.

736. Section 34A(3) sets out two further matters that might be included:

- provision identifying the land and houses affected by the proposal, and
- provision requiring that the agreement between the local housing authority and the private sector landlord be in a form approved by the appropriate person.

737. Section 34A(4) sets out further procedural arrangements that might be included in the regulations:

- provision that certain questions arising from the regulations be answered by the authority or the appropriate person;
- setting time limits for carrying out requirements set in the regulations; and
- requiring persons exercising functions under the regulations to act in

accordance with guidance or directions given by the appropriate person.

738. The regulations are subject to the negative resolution procedure.

***Family intervention tenancies***

**Clause 260 - Family intervention tenancies: general**

739. This clause will enable local housing authorities and registered social landlords to offer tenancies which will not be secure or assured tenancies to certain tenants who have lost or are potentially at risk of losing their secure or assured tenancy. These tenancies will be offered for the purposes of providing behavioural support services to tenants against whom a possession order for anti-social behaviour has been made or to tenants who could face possession proceedings on the grounds of anti-social behaviour.

740. *Subsection (1)* inserts a new paragraph 4ZA into Schedule 1 of the Housing Act 1985 (tenancies which are not secure tenancies).

741. Sub-paragraph (1) of the new paragraph provides that family intervention tenancies are not secure tenancies.

742. Sub-paragraph (2) provides that the tenancy can become a secure tenancy if the landlord so notifies the tenant.

743. Sub-paragraph (3) defines a family intervention tenancy for the purposes of this paragraph as a tenancy granted by a local authority to a person for the purposes of the provision of behaviour support services and against whom a possession order in respect of another dwelling house:

- has been made in relation to a secure tenancy on the grounds of anti-social behaviour or;
- could have been so made in relation to a secure tenancy; or
- could have been so made if the tenant had had such a tenancy.

744. Sub-paragraph (4) provides the new tenancy will not be a family intervention tenancy unless the local housing authority has served a notice under sub-paragraph (5).

745. Sub-paragraph (5) provides the information the notice must contain including that the tenant is under no obligation to enter into the tenancy or to surrender any existing tenancy or possession of a dwelling house. Entry into the tenancy will be voluntary.

746. Sub-paragraph (6) provides that the contents of the notice may be amended by regulations made by statutory instrument. The regulations may contain transitional, transitory or saving provisions. These regulations will be subject to negative resolution.

747. Sub-paragraph (9) provides definitions for the terms used in the new paragraph 4ZA. “Behaviour support services” is defined as support services provided by any person to the new tenant or persons living with them for the purposes of preventing the anti-social behaviour which has led to the local authority taking the possession action it has or of being of the opinion that such a possession claim could be made.

748. *Subsection (2)* inserts new paragraph 12ZA into Part 1 of Schedule 1 to the Housing Act 1988 (tenancies which cannot be assured tenancies).

749. New paragraph 12ZA mirrors the provisions in new paragraph 4ZA above in respect of family intervention tenancies granted by registered social landlords.

750. *Subsection (3)* provides that the new provisions in new paragraph 4ZA of Schedule 1 to the Housing Act 1985 and paragraph 12ZA to the Housing Act 1988 will not apply to any tenancy granted before this section comes into force.

#### **Clause 261 - Certain family intervention tenancies: termination**

751. This clause makes provision in relation to the termination of local housing authority family intervention tenancies.

752. *Subsection (1)* provides that a local authority should not serve a notice to quit on a tenant of a family intervention tenancy unless a notice under *subsection (2)* has been served on the tenant and either:

- the tenant has not requested a review specified in *subsection (2)(e)* (right to request a review of decision to evict within 14 days of the date when the notice of intention to evict is served on the tenant);
- the tenant withdraws the request for a review; or
- a notice under *subsection (4)(b)* has been served on the tenant (notice of the reasoning and decision of the requested review).

753. *Subsection (2)* sets out the required contents of the notice.

754. *Subsections (3)–(4)* explain what a local authority must do if a tenant requests a review of the local authority's decision within 14 days of the service of the notice under *subsection (2)*. The local authority must carry out the review and serve notice of their decision and the reasons for it on the tenant.

755. *Subsection (5)* provides that an “appropriate authority” (Secretary of State for England or the Welsh Ministers for Wales) may make regulations about the review procedure.

756. *Subsection (6)* provides that regulations made under *subsection (5)* may contain:

- a description of the person who makes the review decision;
- the circumstances under which the tenant would be entitled to an oral review;
- whether or not and by whom the tenant can be represented during the review hearing.

757. *Subsection (7)* provides that any notice to quit or notice under *subsection (2)* served in respect of a family intervention tenancy, must also contain advice to the tenant about obtaining assistance in relation to the notice.

758. *Subsection (8)* provides that an “appropriate authority” (Secretary of State for England or the Welsh Ministers for Wales) may make regulations on the type of advice the notice to quit or notice under *subsection (2)* must include.

759. *Subsection (10)* effectively applies the provisions of this clause only to tenancies granted after the coming into force of this section.

### ***Right to buy etc: miscellaneous***

#### **Clause 262 – Exception to the right to buy: possession orders**

760. Clause 262 clarifies the circumstances where section 121(1) of the Housing Act 1985 applies so that a tenant subject to a possession order cannot exercise the Right to Buy, ensuring that these include a possession order which does not initially specify a date for possession.

#### **Clause 263 – Review of determination of value**

761. Section 128 of the Housing Act 1985 (“the Act”) provides that where a tenant who has applied for the Right to Buy is dissatisfied with the valuation provided by his landlord under section 125 of the Act, he may ask the District Valuer (an officer of the Valuation Office Agency, a non-profit-making public body) for a determination of value. Clause 263 inserts new sections 128A and 128B into the Act to enable a District Valuer, either at the request of the landlord or the tenant or on his own initiative, to withdraw and replace a determination of value which he subsequently finds has been based on faulty facts. A request or decision to review the original determination must be made within specified time limits.

**Clause 264 – Approved lending institutions**

762. If a tenant buys his home under the Right to Buy and then resells it within five years, his former landlord may require him to repay some or all the discount he received. This obligation is secured by a charge on the property. However, if the owner has a mortgage and is unable to keep up the payments on it, lenders specified in section 156 of the Housing Act 1985 or approved by the Secretary of State under that section (“approved lending institutions”) are entitled to recover what they are owed (by taking possession and selling the property) ahead of the landlord’s entitlement - i.e. they have a ‘first charge’ on the property. Clause 264 removes the Secretary of State’s powers under section 156 to specify bodies as approved lending institutions and to revoke that status. The clause instead adds to the list in section 156(4) of automatically approved lending institutions (i) bodies which are authorised by the Financial Services Authority (FSA) and (ii) European lenders automatically entitled to operate in the United Kingdom. The clause also makes consequential amendments to the relevant definitions in section 622 of the Housing Act 1985. The overall effect is to combine the process of approving lenders for Right to Buy purposes, now carried out by the Secretary of State, with the process of authorising lenders carried out by the FSA.

**Clause 265 – Former right to buy flats etc: service charge loans**

763. Clause 265 amends section 450C of the Housing Act 1985 to add a power for the Secretary of State to make regulations allowing landlords, where they make loans to leaseholders to assist them in paying service charges, to do so on terms other than an interest bearing loan. A power is included to provide for charging for the services of the District Valuer, since it may be appropriate to specify valuation of the flat by a District Valuer in regulations. Fees charged by the District Valuer are limited to recovery of expenses, and are governed by usual administrative law principles of reasonableness. Provisions for service charge loans under regulations made under the powers in sections 450A to C of the Housing Act 1985 apply only to properties sold under the Right to Buy.

**Clause 266 - Other amendments**

764. Clause 266 corrects two errors in schedules to the Housing Act 1985 (“the Act”). The first correction, to Schedule 5 to the Act, removes an unintended right of further appeal to the High Court against the decision of a residential property tribunal, where tenants who have been refused the Right to Buy on the ground that the property is particularly suitable for occupation by elderly persons have appealed to a residential property tribunal. It was intended that the tribunal’s decision should be final; further appeal to the Lands Tribunal is already excluded. A possible right of further appeal to the High Court was inadvertently suggested by interaction between Schedule 5 and section 231 of the Housing Act 1996. The second correction amends a paragraph reference in Schedule 5A to the Act.

***Other***

**Clause 267 – Disposals of dwelling-houses by local authorities**

765. Clause 267 introduces Schedule 9.

**Clause 268 - Financial assistance for information and other services**

766. This widens the existing power contained in section 94 of the Housing Act 1996 for the Secretary of State in England and the Welsh Ministers in Wales to provide financial assistance for the giving of general advice in respect of residential landlord and tenant law, including advice about estate management schemes in connection with enfranchisement.

767. Financial assistance may now also be provided for the giving of information and training, and for the running of an alternative dispute resolution service.

768. The ability to provide assistance in such form and on such terms as the Secretary of State in England and the Welsh Ministers in Wales consider appropriate will remain.

**Chapter 3 - Housing finance and other provisions**

***Housing Revenue Account Subsidy***

769. These provisions also provide a power for the appropriate person (the Secretary of State in England and Welsh Ministers in Wales) and those local housing authorities who keep a Housing Revenue Account to enter into agreements concerning Housing Revenue Account Subsidy. This enables the parties to agree that no Housing Revenue Account Subsidy is payable by or to the appropriate person. Agreements can be for either an authority's whole stock or for specified properties.

**Clause 269 - Exclusions from subsidy arrangements**

770. *Subsection (1)* inserts a new section 80B into the Local Government and Housing Act 1989 (the 1989 Act) which by virtue of subsection (2) of section 80B disapplies sections 79 to 80A of the 1989 Act where an agreement exists between the appropriate person (the Secretary of State in England and Welsh Ministers in Wales) and a local housing authority. An agreement disapplying sections 79 to 80A would have the effect that no Housing Revenue Account Subsidy was payable by or to the appropriate person in respect of the properties covered by the agreement.

771. Subsection (3) of section 80B gives examples of the kinds of terms and conditions that such agreements may contain. These include conditions specifying whether the agreement is to be for a fixed or indeterminate period, setting out the payments to or from the appropriate person for making the agreement, rent levels, the giving of information and the variation or termination of the agreement.

772. Subsections (4), (5) and (6) of section 80B enable the appropriate person to make directions concerning the variation or termination of an agreement to deal with issues such as necessary transitional, consequential, incidental or supplementary changes. Directions cannot, however, override the terms of the original agreement without the consent of the relevant local housing authority. Directions may in particular deal with the return to the subsidy regime of an authority's housing stock.

773. Subsection (8) of section 80B defines key terms used in clause 269. In particular the definition of property ensures that the agreement can cover both current and future properties.

774. *Subsection (3)* amends paragraph 2 of Part 3 of Schedule 4 to the 1989 Act which currently provides authorities a very limited power to move credits from their Housing Revenue Account to the general fund, so that it does not apply in respect of those properties subject to an agreement under section 80B(1)(b).

### ***Homelessness and allocation of housing***

#### **Clause 270 - Armed forces: homelessness and allocation of housing**

775. Clause 270 amends section 199 of the Housing Act 1996, which sets out the circumstances when a person has a local connection with the district of a local housing authority. Housing authorities may take account of whether a person has a local connection with their district when considering the person's priority for an allocation of housing under Part 6 of the 1996 Act or when making inquiries about whether the person is homeless and owed a duty for the purposes of Part 7 of the 1996 Act. The effect of the amendment is that a person in the armed forces will now be able to establish a local connection with a district through residence of choice or employment there, in the same way as a civilian.

### ***Other***

#### **Clause 271 – Building regulations: time limit for prosecutions**

776. This clause amends section 35A of the Building Act 1984 to extend to all provisions of building regulations longer time limits for bringing prosecutions for contraventions of those provisions. At present the longer prosecution time limits provided for by section 35A can apply only to contraventions of provisions of building regulations which were made for the purpose of furthering the conservation of fuel and power or otherwise in connection with the use of fuel and power, or for the purpose of reducing the emission of greenhouse gases, where those provisions have been designated in regulations.

777. The current time limit within which prosecutions for breaches of provisions of building regulations must be brought is six months from the date the offence is committed (in accordance with the standard provisions for summary offences set out in section 127(1) of the Magistrates' Courts Act 1980). The amendments in this clause will bring prosecutions for all building regulation contraventions within the time limit provisions in section 35A. Thus there will be an absolute limit of two years from the date the offence is committed within which summary proceedings must be commenced, subject to a requirement that proceedings must be brought within 6 months of the date on which sufficient evidence to justify a prosecution becomes known to the person who commences the proceedings.

778. *Subsection (5)* provides that the extended time limits for prosecution will not apply to any offence committed before the amendments to section 35A come into force, i.e. the amendments will not be retrospective.

**Clause 272 – Protected mobile home sites to include sites for gypsies and travellers**

779. Clause 272 amends the definition of a “protected site” in section 5(1) of the Mobile Homes Act 1983 by removing the exclusion for land occupied by a local authority as a caravan site providing accommodation for gypsies and travellers. The Mobile Homes Act 1983 will therefore apply to an agreement to station a mobile home (or caravan) on a local authority gypsy and traveller site.

**Clause 273 – Financial assistance for certain services about commonhold**

780. This widens the existing power contained in section 62 of the Commonhold and Leasehold Reform Act 2002 for the Lord Chancellor to provide financial assistance for the giving of general advice in respect of the law relating to commonhold land so far as relating to residential matters.

781. Financial assistance may now also be provided for the giving of information and training, and for the running of an alternative dispute resolution service. The Lord Chancellor may also provide financial assistance for the giving of advice in respect of freehold land so far as relating to residential matters when that advice is connected to advice about aspects of commonhold land.

782. The ability to provide assistance in such form and on such terms as the Lord Chancellor considers appropriate will remain.

## **PART 4 – SUPPLEMENTARY AND FINAL PROVISIONS**

### **Clause 274 – Orders and regulations**

783. Clause 274 makes general provision for orders and regulations under the Bill. It provides for regulations and orders to be made by statutory instrument except where specified otherwise (*subsection (2)*) and for the Parliamentary procedure which is to apply in respect of various instruments (*subsections (3) to (7)*).

784. *Subsections (6) and (7)* provide for the procedure to be followed in the National Assembly for Wales in relation to instruments made by Welsh Ministers.

### **Clause 275 – Consequential amendments and repeals**

785. Clause 275 gives the Secretary of State power by order to amend, repeal or revoke enactments in order to make supplementary or consequential provisions for the purpose of giving full effect to the Bill. *Subsection (4)* enables Welsh Ministers to make consequential amendments and repeals in relation to matters where functions are exercised by Welsh Ministers. This clause also introduces Schedule 10.

### **Clause 276 – Transitional, transitory or saving provisions**

786. Clause 276 enables the Secretary of State by order to make such transitional, transitory or saving provisions as are needed in connection with the coming into force of the Bill and for Welsh Ministers to have similar power in connection with Welsh provisions.

### **Clause 277 – Financial provisions**

787. Clause 277 sets out how money is to be provided by Parliament for any expenditure incurred by a Minister of the Crown in connection with the Bill. Any sums received by a Minister of the Crown are to be paid into the Consolidated Fund so far as not required to be paid into the National Loans Fund.

### **Clauses 278 - 280 – Extent; Commencement; Short title**

788. These clauses provide for the extent, commencement and short title of the Bill.

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### ***Schedule 1 – The Homes and Communities Agency***

789. Schedule 1 sets out the constitution of the HCA, and includes provisions about its status, membership, procedure, delegation, appointment of its chief executive and other employees, pay and pensions, accounts and annual reports. The consent of the Secretary of State is required for certain key decisions of the HCA in relation to appointments and finances.

*These notes refer to the Housing and Regeneration Bill  
as introduced in the House of Commons on 15th November 2007 [Bill 8]*

790. The Board of the HCA is to consist of not less than six members appointed by the Secretary of State. Paragraph 2 of the Schedule details the arrangements for the terms of appointment of members and includes provision about vacation of office.

791. Paragraph 3 makes provision about members' remuneration, allowances and pensions.

792. Paragraph 4 details arrangements for the appointment, terms and conditions, pay and pensions of the HCA's chief executive and staff. The Secretary of State must approve these arrangements.

793. Paragraph 5 enables the Secretary of State to fund the HCA and paragraphs 6 to 10 detail how the HCA is to organise its committees, including arrangements for members to declare interests, and for the delegation of functions.

794. Paragraphs 11 to 17 detail arrangements for the HCA's financial reporting of its accounts, and other administrative matters.

795. Paragraph 18 enables the Secretary of State instead of the HCA to appoint the first chief executive and to determine the terms and conditions of his service.

***Schedule 2 – Acquisition of land***

796. Schedule 2 makes further provision regarding the acquisition of land and new rights over land by the HCA.

797. It applies the Acquisition of Land Act 1981 (with modifications) to the acquisition of land and new rights over land. The 1981 Act sets out the standard compulsory purchase procedure, which is applied in the case of most compulsory acquisitions. In summary:

- The 1981 Act contains requirements as to publicity and notification, to enable any person to submit an objection to the Secretary of State within the specified period.
- A statutory objector is a “qualifying person” on whom section 12 of the 1981 Act requires notice to be served, and includes owners, leaseholders, tenants and occupiers of any land in the compulsory purchase order, and any other person having a right to claim compensation for interference with rights they enjoy over land, or who are likely to be entitled to make a claim for compensation for “injurious affection” (decrease in value of retained land as a result of the acquisition and proposed use of the land which is being acquired).

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- If a relevant objection is made by a person with a statutory interest in the land, a public local inquiry will generally be held. It is also open to the statutory objectors to agree to their objections being considered through the written representations procedure.
- An inspector will prepare a report and the Secretary of State will then consider the findings of the report and the inspector's recommendation when deciding whether or not to confirm a compulsory purchase order.
- Where an order is confirmed, the usual compensation regime will apply, which is linked to the value of the land being acquired and may also include compensation for disturbance and other losses and, for example, legal costs in preparing a compensation claim.

798. Various statutory bodies – including the Urban Regeneration Agency under the 1993 Act - have the power to acquire land which is, or forms part of, a common, open space or allotment. The Acquisition of Land Act 1981 makes separate procedural provision in relation to such land. A compulsory purchase order in respect of any of these types of land will be subject to special parliamentary procedure (which ensures a high level of parliamentary scrutiny) unless the Secretary of State is satisfied that equivalent land has been given in exchange for such land or that certain other limited circumstances (for example, that the land area is not more than 250 square yards) apply. Provision is also made in respect of notice requirements, an opportunity for objections to be made and a power for the Secretary of State to hold a public local inquiry.

799. Part 1 of the Schedule makes provision for the extinguishment of private rights of way or rights in relation to apparatus and for apparatus to vest in the HCA (subject to any agreement between the HCA and the person in whom the right or apparatus is vested). Compensation is payable to any person who suffers loss as a result of the extinguishment of any such right or the vesting of any apparatus. These provisions do not apply to any right vested in, or apparatus belonging to, statutory undertakers for the purpose of carrying on their undertaking.

800. Schedule 2 also ensures that following a compulsory acquisition the usual regime for compensation applies. The compulsory acquisition legislation applied by Schedule 2 contains various provisions for the recovery or award of costs. Where any provision is made in respect of costs, or where there is a power to make an order in respect of costs, such provision would be governed by usual administrative law principles of reasonableness.

801. Part 2 of Schedule 2 also applies Part 1 (except section 31) of the Compulsory Purchase Act 1965 to the acquisition of land by agreement (so far as applicable).

***Schedule 3 – Main powers in relation to land of the HCA***

802. Part 1 of Schedule 3 makes provision in respect of powers to override easements.

803. It may be necessary for the HCA to override easements, for example rights of access or other rights over land, in order to develop or regenerate land. Part 1 is modelled on paragraph 5 of Schedule 20 to the Leasehold Reform, Housing and Urban Development Act 1993 which gave the Urban Regeneration Agency similar powers. The HCA (or any person working on behalf of the HCA) will be able to carry out development or regeneration works on its land even if they interfere with a right or interest in respect of that land. However any works undertaken under this provision must still comply with the relevant planning permission.

804. A right to compensation may arise under section 7 or 10 of the Compulsory Purchase Act 1965 in relation to an interference or breach in pursuance of this power. In addition, if compensation is payable by a third party and is not paid by them, the HCA can be held liable to pay that compensation.

805. Part 2 of Schedule 3 makes provision in respect of powers to extinguish public rights of way.

806. The Secretary of State may by order remove any public right of way over land owned by the HCA. This is modelled on paragraph 9 of Schedule 20 to the Leasehold Reform, Housing and Urban Development Act 1993, which gave the Urban Regeneration Agency the same power.

807. Part 2 sets out the statutory procedure that must be followed if the Secretary of State proposes to make an order to extinguish a public right of way. It includes a duty to consider objections and the power to hold a public local inquiry.

808. The Secretary of State must publish a notice stating the effect of the order and the time by when, and manner in which, any objections to the order must be made. The Secretary of State must serve a copy of the notice on the relevant local planning authority and the relevant highway authority. The procedure also includes a duty to consider any objections that are properly made, a power to give an objector an opportunity to have their objection heard, and a power for the Secretary of State to hold a public local inquiry if the Secretary of State considers the matters being discussed require such investigation.

809. Where an order under this power is made and any electronic communications apparatus is installed for the purposes of an electronic communications code network under, in, on, over, along or across the land over which the right of way subsisted, provision is made in this Part of the Schedule for the operator of the network to remove, or to serve a notice on the HCA of an intention to abandon, the apparatus within a three month period from the date the right of way is extinguished. The

operator is entitled to recover the expense of providing any substitute apparatus from the HCA as a result of the removal or abandonment of the apparatus.

810. Part 3 of Schedule 3 makes provision in relation to burial grounds and consecrated land etc.

811. This Part makes provision in respect of burial grounds (which are defined as including any churchyard, cemetery or other ground, whether or not consecrated, which has at any time been set apart for the purposes of interment), consecrated land and other land connected to religious worship belonging to the HCA. This Part is modelled on equivalent powers given to the Urban Regeneration Agency in paragraph 6 of Schedule 20 to the Leasehold Reform, Housing and Urban Development Act 1993.

812. Any burial ground which has been used for the burial of the dead may not be used by the HCA until prescribed requirements about the removal and reinterment of human remains, and the disposal of monuments, have been complied with. Regulations made under this power must specifically make provision to enable relatives or personal representatives of any deceased person themselves to undertake the removal and reinterment of the remains of the deceased, and the disposal of any monument commemorating the deceased. The regulations must also require the persons in whom the burial ground is vested to meet the cost of the removal, reinterment and disposal (although the regulations may prescribe a maximum amount). The Secretary of State may also give directions regarding the removal and reinterment of human remains in any case, and the regulations must require compliance with any directions given.

813. The HCA may use consecrated land (other than burial grounds) provided that such use complies with requirements in regulations (which may be made by the Secretary of State under this Schedule) about the disposal of monuments and any provisions prohibiting or restricting use of the land while any church or other building (or part of any church or other building) used, or formerly used, for religious worship remains on the land.

814. Use of any other land which is connected to religious worship (which is not consecrated land nor land which consists of, or forms part of, a burial ground) and at the time of acquisition by the HCA included a church or other building used, or formerly used, for religious worship, or the site of such a church or building, is subject to requirements in regulations (which may be made by the Secretary of State under this Schedule) about the disposal of monuments.

815. Subject to the regulations providing otherwise, the Schedule provides that no licence or authority is required where the removal and reinterment of human remains, or the removal or disposal of any monuments, is carried out in accordance with regulations made under the power in this Schedule. In addition, the Schedule provides that section 25 of the Burials Act 1857 (which prohibits the removal of

human remains without the licence of the Secretary of State except in certain cases) does not apply to a removal of human remains carried out in accordance with regulations made under this Schedule.

816. Part 4 of Schedule 3 makes provision in respect of powers in relation to open spaces.

817. The HCA may use any of its land which is, or forms part of, a common, an open space or an allotment in any way provided it is in accordance with planning permission (despite anything in legislation relating to that type of land or under which that land is specifically regulated). This clause is modelled on a power applied to the Urban Regeneration Agency contained in paragraph 7 of Schedule 20 to the Leasehold Reform, Housing and Urban Development Act 1993.

***Schedule 4 – Powers in relation to, and for, statutory undertakers***

818. Schedule 4 is modelled on provisions in paragraphs 12 to 19 of Schedule 20 to the Leasehold Reform, Housing and Urban Development Act 1993.

819. “Statutory undertakers” for the purposes of Schedule 4 are defined as those persons who are or who are deemed to be “statutory undertakers” for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990. For example, this includes persons authorised by any enactment to carry on any railway, light railway, tramway, road or water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking.

820. Part 1 of the Schedule enables the HCA to serve a notice on a statutory undertaker extinguishing certain rights over land of the HCA vested in, or belonging to, the statutory undertaker or stating that apparatus vested in, or belonging to, the statutory undertaker must be removed from land of the HCA. The statutory undertaker may serve a counter-notice objecting to the provisions of the notice and detailing the grounds of their objection. The provisions set out the subsequent procedure to be followed. A statutory undertaker is entitled to compensation if a right is extinguished or any requirement is imposed upon them under this Part of this Schedule. These provisions apply to the operator of an electronic communications code network as a statutory undertaker in certain circumstances.

821. Part 2 of the Schedule applies where apparatus of the statutory undertaker is situated on, under or over the land of the HCA and the statutory undertaker needs to remove or re-site the apparatus in order to carry out development. In such circumstances a statutory undertaker may serve notice on the HCA claiming the right to enter land of the HCA and remove or re-site the apparatus. The HCA may serve a counter-notice objecting to the provisions of the notice and detailing the grounds of objection. The provisions set out the subsequent procedure to be followed. If works are to be carried out, the statutory undertaker and the HCA may arrange for the HCA

to carry out the works under the supervision of the undertaker. Statutory undertakers are entitled to compensation from the HCA in respect of any works carried out under this Part of this Schedule.

822. Part 3 of the Schedule enables statutory undertakers to make representations to the Secretary of State and appropriate Minister for an extension or modification to their functions. The HCA may also make representations for the extension or modification of the functions of a statutory undertaker. Subject to specified conditions the Secretary of State and the Minister may make an order accordingly. The statutory undertaker or the HCA (that is, whoever made the representations) must publish a notice specifying the time by when, and manner in which, objections may be made, and any other details the Secretary of State and Minister direct should be included. The provisions set out the subsequent procedure to be followed by the Secretary of State and the Minister in considering any objections and include the power to hold a public local inquiry. An order may, for example, give a statutory undertaker power to acquire land (whether compulsorily or by agreement) and to apply enactments relating to the acquisition of land, which would ensure compensation would be payable as usual in such cases. An order may give effect to any financial arrangements agreed between the HCA and the statutory undertaker, or specify a tribunal to determine the issue in the absence of any such financial arrangement. Orders under this Part of the Schedule are subject to special parliamentary procedure, which ensures a high level of parliamentary scrutiny.

823. Part 4 of the Schedule enables a statutory undertaker to be relieved of carrying out some of their obligations where they have made representations to the appropriate Minister and the Minister is satisfied that meeting those obligations has been made impracticable following certain specified acts or events. Subject to specified conditions the Minister may make an order accordingly. The statutory undertaker must publish or serve notices (or both) in accordance with any directions given by the Minister. The provisions set out the subsequent procedure to be followed by the Minister in considering any objections received and include the power to hold a public local inquiry. If an objection is properly made and not withdrawn the order will be subject to special parliamentary procedure. The provisions also set out how an order may be challenged.

#### ***Schedule 5 – Amendments to the New Towns Act 1981***

824. Schedule 5 transfers certain functions of the Commission for the New Towns in Wales to the Welsh Ministers. In England the functions of the Commission for the New Towns will be carried out by the HCA. It also makes other consequential amendments to the New Towns Act 1981.

***Schedule 6 – Transfer schemes***

825. Schedule 6 provides for transfer schemes.

826. In relation to the transfer of employment rights and liabilities, Schedule 6 provides for an equivalent of regulation 5 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

***Schedule 7 – Amendments of enactments: Part 1***

827. Schedule 7 contains consequential amendments to various enactments. The majority of these amendments remove references to the bodies that will be abolished, (i.e. the Urban Regeneration Agency, the Commission for New Towns or ‘English Partnerships’ (the name under which the Urban Regeneration Agency and the Commission for the New Towns have jointly operated)) and insert a reference to the HCA.

***Schedule 8 – Penalty charge notices***

828. Schedule 8 sets out what must be included in a penalty charge notice (paragraph 1). It provides for the penalty sum to be such sum not exceeding £1,000 as may be prescribed in regulations by the appropriate national authority (paragraph 2), and for this to be payable within 28 days or such extended period as the authority may allow (paragraph 3). It provides for review of notices by the enforcement authority on request made within that period (paragraph 4), for withdrawal of the notice by the authority if appropriate (paragraph 5), and for appeal to a county court from a confirmation of the notice upon review (paragraph 6). Provision is made for recovery of the penalty charge by the enforcing authority (paragraph 7), and for evidence to be given in writing in recovery proceedings (paragraph 8). There is provision for the enforcement authority to return payments of any charge where a notice is withdrawn or quashed (paragraph 9). Provision for service of notices is made (paragraph 10). The appropriate national authority may by regulations make provision supplementary or incidental to Schedule 8 for subjects including the form of penalty charge notices, circumstances in which they may not be given, methods of payment, and service (paragraph 11).

***Schedule 9 – Disposals of dwelling-houses by local authorities***

829. Schedule 9 amends certain provisions of the Housing Act 1985 and repeals and amends provisions of the Leasehold Reform, Housing and Urban Development Act 1993. The provisions concern consent from the Secretary of State to large scale disposals of housing by local authorities. The intention of the amendments is to remove the requirement that local authorities must apply to the Secretary of State annually to be included in a large scale disposals programme for a particular financial year. The amendments do, however, retain the requirement that the Secretary of State

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as introduced in the House of Commons on 15th November 2007 [Bill 8]*

must consider the exchequer costs of such disposals before granting consent. Notwithstanding removal of this statutory requirement, local authorities will be expected to engage with the HCA at an early stage when considering a large scale disposal.

830. *Paragraph 1(2)* amends section 34 of the Housing Act 1985, which applies to the grant of the Secretary of State's consent under section 32 or 33 of the Housing Act 1985 for the disposal of land held for housing purposes by a local authority.

831. *Paragraph 1(2)(a)* adds the requirement that, when considering whether to grant consent, the Secretary of State may, in the case of a large scale disposal, have regard to the Secretary of State's estimate of the exchequer costs of such a disposal.

832. *Paragraph 1(2)(b)* adds the provision that the Secretary of State may make assumptions as to what the exchequer costs might be and defines "dwelling-house", "exchequer costs", "housing subsidies", "large scale disposal", "long lease", "relevant period", and "subsidiary" for the purpose of those cost calculations. The subsection also gives the Secretary of State the power by order to change the number of dwelling-houses in the definition of "large-scale disposal". The paragraph also defines "a dwelling-house to be disregarded", "associates", and how the description of an authority might be framed for the purposes of the section.

833. *Paragraph 1(3)* makes identical amendments to section 43 of the Housing Act 1985 in relation to large scale disposals. Section 43 relates to the Secretary of State's powers to grant consent to a local authority to dispose of a house belonging to the local authority which fulfils certain conditions but is not held for housing purposes and is therefore not subject to consent under sections, 32, 33 and 34 of the Housing Act 1985.

834. *Paragraph 2(2)* repeals section 135 of the Leasehold Reform, Housing and Urban Development Act 1993. Section 135 requires that a local authority cannot dispose of more than 499 dwelling-houses (i.e. a large scale disposal) within a particular period without having first been accepted on to an annual disposals programme run by the Secretary of State.

835. *Paragraph 2(3)* amends section 136 of the Leasehold Reform, Housing and Urban Development Act 1993 to retain definitions included in section 135, including an expanded definition of "subsidiary", which would otherwise be repealed.

836. *Paragraph 2(4)* deletes from section 137 of the Leasehold Reform, Housing and Urban Development Act 1993 transitional provisions relating to section 135, which are now redundant.

### **Schedule 10 – Repeals**

837. Schedule 10 contains the repeals of various enactments and will be supplemented by orders made under the power of the power of the Secretary of State under clause 275 (power to make further amendments and repeals).

### **FINANCIAL EFFECTS**

838. The Housing and Regeneration Bill will incur public expenditure in a number of ways which are addressed in the accompanying Impact Assessment. This will amount to some £37.5 million of which one-off costs amount to some £23.5 million.

839. Most of the one-off costs will be incurred through establishing the HCA (Part 1) and the new social housing regulator (Part 2), together estimated to amount to £23 million. Local Authorities may incur one-off costs of some £0.325 million in connection with:

- the provisions to provide the same security of tenure, and other rights and responsibilities, to Gypsies and Travellers on local authority sites as Gypsies and Travellers on private sites, and occupants of other types of residential caravan site, such as park home sites (clause 272);and
- the provision to enable service personnel to establish a local connection with the district in which they serve, for the purposes of applying to a local housing authority for an allocation of social housing or homelessness assistance (clause 270).

840. Ongoing costs of the proposed new social housing regulator are estimated to amount to £12.7 million. Local Authorities may incur some ongoing costs in connection with the management of their Gypsy and Traveller sites under the new arrangements, which are estimated at some £0.625 million over 10 years.

### **PUBLIC SECTOR MANPOWER**

841. In most cases there will be minimal implications for net staffing levels in the public sector, including local authorities. The creation of the HCA is estimated to realise running costs savings of around £3m from 2010-11. Further details are set out in the Impact Assessment.

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## **IMPACT ASSESSMENT**

842. An impact assessment of the Bill's provisions has been published alongside this Bill. It can be read on the Department for Communities and Local Government website at [www.communities.gov.uk](http://www.communities.gov.uk).

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

843. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Secretary of State for Communities and Local Government, Hazel Blears MP, has made the following statement: "In my view the provisions of the Housing and Regeneration Bill are compatible with the Convention rights".

844. Part 1 of the Bill establishes the HCA which will replace the Urban Regeneration Agency, the Commission for New Towns and the investment functions of the Housing Corporation. The HCA will have powers to acquire land and rights over land, including compulsorily where authorised by the Secretary of State, and to override or extinguish rights in some circumstances. These powers are modelled on powers currently exercised by the Urban Regeneration Agency under the Leasehold Reform Housing and Urban Development Act 1993. In addition, the Secretary of State will have power to designate an area in England and confer functions on the HCA, including local planning authority and hazardous substance authority functions, in relation to that designated area. The powers potentially raise issues under Articles 6 and 8 of and Article 1 of Protocol 1 to the European Convention on Human Rights. The objects of the HCA incorporate a clear public interest test and as a public body the HCA will be required to act in a manner which is compliant with the Human Rights Act 1998. Any powers conferred on the HCA must also be exercised in accordance with statutory procedures. For example Part 2 of Schedule 3 sets out the procedure for the consideration of the extinguishment of a public right of way. Part 1 of Schedule 2 applies the procedures in the Acquisition of Land Act 1981 to the compulsory purchase of land and also provides for the usual regime for compensation linked to the value of the property to apply. With regard to any planning functions which the HCA may have conferred upon it, the established procedures which protect individual human rights remain in place. These include the Secretary of State's powers to call in applications for the Secretary of State's own determination and to hear appeals against decisions of the local planning authority.

845. Part 2 of the Bill establishes a new regulator for social housing, the Office for Tenants and Social Landlords. The regulator will have a range of regulatory and enforcement powers in relation to registered providers of social housing. The Convention rights that might be engaged by the regulator's powers under Part 2 are Article 6, Article 7, Article 8 and Article 1 of the First Protocol. However the new regulator will be a public authority for the purposes of the Human Rights Act 1998. It

will therefore be required by section 6 of that Act to act compatibly with the Convention rights when performing its functions. In addition, the regulator will be required to perform its functions with a view to achieving its statutory objectives, set out in clause 86. The tenth such objective (in subsection (11) of clause 86) requires the regulator to regulate in a manner which minimises interference and is proportionate, consistent, transparent and accountable. An explicit objective to minimise interference and act proportionately provides additional reassurance that the regulator will exercise its enforcement powers in a manner compatible with the Convention rights.

846. Part 3 of the Bill includes a range of provisions some of which could potentially engage Convention rights.

847. Clause 260 provides that “Family Intervention Tenancies” (FITs) offered by local housing authorities and registered social landlords will not be secure or assured tenancies. These tenancies will be offered to tenants who have had a possession order against them, are likely to, or, in the opinion of the local authority or registered social landlord, could have such an order against them on the grounds of anti-social behaviour. FITs will provide behaviour support services to the tenant. These provisions potentially raise issues under Articles 6 and 8 and Article 1 of the First Protocol. In accepting a FIT a secure tenant will agree to give up the secure tenancy but is doing so voluntarily so there is no deprivation of property by the state engaging Article 1 of the First Protocol. In accordance with clause 261 any decision to end a local authority FIT tenancy will be subject to a statutory review procedure meeting the requirements of Article 6. In respect of Article 8 any interference may be justified under Article 8(2) in the interests of public safety, the prevention of disorder and crime and the rights and freedoms of others e.g. by balancing the rights of the FIT tenant with those of other tenants and neighbours who need to be protected from anti-social behaviour.

848. Clause 262 ensures that a secure tenant cannot exercise the right to buy where he or she is subject to a possession order. Technically, this may lead to a deprivation or control of the use of a possession under Article 1 of the First Protocol, but any such deprivation may not be permanent and in any event fulfils a clear public interest and is subject to conditions provided by law.

849. Clause 272 brings licence agreements between site occupiers and the local authority on sites providing accommodation for gypsies and travellers into the regulatory regime imposed by the Mobile Homes Act 1983 and, in particular, gives occupiers the protection of the implied terms contained in Schedule 1 of that Act.

## **COMMENCEMENT DATE**

850. Clause 279 makes provision about commencement. In general the provisions of the Bill will be brought into force by order made by the Secretary of State on such days as may be appointed. Certain provisions of the Bill will come into force at the

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end of the period of two months beginning with the day on which the Act is passed; these are set out in subsections (2)(a) and (b) and (5)(a) of clause 279. Certain provisions will be brought into force in relation to Wales by order made by the Welsh Ministers; these are set out in subsections (4)(b) and (5)(b) of clause 279. Certain provisions will come into force on the day on which the Act is passed; these are set out in subsection (7).

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## Annex A

<b>Provisions</b>	<b>Clauses and Schedules that affect the powers of the National Assembly for Wales</b>
The Homes and Communities Agency	<p>Clause 53 introduces Schedule 6 which amends the New Towns Act 1981 and transfers Welsh functions of the Commission for the New Towns to the Welsh Ministers.</p> <p>Clause 54 makes provision for the transfer of any residual assets of the Commission for New Towns in Wales to the Welsh Ministers.</p>
Sustainability certificates	<p>Clauses 242 - 256 provide for the introduction of mandatory sustainability rating for new homes in England and Wales. Powers are to be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.</p>
Tenant empowerment	<p>Clause 258 extends the list of matters that might be included in regulations imposing requirements on a local housing authority to enter into a management agreement with a tenant management organisation by amending the existing regulation making power in section 27AB of the Housing Act 1985. Powers are to be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.</p> <p>Clause 259 enables regulations to be made requiring a local housing authority to take forward a proposal for the transfer of the ownership of part of its social housing stock if requested to do so by tenants of those homes. The detailed provision will be set out in regulations made by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.</p>
Family intervention tenancies	<p>Clauses 260 and 261 will enable local housing authorities and registered social landlords to offer tenancies which will not be secure or assured tenancies to certain tenants who have lost or are potentially at risk of losing their secure or assured tenancy. These tenancies will be offered for the purposes of providing behavioural support services to tenants against whom a possession order for anti-social behaviour has been made or to tenants who could face possession proceedings on the grounds of anti-social behaviour. The provisions will be commenced separately by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.</p>

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Right to buy etc: miscellaneous	Clause 265 extends the scope of an existing power to make regulations regarding loans in respect of service charges on former right to buy flats and other housing authority flats. Powers are to be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.
Financial assistance for information and other services	Clause 268 widens the existing power contained in section 94 of the Housing Act 1996 for the Secretary of State in England and the Welsh Ministers in Wales to provide financial assistance for the giving of general advice in respect of residential landlord and tenant law, including advice about estate management schemes in connection with enfranchisement. Powers are to be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.
Housing Revenue Account subsidy	Clause 269 disapplies sections 79 to 80A of the Local Government and Housing Act 1989 where an agreement exists between the appropriate person and a local housing authority. Such an agreement would have the effect that no Housing Revenue Account Subsidy was payable by or to the appropriate person in respect of properties covered by the agreement. The appropriate person is the Secretary of State in relation to England and Welsh Ministers in relation to Wales. Powers are to be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.
Armed forces: alteration of “local connection” test	Clause 270 amends section 199 of the Housing Act 1996, which sets out the circumstances when a person has a local connection with the district of a local housing authority. The provision will be commenced separately by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.
Protected mobile home sites to include sites for gypsies and travellers	Clause 272 amends section 199 of the Housing Act 1996, which sets out the circumstances when a person has a local connection with the district of a local housing authority. The provision will be commenced separately by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.
<b>Part 4</b> – Supplementary and final provisions	Clause 274 enables the Secretary of State in relation to England and Welsh Ministers in relation to Wales to make orders or regulations to make supplementary, incidental, consequential, transitional, transitory or saving provisions.

# HOUSING AND REGENERATION BILL

## EXPLANATORY NOTES

*These notes refer to the Housing and Regeneration Bill as introduced in the House of Commons on 15th November 2007 [Bill 8]*

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