

# Housing and Regeneration Bill

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[AS AMENDED IN PUBLIC BILL COMMITTEE]

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**B I L L**

[AS AMENDED IN PUBLIC BILL COMMITTEE]

TO

Establish the Homes and Communities Agency and make provision about it; to abolish the Urban Regeneration Agency and the Commission for the New Towns and make provision in connection with their abolition; to regulate social housing; to enable the abolition of the Housing Corporation; to make provision about sustainability certificates, landlord and tenant matters, building regulations and mobile homes; to make further provision about housing; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

THE HOMES AND COMMUNITIES AGENCY

**CHAPTER 1**

GENERAL

- 1 Establishment and constitution** 5
- (1) There shall be a body corporate known as the Homes and Communities Agency (“the HCA”).
- (2) Schedule 1 (which makes further provision about the HCA) has effect.
- 2 Objects**
- (1) The objects of the HCA are— 10
- (a) to improve the supply and quality of housing in England,

- 
- (b) to secure the regeneration or development of land or infrastructure in England, and
- (c) to support in other ways the creation, regeneration or development of communities in England or their continued well-being, with a view to meeting the needs of people living in England. 5
- (2) In subsection (1) –  
“needs” includes future needs, and  
the reference to improving the supply of housing includes a reference to improving the supply of particular kinds of housing.
- (3) In this Part – 10  
“building” means a building or other structure (including a house-boat or caravan),  
“caravan” has the meaning given by section 29(1) of the Caravan Sites and Control of Development Act 1960 (c. 2),  
“housing” means a building, or part of a building, occupied or intended to be occupied as a dwelling or as more than one dwelling; and includes a hostel which provides temporary residential accommodation, 15  
“infrastructure” includes –  
(a) water, electricity, gas, telecommunications, sewerage or other services, 20  
(b) roads or other transport facilities,  
(c) retail or other business facilities,  
(d) health, educational, employment or training facilities,  
(e) social, religious or recreational facilities,  
(f) cremation or burial facilities, and 25  
(g) community facilities not falling within paragraphs (a) to (f),  
“land” includes housing or other buildings (and see also the definition in Schedule 1 to the Interpretation Act 1978 (c. 30)),  
and references to housing include (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, the building or part of building concerned. 30
- (4) See also section 54 (role of the HCA in relation to certain former functions of the Commission for the New Towns).
- 3 Principal powers**
- The HCA may do anything it considers appropriate for the purposes of its objects or for purposes incidental to those purposes. 35
- 4 Powers: general**
- (1) This Part contains various specific powers of the HCA.
- (2) The specific powers of the HCA are to be exercised for the purposes of its objects or for purposes incidental to those purposes. 40
- (3) Each power may be exercised separately or together with, or as part of, another power.
- (4) Each power does not limit the scope of another power.

- (5) Each power does not limit the scope of the powers conferred by section 3.
- (6) But—
  - (a) subsections (2) and (3) do not apply to the HCA in its capacity as a local planning authority by virtue of sections 13 and 14 or in its exercise of other functions by virtue of those sections, and
  - (b) the powers conferred by section 3 must not be used to override a restriction imposed on the exercise of a specific power.

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## CHAPTER 2

### LAND AND INFRASTRUCTURE

#### *General*

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

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

15

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

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

20

#### **7 Powers in relation to infrastructure**

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

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

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

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

- (a) acquiring, holding, improving, managing, reclaiming, repairing or disposing of housing,

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

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## 9 Acquisition of land

- (1) The HCA may acquire land by agreement.
- (2) The HCA may acquire land compulsorily if the Secretary of State authorises it to do so.
- (3) The power of acquiring land compulsorily under subsection (2) includes power to acquire new rights over land. 10
- (4) Subsection (5) applies where –
  - (a) land or new rights over land are being acquired compulsorily under subsection (2), and
  - (b) the land which is being acquired, or over which new rights are being acquired, forms part of a common, open space or allotment. 15
- (5) The power under subsection (2) to acquire land compulsorily includes the power to acquire land compulsorily for giving in exchange for the land or (as the case may be) new rights mentioned in subsection (4)(a).
- (6) Schedule 2 (which makes further provision in relation to the acquisition of land by the HCA) has effect. 20
- (7) In this Part –
  - “allotment” means a fuel or field garden allotment,
  - “common” includes –
    - (a) any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and
    - (b) any town or village green,
  - “open space” means any land which is –
    - (a) laid out as a public garden,
    - (b) used for the purposes of public recreation, or
    - (c) a disused burial ground. 30

## 10 Restrictions on disposal of land

- (1) The HCA may not dispose of land for less than the best consideration which can reasonably be obtained unless the Secretary of State consents.
- (2) Subsection (1) does not apply to a disposal by way of a short tenancy if the disposal consists of –
  - (a) the grant of a term of not more than 7 years, or
  - (b) the assignment of a term which, at the date of assignment, has not more than 7 years to run. 35
- (3) The HCA may not dispose of land which has been compulsorily acquired by it under this Part unless the Secretary of State consents. 40
- (4) Subject as above, the HCA may dispose of land held by it in any way it considers appropriate.

*Powers in relation to acquired land*

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

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

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

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

*Planning*

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

- (1) The Secretary of State may by order designate an area in England if the Secretary of State considers that—
  - (a) the area is suitable for development, and
  - (b) condition 1 or 2 is met.10
- (2) Condition 1 is that it is appropriate for the HCA to be the local planning authority for the whole or any part of the area—
  - (a) for all permitted purposes or for particular permitted purposes, and
  - (b) in relation to all kinds of development or particular kinds of development.15
- (3) Condition 2 is that it is appropriate for—
  - (a) sections 15 and 16,
  - (b) section 17, or
  - (c) both sets of provisions,to apply in relation to the area.20
- (4) A designation order—
  - (a) so far as made by virtue of condition 1 being met, may contain provisions of the kind mentioned in section 14, and
  - (b) so far as made by virtue of condition 2 being met, may provide for—
    - (i) sections 15 and 16,
    - (ii) section 17, or
    - (iii) both sets of provisions,to apply in relation to the designated area.2530
- (5) The Secretary of State must, before making a designation order, consult—
  - (a) every local authority any part of whose area is intended to be included in the proposed designated area, and
  - (b) any person, other than a local authority, who is the local planning authority for the proposed designated area or any part of it.35
- (6) In this Part—

“designated area” means an area designated by a designation order,  
“designation order” means an order under this section,  
“local planning authority”, in relation to a designation order or proposed designation order, means—40

- 
- (a) so far as the order relates to permitted purposes under Part 2 of the Planning and Compulsory Purchase Act 2004 (c. 5), the local planning authority within the meaning of that Part of that Act, and
- (b) in any other case, the local planning authority within the meaning of Part 1 of the Town and Country Planning Act 1990 (c. 8), 5
- “permitted purposes” means any purposes of –
- (a) the Town and Country Planning Act 1990 (other than section 137A, Parts 9 and 13, and sections 325A, 329A and 330A, of that Act), 10
- (b) the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) (other than section 32A, Chapter 5 of Part 1, and sections 82A to 82F and 88C, of that Act),
- (c) Part 2 of the Planning and Compulsory Purchase Act 2004, and 15
- (d) Part 8 of the Planning Act 2008,
- and references to a designated area, in the case of an area whose boundaries have been amended by an order made under this section by virtue of section 14 of the Interpretation Act 1978 (c. 30), are to be read as references to the designated area as so amended. 20
- (7) In this section “local authority” means a county council in England, a district council, a London borough council or the Common Council of the City of London.
- 14 The HCA as the local planning authority**
- (1) A designation order, so far as made by virtue of condition 1 (as mentioned in section 13(2)) being met, may contain provisions of the following kind. 25
- (2) The order may provide for the HCA to be the local planning authority for the whole or any part of the designated area –
- (a) for all permitted purposes or for specified permitted purposes, and
- (b) in relation to all kinds of development or specified kinds of development. 30
- (3) The order may provide that where the HCA is the local planning authority for the whole or any part of the designated area it is to have –
- (a) in relation to the whole or any part of the designated area, and
- (b) subject to any specified modifications, 35
- all relevant functions, or specified relevant functions, conferred by or under specified planning-related provisions.
- (4) An order which makes provision of the kind mentioned in subsection (2) may make provision about the application of enactments relating to local planning authorities to the HCA in its capacity as the local planning authority by virtue of the order. 40
- (5) An order which makes provision of the kind mentioned in subsection (3) –
- (a) may provide for the HCA to have the functions concerned instead of, or concurrently with, other persons who have them,
- (b) may make provision about the application to the HCA of enactments relating to the functions concerned. 45

- (6) Provision made by virtue of subsection (4) or (5), or section 303(1)(d) in its application to an order of a kind falling within this section, may, in particular, provide that any enactment –
- (a) is to apply to the HCA without modification,
  - (b) is to apply to it subject to specified modifications, 5
  - (c) is not to apply to it.
- (7) In this section –
- “planning-related provisions” means –
- (a) Chapter 1 of Part 6 (other than section 137A), and sections 188 and 330, of the Town and Country Planning Act 1990 (c. 8), 10
  - (b) sections 32 and 33 to 37, 54 and 55 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9), and
  - (c) the Planning (Hazardous Substances) Act 1990 (c. 10) (other than sections 30A to 31A and 36C of that Act),
- “relevant functions” means functions of – 15
- (a) a district council, a London borough council, the Common Council of the City of London, or any other body which is a local authority within the meaning of the Town and Country Planning Act 1990,
  - (b) a district planning authority (within the meaning of that Act), or 20
  - (c) a hazardous substances authority (within the meaning of the Planning (Hazardous Substances) Act 1990),
- “specified”, in relation to a designation order, means specified or described in the order.
- (8) The Secretary of State may by order amend the definition of “planning-related provisions” or “relevant functions” in subsection (7). 25

## 15 Adoption of private streets

- (1) This section applies if a designation order provides for it to apply in relation to a designated area.
- (2) The HCA may serve an adoption notice if any street works have been executed on any land in the designated area which was then, or has since become, a private street (or part of a private street). 30
- (3) An adoption notice is a notice requiring the street works authority to declare the street (or part) to be a highway which, for the purposes of the Highways Act 1980 (c. 66), is a highway maintainable at the public expense. 35
- (4) An adoption notice must be served on the street works authority.
- (5) Subsection (6) applies if –
- (a) a street works authority –
    - (i) does not comply with the adoption notice, and
    - (ii) does not appeal under section 16, and 40
  - (b) the period of 2 months, beginning with the day on which the adoption notice is served, has ended.
- (6) The street (or part) becomes a highway which, for the purposes of the Highways Act 1980, is a highway maintainable at the public expense.

- (7) In this section “street works” and “street works authority” have the same meanings as in Part 11 of the Highways Act 1980 (c. 66).

## **16 Appeals against adoption of private streets**

- (1) This section applies if –
- (a) a designation order provides for this section to apply in relation to a designated area, and
  - (b) the HCA has served on the street works authority an adoption notice under section 15 in relation to the area.
- (2) The street works authority may appeal to the Secretary of State against the notice within the period of 2 months beginning with the day on which the notice is served. 10
- (3) On an appeal under subsection (2), the Secretary of State must –
- (a) consider any representations made to the Secretary of State by the HCA and the street works authority, and
  - (b) decide the appeal by setting aside, or confirming, the adoption notice (with or without modifications). 15
- (4) Subsections (5) and (6) apply if the Secretary of State confirms the adoption notice.
- (5) The Secretary of State may, at the same time, impose conditions (including financial conditions) upon the HCA with which it must comply for the notice to take effect. 20
- (6) The street (or part) becomes a highway which, for the purposes of the Highways Act 1980, is a highway maintainable at the public expense with effect from such date as the Secretary of State may specify.
- (7) In this section “street works authority” has the same meaning as in Part 11 of the Highways Act 1980. 25

## **17 Traffic regulation orders for private streets**

- (1) This section applies if a designation order provides for it to apply in relation to a designated area.
- (2) The Secretary of State may make an order under this section if –
- (a) the HCA makes representations to the Secretary of State that an order should be made in relation to any road in the designated area which is a private street, and
  - (b) the Secretary of State considers that the traffic authority do not intend to make a traffic regulation order in relation to the road. 30
- (3) An order under this section may contain any provision in relation to the road which might have been made by the Secretary of State in a traffic regulation order if the Secretary of State had been the traffic authority.
- (4) The Road Traffic Regulation Act 1984 (c. 27) applies to an order under this section as it applies to a traffic regulation order made by the Secretary of State in relation to a road for which the Secretary of State is the traffic authority. 40
- (5) In this section –  
“road” has the same meaning as in the Road Traffic Regulation Act 1984,

“traffic authority” has the same meaning as in that Act,  
“traffic regulation order” means an order under section 1 or (as the case may be) 6 of that Act.

## 18 Regional planning

- (1) Section 4 of the Planning and Compulsory Purchase Act 2004 (c. 5) (assistance for regional planning bodies from certain local authorities) is amended as follows. 5
- (2) For subsection (4) substitute –
- “(4) These are the authorities which fall within this subsection –
- (a) each of the following if their area or any part of their area is in the RPB’s region – 10
- (i) a county council;
- (ii) a metropolitan district council;
- (iii) a district council for an area for which there is no county council; 15
- (iv) a National Park authority; and
- (b) the Homes and Communities Agency if it is the local planning authority for an area or part of an area in the RPB’s region.
- (4A) For the purposes of subsection (4), the Homes and Communities Agency is the local planning authority for an area if – 20
- (a) the area is the whole or part of a designated area within the meaning of Part 1 of the Housing and Regeneration Act 2008; and
- (b) the order designating the area was made under section 13 of that Act by virtue of condition 1 in subsection (2) of that section being met.” 25
- (3) In subsection (8) after “(5)” insert “other than arrangements with the Homes and Communities Agency”.

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

## 19 Power to enter and survey land 30

- (1) Any person authorised by the HCA may, at any reasonable time, enter any land for the purpose of surveying it, or estimating its value, in connection with –
- (a) any proposal for the HCA to acquire that land or any other land, or
- (b) any claim for compensation in respect of any such acquisition. 35
- (2) A person authorised under subsection (1) to enter any land –
- (a) must, if required, produce evidence of the authority before entering the land, and
- (b) must not demand admission as of right to any occupied land unless the HCA has served notice of the intended entry on the occupier not less than 28 days before the making of the demand. 40
- (3) A person interested in any land may recover compensation from the HCA in respect of any damage done to the land –

- (a) in the exercise of a right of entry under this section, or
  - (b) in making a survey under this section.
- (4) Section 118 of the Town and Country Planning Act 1990 (c. 8) (determination of claims for compensation) applies in relation to compensation under subsection (3) as it applies in relation to compensation under Part 4 of that Act. 5
- (5) A person (“A”) commits an offence if A intentionally obstructs another person (“B”) in the exercise of B’s powers under subsection (1) above.
- (6) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (7) The references in subsections (3) and (5) to this section or subsection (1) include references to those provisions as extended by section 20. 10

## 20 Section 19: supplementary

- (1) The power to survey land conferred by section 19(1) includes power to search and bore for the purpose of ascertaining –
- (a) the nature of the subsoil, or 15
  - (b) the presence of minerals in it.
- (2) But this is subject to subsections (3) to (5).
- (3) No person may carry out any works authorised by virtue of subsection (1) unless notice of the person’s intention to do so was included in any notice required by section 19(2)(b). 20
- (4) The authority of the appropriate Minister is required for the carrying out of any works authorised by virtue of subsection (1) if –
- (a) the land concerned is held by statutory undertakers, and
  - (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to carrying on their undertaking. 25
- (5) The references in subsection (4) to the appropriate Minister, statutory undertakers and their undertaking have the same meanings as they have in section 325(9) of the Town and Country Planning Act 1990 (supplementary provisions as to rights of entry). 30

## 21 Powers to connect private streets to highways

- (1) The HCA may serve a notice (“a connection notice”) on the local highway authority requiring the authority to connect a private street to an existing highway.
- (2) The notice must specify – 35
- (a) the private street and the existing highway,
  - (b) the works which the HCA considers to be necessary to make the connection, and
  - (c) the period within which the works should be carried out.
- (3) It does not matter for the purposes of a connection notice whether the existing highway is, for the purposes of the Highways Act 1980 (c. 66), a highway maintainable at the public expense. 40

- (4) Before serving a connection notice, the HCA must consult the local highway authority about the proposed contents of the notice.
- (5) The local highway authority may appeal to the Secretary of State against a connection notice if it does so within the period of 2 months beginning with the day on which the notice is served. 5
- (6) On an appeal, the Secretary of State –
  - (a) must consider any representations made to the Secretary of State by the HCA and the local highway authority, and
  - (b) must decide the appeal by setting aside, or confirming, the connection notice (with or without modifications). 10
- (7) A connection notice becomes effective –
  - (a) in the absence of an appeal within the period mentioned in subsection (5), at the end of that period,
  - (b) in the case of an appeal made within that period but withdrawn before it has been decided under subsection (6)(b), at the end of the period of 21 days beginning with the day on which the Secretary of State is notified of the withdrawal, and 15
  - (c) in the case of a connection notice confirmed on appeal by a decision under subsection (6)(b), on such day as the Secretary of State may specify in the decision. 20
- (8) If a connection notice becomes effective, the local highway authority –
  - (a) must carry out the works specified in the notice within such period as may be so specified, and
  - (b) may recover from the HCA the expenses reasonably incurred by the authority in doing so. 25
- (9) The HCA –
  - (a) may itself carry out, or complete, the works, or
  - (b) arrange for another person to do so,if the local highway authority does not carry out the works specified in the notice within such period as may be so specified. 30
- (10) In this section “local highway authority” has the same meaning as in the Highways Act 1980 (c. 66).

### CHAPTER 3

#### FINANCIAL PROVISION

##### *Powers to give financial assistance* 35

## 22 Financial assistance

- (1) The HCA may, with the consent of the Secretary of State, give financial assistance to any person.
- (2) Financial assistance under this section may be given in any form.
- (3) Financial assistance under this section may, in particular, be given by way of – 40
  - (a) grants,
  - (b) loans,

- (c) guarantee or indemnity,
  - (d) investment, or
  - (e) incurring expenditure for the benefit of the person assisted.
- (4) Financial assistance under this section may be given on such terms and conditions as the HCA considers appropriate (including provision for repayment, with or without interest). 5
- (5) See also sections 35 to 38 (further provision about certain types of financial assistance: social housing).

*Borrowing powers of the HCA*

**23 Powers to borrow** 10

- (1) The HCA may, for the purpose of what it considers to be the short-term management of its finances, borrow from any person by way of overdraft or otherwise.
- (2) Subject to this, the HCA may only borrow from the Secretary of State or the European Investment Bank. 15
- (3) The HCA may not borrow in currencies other than sterling.

**24 Loans by the Secretary of State**

- (1) The Secretary of State may lend to the HCA any sums it has power to borrow from the Secretary of State under section 23.
- (2) In respect of loans under subsection (1), the HCA must— 20
  - (a) repay the principal to the Secretary of State at such times, and in such manner, as the Secretary of State may decide, and
  - (b) pay interest to the Secretary of State at such times, and at such rates, as may be so decided.

**25 Guarantees by the Secretary of State** 25

- (1) The Secretary of State may guarantee—
  - (a) the repayment of the principal of any sums which the HCA borrows from a person other than the Secretary of State, and
  - (b) the payment of interest on such sums.
- (2) Such a guarantee is to be in such manner, and on such terms and conditions, as the Secretary of State considers appropriate. 30
- (3) The Secretary of State must lay a statement of any such guarantee before Parliament immediately after giving the guarantee.
- (4) The Secretary of State must lay before Parliament a statement relating to any sum issued for fulfilling such a guarantee. 35
- (5) A statement under subsection (4) must be laid as soon as possible after the end of each financial year—
  - (a) beginning with that in which the sum is issued, and
  - (b) ending with that in which all liability in respect of the principal of the sum guaranteed, and of interest on it, is finally discharged. 40

- (6) In respect of any sums issued in fulfilment of a guarantee given under this section, the HCA must make payments to the Secretary of State—
  - (a) of such amounts as the Secretary of State may direct in or towards repayment of those sums, and
  - (b) of interest on what is outstanding in respect of those sums, at such rates as the Secretary of State may direct. 5
- (7) Payments under subsection (6) must be made at such times, and in such manner, as the Secretary of State may direct.

## **26 Financial limits**

- (1) The current borrowings of the HCA must not exceed £2,300 million. 10
- (2) The Secretary of State may by order amend subsection (1) so as to specify a greater amount than that for the time being specified there.
- (3) But an order under subsection (2) may not specify an amount of more than £3,000 million.
- (4) In this section “current borrowings of the HCA” means— 15
  - (a) the aggregate amount at any time of sums borrowed by the HCA under section 23, less
  - (b) repayments made, or treated as made, in respect of those sums.

### *Other*

## **27 Power to charge for certain activities** 20

- (1) The HCA may impose charges for, or in connection with, anything done by it by virtue of section 41, 42 or 47.
- (2) Any such charges must be of such amounts as the HCA considers to be reasonable.

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

- (1) Subsection (2) applies if the Secretary of State considers that the HCA has a surplus, whether on capital or on revenue account, after making allowance by way of transfer to reserve or otherwise for its future requirements.
- (2) The Secretary of State may give a direction to the HCA to pay to the Secretary of State such sum not exceeding the amount of the surplus as may be specified in the direction. 30
- (3) The Secretary of State must consult the HCA before coming to a decision of the kind mentioned in subsection (1) or giving a direction as mentioned in subsection (2).
- (4) The Secretary of State may decide to treat the whole or part of any payment under subsection (2) as made— 35
  - (a) by way of repayment of such part of the principal of loans under section 24(1), and
  - (b) in respect of the repayments due at such times, as the Secretary of State may decide. 40

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

- (1) The Secretary of State may appoint the HCA to act as the agent of the Secretary of State in connection with such financial assistance functions as the Secretary of State may specify.
- (2) In subsection (1) “financial assistance functions” means, so far as exercisable in relation to England, functions under sections 126 to 128 of the Housing Grants, Construction and Regeneration Act 1996 (c. 53) (financial assistance for regeneration and development). 5
- (3) An appointment under this section is to be on such terms as the Secretary of State may specify. 10
- (4) The HCA must, if appointed, act as agent in accordance with the terms of its appointment.

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

- (1) The Secretary of State may appoint the HCA to act as the agent of the Secretary of State in connection with such derelict land functions as the Secretary of State may specify. 15
- (2) In subsection (1) “derelict land functions” means functions under –
  - (a) section 1 of the Derelict Land Act 1982 (c. 42) (grants for reclaiming or improving land or bringing land into use), or
  - (b) any enactment superseded by that section, 20
 but excluding the powers to make orders under section 1(5) and (7) of that Act.
- (3) An appointment under this section is to be on such terms as the Secretary of State may specify.
- (4) The HCA must, if appointed, act as agent in accordance with the terms of its appointment. 25

## **CHAPTER 4**

### OTHER FUNCTIONS OF THE HCA

#### *General*

## **31 Business**

- (1) The HCA may carry on any business. 30
- (2) In subsection (1) “business” includes undertaking.

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

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

## **33 Community services**

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- (1) The HCA may –

- (a) encourage or develop existing or new businesses,
  - (b) provide employment,
  - (c) provide business or employment services,
  - (d) provide safe and attractive environments,
  - (e) prevent or reduce anti-social behaviour or crime, 5
  - (f) reduce the fear of anti-social behaviour or crime,
  - (g) provide –
    - (i) transport services,
    - (ii) health services,
    - (iii) social, religious or recreational services, or 10
    - (iv) cremation or burial services, or
  - (h) provide other community services.
- (2) The HCA may facilitate anything falling within paragraphs (a) to (h) of subsection (1).
- 34 Sustainable development** 15
- (1) The HCA may contribute to the achievement of sustainable development.
- (2) The HCA may facilitate any contribution to the achievement of sustainable development.

*Social housing*

- 35 Duties in relation to low cost rental accommodation** 20
- (1) Subsection (2) applies if the HCA acquires, constructs or converts any housing or other land for use as low cost rental accommodation.
- (2) The HCA must ensure that a relevant provider of low cost rental accommodation is the landlord of the accommodation when it is made available for rent. 25
- (3) Subsection (4) applies if the HCA disposes of any housing or other land to a person on condition that the person provides low cost rental accommodation (whether in the same or different housing or other land).
- (4) The HCA must impose a further condition that a relevant provider of low cost rental accommodation is the landlord of the accommodation when it is made available for rent. 30
- (5) Subsection (6) applies if the HCA provides infrastructure to a person on condition that the person provides low cost rental accommodation.
- (6) The HCA must impose a further condition ensuring that a relevant provider of low cost rental accommodation is the landlord of the accommodation when it is made available for rent. 35
- (7) Subsection (8) applies if the HCA is proposing to give financial assistance on condition that the recipient provides low cost rental accommodation.
- (8) The HCA must impose a further condition ensuring that a relevant provider of low cost rental accommodation is the landlord of the accommodation when it is made available for rent. 40

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- (9) For the purposes of this section, a person provides low cost rental accommodation if (and only if) the person acquires, constructs or converts any housing or other land for use as low cost rental accommodation or ensures such acquisition, construction or conversion by another.
- (10) In this section – 5
- “English local housing authority” means a local housing authority (within the meaning of section 1 of the Housing Act 1985 (c. 68)) but excluding a Welsh county council or county borough council,
- “low cost rental accommodation” has the meaning given by section 70,
- “relevant provider of low cost rental accommodation” means a registered 10  
 provider of social housing, an English local housing authority, a county council in England or a person controlled by an English local housing authority or county council in England (and regulations under subsections (5) and (6) of section 114 apply for the purposes of this definition as they apply for the purposes of subsection (4) of that 15  
 section).
- 36 Recovery etc. of social housing assistance**
- (1) The HCA may, in such events as it may determine, exercise the powers conferred by subsections (2) to (4) in relation to a person who has received social housing assistance. 20
- (2) The HCA may reduce any grant payable by it or restrict any other social housing assistance due from it.
- (3) The HCA may suspend or cancel any instalment of any grant payable by it or any aspect of any other social housing assistance due from it.
- (4) The HCA may direct the recipient of the social housing assistance to – 25
- (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.
- (5) In exercising its powers under subsections (2) to (4) the HCA must act in accordance with such principles as it has determined. 30
- (6) A person who has received social housing assistance must notify the HCA if an event of a kind determined by the HCA under subsection (1) occurs after the assistance has been given.
- (7) Such a person must, if required by notice of the HCA, supply the HCA with such particulars of, and information relating to, the event as are specified in the notice. 35
- (8) In this Part –
- “social housing” has the same meaning as in Part 2,
- “social housing assistance” means financial assistance given under section 40  
 22 on condition that the recipient provides social housing (whether by  
 itself or as part of a wider project);
- and, for the purposes of this Part, a person provides social housing if (and only if) the person acquires, constructs, converts, improves or repairs any housing or other land for use as social housing or ensures such acquisition, construction, conversion, improvement or repair by another. 45

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

- (1) A direction by the HCA under section 36(4) may require the application, appropriation or payment of an amount with interest.
- (2) Any such direction must specify –
  - (a) the applicable rate or rates of interest (whether fixed or variable), 5
  - (b) the date from which interest is payable, and
  - (c) any provision for suspended or reduced interest which is applicable.
- (3) The date specified under subsection (2)(b) must not be earlier than the date of the event giving rise to the power to give a direction.
- (4) In subsection (2)(c) – 10
  - (a) provision for suspended interest means provision to the effect that if the principal amount is applied, appropriated or paid before a date specified in the direction, no interest will be payable for any period after the date of the direction, and
  - (b) provision for reduced interest means provision to the effect that if the principal amount is so applied, appropriated or paid, any interest payable will be payable at a rate or rates lower than the rate or rates which would otherwise be applicable. 15
- (5) Subsection (6) applies if –
  - (a) social housing assistance has been given to a person, and 20
  - (b) at any time the social housing provided as a result of the assistance becomes vested in, or is leased for a term of years to, or reverts to, another person.
- (6) Section 36 and this section (including this subsection) have effect in relation to periods after that time as if the assistance, or such element of it as may be determined by the HCA to be appropriate, had been given to that other person. 25
- (7) The matters specified in a direction under subsection (2)(a) to (c), and the element mentioned in subsection (6), are to be –
  - (a) such as the HCA, acting in accordance with such principles as it may determine, may specify as being appropriate, or 30
  - (b) such as the HCA may determine to be appropriate in the particular case.

**38 Determinations under sections 36 and 37**

- (1) The HCA must not make a general determination under section 36 or 37 without the consent of the Secretary of State. 35
- (2) Before making such a determination, the HCA must consult –
  - (a) the Regulator of Social Housing, and
  - (b) such other persons as it considers appropriate.
- (3) Subsection (4) applies if a general determination under section 36 or 37 about relevant events relates to social housing assistance given to a registered provider of social housing. 40
- (4) The HCA must, in particular, consult such bodies appearing to it to represent the interests of registered providers of social housing as it considers appropriate.

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- (5) The HCA must publish a general determination made under section 36 or 37 in such manner as it considers appropriate for bringing the determination to the attention of those affected by it.
- (6) A general determination of the HCA under section 36 or 37 may make different provision for different cases or descriptions of case (including different provision for different areas). 5
- (7) For the purposes of subsection (6) descriptions may be framed by reference to any matters whatever.
- (8) A determination of the HCA under section 36 or 37 may be varied or revoked by it. 10
- (9) In this section –  
     “general determination” means a determination which does not relate solely to a particular case,  
     “relevant event” means an event of a kind determined by the HCA under section 36(1). 15
- 39 Information in relation to social housing**
- (1) The Secretary of State may by order provide for the HCA to supply such information about –  
     (a) which accommodation provided directly or indirectly by it is to be social housing, 20  
     (b) the type of social housing to be so provided, and  
     (c) the consequences of it being social housing,  
 as may be specified or described in the order.
- (2) An order under this section may, in particular, provide for –  
     (a) the person or persons to whom the information is to be provided, 25  
     (b) the time at which, or period or frequency within which, the information is to be provided,  
     (c) the form and manner in which the information is to be provided.
- 40 Duty to co-operate with Regulator of Social Housing**
- (1) The HCA must co-operate with the Regulator of Social Housing. 30
- (2) In particular, the HCA must consult the regulator on matters likely to interest the regulator.
- Information, education and guidance etc.*
- 41 Information services**
- (1) The HCA may – 35  
     (a) publish ideas or information, or  
     (b) disseminate or promote ideas or information in other ways.
- (2) The HCA may undertake research or experimentation.
- (3) The HCA may provide other information services.

- (4) The HCA may facilitate—
  - (a) the publication or other dissemination or promotion of ideas or information,
  - (b) research or experimentation, or
  - (c) the provision of other information services.

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#### **42 Advice, education and training**

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

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#### **43 Guidance**

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

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*Functions in relation to companies and other persons*

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#### **44 Control of subsidiaries**

- (1) The HCA must ensure that no subsidiary of the HCA does anything which the HCA—
  - (a) would not have the power to do, or
  - (b) would be prevented from doing by a direction of the Secretary of State under section 49.
- (2) Subsection (1) does not require the approval of the Secretary of State for the appointment of staff of a subsidiary or for the staff's terms and conditions of service.
- (3) A subsidiary of the HCA may borrow from the HCA despite subsection (1).

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- (4) The HCA must ensure that no subsidiary of the HCA –
- (a) borrows from a person other than the HCA, or
  - (b) raises money by the issue of shares or stock to a person other than the HCA,
- without the consent of the Secretary of State. 5
- (5) In this section “subsidiary” has the meaning given by section 1159 of the Companies Act 2006 (c. 46).

#### **45 Agency arrangements with UDCs**

- (1) The HCA may, with the consent of the Secretary of State, appoint an urban development corporation to act as its agent. 10
- (2) The appointment –
- (a) may be in connection with any of the functions of the HCA other than its functions in connection with Chapter 3, and
  - (b) is to be on such terms as may be agreed.
- (3) The appointment must specify the functions in connection with which it is made. 15
- (4) An urban development corporation must act as agent in accordance with the terms of its appointment.
- (5) An urban development corporation may arrange for any of its property or staff to be made available to the HCA if – 20
- (a) the purpose is to assist the HCA to exercise any of its functions, and
  - (b) the HCA asks the urban development corporation to make the property or staff available.
- (6) The property or staff are to be made available for such period, and on such other terms, as the urban development corporation considers appropriate. 25
- (7) In this Part “urban development corporation” means a corporation established by an order under section 135 of the Local Government, Planning and Land Act 1980 (c. 65).

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

- (1) The HCA may act with other persons (whether in partnership or otherwise). 30
- (2) The HCA may act as agent for other persons.
- (3) The HCA may not appoint an agent.
- (4) Subsection (3) is subject to section 45 and paragraph 10 of Schedule 1.

#### *Other*

#### **47 Support services**

- (1) The HCA may provide services in support of a project. 35
- (2) The HCA may, in particular –
- (a) second staff to the project,

- (b) provide consultants or other manpower resources to the project on a temporary basis, or
  - (c) lend or otherwise provide technical, property or other resources to the project.
- (3) The HCA may facilitate the provision of services in support of a project. 5

## CHAPTER 5

### SUPPLEMENTARY

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

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

- (1) The Secretary of State may give guidance to the HCA as to the exercise of any of its functions. 10
- (2) Before giving guidance under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (3) The Secretary of State must publish any guidance given under this section as soon as reasonably practicable after giving it. 15
- (4) The Secretary of State may revoke guidance given under this section.
- (5) The Secretary of State must –
- (a) consult, before revoking guidance under this section, such persons as the Secretary of State considers appropriate, and
  - (b) publish the fact that the guidance has been revoked as soon as reasonably practicable after the revocation. 20
- (6) The HCA must, in exercising its functions, have regard to any guidance for the time being in force under this section.
- (7) References in this section to giving guidance include references to giving guidance by varying existing guidance. 25

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

- (1) The Secretary of State may give the HCA general or specific directions as to the exercise of any of its functions.
- (2) The Secretary of State must publish any directions given by the Secretary of State under this Part as soon as reasonably practicable after giving them. 30
- (3) The Secretary of State –
- (a) may revoke any directions given by the Secretary of State under this Part, and
  - (b) must publish the fact that the directions have been revoked as soon as reasonably practicable after the revocation. 35
- (4) The HCA must comply with any directions of the Secretary of State in force under this Part.

(5) Subsections (2) and (3)(b) do not apply to directions given under section 25 or paragraph 7 of Schedule 1; and this section does not apply to directions given under Schedule 4.

(6) References in this Part to the Secretary of State giving directions include references to the Secretary of State giving directions by varying existing directions. 5

## **50 Consents of the Secretary of State**

(1) Any consent of the Secretary of State required under this Part may be given—  
 (a) unconditionally or subject to conditions, and  
 (b) generally or specifically. 10

(2) The Secretary of State may vary or revoke any such consent except in the case of anything already done, or agreed to be done, on the authority of it.

(3) A variation or revocation under subsection (2) does not have effect until the Secretary of State has served notice of it on the HCA or (as the case may be) the other person to whom the consent is given. 15

### *Abolition of existing bodies*

## **51 Abolition of Urban Regeneration Agency**

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

## **52 Abolition of the Commission for the New Towns** 20

(1) The Commission for the New Towns shall cease to exist on such day as the Secretary of State may by order appoint.

(2) Schedule 5 (which transfers Welsh functions of the Commission to the Welsh Ministers and makes other amendments of the New Towns Act 1981 (c. 64)) has effect. 25

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

(1) The Secretary of State may make one or more schemes for—  
 (a) the transfer to the HCA of designated property, rights or liabilities of—  
 (i) the Urban Regeneration Agency,  
 (ii) the Commission for the New Towns, or  
 (iii) a Minister of the Crown, or 30

(b) the transfer to the Welsh Ministers of designated property, rights or liabilities of—  
 (i) the Urban Regeneration Agency, or  
 (ii) the Commission for the New Towns. 35

(2) On the transfer date, the designated property, rights or liabilities are transferred and vest in accordance with the scheme.

(3) Schedule 6 (which makes further provision about the making of schemes) has effect.

- (4) In this section and in Schedule 6—  
“designated” in relation to a scheme, means specified in, or determined in accordance with, the scheme,  
“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26),  
“the transfer date” means a date specified by a scheme as the date on which the scheme is to have effect.

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

- (1) The HCA must, so far as practicable, exercise its powers in relation to—  
(a) any property, rights or liabilities of the Commission for the New Towns transferred to it by virtue of section 53 and Schedule 6,  
(b) any property, rights or liabilities of a new town development corporation transferred to it by virtue of section 41 of, and Schedule 10 to, the New Towns Act 1981 (c. 64),  
(c) any undertaking, or part of an undertaking, of an urban development corporation transferred to it by virtue of an agreement under section 165 of the Local Government, Planning and Land Act 1980 (c. 65), or  
(d) any property, rights or liabilities of an urban development corporation transferred to it by virtue of an order under section 165B of that Act,  
for the purposes of the objects mentioned in section 2(1) or for purposes incidental to those purposes.
- (2) But subsection (1) does not apply if the HCA does not consider it appropriate to exercise its powers in this way having regard, in particular, to the purposes for which the transferred property was held by the Commission for the New Towns, the new town development corporation or (as the case may be) the urban development corporation.
- (3) In such a case, the HCA must exercise its powers in relation to the transferred property in such a way as it considers appropriate having regard, in particular, to—  
(a) the objects mentioned in section 2(1), and  
(b) the purposes for which the transferred property was held by the body concerned,  
and the references in this Part to the objects of the HCA are to be read accordingly.
- (4) In this section—  
“new town development corporation” means a development corporation established under section 3 of the New Towns Act 1981,  
“transferred property” means any property, rights or liabilities, or any undertaking or part of an undertaking, falling within paragraphs (a) to (d) of subsection (1) above.

#### 55 Interim arrangements

The Secretary of State may by notice require the Urban Regeneration Agency or the Commission for the New Towns to provide staff, premises and other facilities on a temporary basis to—

- (a) the HCA, or  
(b) the Welsh Ministers.

*Other*

**56 Validity of transactions**

- (1) A transaction between a person and the HCA is not invalid merely because of a failure by the HCA to exercise its powers for the purposes mentioned in sections 3 and 4(2). 5
- (2) A transaction between a person and the HCA is not invalid merely because it was carried out in contravention of a direction under section 49.
- (3) A person entering into a transaction with the HCA need not be concerned as to whether – 10
- (a) there has been a failure of the kind mentioned in subsection (1), or
  - (b) a direction of the kind mentioned in subsection (2) has been given or complied with.
- (4) A disposal of land by the HCA is not invalid merely because any consent required by section 10(1) or (3) has not been given.
- (5) A person dealing with – 15
- (a) the HCA, or
  - (b) a person claiming under the HCA,
- in relation to any land need not be concerned as to whether any consent required by section 10(1) or (3) has been given.

**57 Notices**

- (1) Any notice required or authorised under this Part to be served on any person may be served by – 20
- (a) delivering it to the person,
  - (b) leaving it at the person's proper address, or
  - (c) sending it by post to the person at that address. 25
- (2) Any such notice may –
- (a) in the case of a body corporate, be served in accordance with subsection (1) on an officer of the body, and
  - (b) in the case of a partnership, be served in accordance with subsection (1) on a partner or a person having the control or management of the partnership business. 30
- (3) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of any person on whom a notice is to be served is the person's last known address except as follows. 35
- (4) For the purposes of this section and section 7 of the Act of 1978 in its application to this section, the proper address is –
- (a) in the case of service on a body corporate or an officer of the body, the address of the registered or principal office of the body, and
  - (b) in the case of service on a partnership, a partner or a person having the control or management of the partnership business, the address of the principal office of the partnership. 40

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- (5) For the purposes of subsection (4) the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (6) Subsection (7) applies if a person to be served under this Part with a notice has specified an address within the United Kingdom other than the person’s proper address (as decided under subsections (3) and (4)) as the one at which the person, or someone on the person’s behalf, will accept documents of the same description as the notice. 5
- (7) The specified address is also to be treated for the purposes of this section and section 7 of the Act of 1978 in its application to this section as the person’s proper address. 10
- (8) Subsection (9) applies if the name or address of any owner, lessee or occupier of land on whom a notice is to be served under this Part cannot, after reasonable inquiry, be ascertained.
- (9) The notice may be served by – 15
- (a) leaving it in the hands of a person who is, or appears to be, resident or employed on the land, or
  - (b) leaving it conspicuously affixed to a building or object on the land.
- (10) Any notice required or authorised under this Part to be served on any person may be served on the person by transmitting the text of the notice to the person by means of an electronic communications network or by other means but while in electronic form provided the text is received by the person in legible form and is capable of being used for subsequent reference. 20
- (11) In this section – 25
- “body corporate” includes a limited liability partnership,
  - “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate,
  - “officer of a body corporate” means any director, manager, secretary or other similar officer of the body corporate,
  - “partnership” does not include a limited liability partnership,
- and references to serving include references to similar expressions (such as giving or sending). 30
- 58 Consequential amendments: Part 1**
- Schedule 7 (which contains amendments of enactments) has effect.
- 59 Interpretation: Part 1** 35
- In this Part –
- “conduit system” has the same meaning as in the electronic communications code; and references to providing a conduit system are to be read in accordance with paragraph 1(3A) of that code,
  - “develop” (and development), in relation to land or infrastructure, includes redevelop (and redevelopment), 40
  - “electronic communications apparatus” has the same meaning as in the electronic communications code,
  - “the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the Communications Act 2003 (c. 21), 45

- “electronic communications code network” means –
- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the Act of 2003 (application of the electronic communications code), and 5
  - (b) an electronic communications network which the Secretary of State is providing or proposing to provide, 10
- “electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the Act of 2003, 10
- “electronic communications network” has the same meaning as in the Act of 2003,
- “enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)), 15
- “financial year” means –
- (a) the period beginning with the day on which the HCA is established and ending with the next 31 March, and
  - (b) each subsequent period of 12 months ending with 31 March, 20
- “highway” has the same meaning as in the Highways Act 1980 (c. 66),
- “improve”, in relation to housing and other land, includes refurbish, equip and fit out,
- “modifications” includes omissions,
- “notice” means notice in writing, 25
- “operator”, in relation to an electronic communications code network means –
- (a) the electronic communications code operator providing that network, or
  - (b) the Secretary of State, so far as the Secretary of State is providing or proposing to provide that network, 30
- “private street” has the same meaning as in Part 11 of the Highways Act 1980,
- “provide” and related expressions, in relation to an electronic communications network, are to be read in accordance with section 32(4) of the Communications Act 2003 (c. 21). 35

## 60 Index of defined expressions: Part 1

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column. 40

| <i>Expression</i> | <i>Provision</i> |
|-------------------|------------------|
| Allotment         | Section 9(7)     |
| Building          | Section 2(3)     |
| Caravan           | Section 2(3)     |
| Common            | Section 9(7)     |

| <i>Expression</i>   | <i>Provision</i>   |    |
|---|--|----|
| Conduit system (and providing such a system)  | Section 59   |    |
| Designated area   | Section 13(6)  |    |
| Designation order   | Section 13(6)  |    |
| Develop (and development)   | Section 59   | 5  |
| Electronic communications apparatus   | Section 59   |    |
| Electronic communications code  | Section 59   |    |
| Electronic communications code network  | Section 59   |    |
| Electronic communications code operator   | Section 59   |    |
| Electronic communications network   | Section 59   | 10 |
| Enactment   | Section 59   |    |
| Financial year  | Section 59   |    |
| Giving directions   | Section 49(6)  |    |
| The HCA   | Section 1(1)   |    |
| Highway   | Section 59   | 15 |
| Housing   | Section 2(3)   |    |
| Improve   | Section 59   |    |
| Infrastructure  | Section 2(3)   |    |
| Land  | Section 2(3) (and Schedule 1 to the Interpretation Act 1978 (c. 30)) | 20 |
| Local planning authority (in relation to designation orders or proposed designation orders) | Section 13(6)  |    |
| Modifications   | Section 59   |    |
| Notice  | Section 59   | 25 |
| Objects of the HCA  | Sections 2 and 54(3)   |    |
| Open space  | Section 9(7)   |    |
| Operator (in relation to electronic communications code network)                            | Section 59   |    |
| Permitted purposes  | Section 13(6)  | 30 |
| Private street  | Section 59   |    |
| Provide (in relation to an electronic communications network)                               | Section 59   |    |
| Registered provider of social housing   | Section 81(2)(a)   |    |
| Regulator of Social Housing   | Section 82(2)(a)   | 35 |
| Social housing (and its provision)  | Section 36(8)  |    |
| Social housing assistance   | Section 36(8)  |    |

| <i>Expression</i>             | <i>Provision</i> |
|-------------------------------|------------------|
| Urban development corporation | Section 45(7)    |

## PART 2

### REGULATION OF SOCIAL HOUSING

#### CHAPTER 1

5

#### INTRODUCTION

##### *Preliminary*

#### 61 Purpose

The purpose of this Part is to regulate the provision of social housing (as defined in sections 69 to 78) by English bodies (as defined in section 80).

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#### 62 Structural overview

- (1) This Part replaces the system of “registered social landlords” under Part 1 of the Housing Act 1996 (c. 52).
- (2) That Part will continue to apply in relation to Wales (see section 63).
- (3) Certain provisions of that Part—
  - (a) are applied in relation to England by this Part (see section 172), or
  - (b) are preserved although they apply to England only (see section 124).
- (4) The Table describes the content of this Part.

15

| <i>Chapter</i> | <i>Sections</i> | <i>Topic</i>                 | <i>Contents</i>   |
|----------------|-----------------|------------------------------|---|
| 1              | 61 to 81        | Introduction                 | (a) Preliminary<br>(b) Social housing<br>(c) Other key concepts   |
| 2              | 82 to 110       | The Social Housing Regulator | (a) Constitution<br>(b) Proceedings<br>(c) Powers<br>(d) Money<br>(e) Relationship with other bodies<br>(f) Information |
| 3              | 111 to 121      | Registration                 | (a) Introduction<br>(b) Eligibility<br>(c) Procedure  |
| 4              | 122 to 163      | Registered providers         | (a) General provisions<br>(b) Accounts<br>(c) Insolvency etc.<br>(d) Restructuring and dissolution                      |

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| Chapter | Sections   | Topic                | Contents   |                          |
|---------|------------|----------------------|--|--------------------------|
| 5       | 164 to 178 | Disposal of property | (a) Introductory<br>(b) Regulator’s consent<br>(c) Proceeds<br>(d) Tenants’ rights and duties<br>(e) Miscellaneous<br>(f) Consents under other legislation | 5                        |
| 6       | 179 to 203 | Regulatory powers    | (a) Standards<br>(b) Monitoring<br>(c) Management and constitution<br>(d) Guidance<br>(e) Managers of social housing                                       | 10                       |
| 7       | 204 to 255 | Enforcement powers   | (a) Enforcement notice<br>(b) Penalty<br>(c) Compensation<br>(d) Management<br>(e) Restrictions on dealings<br>(f) Suspension and removal of officers      | 15<br><br><br><br><br>20 |
| 8       | 256 to 264 | General              | (a) Interpretation<br>(b) Miscellaneous  |                          |

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

(1) Part 1 of the Housing Act 1996 (c. 52) (social rented sector) is amended as follows (and the title of Part 1 becomes “Social Rented Sector in Wales”). 25

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

**“A1 Introduction**

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

(3) In section 1 – 30

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

(4) After section 1 insert –

**“1A Welsh bodies**

In this Chapter “Welsh body” means a body which is – 35

- (a) a registered charity whose address, for the purposes of registration by the Charity Commission for England and Wales, is in Wales,
- (b) an industrial and provident society whose registered office for the purposes of the Industrial and Provident Societies Act 1965 is in Wales, or 40
- (c) a company within the meaning of the Companies Act 2006 which has its registered office for the purposes of that Act in Wales.”

(5) In section 2 (eligibility for registration) – 45

- (a) in subsection (1), for “A body” substitute “A Welsh body”,
- (b) in subsection (2) after “that the body is” insert “principally concerned with Welsh housing, is”, and
- (c) after subsection (2) insert –
- “(2A) A body is principally concerned with Welsh housing if the Welsh Ministers think –
- (a) that it owns housing only or mainly in Wales, or
- (b) that its activities are principally undertaken in respect of Wales;
- and once a body has been registered in reliance on paragraph (a) or (b) it does not cease to be eligible for registration by virtue only of ceasing to satisfy that paragraph.”,
- (d) in subsection (7) for “Secretary of State” (in each place) substitute “Welsh Ministers”, and
- (e) in subsection (8) for “either House of Parliament” substitute “the National Assembly for Wales”.
- (6) In section 3 (registration) –
- (a) in subsection (1) for “any body” substitute “any Welsh body”, and
- (b) in subsection (4) for “A body” substitute “A Welsh body”.
- (7) The table sets out substitutions which have effect throughout the Part (except section 51 and Schedule 2); and where necessary in consequence of those substitutions, for words in the singular substitute appropriate corresponding words in the plural.

| <i>Expression</i>          | <i>Substitution</i>   |
|----------------------------|-----------------------|
| “the Relevant Authority”   | “the Welsh Ministers” |
| “the Authority”            | “the Welsh Ministers” |
| “the Relevant Authority’s” | “the Welsh Ministers” |

- (8) Omit section 56 (meaning of “the Relevant Authority”).
- (9) Sections 64 and 65 make other consequential amendments.

## 64 References to Welsh Ministers

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

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

| <i>Provision</i> | <i>Topic</i>                        |
|------------------|-------------------------------------|
| Section 9(1A)(b) | Consent for disposal of land        |
| Section 12A(4)   | Right of first refusal: regulations |

| <i>Provision</i>                      | <i>Topic</i>   |    |
|---------------------------------------|--|----|
| Section 15A(5)                        | Deferred resale agreements: order                            |    |
| Section 17(1), (2)(b), (5)(b) and (6) | Right to acquire: orders and regulations                     |    |
| Section 18(5)(b)                      | Social housing grants: appointment of agent                  | 5  |
| Section 23(6)                         | Loans: approved schemes                                      |    |
| Section 27A(3)                        | Grants to other bodies: further provision                    |    |
| Section 29(1), (2) and (3)            | Commutation of special residual subsidy                      |    |
| Section 30(5)(b)                      | Collection of information: notice                            |    |
| Section 39(3)                         | Insolvency &c.: order defining terms                         | 10 |
| Section 46(7)(b)                      | Appointment of manager: order                                |    |
| Section 52(1) and (3)                 | Orders: general  |    |
| Section 53(1), (4) and (5)            | Determinations: general                                      |    |
| Section 55(2)                         | Consequential: order   |    |
| Paragraph 9(3A)(b) of Schedule 1      | Change of rules of industrial and provident society: consent | 15 |
| Paragraph 11(3A)(b) of Schedule 1     | Change of articles of company: consent                       |    |
| Paragraph 15A(1) of Schedule 1        | Transfer of assets of charity on dissolution: order          |    |

**65 References to National Assembly for Wales** 20

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

| <i>Provision</i>               | <i>Topic</i>  |    |
|--------------------------------|---|----|
| Section 12A(8)(b)              | Right of first refusal: regulations                 |    |
| Section 15A(6)(b)              | Deferred resale agreements: order                   | 25 |
| Section 17(7)                  | Right to acquire: orders and regulations            |    |
| Section 27A(10)                | Grants to other bodies: order                       |    |
| Section 39(3)                  | Insolvency: order                                   | 30 |
| Section 55(3)                  | Consequential: order                                |    |
| Paragraph 15A(4) of Schedule 1 | Transfer of assets of charity on dissolution: order |    |

**66 Dissolution of Housing Corporation**

- (1) The Secretary of State shall by order make provision for the dissolution of the Housing Corporation. 35

- (2) The Secretary of State may by order make consequential amendment of enactments referring to the Housing Corporation.

## 67 Transfer schemes

- (1) The Secretary of State may make one or more schemes for the transfer of the Housing Corporation’s property, rights or liabilities to – 5
- (a) the regulator,
  - (b) the HCA, or
  - (c) the Secretary of State.
- (2) On the transfer date, the designated property, rights or liabilities are transferred and vest in accordance with the scheme. 10
- (3) Schedule 6 applies to a scheme under this section.
- (4) In this section –
- “designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;
  - “the transfer date” means the date specified by a scheme as the date on which the scheme is to have effect. 15

## 68 Interim arrangements

- The Secretary of State may by notice require the Housing Corporation to provide staff, premises, facilities or other assistance to – 20
- (a) the regulator, or
  - (b) the HCA.

### *Social housing*

## 69 Basic principle

- (1) In this Part “social housing” means – 25
- (a) low cost rental accommodation (defined by section 70), and
  - (b) low cost home ownership accommodation (defined by section 71).
- (2) Accommodation which becomes “social housing” by satisfying subsection (1)(a) or (b) remains “social housing” for the purposes of this Part unless and until an event specified in sections 74 to 77 occurs.
- (3) Section 78 makes transitional provision as a result of which certain accommodation is to be treated as “social housing” whether or not it satisfies subsection (1)(a) or (b). 30

## 70 Low cost rental

- Accommodation is low cost rental accommodation if – 35
- (a) it is made available for rent,
  - (b) the rent is below the market rate, and
  - (c) the accommodation is made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market.

## 71 Low cost home ownership

- (1) Accommodation is low cost home ownership accommodation if the following conditions are satisfied.
- (2) Condition 1 is that the accommodation is occupied, or made available for occupation, in accordance with— 5
  - (a) shared ownership arrangements,
  - (b) equity percentage arrangements, or
  - (c) shared ownership trusts.
- (3) Condition 2 is that the accommodation is made available in accordance with rules designed to ensure that it made available to people whose needs are not adequately served by the commercial housing market. 10
- (4) “Shared ownership arrangements” means arrangements for rental under a lease which—
  - (a) is granted on payment of a premium calculated by reference to a percentage of either the value of the accommodation or the cost of providing it, and 15
  - (b) provides that the tenant (or the tenant’s personal representatives) will or may be entitled to a sum calculated by reference to the value of the accommodation.
- (5) “Equity percentage arrangements” means arrangements under which— 20
  - (a) the owner of a freehold or leasehold interest in residential property (“the seller”) conveys it to an individual (“the buyer”),
  - (b) the buyer, in consideration for the conveyance—
    - (i) pays the seller a sum (the “initial payment”) expressed to represent a percentage of the value of the interest at the time of the conveyance, and 25
    - (ii) agrees to pay the seller other sums calculated by reference to a percentage of the value of the interest at the time when each sum is to be paid, and
  - (c) the liability to make any payment required by the arrangements (apart from the initial payment) is secured by a mortgage. 30
- (6) Shared ownership trusts has the same meaning as in Schedule 9 to the Finance Act 2003 (stamp duty land tax).
- (7) The Secretary of State may make regulations amending— 35
  - (a) the definition of “low cost home ownership accommodation”;
  - (b) the definition of any of the sub-categories specified in that definition.

## 72 Shared ownership low cost rental

Accommodation which is both low cost rental accommodation and low cost home ownership accommodation is to be treated as the latter and not as the former. 40

## 73 Regulations

- (1) The Secretary of State may make regulations providing that specified accommodation, or a specified class of accommodation, is or is not to be treated as social housing for the purposes of this Part.

- 
- (2) The regulations may provide for accommodation to be social housing despite not satisfying section 69(1)(a) or (b) 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. 5
- (3) The regulations –
- (a) may override section 69(2),
  - (b) are subject to sections 69(3) and 78, and
  - (c) are subject to sections 70 and 71 (but may clarify doubt about the application of those sections). 10
- (4) The regulations –
- (a) may make provision by reference to the opinion of the regulator or another specified person, and
  - (b) may make provision by reference to designation, agreement or other action by the regulator or another specified person. 15
- 74 Leaving the social housing stock: sale**
- (1) A dwelling ceases to be social housing if it is sold to the tenant.
- (2) Low cost rental accommodation is “sold to the tenant” when the tenant exercises a statutory or contractual right and as a result becomes the owner of – 20
- (a) the freehold interest in the property, or
  - (b) the leasehold interest previously owned by the person providing the social housing.
- (3) Low cost home ownership accommodation of the shared ownership kind is “sold to the tenant” when the tenant exercises a statutory or contractual right and as a result becomes the owner of – 25
- (a) the freehold interest in the property, or
  - (b) the leasehold interest previously owned by the person providing the social housing.
- (4) Low cost home ownership accommodation of the equity percentage kind is “sold to the tenant” when the “buyer” (see section 71(3)(a)) exercises a statutory or contractual right as a result of which the equity percentage arrangements (see section 71(3)) come to an end. 30
- (5) Low cost home ownership accommodation of the shared ownership trust kind comes to an end when the “purchaser” (see paragraph 7(4)(a) of Schedule 9 to the Finance Act 2003) exercises a statutory or contractual right as a result of which the trust comes to an end. 35
- 75 Leaving the social housing stock: expired lease**
- (1) A dwelling ceases to be social housing if –
- (a) the provider holds a leasehold interest in the dwelling, and 40
  - (b) the leasehold interest expires.
- (2) A lease from an associate or subsidiary of the provider is disregarded for the purposes of subsection (1).

## **76 Leaving the social housing stock: disposal with consent**

- (1) A dwelling ceases to be social housing if it is disposed of with the regulator’s consent in accordance with—
  - (a) Chapter 5,
  - (b) section 171D of the Housing Act 1985 (c. 68) (consent to certain disposals of housing obtained subject to the preserved right to buy), or 5
  - (c) section 81 or 133 of the Housing Act 1988 (c. 50) (consent to certain disposals of housing obtained from housing action trusts or local authorities).
- (2) Subsection (1) does not apply to a disposal in pursuance of shared ownership arrangements or equity percentage arrangements. 10
- (3) Subsection (1) does not apply if the consent is conditional upon the dwelling continuing to be low cost rental accommodation or low cost home ownership accommodation.
- (4) A condition of that kind shall include provision for determining when the dwelling ceases to be social housing. 15

## **77 Leaving the social housing stock: regulator’s direction**

- (1) The regulator may direct that a specified dwelling is to cease to be social housing.
- (2) The regulator may make a direction only on the application of the provider. 20

## **78 Housing stock under Housing Act 1996**

- (1) This section applies to property owned by a registered social landlord within the meaning of Part 1 of the Housing Act 1996 (c. 52) before the coming into force of section 63 of this Act.
- (2) Property to which this section applies is social housing— 25
  - (a) whether or not it satisfies section 69(1)(a) or (b), and
  - (b) unless and until an event specified in sections 74 to 77 occurs.
- (3) But property to which any of the exceptions below applies when section 63 comes into force is social housing only if the purchase, construction or renovation of the property was funded by means of a grant under— 30
  - (a) section 22 (financial assistance by the HCA),
  - (b) section 18 of the Housing Act 1996 (social housing grant), or
  - (c) section 50 of the Housing Act 1988, section 41 of the Housing Associations Act 1985 (c. 69) or section 29 or 29A of the Housing Act 1974 (c. 44) (housing association grant). 35
- (4) Exception 1 is accommodation let on the open market.
- (5) Exception 2 is accommodation made available only to students in full-time education or training.
- (6) Exception 3 is a care home (within the meaning of the Care Standards Act 2000 (c. 14)) in which nursing is provided. 40

- (7) Exception 4 is accommodation provided in response to a request by the Secretary of State under section 100 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum seekers).
- (8) Exception 5 is property of a kind specified by regulations made by the Secretary of State. 5

*Other key concepts*

**79 Regulator of Social Housing**

- (1) Section 82 establishes the Office referred to in this Part as “the regulator”.
- (2) Chapter 2 makes provision for the regulator’s constitution and general powers.
- (3) Other provisions of this Part confer functions on the regulator. 10

**80 English bodies**

In this Part “English body” means –

- (a) a registered charity whose address for the purposes of registration by the Charity Commission is in England,
- (b) an industrial and provident society whose registered office for the purposes of the Industrial and Provident Societies Act 1965 (c. 12) is in England, 15
- (c) a registered company which has its registered office in England, and
- (d) any other person (whether or not a body corporate registered under the law of the United Kingdom) which – 20
- (i) is not a Welsh body within the meaning of section 1A of the Housing Act 1996 (c. 52), and
- (ii) makes available, or intends to make available, accommodation in England.

**81 Provider of social housing** 25

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

| <i>Type of social housing</i>                                 | <i>Provider</i>  |
|---|--|
| Low cost rental accommodation                                 | The landlord   |
| Low cost home ownership accommodation: shared ownership       | The landlord   |
| Low cost home ownership accommodation: equity percentage      | “The seller” within the meaning of section 71(5)(a)  |
| Low cost home ownership accommodation: shared ownership trust | The “social landlord” within the meaning of paragraph 7(3) of Schedule 9 to the Finance Act 2003 |

- (2) Chapter 3 provides for the establishment of a register of providers of social housing: persons listed in the register – 30
- 35

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

## CHAPTER 2

### THE SOCIAL HOUSING REGULATOR

5

#### *Constitution*

#### **82 Establishment**

- (1) There shall be a body corporate to be known as the Office for Tenants and Social Landlords.
- (2) The Office – 10
  - (a) may be referred to in an enactment or other instrument as “the Regulator of Social Housing”, and
  - (b) is referred to in this Part as “the regulator”.
- (3) The Office (and any member of the Office) – 15
  - (a) is not the servant or agent of the Crown, and
  - (b) does not share any immunity or privilege of the Crown.

#### **83 Membership**

- (1) The regulator shall consist of – 20
  - (a) a person appointed by the Secretary of State as chair,
  - (b) neither less than 3 nor more than 10 other members appointed by the Secretary of State, and
  - (c) the chief executive appointed under section 85.
- (2) The Secretary of State must consult the chair before appointing other members.
- (3) The Secretary of State may appoint a person under subsection (1) only if satisfied that the person has no financial or other personal interest in the performance of functions. 25
- (4) Former membership of the Housing Corporation is not a bar to appointment.
- (5) In this Part “appointed member” means – 30
  - (a) the chair, or
  - (b) a member appointed under subsection (1)(b).
- (6) A vacancy for, or a defect in the appointment of, the chair, the chief executive or another member does not prevent or invalidate proceedings.

#### **84 Tenure**

- (1) An appointed member holds and vacates office in accordance with the terms of appointment (subject to this section). 35
- (2) A period of appointment may not exceed 5 years (but a member may be reappointed).

- 
- (3) An appointed member may resign by notice to the Secretary of State.
- (4) The Secretary of State may dismiss an appointed member if satisfied that any of the following cases applies –
- (a) Case 1 is where a member has been absent from meetings of the regulator for a period of more than 6 months without its permission. 5
  - (b) Case 2 is where a member is subject to –
    - (i) a bankruptcy restrictions order, or
    - (ii) an interim bankruptcy restrictions order.
  - (c) Case 3 is where –
    - (i) a member’s estate has been sequestrated by a court in Scotland, or 10
    - (ii) under the law of Scotland, a member has made a composition or arrangement with, or granted a trust deed for, creditors.
  - (d) Case 4 is where a member has a financial or other personal interest which is likely to influence the performance of functions. 15
  - (e) Case 5 is where a member has misbehaved or is for any other reason unable, unsuitable or unwilling to perform functions.
- 85 Chief executive**
- (1) The regulator shall appoint a chief executive.
  - (2) The regulator may appoint a person only if approved by the Secretary of State. 20
  - (3) The first chief executive shall be appointed by the Secretary of State, having consulted the chair.
- 86 Other staff**
- The regulator may appoint employees (in addition to the chief executive).
- 87 Consequential amendments** 25
- (1) In Part 2 of the Table at the end of paragraph 3 of Schedule 1 to the Public Records Act 1958 (c. 51) (bodies whose records are public records) insert at the appropriate place –  
 “Office for Tenants and Social Landlords.”
  - (2) In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members disqualified) insert at the appropriate place –  
 “Office for Tenants and Social Landlords.” 30
  - (3) In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (public bodies and offices) insert at the appropriate place –  
 “Office for Tenants and Social Landlords.” 35
- Proceedings*
- 88 Fundamental objectives**
- (1) The regulator shall perform its functions with a view to achieving the following objectives so far as possible. 40

- (2) Objective 1 is to encourage and support a supply of well-managed social housing, of appropriate quality, sufficient to meet reasonable demands.
  - (3) Objective 2 is to ensure that actual or potential tenants of social housing have an appropriate degree of –
    - (a) choice, and 5
    - (b) protection.
  - (4) Objective 3 is to ensure that tenants of social housing have the opportunity to be involved in its management.
  - (5) Objective 4 is to ensure that registered providers of social housing perform their functions efficiently, effectively and economically. 10
  - (6) Objective 5 is to ensure that registered providers of social housing are financially viable and properly managed.
  - (7) Objective 6 is to encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas in which the housing is situated. 15
  - (8) Objective 7 is to encourage investment in social housing.
  - (9) Objective 8 is to avoid the imposition of an unreasonable burden (directly or indirectly) on public funds.
  - (10) Objective 9 is to guard against the misuse of public funds.
  - (11) Objective 10 is to regulate in a manner which – 20
    - (a) minimises interference, and
    - (b) is proportionate, consistent, transparent and accountable.
  - (12) Pursuit of Objective 10 includes, but is not necessarily limited to, compliance with any duty of the regulator under section 22 of the Legislative and Regulatory Reform Act 2006 (c. 51) (code of practice). 25
  - (13) The order in which the objectives are listed in this section is not significant; the regulator shall balance them as it thinks appropriate.
  - (14) The objectives are referred to in this Part as the regulator’s fundamental objectives.
- 89 Procedure 30**
- (1) The regulator may determine its own procedure (which may include provision about a quorum).
  - (2) The regulator shall make such arrangements as it thinks appropriate for publishing its procedure.
- 90 Conflict of interest 35**
- (1) The regulator’s procedural arrangements under section 89 must include arrangements for dealing with any conflict of interest of –
    - (a) members,
    - (b) employees, or
    - (c) members of committees and sub-committees. 40

- (2) The arrangements must oblige a person –
- (a) to declare any financial or other personal interest relevant to the exercise of a function, and
  - (b) withdraw from the performance of that function unless the regulator directs otherwise, being satisfied that the interest will not influence performance of the function. 5

## 91 Committees

- (1) The regulator may establish committees and sub-committees.
- (2) A committee or sub-committee may include non-members (provided that it includes at least one member). 10

## 92 Delegation

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

- (a) a committee,
- (b) a sub-committee,
- (c) a member, and
- (d) an employee. 15

## 93 Seal

- (1) The application of the regulator’s seal shall be authenticated by a member or by some other person authorised (generally or specially) for that purpose.
- (2) A document purporting to be duly executed under the seal – 20
- (a) shall be received in evidence, and
  - (b) shall be treated as so executed unless the contrary is shown.

## 94 Annual report

- (1) As soon as is reasonably practicable after the end of each financial year the regulator shall – 25
- (a) prepare a report on the performance of its functions during the year, and
  - (b) send a copy to the Secretary of State.
- (2) The report must, in particular – 30
- (a) include a statement of the regulator’s accounts, and
  - (b) specify any direction given to the regulator by the Secretary of State in that year under section 184.
- (3) The Secretary of State shall lay a copy before Parliament.

### *Powers*

## 95 General 35

- (1) The regulator may do anything it thinks necessary or expedient for the purpose of or in connection with the performance of a function conferred on it by this Part or another enactment.

- (2) In particular, the regulator may do anything it thinks appropriate for advancing its fundamental objectives.

## 96 Studies

- (1) The regulator may carry out or commission studies designed to improve the economy, effectiveness and efficiency of registered providers. 5
- (2) The regulator may publish a report on a study.

## 97 Financial assistance

- (1) The regulator may, where it thinks it advances a fundamental objective, give financial assistance to a person in connection with – 10
- (a) undertaking research,
  - (b) preparing guidance,
  - (c) developing and publicising best practice, or
  - (d) facilitating the management of social housing by tenants.
- (2) Financial assistance under subsection (1) may be given – 15
- (a) by way of grant,
  - (b) by way of loan,
  - (c) by defraying expenditure on behalf of a person, or
  - (d) in any other way except purchasing loan or share capital of a body corporate or giving a guarantee or indemnity.
- (3) The regulator may, where it thinks it advances a fundamental objective, give financial assistance to a registered provider by – 20
- (a) lending money to or in respect of the registered provider, or
  - (b) giving a guarantee or indemnity in respect of the registered provider.
- (4) Financial assistance may be given under subsection (3) only with the consent of the Secretary of State (given with the approval of the Treasury). 25
- (5) Financial assistance under subsection (1) or (3) may be given on conditions (which may include provision for repayment, with or without interest).

## 98 Evidence

- In considering whether to exercise a power under this Part the regulator may have regard to information or opinions from any source including, in particular, from – 30
- (a) tenants,
  - (b) bodies representing tenants,
  - (c) local housing authorities, or
  - (d) an ombudsman appointed by virtue of section 124. 35

## 99 Information, advice &c.

- (1) The regulator may for the purpose of advancing its fundamental objectives – 40
- (a) publish ideas or information;
  - (b) undertake research in relation to social housing;
  - (c) provide guidance, advice, education or training.

- 
- (2) The regulator may for that purpose –
- (a) arrange for another person to do anything within subsection (1)(a) to (c);
  - (b) act jointly with, cooperate with or assist another person doing anything within subsection (1)(a) to (c). 5
- (3) The persons to whom advice may be given under subsection (1) include –
- (a) unregistered housing associations (as defined by section 2B of the Housing Associations Act 1985 (c. 69)), and
  - (b) persons who may be forming a housing association (within the meaning of section 1(1) of that Act). 10

### *Money*

#### **100 Remuneration**

- (1) The regulator may pay to or in respect of appointed members –
- (a) remuneration,
  - (b) travelling and other allowances, and 15
  - (c) sums by way of or in respect of pensions and gratuities.
- (2) The Secretary of State shall determine rates and eligibility criteria for payments under subsection (1).
- (3) If the Secretary of State thinks there are special circumstances that make it right to compensate a person on ceasing to be an appointed member, the regulator may pay compensation determined by the Secretary of State. 20
- (4) The regulator may pay to or in respect of employees –
- (a) remuneration,
  - (b) travelling and other allowances, and
  - (c) sums by way of or in respect of pensions and gratuities. 25
- (5) In this section a reference to a member or employee includes a reference to a former member or employee.

#### **101 Charging**

The regulator may charge for giving advice, conducting research or providing other services. 30

#### **102 Assistance by Secretary of State**

- (1) The Secretary of State may make payments to the regulator by way of grant or loan.
- (2) A grant or loan may be subject to conditions (which may include provision for repayment, with or without interest). 35

#### **103 Borrowing**

- (1) The regulator may borrow –
- (a) by way of overdraft or otherwise, for the purpose of what it considers to be short-term management of its finances, or

(b) from the Secretary of State.

(2) The regulator may not borrow otherwise.

#### 104 Accounts

- (1) The regulator shall keep accounts (and records of its accounts).
- (2) As soon as is reasonably practicable after the end of each financial year the regulator shall prepare a statement of accounts in respect of that financial year. 5
- (3) The statement must be in such form as the Secretary of State may direct.
- (4) The regulator shall, within such period as the Secretary of State may direct, send a copy of the statement to – 10
- (a) the Secretary of State, and
  - (b) the Comptroller and Auditor General.
- (5) The Comptroller and Auditor General shall –
- (a) examine, certify and report on the statement, and
  - (b) lay a copy of the report before Parliament.

#### 105 Financial year 15

- (1) The regulator’s financial year is each period of 12 months beginning with 1st April.
- (2) But the first financial year is the period – 20
- (a) beginning with the day on which section 82 comes into force, and
  - (b) ending with the next 31st March.

#### *Relationship with other bodies*

#### 106 Cooperation with the HCA

- (1) The regulator shall cooperate with the HCA.
- (2) In particular, the regulator shall consult the HCA on matters likely to interest it. 25

#### 107 Direction to the HCA

- (1) The regulator may direct the HCA not to give financial assistance to a specified registered provider – 30
- (a) under section 22, and
  - (b) in connection with social housing.
- (2) A direction may be given if – 35
- (a) the regulator has decided to hold an inquiry into affairs of the registered provider under section 192 (and the inquiry is not concluded),
  - (b) the regulator has received notice in respect of the registered provider under section 141, or
  - (c) the regulator has appointed an officer of the registered provider under section 255 (and the person appointed has not vacated office).

- (3) A direction may prohibit the HCA from giving assistance of a specified kind (whether or not in pursuance of a decision already taken and communicated to the registered provider).
- (4) A direction may not prohibit grants to a registered provider in respect of discounts given by the provider on disposals of dwellings to tenants. 5
- (5) A direction shall have effect until withdrawn.

### *Information*

#### **108 Collection**

- (1) The regulator may for a purpose connected with its functions require a person to provide documents or information which it has reason to believe is or may be in the person's possession and which relates to – 10
  - (a) the financial or other affairs of a registered provider;
  - (b) activities which are or may be carried out by a person who is, or who has applied to become, a registered provider.
- (2) A requirement may be imposed on a person other than the body to which the document or information relates only if – 15
  - (a) the body has been required to provide the document or information but has failed to do so, or
  - (b) the regulator thinks that the body is unable to provide it.
- (3) A requirement may specify – 20
  - (a) the form and manner in which a document or information is to be provided (which may include the provision of a legible copy of information stored electronically);
  - (b) when and where it is to be provided.
- (4) The regulator may copy or record documents or information provided. 25
- (5) Failure to comply with a requirement without reasonable excuse is an offence.
- (6) Intentionally altering, suppressing or destroying a document or information to which a requirement relates is an offence.
- (7) If a person fails to comply with a requirement the High Court may, on an application by the regulator, make an order for the purpose of remedying the failure. 30

#### **109 Section 108: supplemental**

- (1) A requirement does not require a person to disclose anything which the person would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court. 35
- (2) A requirement does not require a banker to breach a duty of confidentiality owed to a person who is not –
  - (a) the registered provider to whose affairs or activities the documents or information relates,
  - (b) a subsidiary of the registered provider, or 40
  - (c) an associate of the registered provider.

- (3) A person guilty of an offence under section 108(5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
  - (4) A person guilty of an offence under section 108(6) is liable –
    - (a) on summary conviction, to a fine not exceeding the statutory maximum; 5
    - (b) on conviction on indictment, to –
      - (i) imprisonment for a term not exceeding two years,
      - (ii) a fine, or
      - (iii) both.
  - (5) Proceedings for an offence under section 108(5) or (6) may be brought only by or with the consent of – 10
    - (a) the regulator, or
    - (b) the Director of Public Prosecutions.
  - (6) An order under section 108(7) may include provision about costs.
- 110 Disclosure** 15
- (1) A public authority may disclose information to the regulator for a purpose connected with the regulator’s functions.
  - (2) The regulator may disclose information to a public authority –
    - (a) for a purpose connected with the regulator’s functions, or
    - (b) for a purpose connected with the authority’s functions. 20
  - (3) The regulator may disclose information to a person acting on its behalf for a purpose connected with the regulator’s functions.
  - (4) A disclosure may be subject to restrictions on further disclosure.
  - (5) The power to disclose information under this section is subject to any express restriction on disclosure imposed by another enactment (ignoring any restriction which allows disclosure if authorised by an enactment). 25
  - (6) Disclosure in contravention of a restriction under subsection (4) is an offence.
  - (7) A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
  - (8) “Public authority” means a person having functions of a public nature 30 (whether or not in the United Kingdom).

### CHAPTER 3

#### REGISTRATION

##### *Introduction*

- 111 Overview** 35
- This Chapter provides for the establishment of a register of providers of social housing.

## **112 The register**

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

### *Eligibility*

## **113 Eligibility for registration** 5

- (1) An English body is eligible for registration if –
  - (a) it satisfies the following conditions, and
  - (b) it does not fall within the exceptions in section 114.
- (2) Condition 1 is that the body –
  - (a) is a provider of social housing in England, or 10
  - (b) intends to become a provider of social housing in England.
- (3) Condition 2 is that the body satisfies any relevant criteria set by the regulator as to –
  - (a) its financial situation,
  - (b) its constitution, and 15
  - (c) other arrangements for its management.
- (4) Before setting criteria the regulator must consult –
  - (a) the HCA,
  - (b) one or more bodies appearing to it to represent the interests of registered providers, and 20
  - (c) one or more bodies appearing to it to represent the interests of tenants.

## **114 Local authority non-registrable bodies**

- (1) This section sets out the exceptions to section 113(1).
- (2) Exception 1 is a local housing authority within the meaning of section 1 of the Housing Act 1985 (c. 68). 25
- (3) Exception 2 is a county council.
- (4) Exception 3 is a person controlled by an authority within Exception 1 or 2.
- (5) The Secretary of State may make regulations defining when a person is controlled by an authority for the purpose of Exception 3.
- (6) The definition may be expressed by reference to a definition for the time being given in a document identified by regulations under section 21(2)(b) of the Local Government Act 2003 (accounting practices for local authorities). 30

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

- (1) Each entry in the register shall designate the body registered as either –
  - (a) a non-profit organisation, or 35
  - (b) a profit-making organisation.
- (2) A body is a non-profit organisation if it is a registered or non-registrable charity.

- (3) A body is also a non-profit organisation if it satisfies the following conditions.
- (4) Condition 1 is that the body –
  - (a) does not trade for profit, or
  - (b) is prohibited by its constitution from issuing capital with interest or dividend at a rate exceeding that prescribed under section 1(1)(b) of the Housing Associations Act 1985 (c. 69). 5
- (5) Condition 2 is that a purpose of the body is the provision or management of housing.
- (6) Condition 3 is that any other purposes of the body are connected with or incidental to the provision of housing. 10
- (7) The Secretary of State may make regulations providing that a specified purpose is to be, or not to be, treated as connected with or incidental to the provision of housing.
- (8) A body which is not a non-profit organisation under subsection (2) or (3) is a profit-making organisation. 15
- (9) If the regulator thinks that what was a profit-making organisation has become a non-profit organisation, the regulator must change the registered designation accordingly.

#### *Procedure*

### **116 Entry** 20

- (1) The regulator shall register anyone who –
  - (a) is eligible for registration, and
  - (b) applies to be registered.
- (2) The regulator may make provision about –
  - (a) the form of an application; 25
  - (b) the information to be contained in it or provided with it;
  - (c) the manner in which an application is to be submitted;
  - (d) the consequences of failure to comply with provision under paragraphs (a) to (c).
- (3) This section is subject to section 117 (fees). 30
- (4) Once entered a body remains registered unless and until removed under section 118 or 119.
- (5) It shall be presumed for all purposes that a person entered in the register is eligible for registration while the registration lasts (irrespective of whether and why the person is later removed from the register). 35

### **117 Fees**

- (1) The regulator may make initial registration conditional upon payment of a fee.
- (2) The regulator may make continued registration conditional upon payment of an annual fee.
- (3) The regulator shall – 40

- 
- (a) prescribe the amount of a fee, and
    - (b) make provision about the periods during which and in respect of which annual fees are payable.
  - (4) The regulator may set different fees, and make different provision, for different cases or circumstances. 5
  - (5) Fees must be set in accordance with principles which the regulator prepares and publishes and which are designed to ensure that so far as is reasonably practicable –
    - (a) fee income matches expenditure on the performance of functions,
    - (b) each fee is reasonable and proportionate to the costs to which it relates, and 10
    - (c) actual or potential registered providers can see the relationship between the amount of a fee and the costs to which it relates.
  - (6) The principles may provide for specified expenditure or potential expenditure under section 97 or otherwise to be disregarded for the purpose of subsection (5)(a). 15
  - (7) In preparing (or revising) the principles the regulator shall consult –
    - (a) the Secretary of State, and
    - (b) persons appearing to the regulator to represent the interests of fee-payers. 20
  - (8) The regulator’s accounts shall show –
    - (a) fees received, and
    - (b) fees outstanding.
- 118 De-registration: compulsory**
- (1) The regulator may remove from the register a body which the regulator thinks – 25
    - (a) is no longer eligible for registration,
    - (b) has ceased to carry out activities, or
    - (c) has ceased to exist.
  - (2) Before removing a body under subsection (1)(a) or (b) the regulator must – 30
    - (a) take all reasonable steps to give the body at least 14 days’ notice, and
    - (b) consider any representations it makes in that period.
  - (3) After removing a body under subsection (1)(a) or (b) the regulator must take all reasonable steps to notify the body.
- 119 De-registration: voluntary** 35
- (1) A registered provider may ask the regulator to remove it from the register.
  - (2) The regulator may comply with a request –
    - (a) on the grounds that the registered provider no longer is or intends to be a provider of social housing in England,
    - (b) on the grounds that the registered provider is subject to regulation by another authority whose control is likely to be sufficient, or 40
    - (c) on the grounds that the registered provider meets any relevant criteria for de-registration set by the regulator.

- (3) Before deciding whether or not to comply, the regulator must consult such local authorities in whose area the registered provider acts as it thinks appropriate.
- (4) The regulator shall not comply with a request by a non-profit registered provider if it thinks that removal is sought with a view to enabling the registered provider to distribute assets to members. 5
- (5) In deciding whether or not to comply, the regulator must (in particular) have regard to –
  - (a) any conditions imposed in connection with disposal consents given to the registered provider under Chapter 5, and 10
  - (b) any conditions imposed in connection with financial assistance given to the registered provider under any enactment.
- (6) Having decided whether or not to remove the registered provider the regulator must notify –
  - (a) the provider, and 15
  - (b) any authority consulted.
- (7) The regulator shall publish criteria set for the purposes of subsection (2)(c).

## 120 Notice

- (1) As soon as is reasonably practicable after registering or de-registering a body the regulator shall notify –
  - (a) in the case of a registered charity, the Charity Commission,
  - (b) in the case of an industrial and provident society, the Financial Services Authority, and
  - (c) in the case of a registered company (whether or not also a registered charity), the registrar of companies for England and Wales. 20
- (2) A notice of registration shall specify whether the person registered is designated as a non-profit or profit-making organisation.
- (3) If the designation changes, the regulator shall notify any person notified of the registration.
- (4) A person to whom notice is given under this section must keep a record of it. 30

## 121 Appeal

- (1) A body may appeal to the High Court against a decision of the regulator –
  - (a) to refuse to register it,
  - (b) to de-register it, or
  - (c) to refuse to de-register it. 35
- (2) The regulator shall not de-register a body while an appeal is pending.

## CHAPTER 4

### REGISTERED PROVIDERS

#### *General provisions*

#### **122 Payments to members etc.**

- |   |    |
|---|----|
| (1) This section restricts the making of gifts, and the payment of dividends and bonuses, by a non-profit registered provider to—     | 5  |
| (a) a member or former member of the registered provider,   |    |
| (b) a member of the family of a member or former member,  |    |
| (c) a company which has as a director a person within paragraph (a) or (b).   |    |
| (2) A gift may be made, and a dividend or bonus may be paid, only if it falls within one of the following permitted classes.          | 10 |
| (3) Class 1 is payments which—  |    |
| (a) are in accordance with the constitution of the registered provider, and   |    |
| (b) are due as interest on capital lent to the provider or subscribed in its shares.  | 15 |
| (4) Class 2 is payments which—  |    |
| (a) are paid by a fully mutual housing association (within the meaning of section 1(2) of the Housing Associations Act 1985 (c. 69)), |    |
| (b) are paid to former members of the association, and  |    |
| (c) are due under—  | 20 |
| (i) tenancy agreements with the association, or   |    |
| (ii) agreements under which the former members became members of the association.   |    |
| (5) Class 3 is payments which—  |    |
| (a) are in accordance with the constitution of the registered provider making the payment (“the payer”), and                          | 25 |
| (b) are made to a registered provider which is a subsidiary or associate of the payer.  |    |
| (6) If a registered company or industrial and provident society contravenes this section—   | 30 |
| (a) it may recover the wrongful gift or payment as a debt from the recipient, and   |    |
| (b) the regulator may require it to take action to recover the gift or payment.   |    |

#### **123 Disposal of property** 35

Chapter 5 makes provision about disposal of property.

#### **124 Complaints**

- |   |    |
|---|----|
| (1) Section 51 of, and Schedule 2 to, the Housing Act 1996 (c. 52) (schemes for investigation of complaints by housing ombudsman) continue to have effect, with the following amendments. | 40 |
|---|----|

| <i>Provision or expression</i> | <i>Substitution</i>   |
|--------------------------------|---|
| Section 51(2)(a)               | “(a) a registered provider, or former registered provider, within the meaning of Part 2 of the Housing and Regeneration Act 2008;<br>(aa) a former registered social landlord;” |
| “Relevant Authority”           | “Regulator of Social Housing”   |
| “Housing Corporation”          | “Regulator of Social Housing”   |

5

- (2) In paragraph 11(4) of Schedule 2 to that Act (grants), omit – 10
- (a) “or the Housing Corporation”, and
  - (b) “or, as the case may be, the Housing Corporation”.

### 125 Voluntary undertaking

- (1) A registered provider may give the regulator an undertaking in respect of any matter concerning social housing. 15
- (2) The regulator may prescribe a procedure to be followed in giving an undertaking.
- (3) In exercising a power under Chapter 6 or 7 the regulator must have regard to any undertaking offered or given.
- (4) The regulator may found a decision about whether to exercise a power under Chapter 6 or 7 wholly or partly on the extent to which an undertaking has been honoured. 20

### 126 Sustainable community strategies

If invited by a local authority to participate in the preparation or modification of a sustainable community strategy under section 4 of the Local Government Act 2000 (c. 22), a registered provider must co-operate with the local authority. 25

### *Accounts*

### 127 Directions

- (1) The regulator may give directions to non-profit registered providers about the preparation of their accounts. 30
- (2) The power must be exercised with a view to ensuring that accounts –
  - (a) are prepared in proper form, and
  - (b) present a true and fair view of –
    - (i) the state of affairs of each registered provider in relation to its social housing activities, and 35
    - (ii) the disposition of funds and assets which are, or have been, in its hands in connection with those activities.
- (3) A direction may require a registered charity to use a specified method for distinguishing in its accounts between –

- (a) matters relating to its social housing activities, and
  - (b) other matters.
- (4) A direction –
- (a) may make provision that applies generally or only to specified cases, circumstances or registered providers, and 5
  - (b) may make different provision for different cases, circumstances or registered providers.
- (5) A direction that relates to more than one registered provider may be given only after consulting one or more bodies appearing to the regulator to represent the interests of registered providers. 10
- (6) The regulator shall make arrangements for bringing a direction to the attention of every registered provider to which it applies.

### **128 Submission to regulator**

- (1) Each non-profit registered provider shall send a copy of its accounts to the regulator within the period of 6 months beginning with the end of the period to which the accounts relate. 15
- (2) The accounts must be accompanied by –
- (a) an auditor’s report, or
  - (b) in the case of accounts that by virtue of an enactment are not subject to audit, any report that is required to be prepared in respect of the accounts by virtue of an enactment. 20
- (3) The report must specify whether the accounts comply with any relevant directions under section 127.

### **129 Non-audited industrial and provident society**

- (1) This section applies to a non-profit registered provider which is an industrial and provident society. 25
- (2) Section 9A of the Friendly and Industrial and Provident Societies Act 1968 (c. 55) applies to the society as if subsection (1)(b) were omitted (accountant’s report required only where turnover exceeds specified sum).
- (3) The regulator may require the society to – 30
- (a) appoint a qualified auditor to audit the society’s accounts and balance sheet for any year of account in respect of which section 4 of the Friendly and Industrial and Provident Societies Act 1968 (audit requirements) has been disapplied (see section 4A of that Act), and
  - (b) send a copy of the auditor’s report to the regulator by a specified date. 35
- (4) A requirement under subsection (3) may be imposed only during the year of account following the year to which the accounts relate.
- (5) In this section –
- “qualified auditor” means a person who is a qualified auditor for the purposes of Friendly and Industrial and Provident Societies Act 1968, and 40
  - “year of account” has the meaning given by section 21(1) of that Act.

### 130 Charity

- (1) This section applies to a non-profit registered provider which is a registered charity.
- (2) The charity shall –
  - (a) keep proper accounting records of its transactions and its assets and liabilities in relation to its housing activities, and 5
  - (b) maintain a satisfactory system of control of those records, its cash holdings and its receipts and remittances in relation to those activities.
- (3) For each period of account the charity shall prepare –
  - (a) a revenue account giving a true and fair view of the charity’s income and expenditure during the period, so far as relating to its housing activities, and 10
  - (b) a balance sheet giving a true and fair view of the state of affairs of the charity as at the end of the period.
- (4) The revenue account and balance sheet must be signed by at least two directors or trustees. 15
- (5) “Period of account” means –
  - (a) a period of 12 months, or
  - (b) such other period not less than 6 months nor more than 18 as the charity may, with the consent of the regulator, determine. 20
- (6) This section does not affect any obligation under sections 41 to 45 of the Charities Act 1993 (c. 10) (charity accounts).

### 131 Charity: audit

- (1) This section applies in relation to the accounts of a charity under section 130(3).
- (2) If Condition 1 or 2 is met, the charity shall cause a qualified person to audit the accounts and report on them in accordance with section 132. 25
- (3) If neither Condition is met, the charity shall cause a qualified person (“the reporting accountant”) to report on the accounts in accordance with section 133.
- (4) Condition 1 is met if the accounts relate to a period during which the charity’s gross income arising in connection with its housing activities was greater than the sum specified in section 43(1)(a) of the Charities Act 1993. 30
- (5) Condition 2 is met if –
  - (a) the accounts relate to a period during which the charity’s gross income arising in connection with its housing activities was greater than the accounts threshold as defined by section 43(1) of the Charities Act 1993, and 35
  - (b) at the end of the period the aggregate value of its assets (before deduction of liabilities) in respect of its housing activities was greater than the sum specified in section 43(1)(b). 40
- (6) “Gross income” has the same meaning as in section 43 of the Charities Act 1993.
- (7) “Qualified person” means a person professionally qualified as an accountant.

### **132 Charity: auditor’s report**

- (1) An auditor appointed for the purposes of section 131(2) or 134(2) in respect of a charity’s accounts shall make a report to the charity in accordance with this section.
- (2) The report must state – 5
  - (a) whether the revenue account gives a true and fair view of the charity’s income and expenditure, so far as relating to its housing activities, and
  - (b) whether the balance sheet gives a true and fair view of the state of affairs of the charity as at the end of the period to which the accounts relate. 10
- (3) The report must give the name of the auditor and be signed.
- (4) The auditor shall, in preparing the report, carry out such investigations as are necessary to form an opinion as to – 15
  - (a) whether the charity has complied with section 130(2) during the period to which the accounts relate, and
  - (b) whether the accounts are in accordance with accounting records kept under section 130(2)(a).
- (5) If the auditor thinks that the charity has not complied section 130(2) or that the accounts are not in accordance with its accounting records, that must be stated in the report. 20
- (6) If the auditor fails to obtain all the information and explanations which the auditor thinks necessary for the purposes of the audit, that must be stated in the report.

### **133 Charity: accountant’s report**

- (1) A reporting accountant appointed for the purposes of section 131(3) in respect of a charity’s accounts shall make a report to the charity in accordance with this section. 25
- (2) The report must state whether the accounts are in accordance with accounting records kept under section 130(2)(a).
- (3) On the basis of the information in the accounting records the report must also state whether – 30
  - (a) the accounts comply with the requirements of the Charities Act 1993;
  - (b) section 131(3) applied in respect of the accounts.
- (4) The report must give the name of the reporting accountant and be signed.
- (5) If the reporting accountant fails to obtain all the information and explanations which the reporting accountant thinks necessary for the purposes of preparing the report, that must be stated in the report. 35

### **134 Charity: extraordinary audit**

- (1) This section applies where, in accordance with section 131(3), a charity appoints a reporting accountant to prepare a report in respect of any accounts. 40
- (2) The regulator may require the charity to –

- (a) cause a qualified person to audit the accounts and prepare a report on them in accordance with section 132, and
  - (b) send a copy of the report to the regulator by a specified date.
- (3) A requirement under subsection (2) may be imposed only during the period of account following the period to which the accounts relate. 5
- (4) In this section –
  - “period of account” has the meaning given by section 130(5), and
  - “qualified person” has the meaning given by section 131(7).

### 135 Charity: auditor’s powers

- (1) This section applies to a person who is appointed by a charity for the purposes of section 131(2) or (3) or 134(2). 10
- (2) The charity must grant the person access to its documents, if or in so far as they relate to its housing activities.
- (3) An officer of the charity must provide such information or explanations as the person thinks necessary. 15

### 136 Offences

- (1) A registered provider commits an offence if it fails, without reasonable excuse, to comply with –
  - (a) a direction under section 127,
  - (b) a provision listed in subsection (2), or 20
  - (c) a requirement imposed under a provision listed in subsection (3).
- (2) The provisions referred to in subsection (1)(b) are –
  - (a) section 128;
  - (b) section 130;
  - (c) section 131. 25
- (3) The provisions referred to in subsection (1)(c) are –
  - (a) section 129;
  - (b) section 134.
- (4) If a registered provider fails to comply with a direction, provision or requirement mentioned in subsection (1) every officer of the registered provider is guilty of an offence. 30
- (5) It is a defence for an officer to show that the officer did everything that could reasonably have been expected to ensure compliance by the registered provider.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 35
- (7) Proceedings for an offence may be brought only by or with the consent of –
  - (a) the regulator, or
  - (b) the Director of Public Prosecutions.

**137 High Court**

- (1) If a registered provider fails to comply with a direction, provision or requirement mentioned in section 136(1), the High Court may on the application of the regulator make an order for the purpose of remedying the failure. 5
- (2) An order may include provision about costs.

**138 Disclosure**

- (1) This section applies to information that a person has received while acting –
  - (a) as auditor of a non-profit registered provider, or
  - (b) as a reporting accountant in relation to a non-profit registered provider. 10
- (2) The person may disclose the information to the regulator for a purpose connected with the regulator’s functions –
  - (a) despite any duty of confidentiality, and
  - (b) whether or not the regulator requests the information.
- (3) The reference to disclosing information includes expressing an opinion on it. 15
- (4) “Reporting accountant” means a person who is appointed to prepare a report which, by virtue of any enactment, has to be prepared in respect of accounts that are not subject to audit.

*Insolvency etc.*

**139 Non-profit providers only**

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

**140 Preparatory steps: notice**

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

| <i>Step</i>   | <i>Person to give notice</i> |    |
|---|------------------------------|----|
| Any step, of a kind prescribed for the purposes of this section by the Secretary of State by order, to enforce a security over land held by a registered provider   | The person taking the step   | 25 |
| Presenting a petition for the winding up of a registered provider which is – <ol style="list-style-type: none"> <li>(a) a registered company, or</li> <li>(b) an industrial and provident society</li> </ol>  | The petitioner               | 30 |
| Passing a resolution for the winding up of a registered provider which is – <ol style="list-style-type: none"> <li>(a) a registered company, or</li> <li>(b) an industrial and provident society</li> </ol> But not the passing of a resolution for winding-up where the regulator’s consent is required under section 156 or 158 | The registered provider      | 35 |

| <i>Step</i>  | <i>Person to give notice</i>      |    |
|--|-----------------------------------|----|
| Making an administration application in accordance with paragraph 12 of Schedule B1 to the Insolvency Act 1986 in respect of a registered provider which is a registered company | The applicant                     | 5  |
| Appointing an administrator under paragraph 14 or 22 of that Schedule in respect of a registered provider which is a registered company  | The person making the appointment |    |
| Filing with the court a copy of a notice of intention to appoint a person under either of those paragraphs in respect of a registered provider which is a registered company     | The person filing the notice      | 10 |

#### 141 Moratorium

- (1) If a step specified in the Table below is taken in respect of a registered provider, a moratorium on the disposal of land by the provider begins. 15
- (2) Where a step specified in the Table is taken in respect of a registered provider, the person specified must give the regulator notice as soon as is reasonably practicable.
- (3) If the notice is not given the step is not invalidated (but the end of the moratorium depends on the notice being given – see section 142(2)). 20
- (4) The regulator shall give the HCA a copy of any notice received under this section.

| <i>Step</i>   | <i>Person</i>                        |    |
|---|--------------------------------------|----|
| Any step, of a kind prescribed for the purposes of this section by the Secretary of State by order, to enforce a security over land held by a registered provider                 | The person taking the step           | 25 |
| The making of an order for winding up a registered provider which is –<br>(a) a registered company, or<br>(b) an industrial and provident society                                 | The petitioner                       | 30 |
| The passing a resolution for the winding up of a registered provider which is –<br>(a) a registered company, or<br>(b) an industrial and provident society                        | The registered provider              |    |
| The making of an administration order in accordance with paragraph 13 of Schedule B1 to the Insolvency Act 1986 in respect of a registered provider which is a registered company | The person who applied for the order | 35 |
| The appointment of an administrator under paragraph 14 or 22 of that Schedule in respect of a registered provider which is a registered company                                   | The person making the appointment    | 40 |

#### 142 Duration of moratorium

- (1) The moratorium begins when the step specified in section 141 is taken.

- 
- (2) The moratorium ends (unless extended or cancelled) with the period of 28 days beginning with the day on which the regulator receives notice under section 141(2).
- (3) During a moratorium the regulator may extend it (or further extend it) for a specified period, with the consent of each secured creditor of the registered provider. 5
- (4) If the regulator extends a moratorium it shall notify –
- (a) the registered provider,
  - (b) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land, and 10
  - (c) the HCA.
- (5) During a moratorium the regulator may cancel it if satisfied that it is unnecessary to make proposals under section 146.
- (6) Before cancelling a moratorium the regulator must consult the person who took the step that triggered it. 15
- (7) When a moratorium ends the regulator shall give notice, and (except in the case of cancellation) an explanation of section 143, to –
- (a) the registered provider, and
  - (b) its secured creditors.
- (8) When a moratorium ends the regulator shall also give notice to the HCA. 20
- (9) Taking a further step during a moratorium does not –
- (a) start a new moratorium, or
  - (b) alter the existing moratorium’s duration.
- 143 Further moratorium**
- (1) This section applies if – 25
- (a) a moratorium in respect of a registered provider ends otherwise than by cancellation, and
  - (b) a further step specified in section 141 is taken in relation to the provider within the period of 3 years beginning with the end of the moratorium.
- (2) The further step does not automatically trigger a further moratorium. 30
- (3) But the regulator may impose a further moratorium for a specified period, if each secured creditor of the registered provider consents.
- (4) If the regulator imposes a new moratorium it shall notify –
- (a) the registered provider,
  - (b) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or any of its land, and 35
  - (c) the HCA.
- (5) This group of sections applies to a further moratorium as to a first moratorium (except for section 142(2)).

#### 144 Effect of moratorium

- (1) During a moratorium the registered provider's land may be disposed of only with the regulator's prior consent (and a purported disposal without consent is void).
- (2) Section 145 sets out exceptions to subsection (1). 5
- (3) Consent—
  - (a) may be given before the moratorium begins, and
  - (b) may be subject to conditions.
- (4) This section does not prevent a liquidator from disclaiming land as onerous property during a moratorium. 10
- (5) In this section "land" includes a present or future interest in rent or other receipts arising from land.

#### 145 Exempted disposals

- (1) The regulator's consent is not required under section 144 for the following exceptions. 15
- (2) Exception 1 is a letting under—
  - (a) an assured tenancy, or
  - (b) an assured agricultural occupancy.
- (3) Exception 2 is a letting under what would be an assured tenancy or an assured agricultural occupancy but for any of paragraphs 4 to 8, 12(1)(h) and 12ZA to 12B of Schedule 1 to the Housing Act 1988 (c. 50) (tenancies which cannot be assured tenancies). 20
- (4) Exception 3 is a letting under a secure tenancy.
- (5) Exception 4 is a letting under what would be a secure tenancy but for any of paragraphs 2 to 12 of Schedule 1 to the Housing Act 1985 (c. 68) (tenancies which are not secure tenancies). 25
- (6) Exception 5 is a disposal to which section 81 or 133 of the Housing Act 1988 applies (disposals requiring Secretary of State's consent).
- (7) Exception 6 is a disposal under Part V of the Housing Act 1985 (right to buy).
- (8) Exception 7 is a disposal under the right conferred by section 16 of the Housing Act 1996 (c. 52) (tenant's right to acquire social housing). 30

#### 146 Proposals

- (1) During a moratorium the regulator may make proposals about the future ownership and management of the registered provider's land, with a view to ensuring that the property will be properly managed by a registered provider. 35
- (2) In making proposals the regulator shall—
  - (a) have regard to the interests of the registered provider's creditors as a whole, and
  - (b) so far as is reasonably practicable avoid worsening the position of unsecured creditors. 40

- 
- (3) Proposals may provide for the appointment of a manager in accordance with section 149 to implement all or part of the proposals.
- (4) Proposals may not include anything which would result in—
- (a) a preferential debt being paid otherwise than in priority to a non-preferential debt, or 5
  - (b) a preferential creditor (PC1) being paid a smaller proportion of a preferential debt than another preferential creditor (PC2) (unless PC1 consents).
- (5) Proposals relating to a registered provider which is a charity (C1)—
- (a) may not require it to act outside the terms of its trusts, and 10
  - (b) may provide for the disposal of accommodation only to another charity whose objects the regulator thinks are similar to those of C1.

#### **147 Proposals: procedure**

- (1) Before making proposals the regulator shall consult—
- (a) the registered provider, 15
  - (b) its tenants (so far as is reasonably practicable),
  - (c) if the registered provider is an industrial and provident society, the Financial Services Authority, and
  - (d) if the registered provider is a registered charity, the Charity Commission. 20
- (2) The regulator shall send a copy of proposals to—
- (a) the registered provider and its officers,
  - (b) its secured creditors, and
  - (c) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or any of its land. 25
- (3) The regulator shall also make arrangements for bringing proposals to the attention of—
- (a) the registered provider’s members,
  - (b) its tenants, and
  - (c) its unsecured creditors. 30
- (4) If each secured creditor of a registered provider agrees to proposals by notice to the regulator, the proposals have effect.
- (5) Proposals may be agreed with modifications if—
- (a) each secured creditor consents by notice to the regulator, and
  - (b) the regulator consents. 35
- (6) The regulator shall send a copy of agreed proposals to—
- (a) the registered provider and its officers,
  - (b) its secured creditors,
  - (c) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or any of its land, 40
  - (d) if the registered provider is an industrial and provident society, the Financial Services Authority, and
  - (e) if the registered provider is a registered charity, the Charity Commission.

- (7) The regulator shall also make arrangements for bringing agreed proposals to the attention of –
  - (a) the registered provider’s members,
  - (b) its tenants, and
  - (c) its unsecured creditors. 5
- (8) Proposals may be amended by agreement between the secured creditors and the regulator; and this section and section 146 apply to an amendment as to the original proposals.

**148 Proposals: effect**

- (1) The following are obliged to implement agreed proposals – 10
  - (a) the regulator,
  - (b) the registered provider,
  - (c) its creditors, and
  - (d) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or any of its land. 15
- (2) The following shall co-operate with implementation of agreed proposals –
  - (a) in the case of a charitable trust, its trustees,
  - (b) in the case of an industrial and provident society, its committee members, and
  - (c) in the case of a registered company, its directors. 20
- (3) Subsection (2) does not require or permit a breach of a fiduciary or other duty.

**149 Manager: appointment**

- (1) This section applies where agreed proposals provide for the appointment of a manager.
- (2) The proposals must provide for the manager to be paid reasonable remuneration and expenses. 25
- (3) The regulator shall appoint a manager.
- (4) The regulator may give the manager directions (general or specific).
- (5) The manager may apply to the High Court for directions (and directions of the regulator are subject to directions of the High Court). 30
- (6) If the registered provider is a charity, the regulator must notify the Charity Commission that a manager has been appointed.
- (7) The regulator may appoint a new manager in place of a person who ceases to be manager (in accordance with terms of appointment specified in the proposals or determined by the regulator). 35

**150 Manager: powers**

- (1) A manager –
  - (a) may do anything necessary for the purpose of the appointment,
  - (b) acts as the registered provider’s agent (and is not personally liable on a contract), and 40

- (c) has ostensible authority to act for the registered provider (so that a person dealing with the manager in good faith and for value need not inquire into the manager’s powers).
- (2) In particular, the terms of a manager’s appointment may confer power –
- (a) to sell or otherwise dispose of land by public auction or private contract; 5
  - (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; 10
  - (f) to take possession of property;
  - (g) to appoint a solicitor, accountant or other professional to assist the manager;
  - (h) to appoint agents and staff (and to dismiss them);
  - (i) to make payments; 15
  - (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; 20
  - (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; 25
  - (r) to do anything incidental to a power in paragraphs (a) to (q).
- (3) A manager shall so far as is reasonably practicable consult and inform the registered provider’s tenants about an exercise of powers likely to affect them.

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

- (1) This section applies to a manager appointed to implement proposals relating to an industrial and provident society. 30
- (2) The appointment may confer on the manager power to make and execute on behalf of the society an instrument transferring its engagements.
- (3) An instrument transferring engagements has the same effect as a transfer of engagements under section 51 and 52 of the Industrial and Provident Societies Act 1965 (c. 12) (transfer by special resolution to another society or company). 35
- (4) A copy of the instrument –
  - (a) shall be sent to and registered by the Financial Services Authority, and
  - (b) takes effect when registered.
- (5) The copy must be sent for registration during the period of 14 days beginning with the date of execution; but a copy registered after that period is valid. 40

## 152 Assistance by regulator

- (1) The regulator may give financial or other assistance to a registered provider for the purpose of preserving its position pending the agreement of proposals.
- (2) The regulator may give financial or other assistance to a registered provider, or a manager appointed under section 149, to facilitate the implementation of agreed proposals. 5
- (3) In particular, the regulator may –
  - (a) lend staff;
  - (b) arrange payment of the manager’s remuneration and expenses.
- (4) The regulator may do the following only with the Secretary of State’s consent – 10
  - (a) make grants,
  - (b) make loans,
  - (c) indemnify a manager,
  - (d) make payments in connection with secured loans, and 15
  - (e) guarantee payments in connection with secured loans.

## 153 Applications to court

- (1) A registered provider may apply to the High Court where the registered provider thinks that action taken by a manager is not in accordance with the agreed proposals. 20
- (2) A creditor of a registered provider may apply to the High Court where the creditor thinks that action taken by a manager is not in accordance with the agreed proposals.
- (3) The High Court may –
  - (a) confirm, annul or modify an act of the manager; 25
  - (b) give the manager directions;
  - (c) make any other order.
- (4) If a person bound by agreed proposals (P1) thinks that action by another person (P2) breaches section 148, P1 may apply to the High Court.
- (5) The High Court may – 30
  - (a) confirm, annul or modify the action;
  - (b) grant relief by way of injunction, damages or otherwise.

### *Restructuring and dissolution*

## 154 Company: arrangements and reconstructions

- (1) This section applies to a non-profit registered provider which is a registered company. 35
- (2) A voluntary arrangement under Part 1 of the Insolvency Act 1986 (c. 45) in relation to the company is effective only if the regulator has first consented.
- (3) An order under section 899 of the Companies Act 2006 (c. 46) (court sanction for compromise or arrangement) – 40

- 
- (a) is effective only if the regulator has first consented, and  
 (b) does not take effect until a copy of the consent is delivered to the registrar of companies.
- (4) An order under section 900 of the Companies Act 2006 (c. 46) (powers of court to facilitate reconstruction or amalgamation) is effective only if the regulator has first consented. 5
- (5) The requirement in section 900(6) of the Companies Act 2006 (c. 46) (sending copy of order to registrar) is satisfied only if the copy is accompanied by a copy of the regulator’s consent.
- 155 Company: conversion into industrial and provident society** 10
- (1) This section applies to a non-profit registered provider which is a registered company.
- (2) The registrar of companies may register a resolution under section 53 of the Industrial and Provident Societies Act 1965 (c. 12) for converting the company into an industrial and provident society only if – 15
- (a) the regulator has consented to the resolution, and  
 (b) a copy of the consent accompanies the resolution as sent to the registrar.
- (3) The regulator shall register the body created by the conversion and designate it as a non-profit organisation.
- (4) Pending registration the body shall be treated as if it were registered and designated as a non-profit organisation. 20
- 156 Company: winding up**
- (1) This section applies to a non-profit registered provider which is a registered company.
- (2) A special resolution for the voluntary winding-up of the company under the Insolvency Act 1986 (c. 45) is effective only if the regulator has first consented. 25
- (3) The requirement under section 30 of the Companies Act 2006 (c. 46) (sending copy of resolution to registrar) is satisfied only if the copy is accompanied by a copy of the regulator’s consent.
- 157 Industrial and provident society: restructuring** 30
- (1) This section applies to a non-profit registered provider which is a industrial and provident society.
- (2) The Financial Services Authority may register a resolution passed by the society for the purposes of restructuring provisions listed in subsection (3) only if – 35
- (a) the regulator has consented to the resolution, and  
 (b) a copy of the consent accompanies the resolution as sent to the Authority.
- (3) The following provisions of the Industrial and Provident Societies Act 1965 are the restructuring provisions – 40
- (a) section 50 (amalgamation of societies),

- (b) section 51 (transfer of engagements between societies), and
  - (c) section 52 of that Act (conversion into or amalgamation with registered company).
- (4) Where a resolution is registered in accordance with subsection (2), any body created or to whom engagements are transferred – 5
  - (a) must be registered by the regulator and designated as a non-profit organisation, and
  - (b) pending registration shall be treated as registered and designated as a non-profit organisation.
- 158 Industrial and provident society: winding up** 10
  - (1) This section applies to non-profit registered provider which is an industrial and provident society.
  - (2) A resolution for the voluntary winding-up of the society under the Insolvency Act 1986 (c. 45) is effective only if the regulator has first consented.
  - (3) The requirement in section 30 of the Companies Act 2006 (c. 46) (as applied by section 55 of the Industrial and Provident Societies Act 1965 and section 84(3) of the Insolvency Act 1986) (sending copy of resolution to FSA) is satisfied only if the copy is accompanied by a copy of the regulator’s consent. 15
- 159 Industrial and provident society: dissolution**
  - (1) This section applies to a non-profit registered provider which is – 20
    - (a) an industrial and provident society, and
    - (b) to be dissolved by instrument of dissolution in accordance with section 58 of the Industrial and Provident Societies Act 1965 (c. 12).
  - (2) The Financial Services Authority may register the instrument under section 58(5), or cause notice of the dissolution to be advertised under section 58(6), only if – 25
    - (a) the regulator has consented to the dissolution, and
    - (b) a copy of the consent accompanies the instrument as sent to the Authority.
- 160 Winding up petition by regulator** 30
  - (1) This section applies to a non-profit registered provider which is –
    - (a) a registered company, or
    - (b) an industrial and provident society.
  - (2) The regulator may present a petition for the registered provider to be wound up under the Insolvency Act 1986 on any of the following grounds. 35
  - (3) Ground 1 is that the registered provider is failing properly to carry out its objects.
  - (4) Ground 2 is that the registered provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
  - (5) Ground 3 is that the regulator has directed the registered provider under section 240 to transfer all its land to another person. 40

## **161 Transfer of property**

- (1) This section applies –
  - (a) where a non-profit registered provider which is an industrial and provident society is dissolved in accordance with section 55(a) or (b) of the Industrial and Provident Societies Act 1965 (c. 12), and 5
  - (b) where a non-profit registered provider which is a registered company is wound up under the Insolvency Act 1986 (c. 45).
- (2) Any surplus property that is available after satisfying the registered provider’s liabilities shall be transferred –
  - (a) to the regulator, or 10
  - (b) if the regulator directs, to a specified registered provider.
- (3) If land belonging to the registered provider needs to be sold to satisfy its liabilities, the regulator may discharge those liabilities so as to ensure that the land is instead transferred in accordance with subsection (2).
- (4) Where the registered provider dissolved or wound up is a charity, a registered provider may be specified under subsection (2)(b) only if it is a charity whose objects the regulator thinks are similar to those of the original charity. 15
- (5) This section has effect despite anything in –
  - (a) the Industrial and Provident Societies Act 1965,
  - (b) the Insolvency Act 1986,
  - (c) the Companies Act 2006 (c. 46), or
  - (d) the constitution of a registered provider. 20

## **162 Section 161: supplemental**

- (1) This section applies to property transferred to the regulator in accordance with section 161(2)(a). 25
- (2) The regulator may dispose of the property only to a registered provider.
- (3) Where the registered provider wound up or dissolved was a charity, the regulator may dispose of the property only to a registered provider –
  - (a) which is a charity, and
  - (b) whose objects the regulator thinks are similar to those of the original charity. 30
- (4) If the property includes land subject to a mortgage or charge, the regulator may dispose of the land –
  - (a) subject to that mortgage or charge, or
  - (b) subject to a new mortgage or charge in favour of the regulator. 35

## **163 Extension of sections 161 and 162**

The Secretary of State may by regulations provide for sections 161 and 162 to apply in relation to a registered provider which is a charity but not a registered company –

- (a) in specified circumstances, and 40
- (b) with specified modifications.

## CHAPTER 5

### DISPOSAL OF PROPERTY

#### *Introductory*

#### **164 Overview**

This Chapter makes provision about the disposal of property by registered providers. 5

#### **165 Power to dispose**

- (1) A registered provider may dispose of land.
- (2) Subsection (1) is subject to the following provisions of this Chapter (which include provisions requiring the regulator’s consent for certain disposals). 10

#### *Regulator’s consent*

#### **166 Requirement of consent**

- (1) Any disposal of land by a non-profit registered provider requires the regulator’s consent unless it falls within an exception.
- (2) Any disposal of social housing by a profit-making registered provider requires the regulator’s consent unless it falls within an exception. 15
- (3) The regulator shall not consent to a disposal by a non-profit registered provider which it thinks is being made with a view to enabling the provider to distribute assets to members.
- (4) The exceptions are listed in section 167. 20

#### **167 Exceptions**

- (1) This section lists exceptions to the requirement of consent in section 166.
- (2) Exception 1 is that consent is not required for disposal by a non-profit registered provider by way of—
  - (a) an assured tenancy, 25
  - (b) an assured agricultural occupancy,
  - (c) an arrangement that would be an assured tenancy or an assured agricultural occupancy but for any of paragraphs 4 to 8, 12(1)(h) and 12ZA to 12B of Schedule 1 to the Housing Act 1988 (exclusions),
  - (d) a secure tenancy, or 30
  - (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).
- (3) Exception 2 is that consent is not required for a disposal to which section 81 or 133 of the Housing Act 1988 applies (disposals requiring consent).
- (4) Exception 3 is that consent is not required for a disposal under Part V of the Housing Act 1985 (right to buy). 35

- (5) Exception 4 is that consent is not required for a disposal in pursuance of a tenant’s right to acquire under section 16 of the Housing Act 1996 (c. 52) (as applied by section 172).

### **168 Procedure**

- (1) Consent may be – 5  
 (a) general, or  
 (b) specific (whether as to particular registered providers, as to particular property, as to particular forms of disposal or in any other way).
- (2) Consent may be retrospective.
- (3) Consent may be expressed by reference to a policy for disposals submitted by a registered provider. 10
- (4) Consent may be conditional.
- (5) Before giving consent the regulator must consult –  
 (a) the HCA,  
 (b) one or more bodies appearing to it to represent the interests of registered providers, and 15  
 (c) one or more bodies appearing to it to represent the interests of tenants.
- (6) Subsection (5) does not apply to specific consent relating only to one or more particular registered providers or properties.

### **169 Disposal without consent** 20

- (1) A purported disposal by a registered provider is void if –  
 (a) it requires the regulator’s consent, and  
 (b) the regulator has not given consent.
- (2) But subsection (1) does not apply to a disposal by a non-profit registered provider if either of the following cases applies. 25
- (3) Case 1 applies where the disposal is of land other than a dwelling.
- (4) Case 2 applies where the disposal is to one or more individuals (“the buyer”) if –  
 (a) the disposal is of a single dwelling, and  
 (b) the registered provider reasonably believes at the time of the disposal that the buyer intends to use the property as the buyer’s principal residence. 30

#### *Proceeds*

### **170 Separate accounting**

- (1) The accounts of a registered provider must show its net disposal proceeds, as a separate “disposal proceeds fund”. 35
- (2) The following are net disposal proceeds –  
 (a) net proceeds of sale to a tenant in pursuance of the right to acquire conferred by section 16 of the Housing Act 1996,

- (b) net proceeds of sale of property in respect of which a grant was made under section 21 of that Act,
  - (c) net proceeds of sale of property in respect of which a grant was made under section 22 of this Act in respect of discounts given by a registered provider on disposals of dwellings to tenants, 5
  - (d) grant received under section 20 or 21 of the 1996 Act,
  - (e) grant received under section 22 of this Act in respect of discounts given by a registered provider on disposals of dwellings to tenants,
  - (f) repayments of discount in respect of which grant was received under section 20 or 21 of the 1996 Act, 10
  - (g) repayments of discount in respect of which grant was received under section 22 of this Act in respect of discounts given by a registered provider on disposals of dwellings to tenants,
  - (h) other proceeds of sale specified by the regulator, and
  - (i) other grants specified by the regulator. 15
- (3) The regulator shall determine amounts to be deducted in determining net proceeds of sale.
- (4) The method of constituting the disposal proceeds fund and showing it in the accounts shall be in accordance with a direction of the regulator.
- (5) Subsections (4) to (6) of section 127 apply to a direction under this section as to a direction under that section. 20
- (6) Sections 136 and 137 apply in relation to a direction under this section as in relation to a direction under section 127.
- (7) Interest shall be added to the fund in accordance with a determination made by the regulator. 25

### 171 Use of proceeds

- (1) Sums in a registered provider's disposal proceeds fund may be used or allocated only in accordance with a direction by the regulator.
- (2) If at the end of a period specified by the regulator the disposal proceeds fund includes sums which have not been allocated in accordance with subsection (1), the regulator may require the registered provider to pay the sums to the HCA. 30

### *Tenants' rights and duties*

### 172 Application of Housing Act 1996

- (1) The following provisions of the Housing Act 1996 (c. 52) shall continue to have effect in relation to social housing in England, with the modifications set out in subsection (3) (and any other necessary modifications). 35
- (2) The provisions are –
- (a) sections 11 to 12 (repayment of discount on disposal),
  - (b) sections 12A and 12B (landlord's right of first refusal), 40
  - (c) section 13 (disposal of property in National Park),
  - (d) sections 14 and 15 (supplemental), and
  - (e) sections 16 to 17 (tenant's right to acquire).

- (3) The provisions have effect with the following substitutions –

| <i>Existing reference</i>  | <i>Substituted reference</i> |
|----------------------------|------------------------------|
| Registered social landlord | Registered provider          |
| Relevant Authority         | The regulator                |

*Miscellaneous*

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**173 Unregistered housing associations**

- (1) Part 1 of the Housing Associations Act 1985 (c. 69) (regulation of housing associations) is amended as follows.
- (2) In the following provisions for “the Housing Corporation” substitute “the Regulator of Social Housing” –
- (a) section 9(1A)(a) and (6)(a) (control of dispositions by unregistered housing associations), and
- (b) section 10(1)(a) (section 9: exceptions).

10

**174 Former registered providers**

Where a person ceases to be a registered provider, sections 165 to 169 continue to apply in respect of any property owned by the person at any time when it was registered.

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**175 Trustees**

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

20

**176 Charities**

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

*Consents under other legislation*

**177 Consent to disposals under other legislation**

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

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

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**178 Section 177: consequential amendments**

- (1) In section 171D of the Housing Act 1985 (consent to certain disposals of housing obtained subject to the preserved right to buy) –
- (a) in subsection (2) (consent) for “Secretary of State” substitute “appropriate authority”, and 5
  - (b) after that subsection insert –
    - “(2A) “The appropriate authority” means –
      - (a) in relation to a disposal of land in England by a registered provider of social housing, the Regulator of Social Housing, 10
      - (b) in relation to any other disposal of land in England, the Secretary of State, and
      - (c) in relation to a disposal of land in Wales, the Welsh Ministers.”
- (2) In section 81 of the Housing Act 1988 (consent to certain disposals of housing obtained from housing action trusts) – 15
- (a) in subsection (3) (consent) for “Secretary of State” substitute “appropriate authority”,
  - (b) after that subsection insert –
    - “(3A) In this section “the appropriate authority” means – 20
      - (a) in relation to a disposal of land in England by a registered provider of social housing, the Regulator of Social Housing,
      - (b) in relation to any other disposal of land in England, the Secretary of State, and 25
      - (c) in relation to a disposal of land in Wales, the Welsh Ministers.”,
  - (c) in subsection (5) (consultation of tenants) for “Secretary of State” substitute “appropriate authority”,
  - (d) in subsection (5)(a) for “himself” substitute “itself”, and 30
  - (e) omit subsection (6) (consultation of Housing Corporation).
- (3) In section 133 of that Act (consent to certain disposals of housing obtained from local authorities) –
- (a) in subsection (1) (consent) for “Secretary of State” substitute “appropriate authority”, 35
  - (b) after that subsection insert –
    - “(1ZA) In this section “the appropriate authority” means –
      - (a) in relation to a disposal of land in England by a registered provider of social housing, the Regulator of Social Housing, 40
      - (b) in relation to any other disposal of land in England, the Secretary of State, and
      - (c) in relation to a disposal of land in Wales, the Welsh Ministers.”,
  - (c) in subsection (3)(c) (modification of certain provisions applied for the purposes of section 133) after “this section,” insert “any reference to the appropriate national body shall be construed as a reference to the appropriate authority and”, 45

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

## CHAPTER 6

5

### REGULATORY POWERS

#### 179 Overview

This Chapter –

- (a) allows the regulator to set standards for the provision of social housing (sections 180 to 185), 10
- (b) gives the regulator powers to monitor compliance (sections 186 to 196),
- (c) gives the regulator a degree of control over the governance of non-profit registered providers (sections 197 to 200),
- (d) allows the regulator to give guidance to registered providers (sections 201 to 202), and 15
- (e) allows the regulator to arrange for the accreditation of managers of social housing (section 203).

#### *Standards*

#### 180 Provision of social housing

- (1) The regulator may set standards for registered providers as to – 20
  - (a) the nature and extent of the social housing to be provided by them, and
  - (b) the nature, extent and quality of accommodation, facilities or services provided by them in connection with social housing.
- (2) Standards under subsection (1) may, in particular, require registered providers to comply with specified rules about – 25
  - (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 levels of increase or decrease of rent), 30
  - (f) maintenance,
  - (g) procedures for addressing complaints by tenants against landlords,
  - (h) methods for consulting and informing tenants, 35
  - (i) methods of enabling tenants to influence or control the management of their accommodation and environment,
  - (j) policies and procedures required by section 218A of the Housing Act 1996 (c. 52) in connection with anti-social behaviour,
  - (k) landlords’ contribution to the environmental, social and economic well-being of the areas in which their property is situated, and 40
  - (l) estate management.

### 181 Management

- (1) The regulator may set standards for registered providers in matters relating to the management of their financial and other affairs.
- (2) In respect of profit-making registered providers, standards may be made in relation to the management of their affairs only so far as relating to the provision of social housing. 5

### 182 Code of practice

- (1) The regulator may issue a code of practice which—
  - (a) relates to a matter addressed by a standard, and
  - (b) amplifies the standard. 10
- (2) In considering whether standards have been met the regulator may have regard to a code of practice.
- (3) The regulator may revise or withdraw a code of practice.
- (4) The regulator shall make arrangements for bringing a code of practice to the attention of registered providers. 15

### 183 Consultation

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

- (a) one or more bodies appearing to it to represent the interests of registered providers, 20
- (b) one or more bodies appearing to it to represent the interests of secured creditors of registered providers,
- (c) one or more bodies appearing to it to represent the interests of tenants of social housing, 25
- (d) the HCA, and
- (e) the Secretary of State.

### 184 Direction by Secretary of State

- (1) The Secretary of State may direct the regulator—
  - (a) to set a standard under section 180, or 30
  - (b) about the content of standards under section 180.
- (2) In deciding whether to give a direction the Secretary of State shall, in particular, have regard to the regulator’s fundamental objectives.
- (3) Before giving a direction the Secretary of State must consult—
  - (a) the regulator, 35
  - (b) the HCA,
  - (c) one or more bodies appearing to the Secretary of State to represent the interests of tenants of social housing, and
  - (d) one or more bodies appearing to the Secretary of State to represent the interests of registered providers. 40

- 
- (4) A direction may disapply the requirement to consult under section 183 in relation to specified matters.
  - (5) The regulator shall comply with any direction.
  - (6) The Secretary of State shall publish—
    - (a) each proposed direction that is the subject of a consultation, 5
    - (b) each response to a consultation, and
    - (c) each direction.

### **185 Supplemental**

- (1) Failure to meet a standard is a ground for exercising a power in this Chapter or Chapter 7. 10
- (2) The regulator shall make arrangements for bringing standards to the attention of registered providers.
- (3) The regulator may revise or withdraw standards; and section 183 applies to revising or withdrawing standards as to setting standards.
- (4) Standards may be expressed by reference to documents prepared by others. 15
- (5) Standards—
  - (a) may make provision generally or only in relation to specified cases, circumstances or areas, and
  - (b) may make different provision for different cases, circumstances or areas. 20

### *Monitoring*

### **186 Survey**

- (1) This section applies where the regulator suspects that a registered provider may be failing to maintain premises in accordance with standards under section 180. 25
- (2) The regulator may arrange for a survey of the condition of the premises by an authorised person.
- (3) In subsection (2) “authorised person” means a member of the regulator’s staff, or another person, authorised in writing by the regulator for the purposes of this section. 30
- (4) An authorised person may enter the premises at any reasonable time and carry out the survey.
- (5) Before carrying out the survey an authorised person must give the registered provider at least 28 days’ notice.
- (6) A registered provider who receives notice of a survey must give each occupier of the premises at least 7 days’ notice. 35
- (7) After carrying out a survey an authorised person must produce a written report.
- (8) The regulator must give the registered provider a copy of the report.

### 187 Survey: supplemental

- (1) An authorised person carrying out a survey, or seeking to enter premises in order to carry out a survey, must produce a copy of the authorisation on request by an occupier.
- (2) The regulator may require the registered provider to pay some or all of the costs of the survey and report. 5
- (3) A registered provider who fails without reasonable excuse to comply with section 186(6) commits an offence.
- (4) A registered provider, or an officer of a registered provider, who obstructs an authorised person in exercising a power under section 186 commits an offence. 10
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) Proceedings for an offence under this section may be brought only by or with the consent of –
  - (a) the regulator, or
  - (b) the Director of Public Prosecutions. 15

### 188 Inspection

- (1) The regulator may arrange for an inspector to inspect –
  - (a) a registered provider’s performance of its functions in relation to the provision of social housing, or
  - (b) the financial or other affairs of a registered provider. 20
- (2) “Inspector” means one or more members of the regulator’s staff, or other persons, authorised in writing by the regulator for the purposes of conducting the inspection.
- (3) After carrying out an inspection an inspector must produce a written report. 25
- (4) The regulator –
  - (a) must give the registered provider a copy of the report, and
  - (b) may publish the report and related information.
- (5) An inspection may be general or specific.
- (6) The Secretary of State may by order authorise the regulator to charge fees for inspections. 30
- (7) An inspected registered provider must pay any fee charged.
- (8) Before making an order the Secretary of State shall consult –
  - (a) the regulator,
  - (b) one or more bodies appearing to the Secretary of State to represent the interests of registered providers,
  - (c) the Audit Commission for Local Authorities and the National Health Service in England, and
  - (d) such other persons as the Secretary of State thinks appropriate. 35
- (9) The regulator shall prescribe a scale of fees for inspections, having consulted –
  - (a) the Secretary of State, and 40

- (b) one or more bodies appearing to the regulator to represent the interests of registered providers.

### **189 Inspector’s powers**

- (1) An inspector appointed under section 188 may by notice require a person to provide specified documents or information. 5
- (2) The power under subsection (1) may be exercised only in relation to documents and information of a kind in respect of which the regulator can impose a requirement under section 108.
- (3) Sections 108(3) to (7) and 109 apply for the purposes of subsection (1) (with any necessary modifications). 10
- (4) An inspector may at any reasonable time –
- (a) enter premises occupied by the registered provider which is being inspected, and
- (b) inspect, copy or take away documents found there.
- (5) An inspector may require any person on the premises to provide such facilities or assistance as the inspector reasonably requests. 15
- (6) It is an offence for a person without reasonable excuse to obstruct an inspector exercising the powers conferred by subsection (4) or (5).
- (7) A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 20
- (8) Proceedings for an offence may be brought only by or with the consent of –
- (a) the regulator, or
- (b) the Director of Public Prosecutions.

### **190 Performance information**

- (1) The regulator may require a registered provider – 25
- (a) to prepare an annual report assessing the provider’s performance by reference to standards under section 180 or 181, and
- (b) to send the report to the regulator within a specified period.
- (2) A requirement may specify matters to be covered by a report.
- (3) Failure to comply with a requirement without reasonable excuse is an offence. 30
- (4) A person guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Proceedings for an offence may be brought only by or with the consent of –
- (a) the regulator, or
- (b) the Director of Public Prosecutions. 35

### **191 Publication of performance information**

- (1) The regulator shall publish, at least once a year, information about the performance of registered providers.
- (2) In particular, the regulator shall include information likely to be useful to –

- (a) tenants,
- (b) potential tenants, and
- (c) local authorities.

## **192 Inquiry**

- (1) If the regulator suspects that the affairs of a registered provider may have been mismanaged, the regulator may hold an inquiry. 5
- (2) The regulator shall appoint one or more individuals to conduct the inquiry.
- (3) The individual conducting the inquiry, or at least one of them, must be independent of the regulator.
- (4) Individuals are independent of the regulator if they and the members of their family – 10
  - (a) are not members or employees of the regulator, and
  - (b) have not been members or employees of the regulator within the previous five years.

## **193 Inquiry: supplemental**

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- (1) The individual or individuals conducting an inquiry (“the inquirer”) shall determine its procedure.
- (2) The inquirer may consider affairs of a body which at the material time was a subsidiary or associate of the registered provider.
- (3) The inquirer may make interim reports. 20
- (4) The inquirer shall make a final report on matters specified by the regulator.
- (5) The regulator may arrange for the publication of all or part of an interim or final report.
- (6) A local authority may contribute to the regulator’s expenses in connection with an inquiry. 25

## **194 Inquiry: evidence**

- (1) The inquirer may by notice require a person to provide specified documents or information.
- (2) The notice may, in particular, require evidence to be given on oath (and the inquirer may administer oaths for that purpose). 30
- (3) The power under subsection (1) may be exercised only in relation to documents and information of a kind in respect of which the regulator can impose a requirement under section 108.
- (4) Sections 108(3) to (7) and 109 apply for the purposes of this section (with any necessary modifications). 35

## **195 Inquiry: charities**

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

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

**196 Extraordinary audit** 5

- (1) Where an inquiry in respect of a registered provider is being held, or has been held, under section 192, the regulator may require the registered provider to allow its accounts and balance sheet to be audited by a qualified auditor appointed by the regulator.
- (2) “Qualified auditor” means a person eligible for appointment as auditor of the registered provider’s ordinary accounts. 10
- (3) On completion of the audit, the auditor shall report to the regulator about such matters and in such form as the regulator determines.
- (4) The revenue accounts of a registered charity may be audited under this section only insofar as they relate to its housing activities. 15
- (5) The registered provider shall pay the costs of the audit (including the auditor’s remuneration).

*Management and constitution*

**197 Non-profit providers only** 20

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

**198 Industrial and provident society: change of rules** 25

- (1) This section applies to an industrial and provident society.
- (2) The society must notify the regulator if it changes its –
  - (a) name, or
  - (b) registered office. 25
- (3) Any other amendment of the society’s rules is effective only if the regulator has first consented.
- (4) The requirement in section 10(1) of the Industrial and Provident Societies Act 1965 (c. 12) (sending copies of amendment of rules to FSA) is satisfied only if the copies are accompanied by a copy of the regulator’s consent. 30
- (5) This section shall be treated as if it formed part of that Act as well as of this Act.

**199 Charity: change of objects** 35

- (1) This section applies to a registered charity which is not a registered company.
- (2) An amendment of the charity’s objects is effective only if the Charity Commission has first consented. 35
- (3) Before giving consent the Charity Commission must consult the regulator.

## 200 Companies: change of articles

- (1) This section applies to a registered company.
- (2) The company must notify the regulator if it changes its –
  - (a) name, or
  - (b) registered office. 5
- (3) An amendment of the company’s articles of association is effective only if the regulator has first consented.
- (4) The regulator may not consent to an amendment which it thinks would turn the company into a profit-making organisation.
- (5) The requirement in section 30 of the Companies Act 2006 (c. 46) (sending copy of resolution to registrar) is satisfied only if the copy is accompanied by a copy of the regulator’s consent. 10

### *Guidance*

## 201 Use of intervention powers

- (1) The regulator shall give registered providers guidance on how it uses and intends to use powers under this Chapter and Chapter 7. 15
- (2) The regulator shall have regard to the guidance in exercising those powers.

## 202 Consultation

- Before giving guidance the regulator must consult –
- (a) one or more bodies appearing to it to represent the interests of registered providers, 20
  - (b) one or more bodies appearing to it to represent the interests of tenants, and
  - (c) the HCA.

### *Managers of social housing* 25

## 203 Accreditation

- (1) The regulator may operate a scheme for the purpose of accrediting persons who provide services in connection with the management of social housing.
- (2) The regulator may approve a scheme operated by someone else for that purpose. 30
- (3) Approval may be withdrawn.
- (4) A scheme may include provision about –
  - (a) eligibility for accreditation;
  - (b) standards to be met by accredited persons (which may operate by reference to standards under section 180); 35
  - (c) monitoring compliance;
  - (d) complaints against accredited persons;
  - (e) renewal, suspension and withdrawal of accreditation.

- (5) Accreditation, or continued accreditation, may be conditional on the payment of fees.
- (6) Standards under section 180 may refer to accreditation under this section.

## CHAPTER 7

### ENFORCEMENT POWERS

5

#### *Enforcement notice*

#### **204 Overview**

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

#### **205 Grounds for giving notice**

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- (1) The regulator may give an enforcement notice to a registered provider if the regulator is satisfied that—
  - (a) any of the following cases applies, and
  - (b) giving an enforcement notice is appropriate (whether it is likely to be sufficient in itself or a prelude to further action).
- (2) Case 1 is where the registered provider has failed to meet a standard under section 180 or 181.
- (3) Case 2 is where the affairs of the registered provider have been mismanaged.
- (4) Case 3 is where the registered provider has failed to comply with an earlier enforcement notice.
- (5) Case 4 is where the registered provider has failed to publish information in accordance with a requirement under section 215(3) or 227(3).
- (6) Case 5 is where the interests of tenants of the registered provider require protection.
- (7) Case 6 is where the assets of the registered provider require protection.
- (8) Case 7 is where the registered provider has given an undertaking under section 125 and failed to comply with it.
- (9) Case 8 is where the registered provider has failed to pay an annual fee under section 117(2).
- (10) Case 9 is where an offence under this Part has been committed by the registered provider.
- (11) Where the regulator is satisfied that an offence under this Part has been committed in respect of a registered provider but by another person (such as a member, employee or agent of the registered provider)—
  - (a) Case 9 applies,
  - (b) the regulator may give an enforcement notice to the other person, and
  - (c) this Chapter applies with the substitution of references to that other person for references to the registered provider.

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## 206 Content

- (1) An enforcement notice must –
  - (a) specify the grounds on which it is given,
  - (b) specify the action the regulator wants the registered provider to take in response to the notice, 5
  - (c) specify when the action is to be taken (which may be immediately on receipt of the notice), and
  - (d) explain the effect of sections 210 to 212.
- (2) The action specified in an enforcement notice may include publishing the notice in a specified manner. 10

## 207 Warning

- (1) Before giving an enforcement notice to a registered provider the regulator must give the provider a notice (a “pre-enforcement warning”) –
  - (a) specifying grounds on which the regulator thinks an enforcement notice could be given, 15
  - (b) warning the provider that the regulator is considering giving an enforcement notice in respect of specified matters,
  - (c) specifying the action that the enforcement notice might require the registered provider to take, and
  - (d) explaining the effect of sections 208 to 212. 20
- (2) If the regulator gives a pre-enforcement warning it must send a copy to –
  - (a) the HCA, and
  - (b) any other persons it thinks appropriate.
- (3) For the purposes of subsection (2)(b) the regulator shall consider, in particular, any person who provided information as a result of which the pre-enforcement warning is given. 25
- (4) A pre-enforcement warning must –
  - (a) refer to section 125 (voluntary undertaking), and
  - (b) indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, an enforcement notice. 30
- (5) A pre-enforcement warning may be combined with notice under one or more of sections 217, 229, 235, 237 and 239.

## 208 Representations

- (1) A pre-enforcement warning must specify a period during which the registered provider may make representations to the regulator. 35
- (2) The period must –
  - (a) be a period of at least 28 days, and
  - (b) begin with the date on which the registered provider receives the pre-enforcement warning. 40
- (3) After the end of the period the regulator shall –
  - (a) consider any representations made, and
  - (b) decide whether to give an enforcement notice.

**209 Notifying HCA**

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

**210 Appeal**

A registered provider who is given an enforcement notice may appeal to the High Court. 5

**211 Withdrawal**

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

**212 Sanction**

- (1) If a registered provider does not comply with an enforcement notice the regulator shall consider exercising another power under Chapter 6 or this Chapter. 10
- (2) In the case of an enforcement notice given to a person other than the registered provider by virtue of section 205(11), the regulator may only –
  - (a) exercise the power to issue a penalty notice to the person in accordance with the next group of sections, or 15
  - (b) take steps to have the person prosecuted for the offence by reference to which the enforcement notice was given.
- (3) A person to whom an enforcement notice is given on the ground in Case 9 of section 205 may not be prosecuted for the offence by reference to which the enforcement notice was given unless the person fails to comply with the enforcement notice. 20

*Penalty***213 Overview**

This group of sections allows the regulator to penalise failures on the part of registered providers by the imposition of fines. 25

**214 Grounds for imposition**

- (1) The regulator may require a registered provider to pay a penalty if the regulator is satisfied that –
  - (a) any of the following cases applies, and 30
  - (b) the imposition of a penalty is appropriate (whether or not as part of a response including other action).
- (2) Case 1 is where the registered provider has failed to meet a standard under section 180 or 181.
- (3) Case 2 is where the affairs of the registered provider have been mismanaged. 35
- (4) Case 3 is where the registered provider has failed to comply with an enforcement notice.

- (5) Case 4 is where the registered provider has given an undertaking under section 125 and failed to comply with it.
- (6) Case 5 is where the registered provider has failed to pay an annual fee under section 117(2).
- (7) Case 6 is where an offence under this Part has been committed by the registered provider. 5
- (8) Where the regulator is satisfied that an offence under this Part has been committed in respect of a registered provider but by another person (such as a member, employee or agent of the registered provider) – 10
  - (a) Case 6 applies,
  - (b) the regulator may require the other person to pay a penalty, and
  - (c) this Chapter applies with the substitution of references to that other person for references to the registered provider.
- (9) In order to rely on Case 6 the regulator must be satisfied beyond reasonable doubt that it applies. 15

## 215 Imposition

- (1) A penalty is imposed by the regulator giving notice (a “penalty notice”) to the registered provider.
- (2) The notice must specify – 20
  - (a) the grounds on which the penalty is imposed,
  - (b) the amount of the penalty,
  - (c) how the penalty must be paid,
  - (d) a period within which it must be paid, and
  - (e) any interest or additional penalty which, by virtue of section 221(2), is payable in the event of late payment. 25
- (3) The notice may require the registered provider to publish information about the penalty in a specified manner.
- (4) The notice must explain the effect of sections 221(1), (3) and (6) and 222.
- (5) The Secretary of State – 30
  - (a) shall make regulations about the period under subsection (2)(d),
  - (b) may make other regulations about the form and content of a penalty notice, and
  - (c) may make regulations about the manner in which a penalty notice is given.

## 216 Amount

- (1) The amount of a penalty imposed on the ground specified in Case 6 of section 214 may not exceed the maximum amount of fine that a magistrates’ court could impose for the relevant offence.
- (2) The amount of a penalty imposed on the ground specified in any other Case of that section may not exceed £5,000. 40
- (3) The Secretary of State may by order amend the amount specified in subsection (3).

## 217 Warning

- (1) Before giving a penalty notice to a registered provider the regulator must give the provider a notice (a “pre-penalty warning”) –
  - (a) specifying grounds on which the regulator thinks a penalty could be imposed, 5
  - (b) warning the provider that the regulator is considering imposing a penalty,
  - (c) including any indication that the regulator is able to give of the likely amount of any penalty, and
  - (d) explaining the effect of sections 218 to 222. 10
- (2) If the regulator gives a pre-penalty warning it must send a copy to –
  - (a) the HCA, and
  - (b) any other persons it thinks appropriate.
- (3) For the purposes of subsection (2)(b) the regulator shall consider, in particular, any person who provided information as a result of which the pre-penalty warning is given. 15
- (4) A pre-penalty warning must –
  - (a) refer to section 125 (voluntary undertaking), and
  - (b) indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, a penalty. 20
- (5) A pre-penalty warning may be combined with notice under one or more of sections 207, 229, 235, 237 and 239.

## 218 Representations

- (1) A pre-penalty warning must specify a period during which the registered provider may make representations to the regulator. 25
- (2) The period must –
  - (a) be a period of at least 28 days, and
  - (b) begin with the date on which the registered provider receives the pre-penalty warning.
- (3) Representations may concern – 30
  - (a) whether a penalty should be imposed;
  - (b) the amount of any penalty that may be imposed.
- (4) After the end of the period specified under subsection (1) the regulator shall –
  - (a) consider any representations made, and
  - (b) decide whether to impose a penalty. 35

## 219 Notifying HCA

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

## 220 Destination

- (1) This section applies where the regulator receives money by way of penalty. 40

- (2) The regulator may deduct a sum which represents –
  - (a) the direct costs to the regulator of imposing and enforcing the penalty, and
  - (b) a reasonable share of expenditure by the regulator which is indirectly referable to the imposition and enforcement of the penalty. 5
- (3) Any excess shall be paid to the HCA, to be used for purposes which appear to it to amount to investment in social housing.

## **221 Enforcement**

- (1) A penalty shall be treated as a debt owed to the regulator.
- (2) The Treasury may make regulations authorising the regulator – 10
  - (a) to charge interest on penalty not paid during the period specified under section 215(2)(d);
  - (b) to impose one or more additional penalties where a penalty is not paid during that period.
- (3) Interest and additional penalty shall be treated as penalty (and may have the effect of increasing the penalty above a limit set by section 216). 15
- (4) Regulations under subsection (2)(a) may provide for an interest rate to be –
  - (a) set by a specified person, or
  - (b) determined in accordance with the regulations.
- (5) A penalty notice may include provision allowing a discount if the penalty is paid on or before a date specified in the notice (falling within the period specified under section 215(2)(d)). 20
- (6) A person to whom a penalty notice is given on the ground in Case 6 of section 214 may not be prosecuted for the offence by reference to which the penalty notice was given. 25

## **222 Appeal**

A registered provider who is given a penalty notice may appeal to the High Court against –

- (a) the imposition of the penalty,
- (b) its amount, or
- (c) both. 30

## *Compensation*

## **223 Overview**

This group of sections allows the regulator to award compensation to a victim of a failure on the part of a registered provider. 35

## **224 Grounds for award**

- (1) The regulator may require a registered provider to pay compensation if the regulator is satisfied that –
  - (a) either of the following cases applies, and

- (b) the award of compensation is appropriate (whether or not as part of a response including other action).
- (2) Case 1 is where the registered provider has failed to meet a standard under section 180 or 181.
- (3) Case 2 is where the registered provider has given an undertaking under section 125 and failed to comply with it. 5

## 225 Nature

- (1) Compensation in respect of a failure may be awarded to one or more persons who have suffered as a result of the failure.
- (2) But an award may be made only to – 10
  - (a) a specified tenant or occupier of social housing provided by the registered provider,
  - (b) each member of a specified class of tenants or occupiers of social housing provided by the registered provider, or
  - (c) each member of the class of tenants and occupiers of social housing provided by the registered provider. 15

## 226 Social housing ombudsman compensation

- (1) The regulator may not award compensation to a person in respect of a matter if an ombudsman appointed by virtue of section 124 has awarded compensation to the person in respect of the matter. 20
- (2) But if compensation awarded by an ombudsman by virtue of section 124 has not been paid as required, the regulator may award compensation.

## 227 Imposition

- (1) Compensation is awarded by the regulator giving notice (a “compensation notice”) to – 25
  - (a) the registered provider, and
  - (b) the person to be compensated.
- (2) The notice must specify –
  - (a) the grounds on which the compensation is awarded,
  - (b) the amount of the compensation, 30
  - (c) the person to be compensated,
  - (d) any interest or additional compensation which, by virtue of section 231(2), is payable in the event of late payment, and
  - (e) a period within which it must be paid.
- (3) The notice may require the registered provider to publish information about the compensation award in a specified manner. 35
- (4) The notice must explain the effect of sections 231(1) and (3) and 232.
- (5) The Secretary of State –
  - (a) shall make regulations about the period under subsection (2)(e),
  - (b) may make other regulations about the form and content of a compensation notice, and 40

- (c) may make regulations about the manner in which a compensation notice is given.

## 228 Impact

- (1) This section applies when the regulator is considering –
  - (a) whether to award compensation, or 5
  - (b) the amount of compensation to award.
- (2) The regulator must take account of any information available to it about the financial situation of the registered provider.
- (3) The regulator must consider the likely impact of the compensation on the registered provider’s ability to provide services. 10
- (4) In particular, the regulator must aim to avoid –
  - (a) jeopardising the financial viability of the registered provider,
  - (b) preventing the registered provider from honouring financial commitments, or
  - (c) preventing the registered provider from taking action to remedy the matters on the grounds of which the compensation might be awarded. 15

## 229 Warning

- (1) Before giving a compensation notice to a registered provider the regulator must give the provider a notice (a “pre-compensation warning”) –
  - (a) specifying grounds on which the regulator thinks compensation could be awarded, 20
  - (b) warning the provider that the regulator is considering awarding compensation to a specified person,
  - (c) including any indication that the regulator is able to give of the likely amount of any compensation, and 25
  - (d) explaining the effect of sections 230 to 232.
- (2) Before giving a pre-compensation warning the regulator must consult the person appointed by virtue of section 124 as the ombudsman for the scheme of which the registered provider is a member.
- (3) If the regulator gives a pre-compensation warning it must send a copy to – 30
  - (a) the HCA, and
  - (b) any other persons it thinks appropriate.
- (4) For the purposes of subsection (3)(b) the regulator shall consider, in particular, any person who provided information as a result of which the pre-compensation warning is given. 35
- (5) A pre-compensation warning must –
  - (a) refer to section 125 (voluntary undertaking), and
  - (b) indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, awarding compensation. 40
- (6) A pre-compensation warning may be combined with notice under one or more of sections 207, 217, 235, 237 and 239.

### **230 Representations**

- (1) A pre-compensation warning must specify a period during which the registered provider may make representations to the regulator.
- (2) The period must –
  - (a) be a period of at least 28 days, and 5
  - (b) begin with the date on which the registered provider receives the pre-compensation warning.
- (3) Representations may address –
  - (a) whether compensation should be awarded;
  - (b) the amount of any compensation that may be awarded. 10
- (4) After the end of the period specified under subsection (1) the regulator shall –
  - (a) consider any representations made, and
  - (b) decide whether to award compensation.

### **231 Enforcement**

- (1) Compensation shall be treated as a debt owed to the person to whom it is awarded. 15
- (2) The Treasury may make regulations authorising the regulator –
  - (a) to award interest on compensation not paid during the period specified under section 227(2)(e);
  - (b) to award additional compensation where compensation is not paid during that period. 20
- (3) Interest and additional compensation shall be treated as compensation.
- (4) Regulations under subsection (2)(a) may provide for an interest rate to be –
  - (a) set by a specified person, or
  - (b) determined in accordance with the regulations. 25

### **232 Appeal**

A registered provider who is given a compensation notice may appeal to the High Court against –

- (a) the award of compensation,
- (b) its amount, or
- (c) both. 30

*Management etc.*

### **233 Overview**

This group of sections gives the regulator various powers in relation to the management and constitution of registered providers. 35

### **234 Management tender**

- (1) This section applies if the regulator is satisfied that –

- (a) a registered provider has failed to meet a standard under section 180 or 181, or
  - (b) the affairs of a registered provider have been mismanaged in relation to social housing.
- (2) The regulator may require the registered provider to implement a process specified by the regulator for the purpose of—
- (a) inviting persons to apply to undertake management functions of the registered provider, and
  - (b) selecting from the applications and making an appointment.
- (3) A requirement may relate to—
- (a) the registered provider’s affairs generally in so far as they relate to social housing, or
  - (b) specified affairs relating to social housing.
- (4) A requirement must include—
- (a) provision about the constitution of a selection panel (which must include provision for ensuring representation of tenants’ interests),
  - (b) provision for ensuring best procurement practice, and
  - (c) provision about the terms and conditions on which the manager is to be appointed (including provision about—
    - (i) setting, monitoring and enforcing performance standards, and
    - (ii) resources).

**235 Section 234: supplemental**

- (1) Before acting under section 234(2) the regulator must give the registered provider a notice—
- (a) specifying grounds on which action might be taken under that section,
  - (b) warning the provider that the regulator is considering action under that section, and
  - (c) explaining the effect of this section.
- (2) The provisions of section 208 apply to a notice under subsection (1) above as to a pre-enforcement warning (with any necessary modifications).
- (3) The regulator must send a copy of a notice under subsection (1) to—
- (a) the HCA, and
  - (b) any other persons it thinks appropriate (having regard, in particular, to any person who provided information as a result of which the notice is given).
- (4) A notice under subsection (1) must—
- (a) refer to section 125 (voluntary undertaking), and
  - (b) indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, action under section 234(2).
- (5) Notice under subsection (1) may be combined with notice under one or more of sections 207, 217, 229, 237 and 239.
- (6) In imposing a requirement the regulator must have regard to views of—
- (a) relevant tenants,

- 
- (b) the registered provider,
  - (c) the HCA, and
  - (d) if the regulator thinks it appropriate, any relevant local housing authority.
- (7) If the regulator imposes a requirement it must send a copy to the HCA. 5
- (8) A registered provider may appeal to the High Court against a requirement under section 234(2).
- 236 Management transfer**
- (1) This section applies if as a result of an inquiry under section 192 or an audit under section 196 the regulator is satisfied that— 10
- (a) a registered provider has failed to meet a standard under section 180 or 181,
  - (b) the affairs of a registered provider have been mismanaged in relation to social housing, or
  - (c) a transfer of certain of a registered provider’s management functions would be likely to improve the management of some or all of its social housing. 15
- (2) The regulator may require the registered provider to transfer management functions to a specified person.
- (3) A requirement may relate to— 20
- (a) the registered provider’s affairs generally in so far as they relate to social housing, or
  - (b) specified affairs relating to social housing.
- (4) Transfer shall be on terms and conditions (including as to remuneration) specified in, or determined in accordance with, the requirement. 25
- (5) A transferee manager shall have—
- (a) any power specified in the requirement, and
  - (b) any other power in relation to the registered provider’s affairs required by the manager for the purposes specified in the requirement (including the power to enter into agreements and take other action on behalf of the registered provider). 30
- 237 Section 236: supplemental**
- (1) Before acting under section 236(2) the regulator must give the registered provider a notice— 35
- (a) specifying grounds on which action might be taken under that section,
  - (b) warning the provider that the regulator is considering action under that section, and
  - (c) explaining the effect of this section.
- (2) The provisions of section 208 apply to a notice under subsection (1) above as to a pre-enforcement notice (with any necessary modifications). 40
- (3) The regulator must send a copy of a notice under subsection (1) to—
- (a) the HCA, and

- (b) any other persons it thinks appropriate (having regard, in particular, to any person who provided information as a result of which the notice is given).
  - (4) A notice under subsection (1) must –
    - (a) refer to section 125, and 5
    - (b) indicate whether or to what extent the regulator would accept a voluntary undertaking under that section instead of, or in mitigation of, action under section 236(2).
  - (5) Notice under subsection (1) may be combined with notice under one or more of sections 207, 217, 229, 235 and 239. 10
  - (6) In imposing a requirement the regulator must have regard to views of –
    - (a) relevant tenants,
    - (b) the registered provider,
    - (c) the HCA, and
    - (d) if the regulator thinks it appropriate, any relevant local housing authority. 15
  - (7) If the regulator imposes a requirement it must send a copy to the HCA.
  - (8) A registered provider may appeal to the High Court against a requirement under section 236(2).
- 238 Appointment of manager** 20
- (1) This section applies if the regulator is satisfied that –
    - (a) a registered provider has failed to meet a standard under section 180 or 181, or
    - (b) the affairs of a registered provider have been mismanaged in relation to social housing. 25
  - (2) The regulator may –
    - (a) appoint an individual as a manager of the registered provider, or
    - (b) require the registered provider to appoint an individual as a manager.
  - (3) An appointment or requirement may relate to a manager –
    - (a) of the registered provider’s affairs generally in so far as they relate to social housing, or 30
    - (b) of specified affairs relating to social housing.
  - (4) Appointment shall be on terms and conditions (including as to remuneration) specified in, or determined in accordance with, the appointment or requirement. 35
  - (5) A manager shall have –
    - (a) any power specified in the appointment or requirement, and
    - (b) any other power in relation to the registered provider’s affairs required by the manager for the purposes specified in the appointment or requirement (including the power to enter into agreements and take other action on behalf of the registered provider). 40

### **239 Section 238: supplemental**

- |  |    |
|--|----|
| (1) Before acting under section 238(2) the regulator must give the registered provider a notice—   |    |
| (a) specifying grounds on which action might be taken under that section,  |    |
| (b) warning the provider that the regulator is considering action under that section, and  | 5  |
| (c) explaining the effect of this section.   |    |
| (2) The provisions of section 208 apply to a notice under subsection (1) above as to a pre-enforcement notice (with any necessary modifications).            |    |
| (3) The regulator must send a copy of a notice under subsection (1) to—  | 10 |
| (a) the HCA, and   |    |
| (b) any other persons it thinks appropriate (having regard, in particular, to any person who provided information as a result of which the notice is given). |    |
| (4) A notice under subsection (1) must—  | 15 |
| (a) refer to section 125 (voluntary undertaking), and  |    |
| (b) indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, action under section 238(2).      |    |
| (5) Notice under subsection (1) may be combined with notice under one or more of sections 207, 217, 229, 235 and 237.  | 20 |
| (6) The regulator must notify the HCA of an appointment or requirement under section 238(2).   |    |
| (7) The regulator may require a manager to report to the regulator on the affairs specified in the appointment or requirement under section 238(3).          | 25 |
| (8) A registered provider may appeal to the High Court against an appointment or requirement under section 238(2).   |    |

### **240 Transfer of land**

- |  |    |
|--|----|
| (1) This section applies if as a result of an inquiry under section 192 or an audit under section 196 the regulator is satisfied that—   | 30 |
| (a) a non-profit registered provider has failed to meet a standard under section 180 or 181,   |    |
| (b) the affairs of a non-profit registered provider have been mismanaged in relation to social housing, or   |    |
| (c) a transfer of land by a non-profit registered provider would be likely to improve the management of the land.  | 35 |
| (2) The regulator may require the non-profit registered provider to transfer specified land—   |    |
| (a) to the regulator, or   |    |
| (b) to another specified registered provider.  | 40 |
| (3) A requirement may not be imposed on a registered charity.  |    |
| (4) A requirement may be imposed on a charity which is not registered (C1), but only for transfer to another charity (C2) whose objects the regulator thinks are similar to those of C1. |    |

## 241 Section 240: supplemental

- (1) A transfer under section 240 shall be on terms specified in, or determined in accordance with, the requirement.
- (2) The price shall be not less than an amount certified by the district valuer as the amount the property would fetch if sold by a willing seller to another non-profit registered provider. 5
- (3) The terms shall include provision as to the payment of any debts or liabilities in respect of the land (whether or not secured on it).
- (4) A requirement to transfer land may be imposed only with the Secretary of State's consent (both as to the transfer and the terms). 10

### *Restrictions on dealings*

## 242 Restrictions on dealings during inquiry

- (1) The regulator may make an order under this section if –
  - (a) an inquiry under section 192 is in progress in respect of a non-profit registered provider, and 15
  - (b) either of the following cases applies.
- (2) Case 1 applies if the regulator has reasonable grounds for believing –
  - (a) that the registered provider has failed to meet a standard under section 180 or 181 or that its affairs have been mismanaged, and
  - (b) that the interests of tenants of the registered provider, or its assets, require protection. 20
- (3) Case 2 applies if as a result of an inquirer's interim report under section 193 the regulator is satisfied –
  - (a) that the registered provider has failed to meet a standard under section 180 or 181, or 25
  - (b) that its affairs have been mismanaged.
- (4) The regulator may order a bank or other person who holds money or securities on behalf of the registered provider not to part with the money or securities without the regulator's consent.
- (5) The regulator may make an order restricting – 30
  - (a) the transactions that may be entered into by the registered provider, or
  - (b) the nature and amounts of payments that may be made by it.
- (6) An order under subsection (5) may in particular provide that transactions may not be entered into or payments made without the regulator's consent.
- (7) The regulator may make an order in respect of a registered provider that is a registered charity only if it has received public assistance. 35
- (8) An order ceases to have effect at the end of the period of 6 months beginning with the day on which the inquirer's final report under section 193 is made.
- (9) But the regulator – 40
  - (a) may revoke the order before that time;
  - (b) may by order extend it for a specified period of up to 6 months.

### **243 Restrictions on dealings following inquiry**

- (1) This section applies if as a result of an inquiry under section 192 or an audit under section 196 the regulator is satisfied that—
  - (a) a non-profit registered provider has failed to meet a standard under section 180 or 181, or 5
  - (b) the affairs of a non-profit registered provider have been mismanaged.
- (2) The regulator may order a bank or other person who holds money or securities on behalf of the registered provider not to part with the money or securities without the regulator’s consent.
- (3) The regulator may make an order restricting— 10
  - (a) the transactions that may be entered into by the registered provider, or
  - (b) the nature and amounts of payments that may be made by it.
- (4) An order under subsection (3) may in particular provide that transactions may not be entered into or payments made without the regulator’s consent.
- (5) The regulator may make an order in respect of a registered provider that is a registered charity only if it has received public assistance. 15
- (6) An order under this section has effect until revoked by the regulator.

### **244 Restrictions on dealings: supplemental**

- (1) Before making an order under section 242 or 243 the regulator must take all reasonable steps to give notice to— 20
  - (a) the registered provider, and
  - (b) in the case of an order under section 242(4) or 243(2), the person to whom the order is directed.
- (2) Contravention of an order under section 242(4) or 243(2) is an offence.
- (3) A person guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 25
- (4) Proceedings for an offence may be brought only by or with the consent of—
  - (a) the regulator, or
  - (b) the Director of Public Prosecutions.

### *Suspension and removal of officers* 30

### **245 Suspension during inquiry**

- (1) The regulator may make an order under this section if—
  - (a) an inquiry under section 192 is in progress in respect of a non-profit registered provider, and
  - (b) either of the following cases applies. 35
- (2) Case 1 applies if the regulator has reasonable grounds for believing—
  - (a) that the registered provider has failed to meet a standard under section 180 or 181 or that its affairs have been mismanaged, and
  - (b) that the interests of tenants of the registered provider, or its assets, require protection. 40

- (3) Case 2 applies if as a result of an inquirer’s interim report under section 193 the regulator is satisfied –
  - (a) that the registered provider has failed to meet a standard under section 180 or 181, or
  - (b) that its affairs have been mismanaged. 5
- (4) The regulator may by order suspend any officer, employee or agent of the registered provider who it thinks has contributed to the failure or mismanagement.
- (5) The regulator may suspend an officer, employee or agent of a registered charity only if the charity has received public assistance. 10
- (6) An order ceases to have effect at the end of the period of 6 months beginning with the day on which the inquirer’s final report under section 193 is made.
- (7) But the regulator may revoke an order before the end of that period.
- (8) The regulator shall notify the Charity Commission if it suspends an officer, employee or agent of a registered charity. 15

**246 Removal or suspension following inquiry**

- (1) This section applies if as a result of an inquiry under section 192 or an audit under section 196 the regulator is satisfied –
  - (a) that a non-profit registered provider has failed to meet a standard under section 180 or 181, or 20
  - (b) that the affairs of a non-profit registered provider have been mismanaged.
- (2) The regulator may by order remove any officer, employee or agent of the registered provider who it thinks has contributed to the failure or mismanagement. 25
- (3) Pending a decision whether to remove an officer, employee or agent, the regulator may by order suspend the person for a specified period of up to 6 months.
- (4) The regulator may remove or suspend an officer, employee or agent of a registered charity only if the charity has received public assistance. 30
- (5) Before making an order the regulator must take all reasonable steps to give at least 14 days’ notice to –
  - (a) the person, and
  - (b) the registered provider.
- (6) The regulator shall notify the Charity Commission if it removes or suspends an officer, employee or agent of a registered charity. 35

**247 Suspension under section 245 or 246: supplemental**

- (1) This section applies where the regulator suspends an officer, employee or agent of a registered provider under section 245 or 246.
- (2) The regulator may give directions to the registered provider about – 40
  - (a) the performance of the suspended person’s functions, and
  - (b) any other matter arising from the suspension.

- (3) The regulator may appoint a person to perform the suspended person's functions.

#### **248 Disqualification of removed person**

- (1) A person is disqualified from acting as an officer of a registered provider if the person has been removed under – 5
- (a) section 246, or
  - (b) paragraph 24(2)(a) of Schedule 1 to the Housing Act 1996 (c. 52), section 30(1)(a) of the Housing Associations Act 1985 (c. 69) or section 20(1)(a) of the Housing Act 1974 (c. 44) (other similar provisions).
- (2) The regulator may waive a disqualification either generally or in relation to a particular registered provider or class of registered providers. 10
- (3) A waiver may be granted only on an application by the disqualified person.
- (4) The regulator shall notify a person whose disqualification is waived.
- (5) If a disqualified person acts as an officer of a registered provider, the person's acts are not invalid by reason only of the disqualification. 15

#### **249 Register of disqualified persons**

- (1) The regulator shall maintain a register of persons disqualified under section 248.
- (2) The register must show details of any waivers.
- (3) The regulator shall make the register available for inspection by the public. 20

#### **250 Acting while disqualified: offence**

- (1) It is an offence for a person to act as an officer of a registered provider in respect of which the person is disqualified under section 248.
- (2) A person guilty of an offence is liable – 25
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (3) Proceedings for an offence may be brought only by or with the consent of – 30
- (a) the regulator, or
  - (b) the Director of Public Prosecutions.
- (4) In relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (short sentences) the reference in subsection (2)(a) to 12 months shall have effect as if it were a reference to 6 months. 35

#### **251 Acting while disqualified: other consequences**

- (1) This section applies where the regulator is satisfied that a person –
- (a) has acted as an officer of a registered provider in respect of which the person is disqualified under section 248, and

- (b) in doing so, has received payments or other benefits from the registered provider.
- (2) The regulator may require the person to repay the sum or, as the case may be, a specified amount representing the whole or part of the value of the benefit.
- (3) If a person fails to comply with a requirement the registered provider may recover the sum or specified amount as a debt. 5

## **252 Removal of officers**

- (1) The regulator may by order remove an officer of a non-profit registered provider if a Case listed in this section applies to the officer.
- (2) In subsection (1) “officer” means – 10
  - (a) in the case of a registered charity, a director or a trustee,
  - (b) in the case of an industrial and provident society, a committee member, and
  - (c) in the case of a registered company (other than a registered charity), a director. 15
- (3) Case 1 applies to a person who has been adjudged bankrupt.
- (4) Case 2 applies to a person who has made an arrangement with creditors.
- (5) Case 3 applies to a person who is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46) or equivalent legislation in Northern Ireland. 20
- (6) Case 4 applies to a person who is subject to an order under section 429(2) of the Insolvency Act 1986 (c. 45) (disabilities on revocation of county court administration order).
- (7) Case 5 applies to a person who is disqualified under section 72 of the Charities Act 1993 (c. 10) from being a charity trustee. 25
- (8) Case 6 applies to a person who is incapable of acting by reason of mental disorder.
- (9) Case 7 applies to a person who is impeding the proper management of the registered provider by reason of absence or failure to act.

## **253 Section 252: supplemental** 30

- (1) Before making an order under section 252 in respect of an officer the regulator must take all reasonable steps to give at least 14 days’ notice to –
  - (a) the officer, and
  - (b) the registered provider.
- (2) An order may be made in respect of an officer of a registered charity only if the charity has received public assistance. 35

## **254 Appeal against removal or suspension**

A person removed or suspended under section 245, 246 or 252 may appeal to the High Court.

## 255 Appointment of new officers

- (1) The regulator may by order appoint a person as an officer of a non-profit registered provider –
- (a) to replace an officer removed by order under section 252,
  - (b) where there are no officers, or 5
  - (c) if the regulator thinks an additional officer is necessary for the proper management of the body’s affairs.
- (2) In subsection (1) “officer” has the same meaning as in section 252.
- (3) Subsection (1) overrides any restriction on eligibility or numbers of officers imposed by the body’s constitution. 10
- (4) An order appointing an officer shall specify the period for which, and the terms on which, the office is to be held; but –
- (a) on expiry the regulator may by order renew the appointment, and
  - (b) the officer may resign or retire in accordance with the registered provider’s constitution. 15
- (5) An officer appointed by order has the same rights, powers and obligations as an officer appointed under the registered provider’s constitution.
- (6) The regulator may exercise the power in subsection (1) in respect of a registered charity only if –
- (a) a condition in section 260 is satisfied, and 20
  - (b) the regulator has consulted the Charity Commission.

## CHAPTER 8

### GENERAL

#### *Interpretation*

## 256 Officer 25

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

| <i>Registered provider</i>                           | <i>Meaning of “officer”</i>   |    |
|--|---|----|
| Registered charity which is not a registered company | Trustee, secretary or treasurer   |    |
| Industrial and provident society                     | “Officer” within the meaning given by section 74 of the Industrial and Provident Societies Act 1965 (including a person co-opted to serve on the society’s committee) | 30 |
| Registered company                                   | “Officer” within the meaning given by section 1173 of the Companies Act 2006  | 35 |

## 257 Subsidiary and associate

- (1) A company is a “subsidiary” of a person if any of the following conditions is satisfied.

- (2) Condition 1 is that the person –
  - (a) is a member of the company, and
  - (b) has power, independent of any other person, to appoint or remove all or a majority of the board of directors.
- (3) Condition 2 is that the person holds more than half in nominal value of the company's equity share capital. 5
- (4) Condition 3 is that the company is a subsidiary, within the meaning of the Companies Act 2006 (c. 46) or the Friendly and Industrial and Provident Societies Act 1968 (c. 55), of a company which is a subsidiary of the person by virtue of Condition 1 or 2. 10
- (5) In relation to a company which is an industrial and provident society a reference to the board of directors is a reference to the committee of management.
- (6) “Associate” of a provider means –
  - (a) a body of which the provider is a subsidiary, and
  - (b) any other subsidiary of that body. 15

## 258 Family

- (1) For the purposes of this Part one person is a member of the family of another if –
  - (a) they are, or live together as if they were, spouses or civil partners, or
  - (b) one is the parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece of the other. 20
- (2) For those purposes –
  - (a) a relationship by marriage or civil partnership shall be treated as a relationship by blood (and, in particular, P's stepchild shall be treated as P's child), and
  - (b) a relationship by half-blood shall be treated as a relationship by whole blood. 25

## 259 Disposal

- (1) In this Part a reference to disposing of property is a reference to –
  - (a) selling it,
  - (b) leasing it,
  - (c) mortgaging it,
  - (d) making it subject to a charge, and
  - (e) disposing of it, or of any interest in it, in any other way. 30
- (2) Granting an option to require a disposal shall be treated as making a disposal. 35

## 260 Charities that have “received public assistance”

- (1) For the purposes of this Part a registered charity has received public assistance if at least one of the following conditions is satisfied.
- (2) Condition 1 is that the charity has received financial assistance from the HCA under section 22. 40

- 
- (3) Condition 2 is that the charity has received financial assistance under section 24 of the Local Government Act 1988 (c. 9) (assistance for privately let housing accommodation).
- (4) Condition 3 is that the charity has had housing transferred to it pursuant to –
- (a) a large scale disposal, within the meaning of section 34 of the Housing Act 1985 (c. 68), for which consent was required under section 32 or 43 of that Act, or 5
  - (b) a qualifying disposal that was made under section 135 of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28).
- (5) Condition 4 is that the charity has received a grant or loan under – 10
- (a) section 18 of the Housing Act 1996 (c. 52) (social housing grants),
  - (b) section 22 of that Act (assistance from local authorities),
  - (c) section 58 of the Housing Associations Act 1985 (c. 69) (grants or loans by local authorities),
  - (d) section 50 of the Housing Act 1988 (c. 50), section 41 of the Housing Associations Act 1985 or any enactment replaced by that section (housing association grant), 15
  - (e) section 51 of the Housing Act 1988 or section 54 or 55 of the Housing Associations Act 1985 (revenue deficit grant or hostel deficit grant),
  - (f) section 79 of the Housing Associations Act 1985 (loans by Housing Corporation), 20
  - (g) section 31 of the Housing Act 1974 (c. 44) (management grants), or
  - (h) any enactment mentioned in paragraph 2 or 3 of Schedule 1 to the Housing Associations Act 1985 (pre-1974 grants and certain loans).
- 261 General** 25
- In this Part, except where the context requires otherwise –
- “action” includes inaction, proposed action and decision,
  - “assured agricultural occupancy” has the same meaning as in Part 1 of the Housing Act 1988,
  - “assured tenancy” has the same meaning as in that Part, 30
  - “the Charity Commission” means the Charity Commission for England and Wales,
  - “committee”, in relation to an industrial and provident society, means the committee of management or other directing body of the society (including any person co-opted to serve on the committee, whether a member of the society or not), 35
  - “consent” means written consent,
  - “constitution” includes rules,
  - “conveyance” includes grant, assignment and any other instrument,
  - “district valuer” has the meaning given by section 622 of the Housing Act 1985, 40
  - “dwelling” –
    - (a) means a house, flat or other building or part of a building occupied or intended to be occupied as a separate dwelling, and
    - (b) includes any garden, yard, outhouse or other appurtenance belonging to, or usually enjoyed with, the dwelling, 45  - “the HCA” means the Homes and Communities Agency,

- “industrial and provident society” means a society registered under the Industrial and Provident Societies Act 1965 (c. 12),
- “local authority” has the same meaning as in the Housing Associations Act 1985 (c. 69),
- “maintenance” includes repair, 5
- “mismanagement”, in relation to the affairs of a registered provider, means –
- (a) managed in contravention of a provision of this Part or of anything done under this Part, or
- (b) otherwise conducted improperly or inappropriately, 10
- “non-registrable charity” means a charity which is not required to be registered, in accordance with section 3A of the Charities Act 1993 (c. 10),
- “notice” means written notice (and to “notify” means to give written notice), 15
- “preferential creditor” and “preferential debt” have the same meaning as in the Insolvency Act 1986 (c. 45),
- “price” includes premium,
- “registered charity” means a charity registered under the Charities Act 1993, 20
- “registered company” means a company within the meaning of the Companies Act 2006 (c. 46),
- “rent” includes payments under a licence to occupy accommodation,
- “representations” means written representations,
- “secure tenancy” has the same meaning as in Part 4 of the Housing Act 1985 (c. 68), 25
- “secured creditor” means a creditor who holds a mortgage or charge (including a floating charge) over –
- (a) land held by a registered provider, or
- (b) a present or future interest of a registered provider in rents or other receipts from land, and 30
- “tenant” in relation to social housing includes other occupiers.

## 262 Index of defined terms

The Table lists expressions defined in this Part.

| <i>Expression</i>                            | <i>Section</i> |    |
|--|----------------|----|
| Appointed member                             | Section 83     |    |
| Associate                                    | Section 257    |    |
| Assured agricultural occupancy               | Section 261    |    |
| Assured tenancy                              | Section 261    |    |
| Charity Commission                           | Section 261    | 40 |
| Committee (industrial and provident society) | Section 261    |    |
| Compensation notice                          | Section 227    |    |

| <i>Expression</i>                      | <i>Section</i>      |    |
|--|---------------------|----|
| Consent                                | Section 261         |    |
| Constitution                           | Section 261         |    |
| Conveyance                             | Section 261         |    |
| Disposal                               | Section 259         | 5  |
| District valuer                        | Section 261         |    |
| Dwelling                               | Section 261         |    |
| Enforcement notice                     | Sections 204 to 212 |    |
| Equity percentage arrangements         | Section 71(5)       |    |
| Family                                 | Section 258         | 10 |
| Financial year                         | Section 105         |    |
| Fundamental objectives                 | Section 88          |    |
| The HCA                                | Section 261         |    |
| Industrial and provident society       | Section 261         |    |
| Local authority                        | Section 261         | 15 |
| Low cost home ownership accommodation  | Section 71          |    |
| Low cost rental accommodation          | Section 70          |    |
| Maintenance                            | Section 261         |    |
| Mismanagement                          | Section 261         |    |
| Non-profit organisation                | Section 115         | 20 |
| Non-registrable charity                | Section 261         |    |
| Notice                                 | Section 261         |    |
| Officer                                | Section 256         |    |
| Penalty notice                         | Section 215         |    |
| Pre-compensation warning               | Section 229         | 25 |
| Pre-enforcement warning                | Section 207         |    |
| Pre-penalty warning                    | Section 217         |    |
| Preferential creditor                  | Section 261         |    |
| Preferential debt                      | Section 261         |    |
| Price                                  | Section 261         | 30 |
| Profit-making organisation             | Section 115         |    |
| Provider (of social housing)           | Section 81          |    |
| Received public assistance (charities) | Section 260         |    |
| Registered charity                     | Section 261         |    |

| <i>Expression</i>                       | <i>Section</i> |    |
|---|----------------|----|
| Registered company                      | Section 261    |    |
| Registered provider (of social housing) | Section 81     |    |
| The regulator                           | Section 82     |    |
| The Regulator of Social Housing         | Section 82     | 5  |
| Rent                                    | Section 261    |    |
| Representations                         | Section 261    |    |
| Secure tenancy                          | Section 261    |    |
| Secured creditor                        | Section 261    |    |
| Shared ownership arrangements           | Section 71(4)  | 10 |
| Shared ownership trust                  | Section 71(6)  |    |
| Social housing                          | Section 69     |    |
| Subsidiary                              | Section 257    |    |
| Tenant                                  | Section 261    |    |

*Miscellaneous* 15

**263 Consequential amendments**

In secondary legislation made before the commencement of this Part a reference to registered social landlords shall be treated as including a reference to registered providers of social housing.

**264 Transitional** 20

- (1) The regulator shall include in the register under section 112 on its establishment anyone—
  - (a) who was registered under section 1 of the Housing Act 1996 (c. 52) (register of social landlords) immediately before section 63 came into force, and
  - (b) in relation to whom the Relevant Authority was the Housing Corporation (in accordance with section 56 of that Act).
- (2) A person registered under this section shall be designated as a non-profit organisation. 25

**PART 3**

OTHER PROVISIONS

**CHAPTER 1**

SUSTAINABILITY CERTIFICATES

*General*

5

**265 Certificates for new homes**

- (1) A person who is selling a residential property as a new property must supply the purchaser with—
  - (a) a sustainability certificate, or
  - (b) a written statement to the effect that there is no sustainability certificate for the property. 10
- (2) If the seller is to supply a sustainability certificate, the seller must supply it before the sale is agreed if it is reasonably practicable to do so.
- (3) If it is not reasonably practicable to do so, the seller must—
  - (a) supply an interim certificate before the sale is agreed, and 15
  - (b) supply the sustainability certificate at such time, or within such period, as may be prescribed.
- (4) If the seller is to supply a statement, the seller must supply it before the sale is agreed.
- (5) The appropriate national authority may by regulations require sellers to supply certificates or statements to purchasers earlier than required by subsection (2), (3)(a) or (4). 20
- (6) The appropriate national authority may by regulations provide for exceptions from any duty imposed by virtue of subsections (1) to (5) in such cases and circumstances, and to such extent, as may be specified in the regulations. 25
- (7) Regulations under subsection (6) may impose alternative duties in relation to the supply of certificates or statements.
- (8) The seller is not required to comply with a requirement imposed by virtue of this section if the seller has a reasonable excuse for not complying with the requirement. 30
- (9) The seller may not charge for supplying a certificate or statement by virtue of this section.
- (10) The power conferred by subsection (3)(b) may, in particular, be exercised so as to prescribe a time, or a period which ends, after the completion of the sale.
- (11) In this Chapter— 35
  - “interim certificate” means a document which—
    - (a) contains an interim assessment of the sustainability of a residential property, and
    - (b) complies with the requirements of regulations under this Chapter, 40

“sustainability certificate” means a document which –

- (a) contains a final assessment of the sustainability of a residential property, and
- (b) complies with the requirements of regulations under this Chapter.

5

## 266 Meaning of sustainability

- (1) For the purposes of this Chapter the sustainability of a residential property relates to the extent to which –
  - (a) the materials used in the property,
  - (b) other aspects of the design and construction of the property, and
  - (c) any services, fittings and equipment provided in, or in connection with, the property,meet any sustainability standards. 10
- (2) Sustainability standards are standards prescribed by the appropriate national authority for any of the following purposes – 15
  - (a) ensuring the health, safety, welfare and convenience of persons in or about the property and of others who may be affected by the property or matters connected with it,
  - (b) furthering the efficient management of the property and of its construction, 20
  - (c) furthering energy efficiency,
  - (d) furthering the efficient use of water and minimising flood risk,
  - (e) furthering efficient waste management,
  - (f) furthering the protection or enhancement of the environment, and
  - (g) furthering the prevention or detection of crime. 25
- (3) The appropriate national authority may by regulations amend subsection (2) so as to add, remove or alter purposes for the time being contained there.
- (4) The references in this section to the construction of the property include references to any related demolition and any off-site activities relating to the construction or demolition. 30

## 267 Authorised assessors

- (1) The assessment of the sustainability of a residential property is to be carried out for the purposes of this Chapter by an authorised assessor.
- (2) The appropriate national authority may by regulations make provision about authorised assessors. 35
- (3) The regulations must specify the persons or descriptions of persons who are to be authorised assessors.
- (4) Subsections (5) to (9) apply if regulations under subsection (2) provide for authorised assessors to be persons accredited under an approved accreditation scheme. 40
- (5) The regulations may make provision about accreditation schemes.
- (6) The regulations may, in particular, provide for –

- (a) the approval by the appropriate national authority of one or more accreditation schemes (whether established by the appropriate national authority or another person),
  - (b) the withdrawal by the appropriate national authority of any such approval, 5
  - (c) the charging of fees under accreditation schemes.
- (7) Any regulations of the kind mentioned in subsection (6)(a) must require the appropriate national authority to be satisfied, before approving an accreditation scheme, that the scheme contains appropriate provision –
- (a) for ensuring that members of the scheme are fit and proper persons who are qualified (by their education, training and experience) to carry out assessments, 10
  - (b) for ensuring that a code of conduct for members of the scheme is maintained and published,
  - (c) for ensuring that members of the scheme have in force suitable indemnity insurance, 15
  - (d) for facilitating the resolution of complaints against members of the scheme,
  - (e) for requiring certificates or other documents given by members of the scheme to be entered on a register under section 268, 20
  - (f) for the keeping of a public register of the members of the scheme, and
  - (g) for such other purposes as may be specified in the regulations.
- (8) Subsection (7) does not limit the matters which the regulations may require the appropriate national authority to be satisfied about before approving an accreditation scheme. 25
- (9) Regulations under subsection (5) may, in particular, require or authorise an approved accreditation scheme to contain provision about any matter relating to sustainability certificates or other documents with which the scheme is concerned (including the terms on which members of the scheme may undertake to produce such documents). 30

## **268 Register of certificates**

- (1) The appropriate national authority may by regulations make provision about a register of sustainability certificates.
- (2) The regulations may, in particular, make provision of the kind mentioned in subsections (3) to (7). 35
- (3) The regulations may provide for a register to be kept –
  - (a) by (or on behalf of) the appropriate national authority, or
  - (b) by such other person as the regulations may specify or describe.
- (4) The regulations may require a person wishing to enter a document onto a register to pay such fee as may be prescribed. 40
- (5) No person may disclose –
  - (a) a register or any document (or part of a document) contained in it, or
  - (b) any information contained in, or derived from, a register,
 except in accordance with any provision of the regulations which authorises or requires such a disclosure to be made. 45

- (6) The regulations may make provision as to circumstances in which, or purposes for which, a person or a person of a prescribed description –
- (a) may (on payment of such fee, if any, as may be prescribed) –
    - (i) inspect a register or any document (or part of a document) contained in it, 5
    - (ii) take or be given copies of a register or any document (or part of a document) contained in it, or
    - (iii) be given information contained in, or derived from, a register, or
  - (b) may disclose anything obtained by virtue of provision made under paragraph (a). 10
- (7) The purposes which may be so prescribed may be public purposes or purposes of private undertakings or other persons.
- (8) A person who contravenes subsection (5) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. 15
- (9) The appropriate national authority may by regulations provide for interim certificates or other documents to be included on a register.
- (10) In such a case, subsections (1) to (8) apply in relation to the interim certificates or other documents concerned as they apply in relation to sustainability certificates. 20

### *Enforcement*

#### **269 Enforcement authorities**

- (1) Every local weights and measures authority is an enforcement authority for the purposes of this Chapter.
- (2) It is the duty of each enforcement authority to enforce in its area the duties imposed by virtue of section 265. 25

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

- (1) Subsection (2) applies if an authorised officer of an enforcement authority believes that a person is, or has been, subject to a duty imposed by virtue of section 265 to supply a certificate or statement in relation to a particular property. 30
- (2) The officer may require the person to produce for inspection a copy of the certificate or statement.
- (3) The power conferred by subsection (2) includes power –
  - (a) to require the production of a legible hard copy of any certificate or statement which is held in electronic form, and
  - (b) to take copies of any hard copy produced for inspection. 35
- (4) A requirement under this section may not be imposed more than 6 months after the last day for supplying the certificate or statement concerned in pursuance of the duty imposed by virtue of section 265. 40
- (5) A person is not required to comply with a requirement under this section if the person has a reasonable excuse for not complying with the requirement.

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

### **271 Penalty charge notices**

- (1) An authorised officer of an enforcement authority may give a penalty charge notice to a person if the officer believes that the person has committed a breach of— 5
- (a) any duty imposed by virtue of section 265, or
- (b) any duty under section 270.
- (2) A penalty charge notice may not be given after the end of the period of 6 months beginning with the day (or, in the case of a continuing breach, the last day) on which the breach of duty was committed. 10
- (3) Schedule 8 (which makes further provision about penalty charge notices) has effect.

### **272 Offences relating to enforcement officers**

15

- (1) A person who, without reasonable excuse, obstructs an officer of an enforcement authority who is acting in pursuance of duties imposed by virtue of this Chapter is guilty of an offence.
- (2) A person who, not being an authorised officer of an enforcement authority, purports to act as such in pursuance of section 270 or 271 is guilty of an offence. 20
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### *Supplementary*

### **273 Grants**

- (1) The appropriate national authority may make grants towards expenditure incurred by any person in connection with the development of proposals for, or the operation of— 25
- (a) a register under section 268, or
- (b) accreditation schemes or any other provision which may be made by regulations under this Chapter. 30
- (2) A grant under this section may be made on conditions, which may include (among other things)—
- (a) conditions as to the purposes for which the grant or any part of it may be used, and
- (b) conditions requiring the repayment (with or without interest) of the grant or any part of it in such circumstances as may be specified in the conditions. 35

### **274 Suspension of duties**

- (1) The appropriate national authority may by regulations suspend (or later revive) the operation of any duty imposed by virtue of section 265. 40

- (2) Such regulations may provide for the suspension of a duty to take effect only for a period specified in the regulations.
- (3) A duty which is (or is to any extent) revived after being suspended may be suspended again.

**275 Disclosure of certificates etc.** 5

- (1) The appropriate national authority may by regulations make provision about the disclosure of –
  - (a) sustainability certificates, interim certificates or statements of the kind mentioned in section 265(1)(b),
  - (b) copies of any such documents, 10
  - (c) any information contained in, or derived from, any such documents or copies, or
  - (d) any information collected by an authorised assessor for the purposes of preparing a sustainability certificate or an interim certificate.
- (2) A person who, without reasonable excuse, discloses anything whose disclosure is prohibited by regulations under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. 15

**276 General powers to make regulations**

- (1) The appropriate national authority may by regulations make such provision as the authority considers appropriate – 20
  - (a) for the general purposes, or any particular purpose, of this Chapter,
  - (b) in consequence of any provision made by virtue of this Chapter or for giving full effect to it.
- (2) Such regulations may, in particular, provide for – 25
  - (a) the form and content of sustainability certificates and interim certificates,
  - (b) the form and content of written statements of the kind mentioned in section 265(1)(b),
  - (c) ways in which sustainability standards may be met, 30
  - (d) the issue of guidance for the purposes of this Chapter,
  - (e) the relationship between any provision made by virtue of this Chapter and any provision made by virtue of Part 5 of the Housing Act 2004 (c. 34) (home information packs) or in relation to energy performance certificates. 35
- (3) Regulations made by virtue of subsection (2)(a) or (b) may, in particular, provide for the form or content of the documents concerned to be such as may be approved by the appropriate national authority.
- (4) In subsection (2)(e) “energy performance certificate” has the same meaning as in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991) (see regulation 2(1)) or any corresponding subsequent regulations. 40

## **277 Powers to extend Chapter**

- (1) The appropriate national authority may by regulations provide for this Chapter to apply, with or without prescribed modifications, to—
- (a) buildings which are not residential properties, or
  - (b) prescribed descriptions of buildings falling within paragraph (a),
- as it applies to residential properties. 5
- (2) The appropriate national authority may by regulations provide for this Chapter to apply, with or without prescribed modifications, to—
- (a) newly converted residential properties,
  - (b) newly converted buildings which are not residential properties, or
  - (c) prescribed descriptions of residential properties falling within paragraph (a) or buildings falling within paragraph (b),
- as it applies to new residential properties. 10
- (3) For the purposes of this Chapter a residential property or other building is newly converted if—
- (a) it has been converted but has never been used for its intended purpose,
  - (b) it is being converted, or
  - (c) its conversion is being designed.
- 15
- (4) The appropriate national authority may by regulations provide for circumstances in which a residential property or other building is to be treated as having been converted. 20
- (5) The references in subsections (1)(a) and (b), (2)(b) and (c) and (3) and (4) to buildings include references to—
- (a) ancillary land, and
  - (b) buildings and ancillary land which are being designed or constructed or are to be constructed.
- 25
- (6) The appropriate national authority may by regulations amend the definition of “purchaser” in section 278(1).
- (7) Regulations under subsection (6)—
- (a) must ensure that the descriptions of persons falling within the definition on the passing of this Act continue to fall within the definition (but this is without prejudice to the power to amend the text of the definition), and
  - (b) may, in particular, ensure that descriptions of persons who are taking steps with a view to deciding whether to purchase residential properties are included within the definition.
- 30  
35

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

- (1) In this Chapter—
- “ancillary land”, in relation to a building, means any land intended to be occupied and enjoyed together with the building, 40
  - “appropriate national authority” means—
    - (a) in relation to England, the Secretary of State, and
    - (b) in relation to Wales, the Welsh Ministers,
  - “building” includes part of a building,
  - “modifications” includes omissions, 45

- “purchase”, in relation to a residential property, means acquire, or agree to acquire, by way of purchase a relevant interest in the property,
- “purchaser”, in relation to a residential property, means a person who has—
- (a) made an offer to purchase it, or
  - (b) purchased it,
- “prescribed” means prescribed by regulations made by the appropriate national authority,
- “relevant interest”, in relation to a residential property, means—
- (a) the freehold interest in the property,
  - (b) such leasehold interests as may be prescribed, or
  - (c) an option to acquire the freehold interest or any such prescribed leasehold interest,
- “residential property” means a building which is, or is intended to be, occupied as a separate dwelling (including one that is being designed or constructed or is to be constructed) and includes any ancillary land, but it does not include a newly converted residential property,
- “sell”, in relation to a residential property, means—
- (a) dispose, or agree to dispose, by way of sale of a relevant interest in the property, or
  - (b) offer such an interest for sale,
- “sustainability”, in relation to residential properties, is to be read in accordance with section 266.
- (2) Any reference in subsection (1) or (5) to the disposal of a relevant interest includes a reference to the creation of such an interest.
- (3) For the purposes of this Chapter a person who is selling a residential property is to be treated as selling it as a new property if, at the time in question—
- (a) the property is being designed,
  - (b) the property is being constructed, or
  - (c) the construction of the property has been finished but the property has never been occupied as a dwelling.
- (4) For the purposes of this Chapter, the construction of a residential property is to be treated as finished if the property—
- (a) is wind and weather proof,
  - (b) is safe and sanitary for any occupiers or visitors,
  - (c) has facilities for the supply of space heating, hot and cold water and electricity,
  - (d) has washing and drainage facilities, and
  - (e) meets any other prescribed requirements.
- (5) For the purposes of this Chapter a sale is agreed—
- (a) in the case of a legally binding agreement to dispose by way of sale, when the agreement is entered into, and
  - (b) in the absence of such an agreement, when the disposal is made.
- (6) Any requirement imposed by virtue of section 265 to supply a certificate or statement—
- (a) may be met by supplying a copy of the certificate or statement, and

- (b) may be met by supplying the certificate or statement (or copy) in electronic form if the intended recipient consents to receiving it in that form.
- (7) For the purposes of this Chapter a certificate, statement or copy supplied in electronic form is only to be treated as being received if the recipient is readily able (using equipment available to the recipient) – 5
- (a) to view the document in a form that is legible, and
- (b) to produce hard copies of it in a legible form.
- (8) The sale or purchase of a residential property is not invalid merely because of a failure to comply with any requirement imposed by virtue of this Chapter. 10

### 279 Index of defined expressions: Chapter 1

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

| <i>Expression</i>  | <i>Provision</i>       | 15 |
|--|------------------------|----|
| Agreed (in relation to a sale)                                 | Section 278(5)         |    |
| Ancillary land   | Section 278(1)         |    |
| Appropriate national authority                                 | Section 278(1)         |    |
| Building   | Section 278(1)         |    |
| Enforcement authority  | Section 269(1)         | 20 |
| Finished (in relation to construction of residential property) | Section 278(4)         |    |
| Interim certificate  | Section 265(11)        |    |
| Modifications  | Section 278(1)         |    |
| Newly converted  | Section 277(3)         |    |
| Prescribed   | Section 278(1)         | 25 |
| Purchase   | Section 278(1)         |    |
| Purchaser  | Section 278(1)         |    |
| Relevant interest  | Section 278(1)         |    |
| Residential property   | Section 278(1)         |    |
| Sell   | Section 278(1)         | 30 |
| Sell as new property   | Section 278(3)         |    |
| Supply (in relation to certificates or statements)             | Section 278(6) and (7) |    |
| Sustainability   | Section 266            |    |
| Sustainability certificate                                     | Section 265(11)        |    |

## CHAPTER 2

### LANDLORD AND TENANT MATTERS

#### *Tenant empowerment*

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

- (1) Schedule 3A to the Housing Act 1985 (c. 68) (consultation before disposal to private sector landlord) is amended as follows. 5
- (2) After paragraph 3(3) insert—
  - “(4) When the period specified in sub-paragraph (3)(b) has expired the authority shall arrange a ballot of the tenants in accordance with sub-paragraph (5) to establish whether or not the tenants wish the disposal to proceed. 10
  - (5) The authority shall—
    - (a) make arrangements for such person as they consider appropriate to conduct the ballot in such manner as that person considers appropriate; or 15
    - (b) conduct the ballot themselves.
  - (6) After the ballot has been held the authority shall serve a notice on each tenant (whether or not he voted in the ballot) informing him—
    - (a) of the ballot result; and
    - (b) if the authority intend to proceed with the disposal, that he may within 28 days after the service of the notice make representations to the Secretary of State or (as the case may be) the Welsh Ministers.” 20
- (3) In paragraph 5(1)—
  - (a) for “it appears to him” substitute “the result of a ballot arranged under paragraph 3(4) shows”, and 25
  - (b) after “relates” insert “who voted in the ballot”.
- (4) Subsections (2) and (3) do not apply to consultations begun before the coming into force of those subsections.
- (5) For the purposes of subsection (4) a consultation has begun when a notice has been served under paragraph 3(2) of Schedule 3A to the Act of 1985. 30

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

- (1) Section 27AB of the Housing Act 1985 (management agreements with tenant management organisations) is amended as follows.
- (2) In subsection (2), after paragraph (b), insert— 35
  - “(ba) to provide to the organisation such information or descriptions of information, in connection with the proposal, as may be prescribed in the regulations;
  - (bb) to take, in circumstances prescribed in the regulations, such other steps as may be so prescribed to co-operate with the organisation in connection with the proposal;” 40

- (3) In subsection (4) –
- (a) in paragraph (a) after “authority” insert “or the person making the regulations”,
  - (b) after paragraph (b), insert –
    - “(ba) setting time-limits for the carrying out of requirements under the regulations;”, and
  - (c) in paragraph (c) after “guidance” insert “or directions”.

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

After section 34 of the Housing Act 1985 (c. 68) (consents in relation to disposals of land held for housing purposes) insert – 10

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

- (1) The appropriate person may make regulations for imposing requirements on a local housing authority in any case where a tenant group serves written notice on the authority proposing that the authority should dispose of particular land held by them for the purposes of this Part, or a particular description of such land, to a relevant housing provider. 15
- (2) The regulations may make provision requiring the authority –
  - (a) to provide, or finance the provision of, such office accommodation and facilities, and such training, as the tenant group reasonably requires for the purpose of pursuing the proposal; 20
  - (b) to arrange for such feasibility studies with respect to the proposal as may be determined by or under the regulations to be conducted by such persons as may be so determined; 25
  - (c) to provide to the tenant group such information or descriptions of information, in connection with the proposal, as may be prescribed in the regulations;
  - (d) to take, in circumstances prescribed in the regulations, such other steps as may be so prescribed to co-operate with the tenant group in connection with the proposal; 30
  - (e) to arrange for such ballots or polls with respect to the proposal as may be determined by or under the regulations to be conducted by such persons as may be so determined; and
  - (f) in such circumstances as may be prescribed by the regulations, to enter into an agreement for the disposal. 35
- (3) The regulations may make provision –
  - (a) for determining the houses and other land to which the disposal should relate, and the amounts which should be paid in respect of the disposal; 40
  - (b) requiring the agreement for the disposal to be in such form as may be approved by the appropriate person and to contain such provisions as may be prescribed by the regulations.
- (4) The regulations may make such procedural, incidental, supplementary and transitional provisions as may appear to the appropriate person necessary or expedient, and may in particular make provision – 45

- (a) for particular questions arising under the regulations to be determined by the authority or the appropriate person;
  - (b) setting time-limits for the carrying out of requirements under the regulations;
  - (c) requiring any person exercising functions under the regulations to act in accordance with any guidance or directions given by the appropriate person. 5
- (5) Nothing in subsections (2) to (4) is to be taken as prejudicing the generality of subsection (1).
- (6) This section does not affect any requirement under section 32 or 33 for the consent of the Secretary of State or the Welsh Ministers. 10
- (7) Regulations under this section –
- (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas; and 15
  - (b) are to be made by statutory instrument which –
    - (i) in the case of an instrument made by the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament; and
    - (ii) in the case of an instrument made by the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales. 20
- (8) In this section –
- “appropriate person” means –
    - (a) in relation to England, the Secretary of State; and 25
    - (b) in relation to Wales, the Welsh Ministers;
  - “relevant housing provider” means –
    - (a) in relation to England, a registered provider of social housing; and
    - (b) in relation to Wales, a registered social landlord (within the meaning of Part 1 of the Housing Act 1996); and 30
  - “tenant group” means a body or other person which satisfies such conditions as may be determined by or under the regulations.”

*Family intervention tenancies*

**283 Family intervention tenancies: general** 35

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

*“Family intervention tenancies*

4ZA(1) A tenancy is not a secure tenancy if it is a family intervention tenancy. 40

- (2) But a tenancy mentioned in sub-paragraph (1) becomes a secure tenancy if the landlord notifies the tenant that it is to be regarded as a secure tenancy.

- 
- (3) In this paragraph “a family intervention tenancy” means, subject to sub-paragraph (4), a tenancy granted by a local housing authority in respect of a dwelling-house—
- (a) to a person (“the new tenant”) against whom a possession order under section 84 in respect of another dwelling-house—
    - (i) has been made, in relation to a secure tenancy, on ground 2 or 2A of Part 1 of Schedule 2;
    - (ii) could, in the opinion of the authority, have been so made in relation to such a tenancy; or
    - (iii) could, in the opinion of the authority, have been so made if the person had had such a tenancy; and
  - (b) for the purposes of the provision of behaviour support services.
- (4) A tenancy is not a family intervention tenancy for the purposes of this paragraph if the local housing authority has failed to serve a notice under sub-paragraph (5) on the new tenant before the new tenant entered into the tenancy.
- (5) A notice under this sub-paragraph is a notice stating—
- (a) the reasons for offering the tenancy to the new tenant;
  - (b) the dwelling-house in respect of which the tenancy is to be granted;
  - (c) the other main terms of the tenancy (including any requirements on the new tenant in respect of behaviour support services);
  - (d) the security of tenure available under the tenancy and any loss of security of tenure which is likely to result from the tenant agreeing to enter into the tenancy;
  - (e) that the new tenant is not obliged to enter into the tenancy or to surrender any existing tenancy or possession of a dwelling-house;
  - (f) any likely action by the local housing authority if the new tenant does not enter into the tenancy or surrender any existing tenancy or possession of a dwelling-house.
- (6) The appropriate national authority may by regulations made by statutory instrument amend sub-paragraph (5).
- (7) A notice under sub-paragraph (5) must contain advice to the new tenant as to how the new tenant may be able to obtain assistance in relation to the notice.
- (8) The appropriate national authority may by regulations made by statutory instrument make provision about the type of advice to be provided in such notices.
- (9) Regulations under this paragraph may contain such transitional, transitory or saving provision as the appropriate national authority considers appropriate.
- (10) A statutory instrument containing regulations made under this paragraph—

- (a) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament; and
  - (b) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (11) In this paragraph – 5
- “appropriate national authority” –
    - (a) in relation to England, means the Secretary of State; and
    - (b) in relation to Wales, means the Welsh Ministers;
  - “behaviour support services” means support services to be provided by any person to – 10
    - (a) the new tenant; or
    - (b) any person who is to reside with the new tenant; for the purpose of preventing the kind of behaviour which led to the new tenant falling within sub-paragraph (3)(a); 15
  - “family intervention tenancy” has the meaning given by sub-paragraph (3);
  - “the new tenant” has the meaning given by sub-paragraph (3)(a).”
- (2) In Part 1 of Schedule 1 to the Housing Act 1988 (c. 50) (tenancies which cannot be assured tenancies) after paragraph 12 insert – 20
- “Family intervention tenancies*
- 12ZA(1) A family intervention tenancy.
- (2) But a family intervention tenancy becomes an assured tenancy if the landlord notifies the tenant that it is to be regarded as an assured tenancy. 25
  - (3) In this paragraph “a family intervention tenancy” means, subject to sub-paragraph (4), a tenancy granted by a registered provider of social housing or a registered social landlord (“the landlord”) in respect of a dwelling-house – 30
    - (a) to a person (“the new tenant”) against whom a possession order under section 7 in respect of another dwelling-house –
      - (i) has been made, in relation to an assured tenancy, on ground 14 or 14A of Part 2 of Schedule 2;
      - (ii) could, in the opinion of the landlord, have been so made in relation to such a tenancy; or 35
      - (iii) could, in the opinion of the landlord, have been so made if the person had had such a tenancy; and
    - (b) for the purposes of the provision of behaviour support services. 40
  - (4) A tenancy is not a family intervention tenancy for the purposes of this paragraph if the landlord has failed to serve a notice under sub-paragraph (5) on the new tenant before the new tenant entered into the tenancy.
  - (5) A notice under this sub-paragraph is a notice stating – 45
    - (a) the reasons for offering the tenancy to the new tenant;

- 
- (b) the dwelling-house in respect of which the tenancy is to be granted;
- (c) the other main terms of the tenancy (including any requirements on the new tenant in respect of behaviour support services); 5
- (d) the security of tenure available under the tenancy and any loss of security of tenure which is likely to result from the tenant agreeing to enter into the tenancy;
- (e) that the new tenant is not obliged to enter into the tenancy or to surrender any existing tenancy or possession of a dwelling-house; 10
- (f) any likely action by the landlord if the new tenant does not enter into the tenancy or surrender any existing tenancy or possession of a dwelling-house.
- (6) The appropriate national authority may by regulations made by statutory instrument amend sub-paragraph (5). 15
- (7) A notice under sub-paragraph (5) must contain advice to the new tenant as to how the new tenant may be able to obtain assistance in relation to the notice.
- (8) The appropriate national authority may by regulations made by statutory instrument make provision about the type of advice to be provided in such notices. 20
- (9) Regulations under this paragraph may contain such transitional, transitory or saving provision as the appropriate national authority considers appropriate. 25
- (10) A statutory instrument containing regulations made under this paragraph –
- (a) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament; and
- (b) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales. 30
- (11) In this paragraph –
- “appropriate national authority” –
- (a) in relation to England, means the Secretary of State; and
- (b) in relation to Wales, means the Welsh Ministers; 35
- “behaviour support services” means support services to be provided by any person to –
- (a) the new tenant; or
- (b) any person who is to reside with the new tenant; 40
- for the purpose of preventing the kind of behaviour which led to the new tenant falling within sub-paragraph (3)(a);
- “family intervention tenancy” has the meaning given by sub-paragraph (3);
- “landlord” has the meaning given by sub-paragraph (3); 45
- “the new tenant” has the meaning given by sub-paragraph (3)(a);

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

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

**284 Certain family intervention tenancies: termination** 5

- (1) A local housing authority must not serve a notice to quit on the tenant of a family intervention tenancy unless—
- (a) the authority has served a notice under subsection (2) on the tenant, and
  - (b) either— 10
    - (i) the tenant has not requested a review of the kind mentioned in subsection (2)(e) within the period of 14 days beginning with the service of the notice,
    - (ii) any such request has been withdrawn, or
    - (iii) the authority has served a notice on the tenant under subsection (4)(b). 15
- (2) A notice under this subsection is a notice in writing stating—
- (a) that the authority has decided to serve a notice to quit on the tenant,
  - (b) the effect of serving a notice to quit,
  - (c) the reasons for the authority’s decision, 20
  - (d) when the authority is intending to serve the notice to quit, and
  - (e) that the tenant has the right to request, within the period of 14 days beginning with the service of the notice under this subsection, a review of the authority’s decision.
- (3) Subsection (4) applies if the tenant requests a review of the kind mentioned in subsection (2)(e) within the period of 14 days beginning with the service of the notice under subsection (2) and the request is not withdrawn. 25
- (4) The local housing authority must—
- (a) review its decision to serve a notice to quit on the tenant, and
  - (b) serve a notice on the tenant informing the tenant of the decision of the authority on the review and the reasons for it. 30
- (5) The appropriate national authority may by regulations make provision about the procedure to be followed in connection with such a review.
- (6) Regulations under subsection (5) may, in particular—
- (a) specify the description of person who is to make the decision on a review, 35
  - (b) specify the circumstances in which the tenant is entitled to an oral hearing on a review,
  - (c) specify whether, and by whom, the tenant is entitled to be represented at such a hearing. 40
- (7) A notice under subsection (2), and a notice to quit, served by a local housing authority in respect of a family intervention tenancy must contain advice to the tenant as to how the tenant may be able to obtain assistance in relation to the notice.

- (8) The appropriate national authority may by regulations make provision about the type of advice to be provided in such notices.
- (9) In this section –  
     “appropriate national authority” means –  
         (a) in relation to England, the Secretary of State, and 5  
         (b) in relation to Wales, the Welsh Ministers,  
     “family intervention tenancy” has the same meaning as in paragraph 4ZA of Schedule 1 to the Housing Act 1985 (c. 68),  
     and other expressions used in this section and in paragraph 4ZA of that Schedule have the same meaning as in that paragraph. 10
- (10) This section does not apply to any tenancy granted before the coming into force of this section.

*Leasehold enfranchisement*

**285 Right to acquire freehold: abolition of low rent test**

- (1) In section 1(1) of the Leasehold Reform Act 1967 (c. 88) (right to enfranchisement or extension of long leaseholds) – 15  
     (a) in paragraph (a) omit “at a low rent”,  
     (b) before “and” at the end of paragraph (a) insert –  
         “(aa) in the case of a right to acquire an extended lease, his long tenancy is a tenancy at a low rent;”, and 20  
     (c) in paragraph (b) after “he has” insert “ –  
         (i) in the case of a right to acquire the freehold, been tenant of the house under a long tenancy for the last two years; and  
         (ii) in the case of a right to acquire an extended lease,”. 25
- (2) In that Act –  
     (a) in section 1(1A) (excluded tenancies) –  
         (i) for “subsection (1)(a) and (b)” substitute “subsection (1)”, and  
         (ii) omit “at a low rent”, and 30  
     (b) omit –  
         (i) section 1A(2) (certain deemed low rent tenancies),  
         (ii) section 1AA (additional right to enfranchisement where tenancy not low rent tenancy), and  
         (iii) section 4A (alternative rent limits for purposes of section 1A(2)). 35

**286 Shared ownership leases: protection for certain limited equity leases**

- In paragraph 3(2)(f) of Schedule 4A to the Leasehold Reform Act 1967 (exclusion from enfranchisement for certain shared ownership leases granted by housing associations: condition that lease provides for the tenant to acquire the landlord’s interest) – 40  
     (a) after “acquire” insert “all of”, and  
     (b) after “prescribed” insert “or provides for the tenant to acquire some of the landlord’s interest on terms specified in the lease and complying with such requirements as may be prescribed”.

## 287 Shared ownership leases: protection for hard to replace houses

After paragraph 4 of Schedule 4A to the Leasehold Reform Act 1967 (c. 88) (exclusion from enfranchisement for certain shared ownership leases for the elderly) insert –

- “Certain leases in protected areas”* 5
- 4A (1) A lease which does not fall within paragraph 3 is excluded from the operation of this Part of this Act if –
- (a) the lease meets the conditions mentioned in sub-paragraph (2) of that paragraph; and 10
  - (b) the house is in a protected area.
- (2) The appropriate national authority may by order made by statutory instrument designate an area as a protected area if it considers it appropriate to do so to support the provision in the area of houses, or descriptions of houses, which are available for occupation in accordance with shared ownership arrangements. 15
- (3) The appropriate national authority must publish the criteria for the time being in force which are to be taken into account by it in deciding whether to designate an area as a protected area.
- (4) Before making an order under sub-paragraph (2) the appropriate national authority must take such steps as it considers to be reasonable to consult those likely to be affected by the order. 20
- (5) In any proceedings the court may, if it considers that it is just and equitable to do so, treat a lease as meeting the conditions mentioned in paragraph 3(2) despite the fact that the condition mentioned in paragraph 3(2)(g) is not met. 25
- (6) An order under this paragraph may contain such incidental, supplementary, transitory, transitional or saving provisions as the appropriate national authority considers appropriate.
- (7) In this paragraph –
- “appropriate national authority” means – 30
    - (a) in relation to England, the Secretary of State; and
    - (b) in relation to Wales, the Welsh Ministers; and
  - “shared ownership arrangements” has the same meaning as in section 71 of the Housing and Regeneration Act 2008.
- (8) An instrument containing – 35
- (a) an order of the Secretary of State under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) an order of the Welsh Ministers under this paragraph is subject to annulment in pursuance of a resolution of the National Assembly for Wales.” 40

*Right to buy etc: miscellaneous*

**288 Exclusion of the right to buy: possession orders**

- (1) For section 121(1) of the Housing Act 1985 (c. 68) (circumstances in which the right to buy cannot be exercised) substitute –

“(1) The right to buy cannot be exercised if the tenant is subject to an order of the court for possession of the dwelling-house.” 5

- (2) Subsection (1) does not apply where the tenant has served a notice under section 122 of that Act (tenant’s notice claiming to exercise right to buy) before the coming into force of subsection (1) above and the notice is not withdrawn.

**289 Exclusion of the right to buy: demolition notices**

10

Schedule 9 (which makes provision about demolition notices) has effect.

**290 Review of determination of value**

- (1) The Housing Act 1985 is amended as follows.

- (2) After section 128 (determination of value by district valuer) insert –

**“128A Determination of value: review notices** 15

- (1) Subsection (1) applies if the value of a dwelling-house has been determined or re-determined under section 128 (“the section 128 determination”).

- (2) The district valuer may – 20
- (a) on the valuer’s own initiative, or
  - (b) at the request of the landlord or the tenant of the dwelling-house;

serve on the landlord and the tenant a notice of intention to review the section 128 determination giving reasons for the intention (“a review notice”). 25

- (3) The landlord or the tenant may not make such a request after the end of the period of 28 days beginning with the section 128(5) service date.

- (4) The district valuer must, before the end of the period of 14 days beginning with the day on which such a request is made, serve on the landlord and the tenant – 30

- (a) a review notice; or
- (b) a notice stating – 35
  - (i) that the request was made;
  - (ii) that the district valuer has decided not to comply with it; and
  - (iii) the reasons for the decision.

- (5) A review notice may not be served after the end of the period of 42 days beginning with the section 128(5) service date.

- (6) In this section and section 128B – 40
- “a review notice” has the meaning given by subsection (1);

“the section 128 determination” has the meaning given by subsection (1);

“the section 128(5) service date” means the day on which the landlord serves a notice on the tenant under section 128(5) in relation to the section 128 determination.

5

### **128B Review of determination of value**

- (1) The district valuer must review the section 128 determination as soon as reasonably practicable after serving a review notice.
- (2) Subsection (3) applies if, following the review, the district valuer decides that neither of the withdrawal conditions is met. 10
- (3) The district valuer must, as soon as reasonably practicable, serve on the landlord and the tenant a notice stating –
  - (a) the decision;
  - (b) the reasons for it; and
  - (c) that no further determination or (as the case may be) re-determination is to be made under this section. 15
- (4) Subsection (5) applies if, following the review, the district valuer decides that either withdrawal condition is met or both are met.
- (5) The district valuer must –
  - (a) as soon as reasonably practicable, withdraw the section 128 determination by serving a further determination notice on the landlord and the tenant; and 20
  - (b) make a further determination or (as the case may be) re-determination.
- (6) Before making such a determination or re-determination, the district valuer must consider any representation made to the valuer by the landlord or the tenant before the end of the period of 14 days beginning with the day on which the further determination notice was served. 25
- (7) As soon as practicable after such a determination or re-determination has been made, the landlord must serve on the tenant a determination effect notice. 30
- (8) A determination effect notice is a notice stating –
  - (a) the effect of the further determination or (as the case may be) re-determination; and
  - (b) the matters mentioned in section 125(2) and (3). 35
- (9) For the purposes of this section, the withdrawal conditions are –
  - (a) that a significant error was made in the section 128 determination; or
  - (b) that the district valuer did not comply with section 128(4) in relation to the section 128 determination. 40
- (10) In this section –
  - “a further determination notice” is a notice stating –
    - (a) that the section 128 determination is withdrawn;
    - (b) the reasons for the withdrawal; and

- (c) that a further determination or (as the case may be) re-determination will be made;
- “significant error”, in relation to the section 128 determination, means an error of fact, or a number of such errors, made in the section 128 determination as a result of which the value of the dwelling-house determined or (as the case may be) re-determined was at least 5% more or less than it would otherwise have been.” 5
- (3) In section 125D(2) (period for serving tenant’s notice of intention), after paragraph (b), insert “, and 10
- (c) where that determination or re-determination is withdrawn and a further determination or re-determination made under section 128B, the service of a notice under subsection (7) of that section (a determination effect notice).”
- (4) In section 136(2) (period for serving notice of intention where there is a change of secure tenant), after paragraph (b), insert “, and 15
- (c) where that determination or re-determination is withdrawn and a further determination or re-determination made under section 128B, the service of a notice under subsection (7) of that section (a determination effect notice).” 20
- (5) In section 140(4) (circumstances in which landlord’s first notice to complete may not be served), after paragraph (a), insert –
- “(aa) a review notice (within the meaning of section 128A) has been served in relation to such a determination or re-determination and the district valuer has neither – 25
- (i) served a notice under section 128B(3) (refusal to make further determination), nor
- (ii) served a notice under section 128B(7) (a determination effect notice).”
- (6) In section 181(1) (jurisdiction of county court) after “128” insert “, 128B”. 30
- (7) This section does not apply to any determination or re-determination under section 128 of the Housing Act 1985 (c. 68) which was required before the coming into force of this section.

## **291 Approved lending institutions**

- (1) In section 156 of the Housing Act 1985 (liability to repay is a charge on the premises) – 35
- (a) in subsection (4) for “and any body specified, or of a class or description specified, in an order made by the Secretary of State” substitute –
- “an authorised mortgage lender.”, and
- (b) omit subsections (5) and (6). 40
- (2) In section 622(1) of that Act (minor definitions: general), after the definition of “authorised insurer”, insert –
- ““authorised mortgage lender” means –
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to enter into a regulated mortgage contract as lender, 45

- (b) an EEA firm of the kind mentioned in paragraph (5)(b) of Schedule 3 to that Act who has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to enter into a regulated mortgage contract as lender, or 5
    - (c) a Treaty firm within the meaning of Schedule 4 to that Act who has permission under paragraph 4 of that Schedule (as a result of qualifying for authorisation under paragraph 2 of that Schedule) to enter into a regulated mortgage contract as lender;”. 10
  - (3) In section 622(2) of that Act (interpretation of “authorised deposit taker” and “authorised insurer”) for “and “authorised insurer”” substitute “, “authorised insurer” and “authorised mortgage lender””. 15
  - (4) In section 36(4) of that Act (priority of charges: approved lending institutions) for the words from “and any body” to the end substitute –  
“an authorised mortgage lender.”
  - (5) In section 151B(5) of that Act (priority of charges: approved lending institutions) for the words from “and any body” to the end substitute – 20  
“an authorised mortgage lender.”
  - (6) In paragraph 2(5) of Schedule 11 to the Housing Act 1988 (c. 50) (priority of charges: approved lending institutions) for paragraph (e) substitute –  
“(e) an authorised mortgage lender (within the meaning of the Housing Act 1985 (see section 622 of that Act)).” 25
  - (7) In section 12(5) of the Housing Act 1996 (c. 52) (priority of charges: approved lending institutions) for paragraph (c) substitute –  
“(c) an authorised mortgage lender (within the meaning of the Housing Act 1985 (see section 622 of that Act)).”
- 292 Former right to buy and other flats: service charge loans 30**
  - (1) In section 450C(4) of the Housing Act 1985 (c. 68) (loans in respect of service charges on former right to buy flats and other housing authority flats) –
    - (a) in paragraph (a) for “as regards the rate of interest payable on” substitute “in a case where a rate of interest is payable on some or all of”, and 35
    - (b) after paragraph (a) insert –
      - “(aa) in a case where amounts calculated by reference to the market value of the flat are payable instead of (or as well as) interest, make provision about calculating the market value of the flat (including imposing charges for the services of district valuers);”. 40
  - (2) The powers conferred by section 450C(3) of that Act include, in relation to loans made before the coming into force of subsection (1) above, the power to prescribe terms, or (as the case may be) make provision, of the kind envisaged by subsection (1)(b) above. 45

- (3) But any such terms or provision are not to apply to any particular loan made before the coming into force of subsection (1) above unless the landlord and tenant agree that they are to apply in that case.

### **293 Former right to buy and other flats: equity share purchases**

After section 450C of the Housing Act 1985 (c. 68) (loans in respect of service charges) insert—

*“Other financial assistance in respect of service charges*

#### **450D Purchase of equitable interests**

- (1) The appropriate national authority may by regulations provide that where—
- (a) a housing authority is the landlord of a flat under a long lease granted or assigned by the housing authority or another housing authority, and
  - (b) the tenant is liable under the terms of the lease to pay service charges in respect of repairs or improvements (whether to the flat, the building in which it is situated or any other building or land),
- the landlord may, with the agreement of the tenant and in such circumstances as may be prescribed, purchase an equitable interest in the flat for the purpose of assisting the tenant to meet some or all of the service charge payments.
- (2) Regulations under this section shall ensure that the purchase price is to be met by the landlord reducing or (as the case may be) cancelling the service charge payable to the landlord by the tenant to such extent as corresponds to the amount concerned.
- (3) Regulations under this section may, in particular—
- (a) provide that the power to purchase an equitable interest does not arise in the case of particular descriptions of landlord;
  - (b) make provision about calculating the purchase price (including provision about any discounts and about imposing charges for the services of district valuers);
  - (c) provide for—
    - (i) the tenant to be liable for the administrative expenses of the landlord in connection with the purchase;
    - (ii) such expenses not to exceed such amount (if any) as may be specified in the regulations;
    - (iii) the purchase price to include, at the option of the purchaser, a deduction for such expenses;
  - (d) provide for an alteration, as a result of the purchase of the equitable interest, in the liability of the tenant for future service charges or improvement contributions.
- (4) Regulations under this section may not contain provision for cases where the Secretary of State or the Welsh Ministers are the landlord unless the Welsh Ministers are the landlord—
- (a) as the result of the exercise by them of functions under Part 3 of the Housing Associations Act 1985; or

- (b) as the result of—
  - (i) the exercise by the former National Assembly for Wales, the Secretary of State, Housing for Wales or the Housing Corporation of functions under Part 3 of the Act of 1985; and 5
  - (ii) the transfer of the flat to the Welsh Ministers by virtue of paragraph 39 of Schedule 11 to the Government of Wales Act 2006.
- (5) For the purposes of this section a long lease granted or assigned by—
  - (a) the Welsh Ministers, or 10
  - (b) in a case falling within subsection (4)(b), the former National Assembly for Wales, the Secretary of State, Housing for Wales or the Housing Corporation,shall be taken to have been granted or assigned by a housing authority if (but only if) the person concerned granted or assigned it in exercise of its powers under section 90 of the Housing Associations Act 1985. 15
- (6) This section does not affect any other power of the landlord to purchase an equitable interest in the flat for the purpose of assisting the tenant to meet some or all of the service charge payments.
- (7) Regulations under this section may apply whenever the lease concerned was granted or assigned and whenever the service charge concerned became payable. 20
- (8) Regulations under this section—
  - (a) are to be made by statutory instrument;
  - (b) may make different provision for different cases or descriptions of case including different provision for different areas; 25
  - (c) may contain such incidental, supplementary and transitional provisions as the appropriate national authority considers appropriate.
- (9) An instrument containing regulations made under this section— 30
  - (a) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (10) In this section— 35
  - “appropriate national authority” means—
    - (a) in relation to England, the Secretary of State; and
    - (b) in relation to Wales, the Welsh Ministers;
  - “former National Assembly for Wales” means the Assembly constituted by the Government of Wales Act 1998; 40
  - “housing authority” includes—
    - (a) any registered provider of social housing other than a co-operative housing association;
    - (b) any registered social landlord other than a co-operative housing association; and 45
    - (c) any co-operative housing association which is not—
      - (i) a registered provider of social housing; or
      - (ii) a registered social landlord;

“improvement contribution” has the same meaning as in Part 5  
(see section 187);

“repairs” includes works for making good a structural defect.”

#### **294 Other amendments**

- |  |    |
|--|----|
| (1) In paragraph 11(5B) of Schedule 5 to the Housing Act 1985 (c. 68) (exceptions to the right to buy for certain accommodation for the elderly: appeals etc. to the High Court possible by virtue of disapplication of section 231(4) of the Housing Act 2004 (c. 34)) for “Section 231” substitute “Section 231(1), (2), (3) and (5)”. | 5  |
| (2) Subsection (1) does not apply to –   |    |
| (a) appeals begun, or cases stated and signed, before the coming into force of that subsection, or   | 10 |
| (b) rights of appeal, or rights to have a case stated and signed, which have accrued before that time.   |    |
| (3) In paragraph 5 of Schedule 5A to the Housing Act 1985 (service of initial demolition notices) for “Schedule 13” substitute “Schedule 5”.   | 15 |

*Other*

#### **295 Disposals of dwelling-houses by local authorities**

Schedule 10 (which makes provision about the requirements for consent for disposals of dwelling-houses by local authorities) has effect.

#### **296 Financial assistance for information and other services** 20

- |   |    |
|---|----|
| (1) In section 94(1) of the Housing Act 1996 (c. 52) (financial assistance for provision of general legal advice about residential tenancies and advice about estate management schemes in connection with enfranchisement) – |    |
| (a) after “person of” insert “information, training or”,  |    |
| (b) after “about” insert “, or a dispute resolution service in connection with”,  | 25 |
| (c) at the end of paragraph (a), after “tenancies,”, insert –   |    |
| “(aa) any other matter relating to residential tenancies,”, and   |    |
| (d) in paragraph (b), at the beginning, insert “any matter relating to”.  |    |
| (2) In the heading of section 94 of that Act (and the italic cross-heading before it) for “legal advice” substitute “advice etc.”.  | 30 |

### CHAPTER 3

#### HOUSING FINANCE AND OTHER PROVISIONS

*Housing Revenue Account subsidy*

#### **297 Exclusions from subsidy arrangements** 35

- |  |  |
|--|--|
| (1) After section 80A of the Local Government and Housing Act 1989 (c. 42) |  |
|--|--|

(housing finance: Housing Revenue Account subsidy) insert –

**“80B Agreements to exclude certain authorities or property**

- (1) Subsection (2) applies if an agreement is in force between the appropriate person and a local housing authority for sections 79 to 80A not to apply in relation to – 5
  - (a) the authority; or
  - (b) specified property, or specified descriptions of property, of the authority.
- (2) Sections 79 to 80A do not apply in relation to the authority or (as the case may be) property for each year provided for in the agreement. 10
- (3) Such an agreement may, in particular, contain terms and conditions about –
  - (a) the period of years for which sections 79 to 80A are not to apply (whether a fixed or indefinite period);
  - (b) payments to the authority by the appropriate person or by the authority to the appropriate person; 15
  - (c) the levels of rent for specified property or specified descriptions of property (in the case of an agreement of the kind mentioned in subsection (1)(b));
  - (d) the provision of information; 20
  - (e) the variation or termination of the agreement (whether on the occurrence of particular events, at the discretion of the appropriate person or otherwise).
- (4) The appropriate person may give directions about supplementary, incidental, consequential or transitional matters relating to the variation or termination of an agreement of the kind mentioned in subsection (1). 25
- (5) Such directions may not override any provision made on the subject by the agreement unless the directions are given with the consent of the local housing authority concerned. 30
- (6) The provision made by the directions or the agreement may, in particular, include transitional provision about the terms and conditions on which the authority or (as the case may be) property is to become subject to sections 79 to 80A after the termination of the agreement. 35
- (7) This section does not restrict the circumstances in which Housing Revenue Account subsidy is otherwise not payable to a local housing authority, or in respect of particular property, by virtue of this Part.
- (8) In this section –
  - “property” means land, houses, dwellings, buildings or property of a kind falling within paragraphs (a) to (f) of section 74(1) (property within the Housing Revenue Account); and includes future property; 40
  - “specified, in relation to an agreement, means specified in the agreement.” 45

- (2) In section 88(1)(aa)(ii) of that Act (construction of Part 6: meaning of “appropriate person”) for “National Assembly for Wales” substitute “Welsh Ministers”.
- (3) In Part 3 of Schedule 4 to that Act (the keeping of the Housing Revenue Account: special cases) in paragraph 2—
- (a) at the beginning insert “(1)”, and
- (b) at the end insert—
- “(2) Sub-paragraph (1) does not apply to a local housing authority in respect of a year if, by virtue of section 80B(2), sections 79 to 80A do not apply in relation to the authority for that year.”

*Homelessness and allocation of housing*

**298 Armed forces: homelessness and allocation of housing**

- In section 199 of the Housing Act 1996 (c. 52) (local connection test for homelessness and housing allocation purposes: different treatment of armed forces) omit—
- (a) subsection (2),
- (b) in subsection (3), paragraph (a) and the “or” following it,
- (c) subsection (4), and
- (d) in subsection (5), the word “other”.

*Other* 20

**299 Amendments to Housing Act 1985 relating to lending institutions**

- In section 622(1) of the Housing Act 1985 (c. 68) (minor definitions: general)—
- (a) in the definition of “authorised deposit taker”, in paragraph (b), for “12(1)” substitute “12”, and
- (b) in the definition of “authorised insurer”, in paragraph (b), for “12(1)” substitute “12”.

**300 Building regulations: time limit for prosecutions**

- (1) Section 35A of the Building Act 1984 (c. 55) (time limit for prosecution for contravention of certain building regulations) is amended as follows.
- (2) In the heading omit “certain”. 30
- (3) In subsection (1) for “a relevant offence” substitute “an offence under section 35 above”.
- (4) Omit subsections (2), (3) and (6).
- (5) Subsections (1) to (4) above do not apply to offences committed before the coming into force of this section. 35

**301 Protected mobile home sites to include sites for gypsies and travellers**

In section 5(1) of the Mobile Homes Act 1983 (c. 34) (interpretation), in the definition of “protected site”, omit the words from “does not include” to “that”.

**302 Financial assistance for certain services about commonhold** 5

- (1) In section 62(1) of the Commonhold and Leasehold Reform Act 2002 (c. 15) (financial assistance for general advice about an aspect of the law of commonhold land so far as relating to residential matters) –
- (a) after “person of” insert “information, training or”,
  - (b) for “about an” substitute “about, or a dispute resolution service in connection with –
    - (a) any”, and
    - (b) any other matter relating to commonhold land and residential matters”. 10
  - (c) after “matters” insert “, or
    - (b) any other matter relating to commonhold land and residential matters”. 15
- (2) In the heading of section 62 of that Act after “advice” insert “etc.”.

**PART 4**

SUPPLEMENTARY AND FINAL PROVISIONS

**303 Orders and regulations**

- (1) The power of the Secretary of State, the Treasury or the Welsh Ministers to make orders or regulations under this Act –
- (a) is exercisable by statutory instrument,
  - (b) may be exercised so as to make provision generally or subject to exceptions or only in relation to specified cases or circumstances or descriptions of case, 25
  - (c) may be exercised so as to make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas, and
  - (d) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision. 30
- (2) Subsection (1) does not apply to orders under –
- (a) section 17,
  - (b) paragraph 3 of Schedule 3, or
  - (c) Schedule 4.
- (3) An instrument containing –
- (a) an order under section 14(8),
  - (b) an order of the Secretary of State under section 304,
  - (c) regulations under section 71 or 73, or
  - (d) regulations of the Secretary of State under section 266(3) or 277,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 40

- 
- (4) An instrument containing an order under section 26 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (5) An instrument containing –
- (a) an order under section 13 or 39 or Part 2, 5
  - (b) regulations under Part 2,
  - (c) regulations of the Secretary of State under Chapter 1 of Part 3 (including Schedule 8 but excluding sections 266(3) and 277),
  - (d) regulations of the Secretary of State under section 284, or
  - (e) regulations under Part 3 of Schedule 3, 10
- is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An instrument containing an order of the Welsh Ministers under section 304 or regulations of the Welsh Ministers under section 266(3) or 277 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales. 15
- (7) An instrument containing regulations of the Welsh Ministers under Chapter 1 of Part 3 (including Schedule 8 but excluding sections 266(3) and 277) or section 284 is subject to annulment in pursuance of a resolution of the National Assembly for Wales. 20
- 304 Consequential amendments and repeals**
- (1) Schedule 11 (which contains repeals) has effect.
- (2) The Secretary of State may by order make such supplementary, incidental or consequential provision as the Secretary of State considers appropriate for the general purposes, or any particular purpose, of this Act or in consequence of any provision made by or under this Act or for giving full effect to this Act or any such provision. 25
- (3) The power conferred by subsection (2) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (including this Act and any Act passed in the same Session as this Act). 30
- (4) The power conferred by subsections (2) and (3) is also exercisable by the Welsh Ministers so far as it is exercisable in relation to matters with respect to which functions are exercisable by the Welsh Ministers.
- 305 Transitional, transitory or saving provision** 35
- (1) The Secretary of State may by order make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act other than a Welsh provision.
- (2) The Welsh Ministers may by order make such transitional, transitory or saving provision as the Welsh Ministers consider appropriate in connection with the coming into force of any Welsh provision. 40
- (3) In this section “Welsh provision” means any provision of this Act so far as it is to be brought into force by an order of the Welsh Ministers.

**306 Financial provisions**

- (1) There is to be paid out of money provided by Parliament –
  - (a) any expenditure incurred by a Minister of the Crown by virtue of this Act, and
  - (b) any increase attributable to this Act in the sums payable by virtue of any other Act out of money so provided. 5
- (2) There is to be paid into the Consolidated Fund any sums received by a Minister of the Crown by virtue of this Act (apart from any sums required to be paid into the National Loans Fund).

**307 Extent 10**

- (1) Subject as follows, this Act extends to England and Wales only.
- (2) Any amendment, repeal or revocation made by this Act (other than the repeal in section 5 of the Mobile Homes Act 1983 (c. 34)) has the same extent as the provision to which it relates.
- (3) Any amendment, repeal, revocation or other modification made by virtue of an order under section 304 has the same extent as the provision to which it relates unless the order provides otherwise. 15

**308 Commencement**

- (1) Subject as follows, this Act comes into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes or different areas. 20
- (2) The following provisions –
  - (a) sections 280, 288 to 291, 294, 296, 297 and 302 and Schedule 9, and
  - (b) section 304(1), and Schedule 11, so far as relating to the repeals in sections 125D(2) and 136(2) of, and paragraph 13(5) of Schedule 5 to, the Housing Act 1985 (c. 68), 25come into force at the end of the period of 2 months beginning with the day on which this Act is passed.
- (3) Subsection (4) applies to the following provisions –
  - (a) Chapter 1 of Part 3 (including Schedule 8), 30
  - (b) sections 281, 282, 285 to 287, 292, 293, 298 and 301, and
  - (c) section 304(1), and Schedule 11, so far as relating to repeals which are connected to the provisions mentioned in paragraph (b) above.
- (4) The provisions to which this subsection applies come into force –
  - (a) in relation to England, on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes or different areas, and 35
  - (b) in relation to Wales, on such day as the Welsh Ministers may by order appoint; and different days may be appointed for different purposes or different areas. 40
- (5) Sections 283 and 284 come into force –
  - (a) in relation to England, at the end of the period of 2 months beginning with the day on which this Act is passed, and

- (b) in relation to Wales, on such day as the Welsh Ministers may by order appoint; and different days may be appointed for different purposes or different areas.
- (6) The Secretary of State must consult the Welsh Ministers before making an order under subsection (1) in relation to section 52(2) and Schedule 5. 5
- (7) Subsection (1) does not apply to sections 303, 304(2) to (4), 305, 306 and 307, this section and section 309.

**309 Short title**

This Act may be cited as the Housing and Regeneration Act 2008.

## SCHEDULES

### SCHEDULE 1

Section 1

#### THE HOMES AND COMMUNITIES AGENCY

##### *Membership*

- |   |   |    |
|---|---|----|
| 1 | (1) The HCA is to consist of such number of members (being not less than six) as the Secretary of State may from time to time appoint.  | 5  |
|   | (2) The Secretary of State must appoint one of the members as the person with the function of chairing the HCA.   |    |
|   | (3) In appointing a person to be a member, the Secretary of State –   |    |
|   | (a) must have regard to the desirability of appointing a person who has experience of, and has shown some capacity in, a matter relevant to the exercise of the functions of the HCA, and   | 10 |
|   | (b) must be satisfied that the person will have no financial or other interest likely to affect prejudicially the exercise of the person's functions as a member.   | 15 |
|   | (4) The Secretary of State may require any person whom the Secretary of State proposes to appoint as a member to provide such information as the Secretary of State considers necessary for the purposes of sub-paragraph (3)(b). |    |

##### *Terms of appointment of members*

- |   |  |    |
|---|--|----|
| 2 | (1) Subject as follows, a member of the HCA holds and vacates office in accordance with the member's terms of appointment. |    |
|   | (2) A member may resign by serving notice on the Secretary of State.   |    |
|   | (3) A person ceases to have the function of chairing the HCA if the person –   |    |
|   | (a) resigns from exercising that function by serving notice on the Secretary of State, or                                  | 25 |
|   | (b) ceases to be a member.   |    |
|   | (4) A person who –   |    |
|   | (a) ceases to be a member, or  |    |
|   | (b) ceases to have the function of chairing the HCA,   | 30 |
|   | is eligible for reappointment.   |    |
|   | (5) The Secretary of State may remove a member who –   |    |
|   | (a) has been absent from meetings of the HCA for a period of more than 6 months without the permission of the HCA,         |    |

- (b) has become bankrupt or has made an arrangement with the member's creditors, or
- (c) in the opinion of the Secretary of State, has failed to comply with the member's terms of appointment or is otherwise unable, unfit or unsuitable to exercise the member's functions as a member. 5

*Remuneration etc: members*

- 3 (1) The HCA may pay to its members such remuneration and such allowances as the Secretary of State may decide.
- (2) The HCA may –
- (a) pay such pensions, allowances or gratuities as the Secretary of State may decide to or in respect of any member or former member, or 10
  - (b) pay such sums as the Secretary of State may decide towards the provision for the payment of pensions, allowances or gratuities to or in respect of any member or former member.
- (3) Sub-paragraph (4) applies if – 15
- (a) a person ceases to be a member of the HCA, and
  - (b) the Secretary of State considers that there are special circumstances which make it appropriate for the person to receive compensation.
- (4) The Secretary of State may require the HCA to pay the person such amount as the Secretary of State may decide. 20

*Staff*

- 4 (1) The HCA must appoint a person to be chief executive but may only appoint a person who has been approved by the Secretary of State.
- (2) The chief executive is a member of staff of the HCA.
- (3) The HCA may appoint such number of other staff as the Secretary of State may approve. 25
- (4) The staff's terms and conditions of service are to be decided by the HCA with the approval of the Secretary of State.
- (5) The HCA may pay to its staff such remuneration and such allowances as it may, with the approval of the Secretary of State, decide. 30
- (6) The HCA may –
- (a) pay such pensions, allowances or gratuities to or in respect of any member of staff or former member of staff, or
  - (b) pay such sums towards the provision for the payment of pensions, allowances or gratuities to or in respect of any member of staff or former member of staff, 35
- as it may, with the approval of the Secretary of State, decide.

*Financial provision*

- 5 The Secretary of State may make payments to the HCA.

*Committees*

- 6 (1) The HCA may establish one or more committees.
- (2) A committee may establish one or more sub-committees.
- (3) A member, or member of staff, of the HCA may be a member of a committee or sub-committee. 5
- (4) Other persons may be members of committees or sub-committees but only with the approval, in each case, of the Secretary of State.
- (5) No committee or sub-committee may consist exclusively of other persons.
- (6) The members of a sub-committee of a committee may include persons who are not members of the committee. 10
- (7) The HCA may pay such remuneration and such allowances as the Secretary of State may decide to any person who –
- (a) is a member of a committee or sub-committee, but
- (b) is neither a member nor member of staff of the HCA.
- (8) The HCA may dissolve a committee or sub-committee. 15

*Procedure and members' interests*

- 7 (1) The HCA may, subject to any directions given by the Secretary of State, decide –
- (a) its own procedure, and
- (b) the procedure of any of its committees or sub-committees. 20
- (2) Subject to this, a committee may decide the procedure of any of its sub-committees.
- (3) Subject as above, a committee or sub-committee may decide its own procedure.
- (4) In this paragraph “procedure” includes quorum. 25
- 8 The validity of proceedings of the HCA, or of any of its committees or sub-committees, is not affected by –
- (a) any vacancy,
- (b) any defective appointment, or
- (c) any contravention of – 30
- (i) directions given as mentioned in paragraph 7(1), or
- (ii) paragraph 9.
- 9 (1) A member of the HCA who is directly or indirectly interested in any matter arising at a meeting of the HCA must disclose the nature of that interest to the meeting. 35
- (2) A member of a committee or sub-committee of the HCA who is directly or indirectly interested in any matter arising at a meeting of the committee or sub-committee must disclose the nature of that interest to the meeting.
- (3) In the case of a matter disclosed under this paragraph by a member of the HCA or of a committee or sub-committee, the member – 40

- (a) must not take part in any deliberation or decision about the matter if it is a contract or agreement of any description, but
- (b) may otherwise take part in any deliberation or decision about the matter unless at least one-third of the other members at the meeting decide that the interest disclosed might prejudicially affect the member's consideration of the matter. 5

*Delegation*

- 10 The HCA may delegate any of its functions to any of its members, committees, sub-committees or staff.

*Reports, accounts etc.* 10

- 11 (1) For each financial year, the HCA must –
- (a) prepare an annual report on how it has exercised its functions during the year, and
  - (b) send a copy of the report to the Secretary of State within such period as the Secretary of State may direct. 15
- (2) The Secretary of State must lay before Parliament a copy of each report received under sub-paragraph (1).
- 12 (1) The HCA must keep proper accounts and proper records in relation to the accounts.
- (2) For each financial year, the HCA must – 20
- (a) prepare a statement of accounts in respect of that financial year, and
  - (b) send copies of the statement to the Secretary of State and the Comptroller and Auditor General within such period as the Secretary of State may direct.
- (3) The statement must be in such form as the Secretary of State may direct. 25
- (4) The Comptroller and Auditor General must –
- (a) examine, certify and report on the statement, and
  - (b) send a copy of the certified statement and of the report to the Secretary of State as soon as possible.
- (5) The Secretary of State must lay before Parliament a copy of each statement and report received under sub-paragraph (4). 30
- 13 (1) The HCA must provide the Secretary of State with such information as the Secretary of State may require relating to the HCA's property or to the exercise or proposed exercise of its functions.
- (2) The HCA must – 35
- (a) permit any person authorised by the Secretary of State to inspect and make copies of any accounts or other documents of the HCA, and
  - (b) provide such explanation of them as that person or the Secretary of State may require.

*Supplementary and transitional provisions* 40

- 14 (1) The application of the seal of the HCA must be authenticated by the signature of –

- (a) a member of the HCA who is authorised (generally or specifically) for that purpose, or
  - (b) a member of staff of the HCA who is so authorised.
- (2) A document purporting to be duly executed under the seal of the HCA, or signed on its behalf, is to be received in evidence and, unless the contrary is proved, is to be treated as so executed or signed. 5
- 15 The HCA is not to be regarded –
  - (a) as a servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown,and its property is not to be regarded as property of, or held for or on behalf of, the Crown. 10
- 16 The HCA is a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916.
- 17 The Secretary of State (instead of the HCA) may –
  - (a) appoint the first chief executive, and 15
  - (b) determine the terms and conditions of service as a member of staff of the HCA which are applicable to the first chief executive on appointment.

## SCHEDULE 2

Section 9(6)

### ACQUISITION OF LAND

20

#### PART 1

#### COMPULSORY ACQUISITION OF LAND

##### *Application of Acquisition of Land Act 1981 (c. 67)*

- 1 (1) The Acquisition of Land Act 1981 applies to the compulsory acquisition of land under section 9 with the following modification. 25
  - (2) The reference in section 17(3) of that Act (local authority and statutory undertakers' land) to statutory undertakers includes a reference to the HCA.
- 2 (1) Schedule 3 to the Act of 1981 applies to the compulsory acquisition of new rights under section 9 with the following modification.
  - (2) The reference in paragraph 4(3) of that Schedule to statutory undertakers includes a reference to the HCA. 30

##### *Extinguishment of private rights of way etc.*

- 3 (1) Sub-paragraph (2) applies where the HCA completes the compulsory acquisition of land under this Part of this Act.
  - (2) On completion of the acquisition – 35
    - (a) all private rights of way on, under or over the land are extinguished,
    - (b) all rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land are extinguished, and

- (c) any such apparatus vests in the HCA.
- (3) Sub-paragraph (2) is subject to paragraphs 4 to 6.
- 4 The HCA may give a direction before the completion of the acquisition that paragraph 3(2) is not to apply to any right or apparatus specified in the direction. 5
- 5 Paragraph 3(2) is subject to any agreement which may be made (whether before or after the completion of the acquisition) between—
- (a) the HCA, and
- (b) the person—
- (i) in whom the right or apparatus concerned is vested, or 10
- (ii) to whom it belongs.
- 6 (1) Paragraph 3(2) does not apply to—
- (a) any right vested in statutory undertakers for the purpose of carrying on their undertaking,
- (b) any apparatus belonging to statutory undertakers for that purpose, 15
- (c) any right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network, or
- (d) any electronic communications apparatus kept installed for the purposes of any such network. 20
- (2) In sub-paragraph (1) “statutory undertakers” means persons who are, or are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990 (c. 8); and “statutory undertaking” is to be read in accordance with section 262 of that Act (meaning of “statutory undertakers”). 25
- 7 (1) Any person who suffers loss by the extinguishment of a right, or the vesting of any apparatus, under paragraph 3 is entitled to compensation from the HCA.
- (2) Any compensation payable under this paragraph is to be determined in accordance with the Land Compensation Act 1961 (c. 33). 30
- New rights: Compulsory Purchase Act 1965 (c. 56)*
- 8 (1) The Compulsory Purchase Act 1965 applies, with the necessary modifications, to the compulsory acquisition of new rights under section 9 as it applies to the compulsory purchase of land.
- (2) One result is that, in appropriate contexts, references in that Act to land are to be read as referring, or as including references, to— 35
- (a) the rights acquired or to be acquired, or
- (b) land over which the rights are, or are to be, exercisable, according to the requirements of the particular context.
- New rights: specific adaptations of 1965 Act* 40
- 9 (1) Part 1 of the Act of 1965 applies to the compulsory acquisition of new rights under section 9 with the modifications specified in paragraphs 10 to 15.
- (2) Sub-paragraph (1) is without prejudice to the generality of paragraph 8.

- 10 Section 7 (measure of compensation) of the Act of 1965 is to be read as if for that section there were substituted –
- “7 (1) In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is acquired is depreciated by the acquisition but also to the damage (if any) to be sustained by the owner of the land by reason of injurious affection of other land of the owner by the exercise of the right. 5
  - (2) The modifications subject to which subsection (1) of section 44 of the Land Compensation Act 1973 (compensation for injurious affection) is to have effect, as applied by subsection (2) of that section to compensation for injurious affection under this section, are that – 10
    - (a) for “land is acquired or taken” there shall be substituted “a right over land is acquired”; and 15
    - (b) for “acquired or taken from him” there shall be substituted “over which the right is exercisable”.”
- 11 Section 8 of the Act of 1965 (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) is to be read as if for that section there were substituted – 20
- “8 (1) Subsection (3) applies if –
    - (a) a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”) has been served on a person in pursuance of section 5 of this Act; and 25
    - (b) as a result –
      - (i) a question of disputed compensation in respect of the purchase of the right would, apart from this section, fall to be determined by the Lands Tribunal (“the Tribunal”); and 30
      - (ii) before the Tribunal has determined the question, the person satisfies the Tribunal as mentioned in subsection (2).
  - (2) The person satisfies the Tribunal as mentioned in this subsection if the person satisfies the Tribunal that – 35
    - (a) the person has an interest which the person is able and willing to sell in the whole of the relevant land; and
    - (b) the right –
      - (i) in the case of land consisting of a house, building or manufactory, cannot be purchased without material detriment to the land; or 40
      - (ii) in the case of land consisting of a park or garden belonging to a house, cannot be purchased without seriously affecting the amenity or convenience of the house. 45
  - (3) The compulsory purchase order to which the notice to treat relates, in relation to the person concerned –
    - (a) ceases to authorise the purchase of the right; and

- (b) is deemed to authorise the purchase of the person's interest in the whole of the relevant land (including, in the case of land consisting of a park or garden belonging to a house, the house);
- and the notice to treat is deemed to have been served in respect of that interest on such date as the Tribunal directs. 5
- (4) Any question as to the extent of the land in which a compulsory purchase order is deemed to authorise the purchase of an interest by virtue of subsection (3) is to be determined by the Tribunal.
- (5) Subsection (6) applies if, in consequence of a determination of the Tribunal that it is satisfied as mentioned in subsection (1)(b)(ii), a compulsory purchase order is deemed by virtue of subsection (3) to authorise the purchase of an interest in land. 10
- (6) The acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made. 15
- (7) Nothing in subsection (6) prejudices any other power of the authority to withdraw the notice.
- (8) The modifications subject to which subsection (1) of section 58 of the Land Compensation Act 1973 (determination of material detriment) is to have effect, as applied by subsection (2) of that section to the duty of the Tribunal in determining whether it is satisfied as mentioned in subsection (1)(b)(ii) above, are set out in subsection (9). 20
- (9) They are that—
- (a) at the beginning of paragraphs (a) and (b) there shall be inserted “a right over”;
- (b) for “severance” there shall be substituted “right on the whole of the house, building or manufactory or of the house and the park or garden”; and 30
- (c) for “part proposed” and “part is” there shall be substituted respectively “right proposed” and “right is”.
- 12 (1) The provisions of the Act of 1965 mentioned in sub-paragraph (2) (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land) are to be read as if they were modified in accordance with sub-paragraph (3). 35
- (2) The provisions are—
- (a) section 9(4) (failure of owners to convey),
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity), 40
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners), and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land).
- (3) The provisions are to be read as if they were modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be acquired compulsorily is vested absolutely in the acquiring authority. 45

- 13 (1) Section 11 of the Act of 1965 (powers of entry) is to be read as if it were modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, the acquiring authority has power to enter for the purpose of exercising that right.
- (2) For the purposes of sub-paragraph (1) –
- (a) the power to enter is to be exercisable in the same circumstances, and subject to the same conditions, as already contained in that section, and
- (b) the right is deemed to have been created on the date of service of the notice.
- (3) Sections 12 (penalty for unauthorised entry) and 13 (entry on sheriff’s warrant in the event of obstruction) of the Act of 1965 are to be read as if modified correspondingly.
- 14 Section 20 of the Act of 1965 (compensation for short-term tenants) is to be read as if it were modified so as to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory purchase of the interests but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right concerned.
- 15 Section 22 of the Act of 1965 (protection of acquiring authority’s possession of land where by inadvertence an interest in the land has not been purchased) is to be read as if it were modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right concerned, subject to compliance with that section as respects compensation.

*New rights: compensation*

- 16 (1) The enactments relating to compensation for the compulsory purchase of land apply, with the necessary modifications, in relation to the acquisition of new rights under section 9 as they apply to compensation for the compulsory purchase of land.
- (2) Sub-paragraph (1) is without prejudice to the generality of paragraph 8.

PART 2

ACQUISITION BY AGREEMENT

- 17 (1) The provisions of Part 1 of the Compulsory Purchase Act 1965 (c. 56) (other than section 31) apply, so far as applicable, to the acquisition by the HCA of land by agreement.
- (2) In that Part as so applied “land” has the same meaning as in this Part of this Act.

SCHEDULE 3

Section 11

MAIN POWERS IN RELATION TO LAND OF THE HCA

PART 1

POWERS TO OVERRIDE EASEMENTS ETC.

|   |    |
|---|----|
| <i>Powers to override easements etc. in undertaking works or using land</i>   | 5  |
| 1 (1) The HCA or any other person may undertake any construction or maintenance works on land of the HCA even if undertaking the works involves—  |    |
| (a) interference with a relevant right or interest, or  |    |
| (b) a breach of a restriction as to the user of land arising by virtue of a contract.   | 10 |
| (2) But the construction or maintenance works must still be in accordance with planning permission.   |    |
| (3) The HCA or any other person may use any land of the HCA even if the use involves—   | 15 |
| (a) interference with a relevant right or interest, or  |    |
| (b) a breach of a restriction as to the user of land arising by virtue of a contract.   |    |
| (4) But the use of the land must be in accordance with planning permission.   |    |
| (5) Sub-paragraphs (1) to (4) do not authorise interference with—   | 20 |
| (a) any right of way on, under or over land, or   |    |
| (b) any right of laying down, erecting, continuing or maintaining apparatus on, under or over land,   |    |
| if the right is a protected right.  |    |
| (6) In this paragraph—  | 25 |
| “construction or maintenance works” means the erection, construction, carrying out or maintenance of any building or work,  |    |
| “protected right” means—  |    |
| (a) a right vested in, or belonging to, statutory undertakers for the purpose of carrying on their undertaking, or  | 30 |
| (b) a right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network,   |    |
| “relevant right or interest” means any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support),  | 35 |
| “statutory undertakers” means persons who are, or are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990 (c. 8); and “statutory undertaking” is to be read in accordance with section 262 of that Act (meaning of “statutory undertakers”). | 40 |

*Compensation for overridden easements etc.*

- 2 (1) Compensation is payable under section 7 or 10 of the Compulsory Purchase Act 1965 (c. 56) in respect of any interference or breach made in pursuance of paragraph 1.
- (2) The compensation is to be assessed in the same manner, and subject to the same rules, as in the case of other compensation under those sections in respect of injurious affection where –
- (a) the compensation is to be estimated in connection with a purchase by the HCA, or
  - (b) the injury arises from the execution of works on, or use of, land acquired by the HCA.
- (3) Sub-paragraph (4) applies if a person other than the HCA –
- (a) is liable to pay compensation by virtue of sub-paragraphs (1) and (2), and
  - (b) fails to discharge that liability.
- (4) The liability is enforceable against the HCA.
- (5) But sub-paragraph (4) does not affect any agreement between the HCA and any other person for indemnifying the HCA against any liability under that sub-paragraph.

PART 2

POWERS TO EXTINGUISH PUBLIC RIGHTS OF WAY

*Powers of Secretary of State to extinguish public rights of way by order*

- 3 The Secretary of State may by order extinguish any public right of way over land of the HCA if the Secretary of State is satisfied that –
- (a) an alternative right of way has been, or will be, provided, or
  - (b) the provision of an alternative right of way is not required.

*Notification of proposal to make order*

- 4 (1) This paragraph applies if the Secretary of State is proposing to make an order under paragraph 3.
- (2) The Secretary of State must –
- (a) publish a notice stating –
    - (i) the effect of the order,
    - (ii) the time (not less than 28 days starting with the date of publication of the notice) within which objections to the proposal may be made, and
    - (iii) the manner in which objections to the proposal may be made, and
  - (b) serve a copy of the notice on –
    - (i) the local planning authority in whose area the land is situated, and
    - (ii) the relevant highway authority.

- (3) In sub-paragraph (2) “the relevant highway authority” means any authority which is a highway authority in relation to the right of way which is proposed to be extinguished by the order.
- (4) Publication under sub-paragraph (2) must be in such manner as the Secretary of State considers appropriate. 5

*Duty to consider objections*

- 5 (1) The Secretary of State must proceed under paragraph 6 if –
- (a) an objection to a proposal to make an order is properly made and not withdrawn, and
  - (b) the matter is not otherwise dealt with. 10
- (2) For the purposes of sub-paragraph (1) an objection is properly made if (and only if) –
- (a) it is made –
    - (i) within the time, and
    - (ii) in the manner, 15
 stated in the notice under paragraph 4, and
  - (b) a written statement of the grounds of the objection is comprised in, or submitted with, the objection.
- (3) For the purposes of sub-paragraph (1) the matter is otherwise dealt with if (and only if) the Secretary of State – 20
- (a) decides, irrespective of the objection, not to make the order, or
  - (b) decides to make a modification to the proposal which is agreed to by the objector as meeting the objection.
- 6 (1) The Secretary of State must, before making a final decision, consider the grounds of the objection as set out in the statement comprised in, or submitted with, the objection. 25
- (2) The Secretary of State may require the objector to submit within a particular period a further written statement as to any of the matters to which the objection relates.

*Duty to give opportunity to appear* 30

- 7 (1) The Secretary of State must, before making a final decision, give the objector an opportunity to appear before, and be heard by, a person appointed for the purpose by the Secretary of State.
- (2) Sub-paragraph (3) applies if the objector takes advantage of this opportunity. 35
- (3) The Secretary of State must give an opportunity of appearing and being heard on the same occasion as the objector to –
- (a) the HCA, and
  - (b) any other persons whom the Secretary of State considers ought to be given the opportunity. 40
- (4) Sub-paragraphs (1) to (3) do not apply so far as the Secretary of State has the power to proceed under paragraph 8 or 9.

*Power to treat objection as irrelevant*

- 8 The Secretary of State may treat the objection as irrelevant for the purpose of making a final decision –
- (a) if the Secretary of State has considered the grounds of the objection as set out in the original statement and in any further statement, and 5
  - (b) so far as the Secretary of State is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation.

*Power to curtail decision-making process*

- 9 The Secretary of State may make a final decision without further investigation as to the matters to which the objection relates if – 10
- (a) the Secretary of State –
    - (i) has considered the grounds of the objection as set out in the original statement and in any further statement, and
    - (ii) is satisfied that, for the purpose of making a final decision, sufficient information is available as to the matters to which the objection relates, or 15
  - (b) a further statement has been required under paragraph 6(2) but is not submitted within the required period.

*Power to hold public local inquiry*

- 10 (1) The Secretary of State must cause a public local inquiry to be held in relation to an objection to a proposal to make an order under paragraph 3 if the Secretary of State considers that the matters to which the objection relates are such as to require investigation by such an inquiry before the Secretary of State makes a final decision. 20
- (2) The duty in sub-paragraph (1) is effective despite any other provisions of paragraphs 4 to 9. 25
- (3) The other provisions of those paragraphs are to be ignored if no effect has been given to them when the Secretary of State decides to cause an inquiry to be held.

*Orders relating to electronic communications apparatus: removal or abandonment of apparatus* 30

- 11 Paragraphs 12 and 13 apply if –
- (a) an order under paragraph 3 extinguishing a public right of way is made, and
  - (b) at the time of the publication of the notice required by paragraph 4 any electronic communications apparatus was kept 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. 35
- 12 (1) The power of the operator of the network to remove the apparatus is exercisable, despite the order, at any time not later than the end of the period of 3 months beginning with the day on which the right of way is extinguished. 40
- (2) The power of the operator of the network to remove the whole or any part of the apparatus is exercisable after the end of that period if, before the end

- 
- of the period, the operator has served notice on the HCA of the operator’s intention to remove the apparatus or (as the case may be) part.
- 13 (1) The operator of the network may abandon the electronic communications apparatus, or any part of it, by serving notice to that effect on the HCA not later than the end of the period of 3 months beginning with the day on which the right of way is extinguished. 5
- (2) In the absence of such a notice, the operator of the network is to be treated at the end of the period of 3 months as having abandoned any part of the apparatus which, at that time, the operator has neither – 10
- (a) removed, nor
- (b) served notice of intention to remove.
- 14 (1) The operator of the network may recover from the HCA the expense of providing any substitute electronic communications apparatus in such other place as the operator may require.
- (2) In sub-paragraph (1) “substitute electronic communications apparatus” means electronic communications apparatus in substitution for – 15
- (a) the electronic communications apparatus removed or abandoned, and
- (b) any other electronic communications apparatus connected with the removed or abandoned apparatus which is made useless in consequence of the removal or abandonment. 20
- 15 Electronic communications apparatus, or any part of it, abandoned by the operator of an electronic communications code network under paragraph 13 –
- (a) vests in the HCA, and 25
- (b) is deemed, with its abandonment, to cease to be kept installed for the purposes of an electronic communications code network.
- Orders relating to electronic communications apparatus: notice requirements*
- 16 (1) The Secretary of State must serve notice on the operator of an electronic communications code network of the making of an order under paragraph 3 if the order extinguishes a public right of way in circumstances in which paragraphs 12 and 13 apply in relation to the operator. 30
- (2) The notice must be served as soon as practicable after the making of the order.
- Supplementary: Part 2* 35
- 17 The power of the Secretary of State to make orders under paragraph 3 includes power to –
- (a) vary or revoke such orders, and
- (b) make supplementary, incidental, consequential, transitional, transitory or saving provision. 40
- 18 In this Part of this Schedule, in relation to an order, any reference to making a final decision is a reference to deciding whether to make the order or what modification (if any) ought to be made.

PART 3

POWERS IN RELATION TO BURIAL GROUNDS AND CONSECRATED LAND ETC.

*Burial grounds*

- 19 (1) This paragraph applies in relation to any land of the HCA which consists in, or forms part of, a burial ground. 5
- (2) The HCA may use the land in any way which accords with planning permission despite –
- (a) anything in any enactment relating to burial grounds, or
  - (b) any obligation or restriction imposed under ecclesiastical law or otherwise in respect of burial grounds. 10
- (3) But sub-paragraph (2) does not apply in relation to any land which has been used for the burial of the dead until prescribed requirements about the removal and reinterment of human remains and the disposal of monuments have been complied with in relation to the land.

*Consecrated land other than burial grounds* 15

- 20 (1) This paragraph applies in relation to any land of the HCA which –
- (a) is consecrated land (whether or not including a building), and
  - (b) does not consist in, or form part of, a burial ground.
- (2) The HCA or any other person may use the land in any way which accords with planning permission despite any obligation or restriction imposed under ecclesiastical law or otherwise in respect of consecrated land. 20
- (3) But any such use of the land is subject to –
- (a) prescribed requirements about the disposal of monuments, and
  - (b) prescribed provisions for prohibiting or restricting the use of the land while – 25
    - (i) any church or other building used, or formerly used, for religious worship remains on the land, or
    - (ii) any part of any such church or other building remains on the land.
- (4) Prohibitions or restrictions prescribed under sub-paragraph (3)(b) may be absolute or until a prescribed consent is obtained. 30

*Other land connected to religious worship*

- 21 (1) This paragraph applies in relation to any land of the HCA which –
- (a) is neither consecrated land nor land which consists in, or forms part of, a burial ground, and 35
  - (b) at the time of acquisition included –
    - (i) a church or other building used, or formerly used, for religious worship, or
    - (ii) the site of such a church or other building.
- (2) Any use of the land is subject to prescribed requirements about the disposal of monuments. 40

*Regulations: general*

- 22 (1) Regulations under this Part of this Schedule must secure that any use of land which is subject to compliance with the regulations is (so far as possible) subject to an appropriate level of control.
- (2) For the purposes of sub-paragraph (1) an appropriate level of control is the same control –
- (a) as imposed by law in relation to a similar use authorised by an enactment not contained in this Part of this Act,
  - (b) as imposed by a Measure, or
  - (c) as it would be proper to impose on a disposal of the land concerned otherwise than in pursuance of an enactment or Measure.
- (3) Regulations under this Part of this Schedule must impose such requirements in relation to the disposal of the land as the Secretary of State considers appropriate to secure that the requirements and other provisions in the regulations about the use of the land are complied with.
- (4) Regulations made for the purposes of paragraphs 19 to 21 may, in particular, include incidental or consequential provision about the closing of registers.

*Regulations about human remains and monuments*

- 23 (1) Regulations under this Part of this Schedule about the removal and reinterment of human remains and the disposal of monuments must require the persons in whom the land is vested to publish notice of their intention to carry out the removal and reinterment of any human remains or the disposal of any monuments.
- (2) Regulations under this Part of this Schedule about the removal and reinterment of human remains and the disposal of monuments must make provision for –
- (a) enabling the personal representatives or relatives of any deceased person themselves –
    - (i) to undertake the removal and reinterment of the remains of the deceased, and
    - (ii) the disposal of any monument commemorating the deceased, and
  - (b) requiring the persons in whom the land is vested to meet the expenses of such removal, reinterment and disposal provided that they are not more than such amount as may be prescribed.
- (3) Regulations under this Part of this Schedule about the removal and reinterment of human remains and the disposal of monuments must require compliance with such reasonable conditions (if any) as may be imposed, in the case of consecrated land, by the bishop of the diocese, in relation to –
- (a) the manner of removal of any human remains,
  - (b) the place and manner of reinterment of any human remains, and
  - (c) the disposal of any monuments.
- (4) Regulations under this Part of this Schedule about the removal and reinterment of human remains must require compliance with any directions given in any case by the Secretary of State in relation to the removal and reinterment of any human remains.

*Disapplication of faculties*

- 24 (1) No faculty is required for –
- (a) the removal and reinterment of any human remains, or
  - (b) the removal or disposal of any monuments,
- in accordance with regulations under this Part of this Schedule. 5
- (2) Sub-paragraph (1) is subject to any provision to the contrary made by regulations under this Part of this Schedule.

*Disapplication of section 25 of the Burial Act 1857*

- 25 Section 25 of the Burial Act 1857 (c. 81) (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 under this Part of this Schedule. 10

*Interpretation: Part 3*

- 26 (1) In this Part of this Schedule –
- “burial ground” includes any churchyard, cemetery or other ground (whether or not consecrated) which has at any time been set apart for the purposes of interment, 15
  - “monument” includes a tombstone or other memorial,
  - “prescribed” means prescribed by regulations made by the Secretary of State. 20
- (2) Any power conferred by paragraph 19(2) or 20(2) to use land is to be read as a power to use the land, whether or not it involves –
- (a) the erection, construction or carrying out of any building or work, or
  - (b) the maintenance of any building or work.

PART 4 25

POWERS IN RELATION TO OPEN SPACES

- 27 (1) This paragraph applies to land of the HCA which is, or forms part of –
- (a) a common,
  - (b) open space, or
  - (c) an allotment. 30
- (2) The HCA or any other person may use the land in any way which accords with planning permission despite anything in any enactment –
- (a) which relates to land of that kind, or
  - (b) by which the land is specially regulated.
- (3) The power conferred by sub-paragraph (2) to use land is to be read as a power to use the land, whether or not it involves – 35
- (a) the erection, construction or carrying out of any building or work, or
  - (b) the maintenance of any building or work.

SCHEDULE 4

Section 12

POWERS IN RELATION TO, AND FOR, STATUTORY UNDERTAKERS

PART 1

EXTINGUISHMENT OR REMOVAL POWERS FOR THE HCA

*Notice for extinguishment of rights of undertakers or for removal of their apparatus* 5

- 1 (1) Sub-paragraph (2) applies if –
  - (a) a protected right subsists over land of the HCA and is vested in, or belongs to, statutory undertakers for the purpose of carrying on their undertaking, or
  - (b) apparatus vested in, or belonging to, statutory undertakers for the purpose of carrying on their undertaking is on, under or over land of the HCA. 10
- (2) The HCA may serve a notice on the statutory undertakers.
- (3) The notice may, in the case of a protected right, state that, at the end of the relevant period, the right will be extinguished. 15
- (4) The notice may, in the case of apparatus, require that, before the end of the relevant period, the apparatus must be removed.
- (5) In this paragraph –
  - “protected right” means –
    - (a) a right of way on, under or over land, or 20
    - (b) a right of laying down, erecting, continuing or maintaining apparatus on, under or over land,
  - “relevant period” means –
    - (a) the period of 28 days beginning with the date of service of the notice, or 25
    - (b) any longer period beginning with that date and specified in the notice.

*Counter-notices*

- 2 (1) Sub-paragraph (2) applies if the HCA serves a notice under paragraph 1 on statutory undertakers. 30
- (2) The statutory undertakers may, before the end of the period of 28 days beginning with the date of the service of the notice, serve a counter-notice on the HCA.
- (3) The counter-notice is a notice stating that the statutory undertakers object to all or any provisions of the notice under paragraph 1. 35
- (4) The counter-notice must also specify the grounds of their objection.

*Effect of unopposed notice*

- 3 (1) This paragraph applies if –
  - (a) a notice is served under paragraph 1, and
  - (b) no counter-notice is served under paragraph 2. 40

- (2) Any right to which the notice under paragraph 1 relates is extinguished at the end of the period specified for that purpose in the notice.
- (3) The HCA may –
- (a) remove any apparatus, and
  - (b) dispose of it as it considers appropriate,
- if any requirement of the notice under paragraph 1 as to the removal of the apparatus has not been complied with by the end of the period specified for that purpose in the notice.

5

*Opposed notices and Ministerial orders*

- 4 (1) This paragraph applies if –
- (a) a notice is served under paragraph 1, and
  - (b) a counter-notice is served under paragraph 2.
- (2) The HCA may –
- (a) withdraw the notice served under paragraph 1, or
  - (b) apply to the Secretary of State and the appropriate Minister for an order under sub-paragraph (3).
- (3) The Secretary of State and the appropriate Minister may make an order embodying, with or without modifications, the provisions of the notice.
- (4) The fact that a notice has been withdrawn under sub-paragraph (2)(a) does not prejudice the service of a further notice.
- 5 (1) Before making an order under paragraph 4(3), the Secretary of State and the appropriate Minister must give the statutory undertakers on whom notice was served an opportunity to object to the application for the order.
- (2) The Secretary of State and the appropriate Minister –
- (a) must consider any objections made by virtue of sub-paragraph (1), and
  - (b) must give –
    - (i) the statutory undertakers who made the objections, and
    - (ii) the HCA,an opportunity to appear before, and be heard by, a person appointed for this purpose by the Secretary of State and the appropriate Minister.
- (3) The Secretary of State and the appropriate Minister may then –
- (a) decide not to make an order, or
  - (b) proceed to make an order in accordance with the application (with or without modifications).
- 6 (1) This paragraph applies if an order is made under paragraph 4(3).
- (2) Any right to which the order relates is extinguished at the end of the period specified for that purpose in the order.
- (3) The HCA may –
- (a) remove any apparatus, and
  - (b) dispose of it as it considers appropriate,

if any requirement of the order as to the removal of the apparatus has not been complied with by the end of the period specified for that purpose in the order.

### *Compensation*

- |   |  |    |
|---|--|----|
| 7 | <p>(1) Statutory undertakers are entitled to compensation from the HCA if—</p> <p style="margin-left: 20px;">(a) any right vested in, or belonging to, the statutory undertakers is extinguished, or</p> <p style="margin-left: 20px;">(b) any requirement is imposed on the statutory undertakers, by virtue of this Part of this Schedule.</p> | 5  |
|   | <p>(2) Sections 280 and 282 of the Town and Country Planning Act 1990 (c. 8) (measure of compensation to statutory undertakers) apply to compensation under this paragraph as they apply to compensation under section 279(4) of that Act.</p>   | 10 |

### *Electronic communications*

- |   |   |    |
|---|---|----|
| 8 | <p>(1) The reference in paragraph 1(1)(a) to a protected right vested in, or belonging to, statutory undertakers for the purpose of carrying on their undertaking includes a reference to a protected right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network.</p>   | 15 |
|   | <p>(2) The reference in paragraph 1(1)(b) to apparatus vested in, or belonging to, statutory undertakers for the purpose of carrying on their undertaking includes a reference to electronic communications apparatus kept installed for the purposes of any such network.</p>  | 20 |
|   | <p>(3) Sub-paragraphs (1) and (2) do not apply where paragraphs 12 and 13 of Part 2 of Schedule 3 apply (orders under paragraph 3 of that Schedule which relate to electronic communications apparatus).</p>  | 25 |
|   | <p>(4) Where paragraph 1 has effect as mentioned in sub-paragraphs (1) and (2) above—</p> <p style="margin-left: 20px;">(a) any reference in this Part of this Schedule to statutory undertakers has effect as a reference to the operator of the electronic communications code network, and</p> <p style="margin-left: 20px;">(b) any reference in this Part of this Schedule to the appropriate Minister has effect as a reference to the Secretary of State for Business, Enterprise and Regulatory Reform.</p> | 30 |

## PART 2 35

### POWERS FOR UNDERTAKERS TO CARRY OUT WORKS

#### *Notices to carry out works*

- |   |   |    |
|---|---|----|
| 9 | <p>(1) Sub-paragraph (2) applies if—</p> <p style="margin-left: 20px;">(a) apparatus vested in, or belonging to, statutory undertakers is on, under or over land of the HCA, and</p> <p style="margin-left: 20px;">(b) the statutory undertakers claim that development to be carried out on the land will require, on technical or other grounds connected</p> | 40 |
|---|---|----|

with carrying on their undertaking, the removal or re-siting of the apparatus affected by the development.

- (2) The statutory undertakers may serve on the HCA a notice claiming the right to –
- (a) enter on the land, and
  - (b) carry out such works for the removal or re-siting of the apparatus or any part of it as may be specified in the notice.
- (3) No notice may be served under sub-paragraph (2) more than 21 days after the beginning of the development on the land.

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*Counter-notices*

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- 10 (1) Sub-paragraph (2) applies if statutory undertakers serve a notice under paragraph 9 on the HCA.
- (2) The HCA may, before the end of the period of 28 days beginning with the date of the service of the notice, serve a counter-notice on the statutory undertakers.
- (3) The counter-notice is a notice stating that the HCA objects to all or any provisions of the notice under paragraph 9.
- (4) The counter-notice must also specify the grounds of the HCA's objection.

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*Effect of unopposed notice*

- 11 (1) This paragraph applies if –
- (a) a notice is served under paragraph 9,
  - (b) no counter-notice is served under paragraph 10, and
  - (c) the period of 28 days beginning with the date of the service of the notice under paragraph 9 has ended.
- (2) The statutory undertakers have the rights claimed in their notice under paragraph 9.

20

25

*Opposed notices and Ministerial orders*

- 12 (1) This paragraph applies if –
- (a) a notice is served under paragraph 9, and
  - (b) a counter-notice is served under paragraph 10.
- (2) The statutory undertakers may –
- (a) withdraw the notice served under paragraph 9, or
  - (b) apply to the Secretary of State and the appropriate Minister for an order under sub-paragraph (3).
- (3) The Secretary of State and the appropriate Minister may by order confer on the statutory undertakers –
- (a) the rights claimed in the notice under paragraph 9, or
  - (b) such modified rights as the Secretary of State and the appropriate Minister consider it appropriate to confer on the statutory undertakers.

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- (4) The fact that a notice has been withdrawn under sub-paragraph (2)(a) does not prejudice the service of a further notice.

*Power to arrange for the works to be done by the HCA*

- 13 (1) Sub-paragraph (2) applies if statutory undertakers have the right to carry out works for the removal or re-siting of apparatus by virtue of this Part of this Schedule. 5
- (2) The statutory undertakers may arrange with the HCA for the works to be carried out by the HCA, under the superintendence of the statutory undertakers, instead of by the statutory undertakers themselves.

*Compensation* 10

- 14 (1) Statutory undertakers are entitled to compensation from the HCA if works are carried out for the removal or re-siting of their apparatus which they have the right to carry out by virtue of this Part of this Schedule.
- (2) Sections 280 and 282 of the Town and Country Planning Act 1990 (c. 8) (measure of compensation to statutory undertakers) apply to compensation under this paragraph as they apply to compensation under section 279(4) of that Act. 15

*Electronic communications*

- 15 (1) The reference in paragraph 9(1)(a) to apparatus vested in, or belonging to, statutory undertakers includes a reference to electronic communications apparatus kept installed for the purposes of an electronic communications code network. 20
- (2) Where paragraph 9(1)(a) has effect as mentioned in sub-paragraph (1) above—
- (a) any reference in this Part of this Schedule to statutory undertakers has effect as a reference to the operator of the electronic communications code network, and 25
- (b) any reference in this Part of this Schedule to the appropriate Minister has effect as a reference to the Secretary of State for Business, Enterprise and Regulatory Reform. 30

PART 3

EXTENSION OR MODIFICATION OF FUNCTIONS OF UNDERTAKERS

*Ministerial order following representations by statutory undertakers*

- 16 (1) The Secretary of State and the appropriate Minister may by order provide for an extension or modification of the functions of particular statutory undertakers if conditions 1 and 2 are met. 35
- (2) Condition 1 is that the statutory undertakers have made representations on the subject to the Secretary of State and the appropriate Minister.
- (3) Condition 2 is that the Secretary of State and the appropriate Minister consider it appropriate to extend or modify the functions of the statutory undertakers— 40

- (a) to secure the provision of services which –
    - (i) would not otherwise be provided, or
    - (ii) would not otherwise be satisfactorily provided,in relation to relevant land, or
  - (b) to facilitate an adjustment of the carrying on of the undertaking necessitated by any of the acts and events mentioned in subparagraph (4). 5
- (4) The acts and events are –
  - (a) the acquisition by the HCA under this Part of this Act of any land –
    - (i) in which an interest was held for the purpose of carrying on the undertaking concerned, or 10
    - (ii) which was used for that purpose, and
  - (b) the extinguishment of a right, or the imposition of any requirement, by virtue of Part 1 of this Schedule.
- (5) In this Part of this Schedule “relevant land” means land in respect of which any of the functions of the HCA under this Part of this Act are being, or have been, exercised. 15

*Ministerial order following representations by the HCA*

- 17 (1) The Secretary of State and the appropriate Minister may by order provide for an extension or modification of the functions of particular statutory undertakers if conditions 1 and 2 are met. 20
- (2) Condition 1 is that the HCA has made representations on the subject to the Secretary of State and the appropriate Minister.
- (3) Condition 2 is that the Secretary of State and the appropriate Minister consider it appropriate to extend or modify the functions of the statutory undertakers to secure – 25
  - (a) the provision of new services in relation to relevant land, or
  - (b) the extension of existing services in relation to such land.

*Examples of contents of orders*

- 18 (1) An order under paragraph 16 or 17 may, in particular – 30
  - (a) give power to statutory undertakers –
    - (i) to acquire (whether compulsorily or by agreement) any land specified in the order, or
    - (ii) to erect or construct any buildings or works specified in the order, 35
  - (b) apply, in relation to the acquisition of any such land or the erection or construction of any such buildings or works, enactments relating to the acquisition of land or the erection or construction of buildings or works.
- (2) An order under paragraph 16 which is for the purposes mentioned in subparagraph (3)(a) of that paragraph or an order under paragraph 17 may, in particular, give effect to any financial arrangements – 40
  - (a) agreed between the HCA and the statutory undertakers, or
  - (b) in the absence of agreement, decided to be equitable in such manner, and by such tribunal, as may be specified in the order. 45

*Notification of proposal to make order*

- 19 (1) Statutory undertakers must, as soon as possible after making representations of the kind mentioned in paragraph 16(2), publish a notice –
- (a) giving such particulars as the Secretary of State and the appropriate Minister may direct of the matters to which the representations relate, 5
  - (b) specifying the time within which objections to the making of an order as a result of the representations may be made, and
  - (c) specifying the manner in which objections to the making of such an order may be made. 10
- (2) The notice must be published in such form and manner as the Secretary of State and the appropriate Minister may direct.
- (3) The statutory undertakers must also serve a copy of the notice on such persons, or descriptions of persons, as the Secretary of State and the appropriate Minister may direct if the Secretary of State and the appropriate Minister direct that a copy is to be served. 15
- 20 (1) The HCA must, as soon as possible after making representations of the kind mentioned in paragraph 17(2), publish a notice –
- (a) giving such particulars as the Secretary of State and the appropriate Minister may direct of the matters to which the representations relate, 20
  - (b) specifying the time within which objections to the making of an order as a result of the representations may be made, and
  - (c) specifying the manner in which objections to the making of such an order may be made. 25
- (2) The notice must be published in such form and manner as the Secretary of State and the appropriate Minister may direct.
- (3) The HCA must also serve a copy of the notice on such persons, or descriptions of persons, as the Secretary of State and the appropriate Minister may direct if the Secretary of State and the appropriate Minister direct that a copy is to be served. 30

*Duty to consider objections*

- 21 (1) The Secretary of State and the appropriate Minister must proceed under paragraph 22 if –
- (a) an objection to the making of an order under paragraph 16 or 17 is properly made and not withdrawn, and 35
  - (b) the matter is not otherwise dealt with.
- (2) For the purposes of sub-paragraph (1) an objection is properly made if (and only if) –
- (a) it is made – 40
    - (i) within the time, and
    - (ii) in the manner,
 stated in the notice under paragraph 19(1) or (as the case may be) 20(1), and
  - (b) a written statement of the grounds of the objection is comprised in, or submitted with, the objection. 45

- (3) For the purposes of sub-paragraph (1) the matter is otherwise dealt with if (and only if) the Secretary of State and the appropriate Minister –
- (a) decide, irrespective of the objection, not to make the order, or
  - (b) decide to make a modification which is agreed to by the objector as meeting the objection. 5
- 22 (1) The Secretary of State and the appropriate Minister must, before making a final decision, consider the grounds of the objection as set out in the statement comprised in, or submitted with, the objection.
- (2) The Secretary of State and the appropriate Minister may require the objector to submit within a specified period a further written statement as to any of the matters to which the objection relates. 10

*Duty to give opportunity to appear*

- 23 (1) The Secretary of State and the appropriate Minister must, before making a final decision, give the objector an opportunity to appear before, and be heard by, a person appointed for the purpose by the Secretary of State and the appropriate Minister. 15
- (2) The Secretary of State and the appropriate Minister must give an opportunity of appearing and being heard on the same occasion to –
- (a) the statutory undertakers or (as the case may be) the HCA as a result of whose representations the order is proposed to be made, and 20
  - (b) any other persons whom the Secretary of State and the appropriate Minister consider ought to be given the opportunity,
- if the objector takes advantage of the opportunity mentioned in sub-paragraph (1).
- (3) Sub-paragraphs (1) and (2) do not apply so far as the Secretary of State and the appropriate Minister have the power to proceed under paragraph 24 or 25. 25

*Power to treat objection as irrelevant*

- 24 The Secretary of State and the appropriate Minister may treat the objection as irrelevant for the purpose of making a final decision – 30
- (a) if the Secretary of State and the appropriate Minister have considered the grounds of the objection as set out in the original statement and in any further statement, and
  - (b) so far as the Secretary of State and the appropriate Minister are satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation. 35

*Power to curtail decision-making process*

- 25 The Secretary of State and the appropriate Minister may make a final decision without further investigation as to the matters to which the objection relates if – 40
- (a) the Secretary of State and the appropriate Minister –
    - (i) have considered the grounds of the objection as set out in the original statement and in any further statement, and

- (ii) are satisfied that, for the purpose of making a final decision, sufficient information is available as to the matters to which the objection relates, or
- (b) a further statement has been required under paragraph 22(2) but is not submitted within the specified period. 5

*Power to hold public local inquiry*

- 26 (1) The Secretary of State and the appropriate Minister must cause a public local inquiry to be held in relation to an objection under this Part of this Schedule if the Secretary of State and the appropriate Minister consider that the matters to which the objection relates are such as to require investigation by such an inquiry before the Secretary of State and the appropriate Minister make a final decision. 10
- (2) The duty in sub-paragraph (1) is effective despite any other provisions of this Part of this Schedule.
- (3) The other provisions of this Part of this Schedule are to be ignored if, when the Secretary of State and the appropriate Minister decide to cause an inquiry to be held, effect has not been given to them. 15

*Special parliamentary procedure for orders*

- 27 Orders under paragraph 16 or 17 are subject to special parliamentary procedure. 20

PART 4

RELIEVING UNDERTAKERS OF OBLIGATIONS

*Orders to relieve obligations*

- 28 (1) The appropriate Minister may by order provide for statutory undertakers to be relieved (whether absolutely or so far as specified in the order) of the need to meet an obligation relating to the carrying on of their undertaking if conditions 1 and 2 are met. 25
- (2) Condition 1 is that the statutory undertakers have made representations on the subject to the appropriate Minister.
- (3) Condition 2 is that the appropriate Minister is satisfied that meeting some or all of the obligation has been made impracticable by any of the acts and events mentioned in sub-paragraph (4). 30
- (4) The acts and events are –
- (a) the acquisition by the HCA under this Part of this Act of any land –
    - (i) in which an interest was held for the purpose of carrying on the undertaking concerned, or 35
    - (ii) which was used for that purpose, and
  - (b) the extinguishment of a right, or the imposition of any requirement, by virtue of Part 1 of this Schedule.

*Notification of proposal to make order*

- 29 (1) Statutory undertakers must, as soon as possible after making representations of the kind mentioned in paragraph 28(2), proceed as directed by the appropriate Minister.
- (2) The appropriate Minister may direct the statutory undertakers to do either or both of the following – 5
- (a) publish a notice –
    - (i) giving such particulars as the appropriate Minister may direct of the matters to which the representations relate,
    - (ii) specifying the time within which objections to the making of an order as a result of the representations may be made, and 10
    - (iii) specifying the manner in which objections to the making of such an order may be made, and
  - (b) serve a corresponding notice on such persons, or descriptions of persons, as the appropriate Minister may direct. 15
- (3) Publication under sub-paragraph (2) must be in such form and manner as the appropriate Minister may direct.

*Duty to consider objections*

- 30 (1) The appropriate Minister must proceed under paragraph 31 if –
- (a) an objection to the making of an order is properly made and not withdrawn, and 20
  - (b) the matter is not otherwise dealt with.
- (2) For the purposes of sub-paragraph (1) an objection is properly made if (and only if) –
- (a) it is made – 25
    - (i) within the time, and
    - (ii) in the manner,stated in the notice under paragraph 29(2), and
  - (b) a written statement of the grounds of the objection is comprised in, or submitted with, the objection. 30
- (3) For the purposes of sub-paragraph (1) the matter is otherwise dealt with if (and only if) the appropriate Minister –
- (a) decides, irrespective of the objection, not to make the order, or
  - (b) decides to make a modification which is agreed to by the objector as meeting the objection. 35
- 31 (1) The appropriate Minister must, before making a final decision, consider the grounds of the objection as set out in the statement comprised in, or submitted with, the objection.
- (2) The appropriate Minister may require the objector to submit within a specified period a further written statement as to any of the matters to which the objection relates. 40

*Duty to give opportunity to appear*

- 32 (1) The appropriate Minister must, before making a final decision, give the objector an opportunity to appear before, and be heard by, a person appointed for the purpose by the appropriate Minister.
- (2) The appropriate Minister must give an opportunity of appearing and being heard on the same occasion to –
- (a) the statutory undertakers as a result of whose representations the order is proposed to be made, and
  - (b) any other persons whom the appropriate Minister considers ought to be given the opportunity,
- if the objector takes advantage of the opportunity mentioned in sub-paragraph (1).
- (3) Sub-paragraphs (1) and (2) do not apply so far as the appropriate Minister has the power to proceed under paragraph 33 or 34.

*Power to treat objection as irrelevant* 15

- 33 The appropriate Minister may treat the objection as irrelevant for the purpose of making a final decision –
- (a) if the appropriate Minister has considered the grounds of the objection as set out in the original statement and in any further statement, and
  - (b) so far as the appropriate Minister is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation.

*Power to curtail decision-making process*

- 34 The appropriate Minister may make a final decision without further investigation as to the matters to which the objection relates if –
- (a) the appropriate Minister –
    - (i) has considered the grounds of the objection as set out in the original statement and in any further statement, and
    - (ii) is satisfied that, for the purpose of making a final decision, sufficient information is available as to the matters to which the objection relates, or
  - (b) a further statement has been required under paragraph 31(2) but is not submitted within the specified period.

*Power to hold public local inquiry* 35

- 35 (1) The appropriate Minister may cause a public local inquiry to be held in relation to an objection under this Part of this Schedule if the appropriate Minister considers that the matters to which the objection relates are such as to require investigation by such an inquiry before the appropriate Minister makes a final decision.
- (2) The power in sub-paragraph (1) is effective despite any other provisions of this Part of this Schedule.

- (3) The other provisions of this Part of this Schedule are to be ignored if, when the Secretary of State decides to cause an inquiry to be held, effect has not been given to them.

*Notification procedure after the making of an order*

- 36 (1) The appropriate Minister must, immediately after making an order under paragraph 28, proceed under sub-paragraphs (2) and (3). 5
- (2) The appropriate Minister must publish a notice stating –
- (a) that the order has been made, and
  - (b) a place where a copy of it may be seen at any reasonable hour.
- (3) The appropriate Minister must serve a copy of the notice on – 10
- (a) any person who –
    - (i) duly made an objection to the order, and
    - (ii) has sent the appropriate Minister a written request for the notice with an address for service, and
  - (b) any other person whom the appropriate Minister considers appropriate. 15

*Operative date of orders*

- 37 An order under paragraph 28 which is not subject to special parliamentary procedure becomes operative on the date on which the notice required by paragraph 36(2) is first published. 20

*Special parliamentary procedure for orders*

- 38 (1) An order under paragraph 28 is subject to special parliamentary procedure if any objection to the making of the order is properly made and not withdrawn before the order is made.
- (2) Sub-paragraph (2) of paragraph 30 applies for the purposes of sub-paragraph (1) above as it applies for the purposes of sub-paragraph (1) of that paragraph. 25

*Legal challenges to orders*

- 39 (1) Sub-paragraph (2) applies if a person aggrieved by an order under paragraph 28 wishes to question its validity on the ground that – 30
- (a) it is not within the powers conferred by this Part of this Schedule, or
  - (b) any requirement of this Part of this Schedule has not been complied with in relation to the order.
- (2) The person may, within 6 weeks beginning with the date on which the notice required by paragraph 36(2) is first published, apply to the High Court. 35
- (3) The High Court may, on an application under sub-paragraph (2), make an interim order suspending (whether wholly or in part) the operation of the order under paragraph 28 until the final determination of the proceedings.
- (4) The operation of the order may be suspended generally or so far as affecting any property of the applicant. 40

- (5) The High Court may, on an application under sub-paragraph (2), quash (whether wholly or in part) the order under paragraph 28 if satisfied that—
- (a) the order is wholly or to any extent outside the powers conferred by this Part of this Schedule, or
  - (b) the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of this Part of this Schedule. 5
- (6) The order under paragraph 28 may be quashed generally or so far as affecting any property of the applicant. 10

PART 5

SUPPLEMENTARY

*Orders and directions*

- 40 (1) The power of—
- (a) the Secretary of State and the appropriate Minister,
  - (b) the Secretary of State and the Secretary of State for Business, Enterprise and Regulatory Reform, or
  - (c) the appropriate Minister,
- to make orders under this Schedule includes power to vary or revoke such orders and to make supplementary, incidental, consequential, transitional, transitory or saving provision. 15
- (2) The power of—
- (a) the Secretary of State and the appropriate Minister, or
  - (b) the appropriate Minister,
- to give directions under this Schedule includes power to vary or revoke such directions and to make supplementary, incidental, consequential, transitional, transitory or saving provision. 20

*Interpretation*

- 41 (1) In this Schedule—
- “the appropriate Minister” is to be read as if contained in Part 11 of the Town and Country Planning Act 1990 (c. 8), 30
  - “the Secretary of State and the appropriate Minister” is to be read as if contained in Part 11 of the Town and Country Planning Act 1990 (and any references to the Secretary of State and the appropriate Minister are, in relation to anything done or to be done by them, to be read as references to them acting jointly), 35
  - “statutory undertakers” means persons who are or are deemed to be statutory undertakers for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990; and “statutory undertaking” is to be read in accordance with section 262 of that Act (meaning of “statutory undertaker”). 40
- (2) In this Schedule, in relation to an order, any reference to making a final decision is a reference to deciding whether to make the order or what modification (if any) ought to be made.

SCHEDULE 5

Section 52

AMENDMENTS OF THE NEW TOWNS ACT 1981

- 1 The New Towns Act 1981 (c. 64) is amended as follows.
- 2 For the heading to Part 2 substitute “Transfers from and dissolution of development corporations etc.”. 5
- 3 For the italic heading before section 35 substitute “Functions of Welsh Ministers in relation to certain transferred property”.
- 4 Omit section 35 (establishment of Commission for the New Towns).
- 5 (1) Section 36 (functions of Commission) is amended as follows.
  - (2) For the heading substitute “Functions of Welsh Ministers”. 10
  - (3) For subsection (1) substitute –
    - “(1) The Welsh Ministers may –
      - (a) take over and, with a view to its eventual disposal, hold, manage and turn to account –
        - (i) the property of the Commission for the New Towns transferred to them under a scheme made under section 53(1) of the Housing and Regeneration Act 2008; 15
        - (ii) the property of development corporations transferred to them under this Act; and 20
        - (iii) the property of urban development corporations transferred to them by order under section 165A of the Local Government, Planning and Land Act 1980; and
      - (b) as soon as they consider it expedient to do so, dispose of property so transferred or any other property arising out of such property. 25
  - (1A) In exercising their functions under subsection (1), the Welsh Ministers must have regard to the considerations specified in subsection (2).” 30
- (4) Omit subsections (3) and (3A).
- (5) In subsection (4) –
  - (a) for “Commission”, in the first two places where it appears, substitute “Welsh Ministers”, and
  - (b) omit the words from “; nor shall any” to the end. 35
- (6) In subsection (4A)(a) for “Commission by order under section 165B” substitute “Welsh Ministers by order under section 165A”.
- 6 Omit sections 37 (restrictions on functions of Commission) and 38 (local authorities and work for the Commission).
- 7 (1) Section 39 (power of development corporations to transfer undertakings) is amended as follows. 40
  - (2) In subsection (1) for “Secretary of State” substitute “appropriate national authority”.

- 
- (3) In subsection (2) for “Secretary of State” substitute “appropriate national authority”.
- (4) In subsection (2A) for “in relation to Wales” substitute “in the case of a development corporation established by the Welsh Ministers”.
- (5) In subsection (3) for “Secretary of State” substitute “appropriate national authority”.
- (6) In subsection (4) –
- (a) at the beginning insert “In a case in which the appropriate national authority is the Secretary of State,”, and
  - (b) for “Secretary of State”, where it first appears, substitute “appropriate national authority”.
- (7) In subsection (5) –
- (a) for “Secretary of State” substitute “appropriate national authority”, and
  - (b) for “he” substitute “the authority”.
- (8) For subsection (5A) substitute –
- “(5A) No order shall be made under subsection (5) above –
- (a) by the Secretary of State unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons;
  - (b) by the Welsh Ministers unless a draft of the order has been laid before, and approved by a resolution of, the National Assembly for Wales.”
- 8 (1) Section 41 (transfer of property to Commission and dissolution of corporation) is amended as follows.
- (2) In the heading, omit “to Commission”.
- (3) In subsection (1) –
- (a) for “Secretary of State” substitute “appropriate national authority”,
  - (b) for “he” substitute “the authority”, and
  - (c) in paragraph (a), for “Commission” substitute “relevant transferee”.
- (4) In subsection (1A) for “in relation to Wales” substitute “in the case of a development corporation established by the Welsh Ministers”.
- (5) In subsection (2) –
- (a) for “Commission” substitute “relevant transferee”, and
  - (b) in paragraph (b) –
    - (i) for “Secretary of State” substitute “appropriate national authority”, and
    - (ii) for “him” substitute “the authority”.
- (6) In subsection (4) for “Secretary of State” substitute “appropriate national authority”.
- (7) In subsection (5) for “Commission” substitute “relevant transferee”.

9 After section 41 insert –

**“41A Part 2: interpretation**

In this Part –

“the appropriate national authority” –

(a) in relation to a development corporation established by order made by the Secretary of State, means the Secretary of State; and 5

(b) in relation to a development corporation established by order made by the Welsh Ministers, means the Welsh Ministers; 10

“the relevant transferee” –

(a) in relation to an order made under section 41 by the Secretary of State, means the Homes and Communities Agency; and

(b) in relation to an order made under section 41 by the Welsh Ministers, means the Welsh Ministers.” 15

10 (1) Section 58 (advances to development corporations and Commission) is amended as follows.

(2) In the heading, omit “and Commission”.

(3) Omit subsections (5) and (6). 20

11 (1) Section 58A (grants to development corporations and Commission) is amended as follows.

(2) In the heading, omit “and Commission”.

(3) Omit subsections (4) and (5).

12 (1) Section 59 (other borrowing powers of development corporations and Commission) is amended as follows. 25

(2) In the heading, omit “and Commission”.

(3) In subsection (1) –

(a) omit “or the Commission”, and

(b) for the words from “or the Commission (as the case may be)” to the end substitute “may require for meeting its obligations or performing its functions”. 30

(4) In subsection (2) –

(a) omit “or the Commission”, and

(b) for “they may require for enabling them” substitute “it may require for enabling it.” 35

13 (1) Section 60 (limit on borrowing by development corporations and Commission) is amended as follows.

(2) In the heading, omit “and Commission”.

(3) In subsection (1) – 40

(a) at the end of paragraph (b), insert “and”,

(b) omit paragraph (c) and the “and” following it,

- (c) in paragraph (d), for “(whether by development corporations or by the Commission)” substitute “by development corporations”, and
- (d) for “(2) to (4)” substitute “(2) and (3)”.
- (4) Omit subsection (4).
- 14 (1) Section 61 (provisions supplemental to section 58) is amended as follows. 5
- (2) In subsection (1) for from the beginning of paragraph (a) to the end of paragraph (b) substitute “to a development corporation under section 58(1) above”.
- (3) In subsection (2) omit “, (5) or (6)”.
- 15 (1) Section 62 (Treasury guarantees) is amended as follows. 10
- (2) In subsection (1) for “or the Commission borrow” substitute “borrows”.
- (3) In subsection (5) for the words from “or by the Commission” to “(as the case may be)” substitute “, the corporation”.
- 16 Omit section 62B (power to suspend loan obligations of development corporations and Commission). 15
- 17 (1) Section 63 (Secretary of State’s general power) is amended as follows.
- (2) In subsection (1) omit “or the Commission”.
- (3) In subsection (2) omit “or the Commission, as the case may be”.
- 18 (1) Section 65 (disposal of surplus funds) is amended as follows.
- (2) In subsection (1) for the words from “, and with the Commission” to the end substitute “and any development corporation, that the corporation has a surplus whether on capital or on revenue account after making allowance by way of transfer to reserve or otherwise for its future requirements.” 20
- (3) In subsection (2) for “The Commission or that corporation, as the case may be,” substitute “That corporation”. 25
- 19 In section 66(1) (payments under sections 63 and 65 treated as repayments) for paragraph (a) and the “and” following it substitute –
- “(a) as made by way of repayment of such part of the principal of advances under section 58(1) above, and”.
- 20 (1) Section 67 (accounts of Commission and development corporations) is amended as follows. 30
- (2) In the heading, omit “Commission and”.
- (3) In subsection (1) –
- (a) omit “The Commission and”,
- (b) in paragraph (b), omit “respectively”, and 35
- (c) omit the words from “being, in the Commission’s case” in paragraph (b) to the end of the subsection.
- (4) Omit subsection (1A).
- (5) In subsection (2) –
- (a) omit “of the Commission and”, and 40
- (b) omit “or the Commission” wherever appearing.

- 
- (6) In subsection (3) –  
    (a) omit “the Commission or”, and  
    (b) in paragraph (a), for “they are” substitute “it is”.
- 21 (1) Section 68 (audit) is amended as follows.
- (2) In subsection (1) – 5  
    (a) omit the words from “of the Commission” to “and the accounts”, and  
    (b) omit “Commission or”.
- (3) Omit subsection (2A).
- (4) In subsection (3) – 10  
    (a) for “accounts of the Commission or” substitute “accounts of”,  
    (b) for “Commission or corporation, as the case may be,” substitute  
        “corporation”, and  
    (c) for “them” substitute “it”.
- 22 (1) Section 69 (Secretary of State’s accounts) is amended as follows.
- (2) In subsection (1) – 15  
    (a) omit paragraph (a) and the “and” following it, and  
    (b) omit the words from “and directions under” to the end.
- (3) In subsection (2), omit paragraph (a) and the “and” following it.
- 23 (1) Section 70 (reports) is amended as follows.
- (2) Omit paragraph (a). 20
- (3) Omit “of the Commission or”.
- 24 (1) Section 71 (information) is amended as follows.
- (2) In subsection (1) – 25  
    (a) for “the Commission and every development corporation shall  
        respectively” substitute “every development corporation shall”, and  
    (b) for “their” substitute “its”.
- (3) In subsection (2) – 30  
    (a) omit “the Commission and”, and  
    (b) in paragraph (a), for “Commission or corporation, as the case may  
        be” substitute “corporation”.
- 25 In section 74(3) (local inquiries) for “sections 37, 40 and 41” substitute  
“sections 40 and 41”.
- 26 In section 77(3) (regulations and orders to be made by statutory instrument)  
omit “and paragraph 7 of Schedule 9 to this Act”.
- 27 In section 80(1) (general interpretation provisions) – 35  
    (a) omit the definition of “the Commission”, and  
    (b) in the definition of “financial year”, omit “or the Commission”.
- 28 In section 82 (short title, extent and commencement) –  
    (a) in subsection (2)(c) for “1, 2 and 12” substitute “1 and 2”, and  
    (b) in subsection (3) omit “paragraph 12 of Schedule 11, and”. 40

- 29 Omit Schedule 9 (additional provisions as to the Commission).
- 30 (1) Schedule 10 (additional provisions as to transfer to Commission of property of development corporation) is amended as follows.
- (2) In the heading, omit “to Commission”.
- (3) In paragraph 1 – 5
- (a) for “Commission”, wherever appearing, substitute “relevant transferee”, and
- (b) in sub-paragraph (2)(c), for “, to the member” to the end substitute “\_
- (i) in a case where the relevant transferee is the *Homes and Communities Agency*, to the member or member of staff of the Agency who corresponds as nearly as may be to the member or officer in question of the corporation; and 10
- (ii) in a case where the relevant transferee is the *Welsh Ministers*, to the member of staff of the *Welsh Ministers* who corresponds as mentioned in sub-paragraph (i) above.” 15
- (4) In paragraph 2 – 20
- (a) for “Secretary of State”, wherever appearing, substitute “appropriate national authority”, and
- (b) for “Commission”, wherever appearing, substitute “relevant transferee”.
- (5) In paragraph 3 – 25
- (a) in sub-paragraph (1) for “Commission” substitute “relevant transferee”,
- (b) in sub-paragraph (3)(a) for “Commission” substitute “relevant transferee”, and
- (c) in sub-paragraph (3)(c) – 30
- (i) for “where the development” substitute “where, in the case of a development corporation established by the Secretary of State, the”, and
- (ii) for “Commission” substitute “*Homes and Communities Agency*”. 35
- (6) Omit paragraph 4.
- (7) In paragraph 5 –
- (a) omit sub-paragraph (1), and
- (b) for sub-paragraph (2) substitute –
- “(2) Sub-paragraph (3) applies if, in the case of a development corporation established by the Secretary of State, the liabilities of the corporation for – 40
- (a) the repayment of advances under section 58(1) above; or
- (b) the payment of interest on such advances; 45
- are transferred to the *Homes and Communities Agency*.”

- (3) The following provisions apply to those advances –
- (a) section 61(2); and
  - (b) section 66(1) but as if the reference to any payment under section 63 or 65 above were a reference to any sum received by the Secretary of State under section 28(2) of the Housing and Regeneration Act 2008.” 5
- 31 (1) Schedule 11 (saving and transitional provisions) is amended as follows.
- (2) In the italic heading before paragraph 3, omit “to Commission and”.
  - (3) Omit paragraphs 3 and 5. 10
  - (4) Omit paragraph 12 and the italic heading before it.

## SCHEDULE 6

Section 53(3)

### TRANSFER SCHEMES

#### *Creation and apportionment of property, rights and liabilities etc.*

- 1 A scheme may – 15
- (a) create for the transferor interests in, or rights over, property transferred by virtue of the scheme,
  - (b) create for the transferee interests in, or rights over, property retained by the transferor,
  - (c) create rights or liabilities between the transferor and transferee. 20
- 2 (1) A scheme may provide for the transfer of property, rights or liabilities that would not otherwise be capable of being transferred or assigned.
- (2) In particular, it may provide for the transfer to take effect regardless of a contravention, liability or interference with an interest or right that would otherwise exist by reason of a provision having effect in relation to the terms on which the transferor is entitled to the property or right, or subject to the liability, in question. 25
- (3) It does not matter whether the provision referred to in sub-paragraph (2) has effect under an enactment or an agreement or in any other way.
- 3 A certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence for all purposes of that fact. 30

#### *Employment contracts*

- 4 (1) This paragraph applies if rights and liabilities under a contract of employment are transferred by virtue of a scheme. 35
- (2) The contract of employment –
- (a) is not terminated by the transfer, and
  - (b) has effect from the transfer date as if made between the employee and the transferee.

- (3) The rights, powers, duties and liabilities of the transferor under or in connection with the contract are transferred to the transferee on the transfer date.
- (4) Anything done before the transfer date by or in relation to the transferor in respect of the contract or the employee is to be treated from that date as having been done by or in relation to the transferee. 5
- (5) In particular, a period of employment with the transferor is to be treated as a period of employment with the transferee (and the transfer is not to be treated as interrupting the continuity of that employment).
- (6) This paragraph is subject to paragraph 5. 10
- 5 (1) Rights and liabilities under a contract of employment are not transferred by virtue of a scheme if the employee objects to the transfer and informs the transferor or transferee of that fact.
- (2) If the employee objects to the transfer and informs the transferor or transferee of that fact – 15
- (a) the employee’s contract of employment is terminated immediately before the transfer date, but
- (b) the employee is not to be treated, for any purpose, as having been dismissed by the transferor.
- 6 If (apart from the change of employer) a substantial detrimental change is made to a person’s working conditions, nothing in this Schedule affects any right the person has to terminate the person’s contract of employment. 20

*Civil servants treated as employed under a contract of employment etc.*

- 7 (1) This Schedule applies with the following modifications in relation to employment in the civil service of the Crown on terms which do not constitute a contract of employment. 25
- (2) An individual who holds employment in the civil service of the Crown immediately before the transfer date is to be treated as employed by virtue of a contract of employment.
- (3) The terms of the employment in the civil service of the Crown are to be regarded as constituting the terms of the contract of employment. 30
- (4) The reference in paragraph 5 to dismissal by the transferor is to termination of the employment in the civil service of the Crown.

*Compensation*

- 8 A scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by it. 35

*Continuity*

- 9 A transfer by virtue of a scheme does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect.
- 10 Anything which – 40
- (a) is done by the transferor for the purposes of, or otherwise in connection with, anything transferred by virtue of a scheme, and

- (b) is in effect immediately before the transfer date, is to be treated as done by the transferee.
- 11 There may be continued by or in relation to the transferee anything (including legal proceedings) –
- (a) which relates to anything transferred by virtue of a scheme, and 5
  - (b) which is in the process of being done by or in relation to the transferor immediately before the transfer date.
- 12 (1) This paragraph applies to any document –
- (a) which relates to anything transferred by virtue of a scheme, and
  - (b) which is in effect immediately before the transfer date. 10
- (2) Any references in the document to the transferor are to be read as references to the transferee.

*Supplementary etc. provision*

- 13 A scheme may include supplementary, incidental, transitional and consequential provision. 15

SCHEDULE 7

Section 58

AMENDMENTS OF ENACTMENTS: PART 1

*Public Records Act 1958 (c. 51)*

- 1 In Schedule 1 to the Public Records Act 1958 (definition of public records), at the end of paragraph 3, in Part 2 of the Table, insert at the appropriate place – 20
- “The Homes and Communities Agency.”

*Parliamentary Commissioner Act 1967 (c. 13)*

- 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation) – 25
- (a) insert, at the appropriate place, “Homes and Communities Agency”,
  - (b) insert, in the Notes after the paragraph relating to the Treasury –

**“Homes and Communities Agency**

In the case of the Homes and Communities Agency no investigation is to be conducted in respect of any action in connection with functions in relation to town and country planning.”, 30

- (c) omit the entry for the Urban Regeneration Agency, and
- (d) omit the Note relating to the Urban Regeneration Agency.

*Local Government Act 1974 (c. 7)* 35

- 3 (1) The Local Government Act 1974 is amended as follows.
- (2) In section 25(1) (authorities subject to investigation) –

|   |   |    |
|---|---|----|
|   | (a) omit paragraph (ba), and  |    |
|   | (b) in paragraph (bf), for “Urban Regeneration” substitute “Homes and Communities”.   |    |
| (3)   | In section 26(7) (matters subject to investigation) –   |    |
|   | (a) omit paragraph (a), and   | 5  |
|   | (b) in paragraph (ba) –   |    |
|   | (i) for “Urban Regeneration” substitute “Homes and Communities”, and  |    |
|   | (ii) for “Part III of the Leasehold Reform, Housing and Urban Development Act 1993” substitute “Part 1 of the Housing and Regeneration Act 2008”.       | 10 |
| (4)   | In paragraph 8 of Schedule 5 (matters not subject to investigation) for “Urban Regeneration” substitute “Homes and Communities”.                        |    |
| <i>House of Commons Disqualification Act 1975 (c. 24)</i> |   |    |
| 4   | (1) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) is amended as follows.        | 15 |
|   | (2) Insert at the appropriate place –   |    |
|   | “The Homes and Communities Agency.”   |    |
|   | (3) Omit the entries relating to –  |    |
|   | (a) the Commission for the New Towns, and   | 20 |
|   | (b) the Urban Regeneration Agency.  |    |
| <i>Race Relations Act 1976 (c. 74)</i>                    |   |    |
| 5   | (1) Schedule 1A to the Race Relations Act 1976 (bodies and other persons subject to general statutory duty) is amended as follows.                      |    |
|   | (2) In Part 1, after paragraph 52, insert –   | 25 |
|   | “52A The Homes and Communities Agency.”   |    |
|   | (3) In Part 2, omit the entry relating to English Partnerships.   |    |
| <i>Town and Country Planning Act 1990 (c. 8)</i>          |   |    |
| 6   | (1) Section 8A of the Town and Country Planning Act 1990 (the Urban Regeneration Agency) is amended as follows.   | 30 |
|   | (2) In the heading for “Urban Regeneration” substitute “Homes and Communities”.   |    |
|   | (3) In subsection (1) –   |    |
|   | (a) for “section 170 of the Leasehold Reform, Housing and Urban Development Act 1993” substitute “section 13 of the Housing and Regeneration Act 2008”, | 35 |
|   | (b) for “subsection (1) of section 171” substitute “section 14(2)”, and   |    |
|   | (c) for “Urban Regeneration” substitute “Homes and Communities”.  |    |
|   | (4) Omit subsection (2).  |    |

*Planning (Hazardous Substances) Act 1990 (c. 10)*

- 7 In section 3(5A) of the Planning (Hazardous Substances) Act 1990 (hazardous substances authorities: special cases) for “Urban Regeneration” substitute “Homes and Communities”.

*Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)*

5

- 8 (1) The Leasehold Reform, Housing and Urban Development Act 1993 is amended as follows.
- (2) Omit—
- (a) sections 158 to 173, 175, 177 and 183 to 185, and
  - (b) Schedules 17 to 20,
- (provisions about the Urban Regeneration Agency).
- (3) In section 188(6) (extent etc.) omit paragraph (b) and the “and” before it.

10

*Freedom of Information Act 2000 (c. 36)*

- 9 (1) Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities) is amended as follows.
- (2) Insert at the appropriate place—
- “The Homes and Communities Agency.”
- (3) Omit the entries relating to—
- (a) the Commission for the New Towns, and
  - (b) the Urban Regeneration Agency.

15

20

*Planning and Compulsory Purchase Act 2004 (c. 5)*

- 10 In section 37 of the Planning and Compulsory Purchase Act 2004 (interpretation of Part 2), after subsection (5), insert—
- “(5A) Subsection (4) must also be construed subject to any designation order under section 13 of the Housing and Regeneration Act 2008 (power to make designation orders) providing that the Homes and Communities Agency is to be the local planning authority—
- (a) for an area specified in the order, and
  - (b) for all purposes of this Part or any such purposes so specified.”

25

30

*Local Government and Public Involvement in Health Act 2007 (c. 28)*

- 11 In section 104(4) of the Local Government and Public Involvement in Health Act 2007 (partner authorities), after paragraph (e), insert—
- “(ea) the Homes and Communities Agency;”.

## SCHEDULE 8

Section 271(3)

## PENALTY CHARGE NOTICES

*Contents of notice*

- |   |  |    |
|---|--|----|
| 1 | A penalty charge notice given to a person under section 271 by an officer of an enforcement authority must –   | 5  |
|   | (a) state the officer’s belief that the person has committed a breach of duty,   |    |
|   | (b) give such particulars of the circumstances as may be necessary to give reasonable notice of the breach of duty,  |    |
|   | (c) require the person, within a period specified in the notice –  | 10 |
|   | (i) to pay a penalty charge specified in the notice, or  |    |
|   | (ii) to give notice to the enforcement authority that the person wishes the authority to review the notice,  |    |
|   | (d) state the effect of paragraph 7,   |    |
|   | (e) specify the person to whom, and the address at which, the penalty charge may be paid and the method or methods by which payment may be made, and   | 15 |
|   | (f) specify the person to whom, and the address at which, a notice requesting a review may be sent (and to which any representations relating to the review may be addressed).               | 20 |
| 2 | The penalty charge specified in the notice shall be of such amount (not exceeding £1,000) as may be prescribed for the time being by regulations made by the appropriate national authority. |    |
| 3 | (1) The period specified under paragraph 1(c) must not be less than 28 days beginning with the day after that on which the penalty charge notice was given.                                  | 25 |
|   | (2) The enforcement authority may extend the period for complying with the requirement mentioned in paragraph 1(c) in any particular case if it considers it appropriate to do so.           |    |

*Review and withdrawal of notice* 30

- |   |   |    |
|---|---|----|
| 4 | (1) Sub-paragraph (2) applies if, within the period specified under paragraph 1(c) (or that period as extended under paragraph 3(2)), the recipient of the penalty charge notice gives notice to the enforcement authority requesting a review. |    |
|   | (2) The enforcement authority must –  | 35 |
|   | (a) consider any representations made by the recipient and all other circumstances of the case,   |    |
|   | (b) decide whether to confirm or withdraw the notice, and   |    |
|   | (c) give notice of its decision to the recipient.   |    |
|   | (3) A notice under sub-paragraph (2)(c) confirming the penalty charge notice must also state the effect of paragraphs 6(1) to (4).  | 40 |
|   | (4) The enforcement authority must withdraw the penalty charge notice if it is not satisfied of one (or more) of the following –  |    |

- (a) that the recipient committed the breach of duty specified in the notice,
  - (b) that the notice was given within the time allowed by section 271(2) and complies with the other requirements imposed by virtue of this Schedule, or 5
  - (c) that, in the circumstances of the case, it was appropriate for a penalty charge notice to be given to the recipient.
- 5 The enforcement authority may give the recipient of a penalty charge notice a notice withdrawing the penalty charge notice if the authority considers that the penalty charge notice ought not to have been given. 10

### *Appeals*

- 6 (1) The recipient of a penalty charge notice may appeal to the county court against the notice if the notice is confirmed by the enforcement authority after a review.
- (2) The appeal must be made within the period of 28 days beginning with the day after that on which the notice under paragraph 4(2)(c) is given. 15
- (3) The county court may extend the period for appealing against the notice.
- (4) An appeal must be on one (or more) of the following grounds –
- (a) that the recipient did not commit the breach of duty specified in the penalty charge notice, 20
  - (b) that the notice was not given within the time allowed by section 271(2) or does not comply with any other requirement imposed by virtue of this Schedule, or
  - (c) that in the circumstances of the case it was inappropriate for the notice to be given to the recipient. 25
- (5) An appeal is to be by way of a rehearing.
- (6) On an appeal the court is to uphold the notice or quash it.

### *Recovery of penalty charge*

- 7 (1) The amount of the penalty charge is recoverable from the recipient of the penalty charge notice as a debt owed to the enforcement authority unless – 30
- (a) the notice has been withdrawn or quashed, or
  - (b) the charge has been paid.
- (2) Proceedings for the recovery of the penalty charge may not be started before the end of the period mentioned in paragraph 4(1).
- (3) Sub-paragraph (4) applies if, within that period, the recipient of the penalty charge notice gives notice to the enforcement authority that the recipient wishes the authority to review the penalty charge notice. 35
- (4) Proceedings for the recovery of the penalty charge may not be started –
- (a) before the end of the period mentioned in paragraph 6(2), and
  - (b) where the recipient appeals against the penalty charge notice, before the end of the period of 28 days beginning with the day on which the appeal is withdrawn or determined. 40
- 8 In proceedings for the recovery of the penalty charge, a certificate which –

- (a) purports to be signed by, or on behalf of, the person having responsibility for the financial affairs of the enforcement authority, and
  - (b) states that payment of the penalty charge was, or was not, received by a date specified in the certificate,
- is evidence of the facts stated. 5

*Repayments*

- 9 The enforcement authority must repay any amount previously paid as a penalty charge in pursuance of a penalty charge notice if the notice is withdrawn or quashed. 10

*Supplementary*

- 10 (1) A penalty charge notice and any other notice mentioned in this Schedule may be given by post.
- (2) Any such notice may be given –
- (a) in the case of a body corporate (other than a limited liability partnership), to the secretary or clerk of that body, 15
  - (b) in the case of a limited liability partnership, to any member or to any person having control or management of the partnership business,
  - (c) in the case of any other partnership, to any partner or to any person having control or management of the partnership business, and 20
  - (d) in the case of an unincorporated association, to any member or to any person having control or management of the affairs of the association.
- 11 (1) The appropriate national authority may by regulations make provision supplementary or incidental to the preceding provisions of this Schedule. 25
- (2) Such provision may, in particular, include –
- (a) provision prescribing –
    - (i) the form of penalty charge notices or any other notice mentioned in this Schedule,
    - (ii) circumstances in which penalty charge notices may not be given, 30
    - (iii) the method or methods by which penalty charges may be paid,
  - (b) provision about the service of notices.

## SCHEDULE 9

Section 289 35

## DEMOLITION NOTICES

*Final demolition notices*

- 1 Schedule 5 to the Housing Act 1985 (c. 68) (exceptions to the right to buy: final demolition notices) is amended as follows.
- 2 (1) Paragraph 13 (final demolition notices) is amended as follows. 40

- 
- (2) In sub-paragraph (5) (period of validity of final demolition notices) –
- (a) omit the “and” following paragraph (a),
  - (b) in paragraph (b) for “(7)” substitute “(7A)”, and
  - (c) after paragraph (b) insert “and  
(c) the provisions of paragraph 15A.”
- 5
- (3) In sub-paragraph (9) (certain references to landlord to include superior landlord) after “15” insert “(other than paragraph 15(7A))”.
- 3 (1) Paragraph 15 (extension or revocation etc. of final demolition notices) is amended as follows.
- (2) After sub-paragraph (7) (revocation notices) insert –
- 10
- “(7A) Sub-paragraphs (4) to (7) do not apply if the landlord is selling or otherwise transferring his interest as landlord to another person or is offering it for sale or for other transfer.”
- (3) In sub-paragraph (8) (restrictions on service of further notices) –
- (a) after “in respect of it” insert “, by the landlord who served the earlier notice or any landlord who served a continuation notice in respect of the earlier notice,”
  - (b) after “when the” insert “earlier”, and
  - (c) in paragraph (a) for “it” substitute “the further notice”.
- 15
- 4 After paragraph 15 insert –
- 20
- “15A(1) This paragraph applies if –
- (a) a final demolition notice is in force in respect of a dwelling-house, and
  - (b) the landlord transfers his interest as landlord to another person.
- 25
- (2) The final demolition notice (“the original notice”) continues in force but this is subject to –
- (a) paragraphs 13(5) and 15, and
  - (b) the following provisions of this paragraph.
- (3) Sub-paragraph (4) applies if the transferee –
- (a) intends to demolish the dwelling-house, but
  - (b) has not –
    - (i) served a continuation notice, and
    - (ii) complied with the conditions in sub-paragraphs (8) and (10),
- 30
- within the period of 2 months beginning with the date of transfer.
- 35
- (4) The transferee must proceed under paragraph 15(4) as if the transferee has decided not to demolish the dwelling-house (and paragraph 15(5) to (7) applies on the same basis).
- 40
- (5) A continuation notice is a notice –
- (a) stating that the transferee –
    - (i) has acquired the interest concerned, and

- (ii) intends to demolish the dwelling-house or (as the case may be) the building containing it (“the relevant premises”),
- (b) setting out the reasons why the transferee intends to demolish the relevant premises, 5
- (c) stating that one of conditions A to C in paragraph 14 is satisfied in relation to the original notice (specifying the condition concerned),
- (d) stating that the original notice is to continue in force, and
- (e) explaining the continued effect of the original notice. 10
- (6) A continuation notice may not vary the proposed demolition date in the original notice nor the date when the original notice will cease to be in force.
- (7) Sub-paragraph (8) applies if—
- (a) the dwelling-house is contained in a building which contains one or more other dwelling-houses, and 15
- (b) the transferee intends to demolish the whole of the building.
- (8) The transferee must serve a continuation notice on the occupier of each of the dwelling-houses contained in the building (whether addressed to him by name or just as “the occupier”). 20
- (9) An accidental omission to serve a continuation notice on one or more occupiers does not prevent the condition in sub-paragraph (8) from being satisfied.
- (10) Paragraph 13(7) and (8) apply in relation to the transferee’s intention to demolish so as to impose a condition on the transferee for a notice to appear within the period of 2 months beginning with the date of transfer. 25
- (11) Sub-paragraphs (7) to (10) above apply instead of paragraph 13(6) to (8) in relation to a final demolition notice so far as continued in force under this paragraph.” 30
- 5 In paragraph 16(1) (notices under paragraphs 13 and 15) for “or 15” substitute “, 15 or 15A”.

*Initial demolition notices*

- 6 Schedule 5A to the Housing Act 1985 (c. 68) (initial demolition notices) is amended as follows. 35
- 7 In paragraph 2(1) (period of validity of initial demolition notices) for “paragraph 3” substitute “paragraphs 3 and 3A”.
- 8 In paragraph 3(1) (revocation of initial demolition notices: application of paragraph 15(4) to (7) of Schedule 5 to that Act) for “(7)” substitute “(7A)”. 40
- 9 After paragraph 3 insert—

*“Transfer of initial demolition notices*

- 3A (1) This paragraph applies if—

- 
- (a) an initial demolition notice is in force in respect of a dwelling-house, and
- (b) the landlord transfers his interest as landlord to another person.
- (2) The initial demolition notice (“the original notice”) continues in force but this is subject to—
- (a) paragraphs 2 and 3, and
- (b) the following provisions of this paragraph. 5
- (3) Sub-paragraph (4) applies if the transferee—
- (a) intends to demolish the dwelling-house, but
- (b) has not—
- (i) served a continuation notice, and
- (ii) complied with the conditions in sub-paragraphs (8) and (10),
- within the period of 2 months beginning with the date of transfer. 10 15
- (4) The transferee must proceed under paragraph 15(4) of Schedule 5 as applied by paragraph 3(1) above as if the transferee has decided not to demolish the dwelling-house (and paragraph 15(5) to (7) of that Schedule as so applied applies on the same basis). 20
- (5) A continuation notice is a notice—
- (a) stating that the transferee—
- (i) has acquired the interest concerned, and
- (ii) intends to demolish the dwelling-house or (as the case may be) the building containing it (“the relevant premises”),
- (b) setting out the reasons why the transferee intends to demolish the relevant premises,
- (c) stating that the original notice is to continue in force, and
- (d) explaining the continued effect of the original notice. 25 30
- (6) A continuation notice may not vary the period specified in the original notice in accordance with paragraph 1(1)(c).
- (7) Sub-paragraph (8) applies if—
- (a) the dwelling-house is contained in a building which contains one or more other dwelling-houses, and
- (b) the transferee intends to demolish the whole of the building. 35
- (8) The transferee must serve a continuation notice on the occupier of each of the dwelling-houses contained in the building (whether addressed to him by name or just as “the occupier”). 40
- (9) An accidental omission to serve a continuation notice on one or more occupiers does not prevent the condition in sub-paragraph (8) from being satisfied.
- (10) Paragraph 13(7) of Schedule 5 applies in relation to the transferee’s intention to demolish so as to impose a condition on the transferee for a notice to appear within the period of 2 months beginning 45

- with the date of transfer; and paragraph 2(3) above applies for this purpose.
- (11) Sub-paragraphs (7) to (10) above apply instead of paragraph 2(2) and (3) in relation to an initial demolition notice so far as continued in force under this paragraph.” 5
- 10 (1) Paragraph 4 (restrictions on service of further notices) is amended as follows.
- (2) In sub-paragraph (2) (further initial demolition notices) –
- (a) after “dwelling-house” insert “, by the landlord who served the relevant notice or any landlord who served a continuation notice in respect of the relevant notice,” and 10
- (b) in paragraph (a) for “it” substitute “the further notice”.
- (3) In sub-paragraph (3) (final demolition notices) –
- (a) after “dwelling-house” insert “, by the landlord who served the relevant notice or any landlord who served a continuation notice in respect of the relevant notice,” and 15
- (b) in paragraph (a) for “it” substitute “the final demolition notice”.
- 11 In paragraph 5 (notices under Schedule 5A) for “or 15” substitute “, 15 or 15A”.
- 12 In paragraph 6(1) (interpretation) after “Schedule” insert “(other than paragraph 3A)”.” 20

*Transitional provision*

- 13 This Schedule does not apply to notices served before the coming into force of the Schedule.

## SCHEDULE 10

Section 295 25

## DISPOSALS OF DWELLING-HOUSES BY LOCAL AUTHORITIES

*Housing Act 1985 (c. 68)*

- 1 (1) The Housing Act 1985 is amended as follows.
- (2) In section 34 (consents in relation to disposals of land held for housing purposes) – 30
- (a) in subsection (1) for “Secretary of State’s” substitute “appropriate national body’s”,
- (b) in subsection (4A) –
- (i) for “Secretary of State” substitute “appropriate national body”, 35
- (ii) after “disposal;” at the end of paragraph (c), insert –
- “(ca) in the case of a proposed large scale disposal, the appropriate national body’s estimate of the exchequer costs of the large scale disposal;” and
- (iii) in paragraph (d) for “he” substitute “the appropriate national body”, and 40

- (c) after subsection (4A) insert –
- “(4AA) The estimate mentioned in subsection (4A)(ca) is to be based on such assumptions (including as to the period during which housing subsidies may be payable) as the appropriate national body may determine, regardless of whether those assumptions are, or are likely to be, borne out by events. 5
- (4AB) In this section –
- “appropriate national body” –
- (a) in relation to England, means the Secretary of State; and 10
- (b) in relation to Wales, means the Welsh Ministers;
- “dwelling-house” has the same meaning as in Part 5 of this Act except that it does not include a hostel or any part of a hostel; 15
- “the exchequer costs”, in relation to a large scale disposal, means any increase which is or may be attributable to the disposal in the aggregate of any housing subsidies;
- “housing subsidies” means any subsidies payable under – 20
- (a) section 140A of the Social Security Administration Act 1992 (subsidy); or
- (b) section 79 of the Local Government and Housing Act 1989 (Housing Revenue Account subsidy); 25
- “large scale disposal” means a disposal of one or more dwelling-houses by a local authority to a person where –
- (a) the number of dwelling-houses included in the disposal; and 30
- (b) the number of dwelling-houses which, in the relevant period, have previously been disposed of by the authority to that person, or that person and any of the person’s associates taken together, 35
- exceeds 499 or, if the appropriate national body by order so provides, such other number as may be specified in the order;
- “long lease” means a lease for a term of years certain exceeding 21 years other than a lease which is terminable before the end of that term by notice given by or to the landlord; 40
- “the relevant period”, in relation to a large scale disposal means – 45
- (a) the period of 5 years ending with the date of the disposal; or
- (b) if the appropriate national body by order so provides, such other period ending with that date as may be specified in the order; 50

- “subsidiary” has the same meaning as in section 61 of the Housing Act 1996 but as if references in subsection (2) of that section and section 60 of that Act to registered social landlords and landlords were references to housing associations (within the meaning of the Housing Associations Act 1985). 5
- (4AC) For the purposes of this section –
- (a) a disposal of any dwelling-house is to be disregarded if at the time of the disposal the local authority’s interest in the dwelling-house is or was subject to a long lease; 10
- (b) two persons are associates of each other if –
- (i) one of them is a subsidiary of the other;
- (ii) they are both subsidiaries of some other person; or 15
- (iii) there exists between them such relationship or other connection as may be specified in a determination made by the appropriate national body; and
- (c) a description of an authority may be framed by reference to any circumstances whatever. 20
- (4AD) An order made by the appropriate national body under this section –
- (a) is to be made by statutory instrument which –
- (i) in the case of an order made by the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament; and 25
- (ii) in the case of an order made by the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales; 30
- (b) may make different provision for different cases or descriptions of case, or for different authorities or descriptions of authority; and 35
- (c) may contain such transitional and supplementary provisions as appear to the appropriate national body to be necessary or expedient.
- (4AE) A determination under this section –
- (a) may make different provision for different cases or descriptions of case, or for different authorities or descriptions of authority; and 40
- (b) may be varied or revoked by a subsequent determination.”
- (3) In section 43 (consent required for certain disposals not within section 32) – 45
- (a) in subsection (1) for “Secretary of State” substitute “appropriate national body”,
- (b) in subsection (4A) –
- (i) for “Secretary of State” substitute “appropriate national body”, 50

- (ii) after “disposal;” at the end of paragraph (c), insert –
  - “(ca) in the case of a proposed disposal which is part of a proposed large scale disposal, the appropriate national body’s estimate of the exchequer costs of the large scale disposal;”, and 5
- (iii) in paragraph (d) for “he” substitute “the appropriate national body”, and
- (c) after subsection (4A) insert –
  - “(4AA) The estimate mentioned in subsection (4A)(ca) is to be based on such assumptions (including as to the period during which housing subsidies may be payable) as the appropriate national body may determine, regardless of whether those assumptions are, or are likely to be, borne out by events. 10
  - (4AB) Subsections (4AB) to (4AE) of section 34 apply for the purposes of this section as they apply for the purposes of that section.”, and 15
- (d) in subsection (5A) after “this section” insert “(other than in subsection (4A)(ca) and in subsections (4AB) to (4AE) of section 34 as applied for the purposes of this section)”.

*Housing Act 1988 (c. 50)* 20

In section 133(3) of the Housing Act 1988 (consent required for certain subsequent disposals) –

- (a) in paragraph (a) for “and (3) to (4A)” substitute “, (3), (4) and (4A)(a) to (c) and (d)”,
- (b) in paragraph (b) for “and (3) to (4A)” substitute “, (3), (4) and (4A)(a) to (c) and (d)”, and 25
- (c) in paragraph (c) for “(4A)” substitute “(4A)(a) to (c) and (d)”.

*Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)*

- 1 (1) The Leasehold Reform, Housing and Urban Development Act 1993 is amended as follows. 30
- (2) Omit section 135 (programmes for disposals of dwelling-houses by local authorities).
- (3) In section 136 (levy on disposals) for subsection (14) substitute –
  - “(14) In this section –
    - “the 1989 Act” means the Local Government and Housing Act 1989; 35
    - “dwelling-house” has the same meaning as in Part 5 of the 1985 Act except that it does not include a hostel (as defined in section 622 of that Act) or any part of a hostel;
    - “local authority” has the meaning given by section 4 of that Act; 40
    - “long lease” means a lease for a term of years certain exceeding 21 years other than a lease which is terminable before the end of that term by notice given by or to the landlord;
    - “subsidiary” has the same meaning as in section 61 of the Housing Act 1996 but as if references in subsection (2) of that section and section 60 of that Act to registered social 45

landlords and landlords were references to housing associations (within the meaning of the Housing Associations Act 1985).

- (15) For the purposes of this section—
- (a) a disposal of any dwelling-house is to be disregarded if at the time of the disposal the local authority’s interest in the dwelling-house is or was subject to a long lease; 5
  - (b) two persons are associates of each other if—
    - (i) one of them is a subsidiary of the other;
    - (ii) they are both subsidiaries of some other person; or 10
    - (iii) there exists between them such relationship or other connection as may be specified in a determination made by the Secretary of State; and
  - (c) a description of authority may be framed by reference to any circumstances whatever.” 15
- (4) Omit section 137(1) to (3) (disposals: transitional provisions in relation to section 135).
- (5) The reference to the Secretary of State in subsection (15) of section 136 of the Act of 1993, as inserted by sub-paragraph (3) above, is to be read in the same way as other references to the Secretary of State in that section of that Act. 20

*Housing Act 1996 (c. 52)*

- (1) The Housing Act 1996 is amended as follows.
- (2) In section 51(2)(b) (schemes for investigation of complaints) for “a qualifying disposal” substitute “—
- (i) a large scale disposal, within the meaning of section 34 of the Housing Act 1985, for which consent was required under section 32 or 43 of that Act; or 25
  - (ii) a qualifying disposal that was made”.
- (3) In paragraph 5(1)(b) of Part 2 of Schedule 1 (constitution, change of rules, amalgamation and dissolution: restriction on power of removal in case of registered charity) for “a qualifying disposal” substitute “—
- (i) a large scale disposal, within the meaning of section 34 of the Housing Act 1985, for which consent was required under section 32 or 43 of that Act, or 30
  - (ii) a qualifying disposal that was made”.
- (4) In paragraph 28(1)(b) of Part 4 of Schedule 1 (inquiry into affairs of registered social landlords: availability of powers in relation to registered charities) for “a qualifying disposal” substitute “—
- (i) a large scale disposal, within the meaning of section 34 of the Housing Act 1985, for which consent was required under section 32 or 43 of that Act, or 40
  - (ii) a qualifying disposal that was made”.

SCHEDULE 11

Section 304(1)

REPEALS

| <i>Short title and chapter</i>                     | <i>Extent of repeal</i>  |    |
|--|--|----|
| Parliamentary Commissioner Act 1967 (c. 13)        | In Schedule 2, the entry for, and the Note relating to, the Urban Regeneration Agency.   | 5  |
| Leasehold Reform Act 1967 (c. 88)                  | In section 1 –<br>(a) in subsections (1)(a) and (1A), the words “at a low rent”,<br>(b) in subsection (3A)(b), the words “, 1AA”.<br>Section 1A(2).<br>Section 1AA.<br>Section 4A.<br>In section 9(1C), the words “, 1AA”.<br>In section 9A(1), the words “, 1AA”.<br>In section 32A(1)(b), the words “or if section 1AA above were not in force”.<br>In Schedule 3, paragraph 6(1A).  | 10 |
| Local Government Act 1974 (c. 7)                   | Section 25(1)(ba).<br>Section 26(7)(a).  |    |
| House of Commons Disqualification Act 1975 (c. 24) | In Part 2 of Schedule 1, the entries relating to the Commission for the New Towns and the Urban Regeneration Agency.   | 20 |
| Race Relations Act 1976 (c. 74)                    | In Part 2 of Schedule 1A, the entry relating to English Partnerships.  |    |
| New Towns Act 1981 (c. 64)                         | Section 35.<br>In section 36 –<br>(a) subsections (3) and (3A),<br>(b) in subsection (4), the words from “; nor shall any” to the end.<br>Section 37.<br>Section 38.<br>In section 41, in the heading, the words “to Commission”.<br>In section 58 –<br>(a) in the heading, the words “and Commission”,<br>(b) subsections (5) and (6).<br>In section 58A –<br>(a) in the heading, the words “and Commission”,<br>(b) subsections (4) and (5). | 25 |
|  |  | 30 |
|  |  | 35 |
|  |  | 40 |

| <i>Short title and chapter</i>  | <i>Extent of repeal</i>   |    |
|---|---|----|
| New Towns Act 1981 (c. 64) –<br><i>cont.</i>  | In section 59 –   |    |
|   | (a) in the heading, the words “and Commission”,                               | 5  |
|   | (b) in subsection (1), the words “or the Commission” where they first appear, |    |
|   | (c) in subsection (2), the words “or the Commission”.                         |    |
|   | In section 60 –   |    |
|   | (a) in the heading, the words “and Commission”,                               | 10 |
|   | (b) in subsection (1), paragraph (c) and the word “and” following it,         |    |
|   | (c) subsection (4).   |    |
|   | In section 61(2), the words “, (5) or (6)”.                                   | 15 |
|   | Section 62B.  |    |
|   | In section 63 –   |    |
|   | (a) in subsection (1), the words “or the Commission”,                         |    |
|   | (b) in subsection (2), the words “or the Commission, as the case may be”.     | 20 |
|   | In section 67 –   |    |
|   | (a) in the heading, the words “Commission and”,                               |    |
|   | (b) in subsection (1), the words “The Commission and”,                        | 25 |
|   | (c) in subsection (1)(b), the word “respectively”,                            |    |
| (d) also in subsection (1), the words from “being, in the Commission’s case” in paragraph (b) to the end of the subsection, | 30  |    |
| (e) subsection (1A),  |   |    |
| (f) in subsection (2), the words “of the Commission and”,   | 35  |    |
| (g) in subsection (2), wherever appearing, the words “or the Commission”,   |   |    |
| (h) in subsection (3), the words “the Commission or”.   |   |    |
| In section 68 –   | 40  |    |
| (a) in subsection (1), the words from “of the Commission” to “and the accounts”,  |   |    |
| (b) in subsection (1), the words “Commission or”,   |   |    |
| (c) subsection (2A).  | 45  |    |

| <i>Short title and chapter</i>   | <i>Extent of repeal</i>  |    |
|--|--|----|
| New Towns Act 1981 (c. 64) –<br><i>cont.</i>                                 | In section 69 –  |    |
|  | (a) in subsection (1), paragraph (a) and the word “and” following it,  |    |
|  | (b) in subsection (1), the words from “and directions under” to the end,   | 5  |
|  | (c) in subsection (2), paragraph (a) and the word “and” following it.  |    |
|  | In section 70 –  |    |
|  | (a) paragraph (a),   | 10 |
|  | (b) the words “of the Commission or”.  |    |
|  | In section 71(2), the words “the Commission and”.  |    |
|  | In section 77(3), the words “and paragraph 7 of Schedule 9 to this Act”.   | 15 |
|  | In section 80(1) –   |    |
| (a) the definition of “the Commission”,                                      |  |    |
| (b) in the definition of “financial year”, the words “or the Commission”.    |  |    |
| In section 82(3), the words “paragraph 12 of Schedule 11, and”.              | 20   |    |
| Schedule 9.  |  |    |
| In Schedule 10 –   |  |    |
| (a) in the heading, the words “to Commission”,                               | 25   |    |
| (b) paragraph 4,   |  |    |
| (c) paragraph 5(1).  |  |    |
| In Schedule 11 –   |  |    |
| (a) in the italic heading before paragraph 3, the words “to Commission and”, | 30   |    |
| (b) paragraphs 3 and 5,  |  |    |
| (c) paragraph 12 and the italic heading before it.                           |  |    |
| Mobile Homes Act 1983 (c. 34)  | In section 5(1), in the definition of “protected site”, the words from “does not include” to “that,”.  | 35 |
| Building Act 1984 (c. 55)  | In section 35A –   |    |
|  | (a) in the heading the word “certain”,   |    |
|  | (b) subsections (2), (3) and (6).  |    |
| New Towns and Urban Development Corporations Act 1985 (c. 5)                 | Section 1(3) and (4).<br>Section 2.<br>In Schedule 3, paragraphs 3, 5, 6(b), 8(b), 12(1)(b) and 16.  | 40 |
| Housing Act 1985 (c. 68)   | In section 125D(2), the word “and” following paragraph (a).<br>In section 136(2), the word “and” following paragraph (a).<br>Section 156(5) and (6).<br>In Schedule 5, in paragraph 13(5), the word “and” following paragraph (a). | 45 |
| Housing Act 1988 (c. 50)   | Section 81(6).   | 50 |

| <i>Short title and chapter</i>  | <i>Extent of repeal</i>   |          |
|---|---|----------|
| Housing Act 1988 (c. 50) – <i>cont.</i>                                 | Section 133(6).   |          |
| Local Government and Housing Act 1989 (c. 42)                           | In Schedule 11, paragraph 58 and the italic heading before it.  |          |
| Town and Country Planning Act 1990 (c. 8)                               | Section 8A(2).  | 5        |
| Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)        | Section 65.<br>Section 135.<br>Section 137(1) to (3).<br>Sections 158 to 173.<br>Section 175.<br>Section 177.<br>Sections 183 to 185.<br>In section 188(6), paragraph (b) and the “and” before it.<br>Schedules 17 to 20. | 10<br>15 |
| New Towns (Amendment) Act 1994 (c. 5)                                   | The whole Act.  |          |
| Local Government (Wales) Act 1994 (c. 19)                               | In Schedule 16, paragraph 63(5).  | 20       |
| Criminal Justice and Public Order Act 1994 (c. 33)                      | In section 80(4), the words from “in the definition” to “1983 or”.  |          |
| Housing Act 1996 (c. 52)  | Section 1(1A) and (1B).<br>Section 56.<br>Section 105(2).<br>In section 199 –   | 25       |
|   | (a) subsection (2),<br>(b) in subsection (3), paragraph (a) and the word “or” following it,<br>(c) subsection (4),<br>(d) in subsection (5), the word “other”.  | 30       |
|   | In Schedule 2, in paragraph 11(4) –   |          |
|   | (a) “or the Housing Corporation”, and<br>(b) “or, as the case may be, the Housing Corporation”.   | 35       |
|   | In Schedule 9, paragraphs 1 and 2(2), (4), (5), (6) and (8).<br>In Schedule 13, paragraph 4 and the italic heading before it.   |          |
| Housing Grants, Construction and Regeneration Act 1996 (c. 53)          | Section 145.  | 40       |
| Housing Act 1996 (Consequential Provisions) Order 1996 (S.I. 1996/2325) | In Schedule 2, paragraph 21(2).   |          |
| Housing Act 1996 (Consequential Amendments) Order 1997 (S.I. 1997/74)   | In the Schedule, paragraph 9(c).  | 45       |

| <i>Short title and chapter</i>  | <i>Extent of repeal</i>  |    |
|---|--|----|
| Government of Wales Act 1998 (c. 38)  | In Schedule 16, paragraphs 68(a), 83(3), 94 and 97(3).   |    |
| Urban Development Corporations in England (Transfer of Property, Rights and Liabilities) Commission for the New Towns) Order (S.I. 1998/85) | Article 3(1), (3), (4) and (5).  | 5  |
| Freedom of Information Act 2000 (c. 36)   | In Part 6 of Schedule 1, the entries relating to the Commission for the New Towns and the Urban Regeneration Agency. | 10 |
| Armed Forces Act 2001 (c. 19)   | In Schedule 6, paragraph 30 and the italic heading before it.  |    |
| Commonhold and Leasehold Reform Act 2002 (c. 15)  | Section 141.   | 15 |
| Deregulation (Disposals of Dwelling-houses by Local Authorities) Order 2002 (S.I. 2002/367)   | Article 2.   | 20 |
| Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003 (S.I. 2003/1326)   | Article 11(2), (3) and (4)(a).   |    |
| Charities Act 2006 (c. 50)  | In Schedule 8, paragraph 190.  | 25 |
| Armed Forces Act 2006 (c. 52)   | In Schedule 16, paragraph 139 and the italic heading before it.  |    |

# Housing and Regeneration Bill

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A

## B I L L

[AS AMENDED IN PUBLIC BILL COMMITTEE]

To establish the Homes and Communities Agency and make provision about it; to abolish the Urban Regeneration Agency and the Commission for the New Towns and make provision in connection with their abolition; to regulate social housing; to enable the abolition of the Housing Corporation; to make provision about sustainability certificates, landlord and tenant matters, building regulations and mobile homes; to make further provision about housing; and for connected purposes.

*Presented by Secretary Hazel Blears  
supported by  
The Prime Minister,  
Mr Chancellor of the Exchequer,  
Secretary Des Browne, Secretary Hilary Benn,  
Mr Secretary Hutton, Yvette Cooper  
and Mr Iain Wright.*

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*Ordered, by The House of Commons,  
to be Printed, 31st January 2008.*

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LONDON – THE STATIONERY OFFICE LIMITED  
Printed in the United Kingdom by  
The Stationery Office Limited  
£x.xx