

*These notes refer to the Housing and Regeneration Bill  
as brought from the House of Commons on 1st April 2008 [HL Bill 47]*

# **HOUSING AND REGENERATION BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Housing and Regeneration Bill as brought from the House of Commons on 1st April 2008. They have been prepared by the Department for Communities and Local Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND SUMMARY**

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

4. Professor Martin Cave began an independent review of social housing regulation on 14th December 2006. Professor Cave's remit was to establish a clear set of objectives for the regulation of social housing to underpin any new regulatory system, present options for reform and make recommendations about institutional arrangements. His report *Every Tenant Matters: A review of social housing regulation*, was published on 19th June 2007. On the same day, the Government launched the consultation paper *Delivering Housing and Regeneration: Communities England and the future of social housing regulation*. This paper

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took forward Professor Cave's recommendations and set out proposals on the role, responsibilities and operation of Communities England, now the HCA. The then Minister for Housing and Planning, Yvette Cooper MP, made a statement to Parliament on 15th October 2007, which set out further detail on the new social housing regulator, the Office for Tenants and Social Landlords. The Government's Housing Green Paper *Homes for the future: more affordable, more sustainable*, published on 23rd July 2007, set out the role of the HCA in the context of the proposals set out in the Green Paper.

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

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

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

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

- proposals to enable certain local housing authorities, on application to the Secretary of State, to keep rental income from new supply dwellings (included in the Housing Green Paper);
- proposals to enable certain local housing authorities, on application to the Secretary of State, to opt out of the Housing Revenue Account Subsidy system (included in the Housing Green Paper); and
- proposals that a mandatory rating against prescribed sustainability standards should be introduced for new homes, indicating whether the home has been assessed and, if it has, the performance of the home against the standards (proposed in *The future of the*

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*Code for Sustainable Homes - Making a rating mandatory*, published on 23rd July 2007 alongside the Housing Green Paper).

9. The Bill will also give effect to a number of measures in the consultation paper *Tenant Empowerment: A Consultation Paper*, published on 11th July 2007, which set out proposals to increase tenant empowerment. The Bill will give effect to proposals to:

- introduce a requirement for a local authority to hold a statutory ballot to ascertain tenants' views before seeking consent from the Secretary of State in relation to England or the Welsh Ministers in relation to Wales to transfer its housing stock to a private sector landlord; and
- give local authority tenants powers to consider the options for the future management of their housing stock and, if they desire, to effect a change of a landlord (subject to certain conditions).

10. The Bill will also give effect to other measures in relation to housing services:

- to allow local authorities and RSLs to offer tenancies which are not secure or assured to families referred to Family Intervention Projects;
- to reform the law relating to tolerated trespassers by preventing the creation of tolerated trespassers in the future; and restoring tenancy status to existing tolerated trespassers, as set out in *Tolerated trespassers: A consultation paper*, published on 20th August 2007; and
- to make changes to the requirements in the 1985 and 1987 Landlord and Tenant Acts about the information landlords will be required to supply to service charge payers and how service charges monies are held, as set out in *Commonhold and Leasehold Reform Act 2002: A Consultation Paper on Regular Statements of Account and Designated Client Accounts*, published on 25th July 2007.
- to protect providers of shared ownership housing from early enfranchisement<sup>1</sup> and to allow limits on the maximum equity share which shared owners can buy to keep homes available as affordable housing in areas designated as protected by the Secretary of State in relation to England and by the Welsh Ministers in relation to Wales;

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<sup>1</sup> Shared owners buying their freehold before they have acquired full ownership of their home by buying further shares under the terms of their lease

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- minor amendments to the way the right to buy scheme works, as set out in *Clarifying the Right to Buy rules: a consultation paper*, published on 22nd August 2007;
- to enable service personnel to establish a local connection with the district in which they serve, for the purpose of applying to a local housing authority for an allocation of social housing or homelessness assistance;
- to remove the requirement on local housing authorities that they be accepted by the Secretary of State for inclusion on an annual disposals programme before seeking her consent to a large scale transfer of housing to the private sector;
- to widen the existing power for the Secretary of State in relation to England and Welsh Ministers in relation to Wales to provide financial assistance for the giving of general advice in respect of residential landlord and tenant law; information and training and for running an alternative dispute resolution service;
- to extend from six months to two years the time limit for local authorities to prosecute those who breach any provision of building regulations to which section 35 (penalty for contravening building regulations) of the Building Act 1984 applies, as set out in *Longer time limits for prosecution of breaches of Building Regulations – Consultation*, published on 31st July 2007;
- to provide the same security of tenure, and other rights and responsibilities, to Gypsies and Travellers on local authority sites as Gypsies and Travellers on private sites, and occupants of other types of residential caravan site, such as park home sites. This is in response to the European Court of Human Rights ruling in the case of *Connors v United Kingdom*. The ruling can be found on the European Court of Human Rights Portal at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=699671&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>; and
- to widen the existing power for the Lord Chancellor to provide financial assistance for the giving of general advice in respect of the law relating to commonhold land relating to residential matters, information and training and an alternative dispute resolution service.

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## **STRUCTURE OF THE BILL**

11. The Bill is set out as follows:
  - **Part 1 – The Homes and Communities Agency**
    - Chapter 1 – General**
    - Chapter 2 – Land and infrastructure**
    - Chapter 3 – Financial provision**
    - Chapter 4 – Other functions of the HCA**
    - Chapter 5 – Supplementary**
  - **Part 2 – Regulation of social housing**
    - Chapter 1 – Introduction**
    - Chapter 2 – The Social Housing Regulator**
    - Chapter 3 – Registration**
    - Chapter 4 – Registered providers**
    - Chapter 5 – Disposal of property**
    - Chapter 6 – Regulatory powers**
    - Chapter 7 – Enforcement powers**
    - Chapter 8 – General**
  - **Part 3 – Other provisions**
    - Chapter 1 – Sustainability certificates**
    - Chapter 2 – Landlord and tenant matters**
    - Chapter 3 – Housing finance and other provisions**

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

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

**Schedule 2 – Acquisition of land**

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

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

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

**Schedule 6 – Transfer schemes**

**Schedule 7 – Transfer schemes: tax**

**Schedule 8 – Amendments of enactments: Part 1**

**Schedule 9 – Penalty charge notices**

**Schedule 10 - Possession orders relating to certain tenancies**

**Schedule 11- Service charges: provision of information and designated accounts**

**Schedule 12 – Demolition notices**

**Schedule 13 – Disposals of dwelling-houses by local authorities**

**Schedule 14 – Repeals**

## **TERRITORIAL EXTENT**

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

13. The Scottish Parliament has given their consent to subsection (3) of clause 66, which repeals Section 33A of the Housing Associations Act 1985 which provides for the Welsh Ministers in relation to Wales, the Scottish Ministers in relation to Scotland and the Secretary of State in relation to England to enter into agreements with the Housing Corporation.

## **TERRITORIAL APPLICATION: WALES**

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

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

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

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

### **Chapter 1 - General**

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

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

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

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

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

19. These objects are broadly drawn to reflect the wide range of activities that the HCA will undertake at a national level. It will work to improve housing supply, including tackling housing shortages, and to improve the quality of housing including the condition of housing.

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It will also undertake the regeneration and development of any type of land or infrastructure; and will have a more general role supporting the overall well-being of communities, in relation to which it will be able to establish new communities or work to regenerate or develop existing communities. It will also work to contribute to the achievement of sustainable development. The HCA will also act as the residuary body for the development corporations for new towns established under the New Towns Act 1981 and for urban development corporations (which is currently the function of the Commission for the New Towns), as set out in clause 54.

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

21. The powers of the HCA are to be exercised for the purposes of the objects (or for purposes incidental to them) only. Those powers may be exercised independently of each other or together. Where the HCA is conferred with functions of the local planning authority in relation to a designated area under clause 13, it will not be constrained by its objects in exercising those powers (but, in this situation, it will exercise those functions in accordance with existing planning legislation).

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

### ***General***

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

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

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

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

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

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

25. The HCA will be able to acquire, hold, improve, manage, reclaim, repair or dispose of housing or other land or property, or facilitate these activities. It will also be able to carry out



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building and other operations, including the demolition or conversion of buildings, or facilitate such operations. These powers are modelled on those of the Urban Regeneration Agency.

**Clause 9 - Acquisition of land**

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

27. This clause also introduces Schedule 2.

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

28. The HCA is not permitted to dispose of land for less than the best consideration it can reasonably obtain, unless the Secretary of State consents (clause 50 provides that the Secretary of State may give consent, where required under Part 1, generally or specifically). The restriction to dispose of land for less than best consideration does not apply where the HCA proposes to dispose of land by granting or assigning a short tenancy, that is to say of a term of seven years or less.

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

*Powers in relation to acquired land*

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

30. Clause 11 introduces Schedule 3.

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

31. Clause 12 introduces Schedule 4.

*Planning*

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

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

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relation to all or particular kinds of development and Condition 2 is that it is appropriate for the provisions in clauses 15 and 16, or 17, or both sets of provisions to apply in relation to that area.

33. The designation of an area is to be made by order and before making such an order the Secretary of State is required to consult a variety of bodies including every local authority who has an area, or part of an area, in the proposed designated area and any person other than a local authority who is the local planning authority for any part of the area that is to be designated.

34. The range of planning functions that can be conferred on the HCA under a designation order provide the Secretary of State with the flexibility to confer only those functions considered to be necessary for that area. Where a designation order is made in accordance with Condition 1, clause 14 sets out the functions which may be conferred on the HCA in relation to that designated area. In particular the designation order may provide that the HCA is to be the local planning authority in relation to development control under Part 3 of the Town and Country Planning Act 1990, it may be the local planning authority in relation to applications for listed building and conservation area consent and it may be the hazardous substances authority for the designated area. A designation order may also confer certain other planning functions (those which are not conferred on a local planning authority per se) on the HCA, either instead of or concurrently with, other persons who have them. An example of such a function is that of keeping enforcement notice registers, a function of the district council planning authority, district council or London borough council.

35. Clause 14 also enables the Secretary of State to confer responsibility on the HCA for preparing and maintaining all or part of the Local Development Framework for the designated area. Conferring such powers may be useful in instances where a designated area covers two or more local authority areas.

36. Where the HCA is the local planning authority for a designated area it will be bound by the same legislation, consultation requirements and restrictions as any other local planning authority. The procedures set out in the Town and Country Planning (General Development Procedure) Order 1995 will apply where the HCA is an “interested planning authority”. In addition it would also need to have regard to the same policies as any other local planning authority, whether these are development plan policies or policies of the Secretary of State.

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

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

38. Clause 14 affords the Secretary of State the opportunity to determine which planning functions the HCA should have for each different designated area; such as:

- development control functions such as dealing with planning applications;
- associated enforcement functions and powers to issue enforcement, stop and temporary stop notices; and
- applying for injunctions restraining breach of planning control.

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

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

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

**Clause 18 - Regional planning**

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

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HCA to this list of bodies from whom the regional planning body must seek advice, where the HCA is the local planning authority for a designated area.

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

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

43. The HCA may authorise a person to enter any land in connection with a proposal by the HCA to acquire that land or other land, or a claim for compensation in respect of an acquisition of land. This power may be exercised for the purpose of surveying the land or estimating its value. The clause sets out entry and notice requirements, and enables compensation to be recovered if the land is damaged as a result of the authorised person entering the land or the survey being undertaken. An offence is committed if a person intentionally obstructs another person in the exercise of that other person's powers under clause 19. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale, which is currently a fine not exceeding £500.

44. The power to survey land includes power to search and bore in order to establish the nature of the subsoil or the presence of any minerals, provided that notice of intention to do so is included in the notice of intended entry required under clause 19. In addition, if the proposed works are to be carried out on land held by a statutory undertaker and the statutory undertaker objects because the works would seriously interfere with the carrying out of their functions, the consent of the appropriate Minister is needed before the works can be carried out.

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

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

**Chapter 3 - Financial provision**

***Powers to give financial assistance***

**Clause 22 - Financial assistance**

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

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

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

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

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

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

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

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

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

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

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

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

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

### ***Other***

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

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

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

55. If the Secretary of State considers that the HCA has surplus capital, either on capital or revenue account, the Secretary of State may direct the HCA to pay such sums as specified to the Secretary of State, following consultation with the HCA.

56. The Secretary of State may decide to treat the whole or part of any payment as part repayment of the principal of any loans borrowed from the Secretary of State under clause 24.

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

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

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

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

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

*General*

**Clause 31 - Business**

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

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

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

**Clause 33 - Community services**

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

## ***Social housing***

### **Clause 34 - Duties in relation to low cost rental accommodation**

62. This clause requires the HCA when -

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

to ensure that when it is made available for rent the landlord is a “relevant provider of social housing”. A “relevant provider” is a registered provider of social housing (as defined by clause 81(2)(a)), an English local housing authority (or a person controlled by them), or a county council in England. Low cost rental accommodation is accommodation which is made available for rent, the rent is below the market rate and the accommodation is made available in accordance with rules designed to ensure that the accommodation is made available to people whose needs are not adequately served by the commercial housing market.

### **Clause 35 – Recovery etc. of social housing assistance**

63. This clause gives the HCA powers in relation to a person who has received financial assistance for the provision of social housing. The HCA may-

- reduce, suspend or cancel grant payments (or other financial assistance); or
- direct the recipient of financial assistance by way of grant to:
  - a) apply or appropriate for such purposes as the HCA may specify; or
  - b) pay to the HCA,

such amount as the HCA may specify.

64. However, the aggregate of the amounts specified in directions given to a person cannot be greater than the amount of grant received by that person, although interest may be added to the original amount (see clause 36).

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

66. These powers enable the HCA to operate a system similar to the Housing Corporation's "Recycled Capital Grant Fund" operated under section 27 of the Housing Act 1996. This enables the Housing Corporation to require, as a condition of grant that, for example, when a property grant-funded by the Corporation is disposed of, a sum specified by the Corporation (which could be the amount of original grant, or a proportion of the property value) is either repaid to the Corporation, or is applied by the grant recipient to a purpose specified by the Corporation, such as the provision of new social housing.

**Clause 36 – Section 35: interest and successors in title**

67. *Subsections (1) to (4)* provide that the HCA may add interest to sums to be repaid under clause 35. It also has power to suspend or reduce that interest. This clause replicates the provisions in sections 27(4) and (5) of the Housing Act 1996.

68. *Subsections (5) to (7)* provide that a person acquiring social housing from the recipient of social housing assistance will also be subject to the direction to repay under clause 35. This clause replicates section 27(6) of the Housing Act 1996.

**Clause 37 – Determinations under sections 35 and 36**

69. This clause sets out the process for determinations under clauses 35 and 36. A determination could define the "relevant events" which would trigger these requirements (e.g. the disposal of a grant-funded property), or it could specify the purposes to which sums may be applied (e.g. the provision of similar properties, the refurbishment of others, etc.).

70. *Subsection (1)* prohibits the HCA from making a general determination without the consent of the Secretary of State. And *subsection (2)* requires the HCA, before making such a determination, to consult the Regulator of Social Housing, and other appropriate persons.

**Clause 38 - Duty to give financial assistance in respect of certain disposals**

71. Clause 38 essentially replicates the duties that were placed on the Housing Corporation under sections 20 and 21 of the Housing Act 1996.

72. It places a statutory duty on the HCA to provide clause 22 grant to a registered provider of social housing or a registered social landlord in respect of discount provided to a tenant exercising their right to acquire under the right to acquire provisions in Part 2 of the Bill (or under section 16 of the Housing Act 1996, where a Welsh social landlord is disposing of a dwelling in England). The requirement also applies if a tenant entitled to the right to acquire chooses to purchase an alternative property in England offered by their landlord.

73. The grant given to a person in any one year is limited to the total value of the discounts given by the person in that year. The HCA is required to specify the procedure to



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be followed in relation to applications for the grant; the method for calculating and any other limitations on the amount of grant; the manner and timing of payment and any other terms and conditions under which the grant will be given.

74. The purpose of this duty is to ensure that providers of social housing receive the market value for the properties they are required to sell to tenants at a discount. This duty ensures that they receive full market value for the property while the disposal proceeds fund system ensures that proceeds are spent on replacement social housing.

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

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

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

76. Under this clause the HCA is required to co-operate and consult with the Regulator of Social Housing on matters of general interest. For example, the HCA should take account of the regulator's views when it proposes to invest in the provision of social housing. The Regulator of Social Housing is under a corresponding duty to co-operate with the HCA by virtue of clause 106.

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

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

77. These clauses allow the HCA to publish, provide, disseminate or facilitate ideas or information. It can also undertake research and provide, or facilitate the provision of, education and training services. This for example might include providing accreditation or sponsorship programmes, running conferences or developing training modules.

78. Clause 27 enables the HCA to charge a reasonable amount for such services. The intention is that the amount charged will not exceed the cost of providing the service.

**Clause 43 - Guidance**

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

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80. The HCA can revoke its guidance, but, prior to revocation, it must consult those affected by the guidance and, upon revocation, inform those affected by it.

***Functions in relation to companies and other persons***

**Clause 44 - Control of subsidiaries**

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

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

83. The HCA must take steps to ensure that its subsidiaries do not borrow money from anyone other than the HCA, nor issue shares or stocks to anyone other than the HCA, without the consent of the Secretary of State.

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

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

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

***Other***

**Clause 47 - Support services**

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

## **Chapter 5 - Supplementary**

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

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

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

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

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

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

90. The HCA is required to comply with the Secretary of State's directions.

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

91. Where the Secretary of State may give consent, such as under clause 10 for the disposal of land for less than best consideration, the Secretary of State may give consent with or without conditions, or, depending upon the circumstances, in either general or specific terms..

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

### ***Abolition of existing bodies***

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

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

94. Clause 52 also introduces Schedule 5.

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

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

96. Clause 53 also introduces, together with Clause 67, Schedule 6 and Schedule 7.

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

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

**Clause 55 - Interim arrangements**

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

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

***Other***

**Clause 56 - Validity of transactions**

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

**Clause 57 - Notices**

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

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

102. Clause 58 introduces Schedule 8 which makes various consequential amendments including:

- requiring the HCA to have regard to the London Mayor's housing strategy, and
- making the HCA a partner authority in relation to a responsible local authority in the formulation of local area agreements and community strategies.

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

**PART 2 – REGULATION OF SOCIAL HOUSING**

**Chapter 1 - Introduction**

*Preliminary*

**Clause 61 – Purpose**

104. Clause 61 specifies the purpose of Part 2 of the Bill, which is to regulate the provision of social housing by English bodies. “Social housing” is defined in clauses 69 to 78. “English body” is defined in clause 80.

**Clause 62 - Structural overview**

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

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

107. *Subsection (3)* specifies that certain provisions of the Housing Act 1996 are applied in England (these are specified in clause 177) or are preserved, although they apply only in England (see clause 124).

108. *Subsection (4)* sets out the contents and organisation of Part 2 of the Bill which is as follows:

- Chapter 1: Introduction, including definitions of social housing, the regulator, English and Welsh bodies and registered providers of social housing

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- Chapter 2: Establishment of the Office for Tenants and Social Landlords as the regulator of social housing, including its constitution, objectives and its general powers
- Chapter 3: Establishment of a register of providers of social housing, including provisions as to eligibility of providers, their profit or non profit designation, the procedure for registration and removal from the register, and the payment of registration fees
- Chapter 4: Sets out a range of provisions which govern the constitutional arrangements of registered providers, including requirements for accounting, the operation of a moratorium where steps are taken in respect of the insolvency of registered providers, and controls on constitutional changes which result in their restructuring or dissolution
- Chapter 5: Contains a number of provisions in relation to the disposal of property by registered providers, and the regulator’s powers in relation to such disposals
- Chapter 6: Sets out the regulator’s regulatory powers including the scope of its powers to set standards, the Secretary of State’s power to issue directions to the regulator in respect of standards and the regulator’s powers for survey, inspection, specifying performance information and carrying out inquiries
- Chapter 7: Gives the regulator various powers of enforcement, including the power to issue enforcement notices, require the payment of fines or compensation and make provision in relation to the management and constitution of registered providers.
- Chapter 8: Sets out provisions to assist the interpretation of Part 2 and also provides for repeals and consequential amendments

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

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

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

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

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

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

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

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

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

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

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

**Clause 64 - References to Welsh Ministers**

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

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

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

**Clause 66 - Dissolution of Housing Corporation**

120. This clause provides for the dissolution of the Housing Corporation by order of the Secretary of State. *Subsection (2)* provides that the Secretary of State may by order make consequential amendments of enactments referring to it.

**Clause 67 – Transfer schemes**

121. This clause provides that the Secretary of State may make one or more schemes for the transfer of the Housing Corporation’s property, rights or liabilities to the Regulator, the HCA or the Secretary of State.

**Clause 68 – Interim arrangements**

122. This clause confers on the Secretary of State the power to require the Housing Corporation to provide staff, premises, facilities or other assistance to the regulator or the HCA. This mirrors the provisions at clause 55 allowing the Secretary of State to require the same of the Urban Regeneration Agency or the Commission for New Towns.

## ***Social housing***

### **Clause 69 - Basic principle**

123. This clause defines social housing for the purposes of this Bill. Under this Bill registered providers (defined at clause 81) are primarily regulated in respect of their provision of social housing. The definition ensures that registered bodies will not be regulated in respect of their other activities, e.g. provision of housing for sale on the open market.

124. *Subsection (1)* explains that there are two types of social housing – (a) low cost rental accommodation (defined by clause 70) and (b) low cost home ownership accommodation (defined by clause 71).

125. *Subsection (2)* states that accommodation which becomes “social housing” by satisfying subsection (1)(a) or (b) remains “social housing” unless an event specified in clauses 74 to 77 occurs (e.g. sale to a tenant, expiry of a lease or disposal with the Regulator’s consent). This subsection ensures that, once designated as social housing, accommodation continues to be social housing and subject to the regulator’s standards (e.g. on rents and management) and enforcement powers unless one of the specified events occurs.

126. *Subsection (3)* refers to clause 78 which ensures that certain accommodation is to be treated as “social housing” whether or not it satisfies subsection (1)(a) or (b). This will ensure that accommodation provided by existing RSLs is designated as “social housing” even if, for example, rents are not below market rents. This will ensure that homes subject to regulation under the existing regulation system remain regulated under the new system.

### **Clause 70 - Low cost rental**

127. This clause defines low cost rental accommodation. Low cost rental accommodation is one of the two types of social housing referred to in clause 69. This definition is intended to capture homes provided for “social rent”, a term which is not currently defined in law. This clause now defines this by reference to a rent below the market rate (paragraph (b)) and rules designed to ensure that the accommodation is made available to people whose needs may not be adequately served by the commercial market. This might, for example, be for reasons of affordability, specialised/adapted housing, security of tenure or vulnerability (paragraph (c)).

128. Subsection (2) of clause 69 provides that accommodation which becomes social housing by satisfying this definition remains social housing unless an event specified at clauses 74 to 77 occurs.

### **Clause 71 - Low cost home ownership**

129. This clause defines low cost home ownership accommodation.

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



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131. Condition 1 is that accommodation is made available on the basis of a shared ownership arrangement, an equity percentage arrangement or shared ownership trust.

132. Condition 2 is that the accommodation is aimed at people whose needs may not be adequately served by the commercial market. This could, for example, be for reasons of affordability, specialised/adapted housing, security of tenure or vulnerability.

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

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

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

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

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

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

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

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

**Clause 72 - Shared ownership low cost rental**

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

**Clause 73 – Regulations**

139. *Subsection (1)* allows the Secretary of State to make regulations providing that specified property (or a specified class of property) is or is not to be treated as social housing. This allows the Secretary of State to ensure, for example, that all homes funded through public investment are designated as social housing. This is necessary to allow decisions on the classification of new types of social housing (in particular low cost home ownership arrangements) which are likely to be developed in future.

140. *Subsection (2)* states that the regulations may provide for property to be social housing despite not satisfying clause 69(1)(a) or (b) – i.e. not meeting the definitions of low cost rental accommodation or low cost home ownership accommodation where the Secretary of State thinks the property is of a kind, or is provided in circumstances, that serve the needs of a group whose needs are not adequately served by the commercial housing market. This may, for example, cover housing for vulnerable people.

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

- may override clause 69(2)
- are subject to clause 69(3) and clause 78
- are subject to clauses 70 and 71 (but may clarify doubt about the application of those clauses).

142. *Paragraph (a)* means that the Secretary of State can make regulations which specify that certain property is not social housing, even if it had previously satisfied clause 69(1)(a) or (b). This power is necessary to correct any errors of classification that become apparent over time.

143. *Paragraph (b)* means that the regulations cannot override clauses 69(3) and 78 which ensure that homes currently regulated by the Housing Corporation under the 1996 Act are regulated under the new system.

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144. *Paragraph (c)* means that the regulations can clarify the application of the definitions of low cost rental and low cost home ownership, but cannot fundamentally alter them. However clause 71(7) separately allows the Secretary of State to make regulations amending the definition of low cost home ownership.

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

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

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

**Clause 74 - Leaving the social housing stock: sale**

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

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

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

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

**Clause 75 - Leaving the social housing stock: expired lease**

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

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

**Clause 76 - Leaving the social housing stock: disposal with consent**

153. This clause states that a dwelling ceases to be social housing if it is disposed of with the regulator’s consent in accordance with Chapter 5 or certain other statutory provisions.

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**Clause 77 - Leaving the social housing stock: regulator's direction**

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

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

**Clause 78 - Housing stock under Housing Act 1996**

156. This clause ensures that properties owned by an RSL immediately before the coming into force of clause 69 are defined as social housing under this Bill.

157. *Subsection (2)* clarifies that such properties are social housing even if they do not satisfy the definitions of low cost rental or low cost home ownership accommodation in clauses 70 and 71. As with other social housing, it remains social housing until an event specified in clauses 74 to 77 (sales to tenants, expiry of lease, disposal with regulator's consent, etc) occurs.

158. *Subsections (3) to (8)* provide that the following types of property where they are in existence on the date clause 63 comes into force, are only to be treated as social housing if they were purchased, constructed or renovated by means of specified grants:

- (a) market-let accommodation;
- (b) student accommodation;
- (c) care homes providing nursing care;
- (d) asylum seeker Home Office contracted accommodation; and
- (e) other property specified in regulations by the Secretary of State.

159. These exemptions continue the approach currently taken by the Housing Corporation to regulating the existing housing stock of RSLs registered with the Corporation. This will ensure that housing which is not social housing and has not previously been directly regulated by the Corporation should not be caught by regulation in future.

***Other key concepts***

**Clause 79 – Regulator of Social Housing**

160. Clause 79 specifies that for this Part “the regulator” means the Office for Tenants and Social Landlords as specified in clause 82.

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### **Clause 80 - English bodies**

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

- a charity registered with the Charity Commission whose registered address is in England, or
- an industrial and provident society whose registered office is in England, or
- a company whose registered office is in England, or
- any other person, whether or not a corporate body under the law of the United Kingdom, that is not a Welsh body, and that makes available, or intends to make available, accommodation in England. (The definition of “Welsh body”, inserted by clause 63(4), applies here.)

### **Clause 81 - Provider of social housing**

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

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

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

### **Clause 82 - Establishment**

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

### **Clause 83 – Membership**

165. This clause provides for the membership of the regulator. The regulator is to consist of not fewer than four members and up to a maximum of 11 members (including the Chair who is appointed by the Secretary of State) and a Chief Executive (appointed under clause 85). The Secretary of State must consult the Chair before appointing other members. *Subsection (4)* makes clear that former members of the Housing Corporation can become members of the regulator.

### **Clause 84 – Tenure**

166. This clause sets out the tenure of appointment of appointed members and the circumstances where the Secretary of State may dismiss a member (eg absence, bankruptcy or misbehaviour). Appointment terms cannot exceed 5 years although members may be

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reappointed for additional terms. Members can resign by written notice to the Secretary of State.

**Clause 85 – Chief executive**

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

**Clause 86 – Other staff**

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

**Clause 87 – Consequential amendments**

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

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

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

***Proceedings***

**Clause 88 - Fundamental objectives**

172. Clause 88 sets out the fundamental objectives of the regulator. These objectives are separately identified in *subsections (2) to (11)*. The regulator must perform its functions with a view to achieving these objectives so far as possible.

173. *Subsection (2)* specifies the first objective: to encourage and support a supply of well-managed social housing of appropriate quality and sufficient to meet reasonable needs. Social housing is defined in clause 69(1).

174. *Subsection (3)* specifies the second objective: to ensure that actual or potential tenants of social housing have an appropriate degree of choice and protection..

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

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

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

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

179. *Subsection (8)* specifies the seventh objective: to encourage investment in social housing, including by promoting the availability of financial services to registered providers of social housing.

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

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

182. *Subsection (11)* specifies the tenth objective: to regulate in such a way as to minimise administrative burdens, consistent with its ability to achieve its other objectives.

183. *Subsection (12)* provides that this will include compliance with the Regulators' Compliance Code issued under the provisions of the Legislative and Regulatory Reform Act 2006.

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

**Clauses 89 and 90 – Procedure and conflict of interest**

185. Clause 89 provides for the regulator to determine its own procedure and for the manner in which its procedure is made public. Clause 90 states that this procedure must include arrangements for dealing with conflicts of interest of members, employees or members of committees and sub-committees.

**Clauses 91 and 92 – Committees and delegation**

186. Clauses 91 and 92 enable the regulator to authorise a committee, a sub-committee, a member or an employee to exercise a function on its behalf. All committees or sub-committees will need to include at least one member of the regulator (but may also include non-members).

### **Clause 93 – Seal**

187. This clause provides that a document executed under the seal is to be regarded as valid unless the contrary is shown, and that the seal may be authenticated by any person authorised to so do or by a member.

### **Clause 94 - Annual report**

188. This clause requires the regulator to prepare and publish an annual report, as soon as is reasonably practicable after the end of each financial year. The contents must be a report on the performance of its functions during the preceding financial year. In particular, it will include a statement of the regulator's accounts, and specify any direction that the regulator has been given by the Secretary of State during the preceding year under clause 195. Having prepared the report, the regulator will send a copy of the report to the Secretary of State, who will then lay a copy before Parliament.

### ***Powers***

#### **Clause 95 - General**

189. This clause gives the regulator power to do anything it thinks necessary or expedient for the purpose of, or in connection with, the performance of a function conferred on it by this Part, or another enactment. In particular the regulator may do anything it thinks appropriate for advancing its fundamental objectives.

#### **Clause 96 - Studies**

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

#### **Clause 97 - Financial assistance**

191. This clause gives the regulator a power to give financial assistance to another person for the purpose of advancing its fundamental objectives as set out in clause 88.

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

193. *Subsection (2)* sets out a range of means by which the regulator may give financial assistance, including grant, loan, or the defraying of expenditure on behalf of a person. *Subsection (2)(d)* notes that the regulator may also give financial assistance in any other way, with the specified exceptions of purchasing loan or share capital of a body corporate or the giving of a guarantee or indemnity.



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

**Clause 98 – Evidence**

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

**Clause 99 – Information, advice &c.**

196. This clause enables the regulator to publish ideas or information; to undertake research in relation to social housing; and to provide guidance, advice, education or training.

197. *Subsection (2)* enables the regulator to arrange for someone else to carry out all these activities on its behalf, and also joint working with other persons engaged in the work set out in *subsection (1)*.

198. *Subsection (3)* specifies that advice may be given to unregistered and prospective housing associations. This provision replicates section 77 of the Housing Associations Act 1985.

**Money**

**Clause 100 – Remuneration**

199. This clause provides for the regulator to make payments to appointed members and employees. *Subsection (1)* enables the regulator to pay remuneration, allowances, pensions and gratuities to Board members although *subsection (2)* makes clear that rates and eligibility will be determined by the Secretary of State. *Subsection (3)* provides, if the Secretary of State considers there are special circumstances, for the regulator to make compensation payments to a person who ceases to be an appointed member.

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

**Clause 101 – Charging**

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

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**Clause 102 – Assistance by Secretary of State**

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

**Clause 103 – Borrowing**

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

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

**Clauses 104 and 105 – Accounts and Financial year**

205. Clause 104 sets out provisions for ensuring that the regulator maintains and publishes its accounts, the form of which will be directed by the Secretary of State. These accounts are to be sent to the Secretary of State, and to the Comptroller and Auditor General. Clause 105 defines the regulator's financial year.

***Relationship with other bodies***

**Clause 106 - Co-operation with the HCA**

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

207. *Subsection (2)* requires the regulator to consult the HCA on matters likely to interest it. This mirrors a parallel provision at clause 40, requiring the HCA to co-operate with the regulator, and to consult the regulator on matters likely to interest it.

**Clause 107 - Direction to the HCA**

208. This clause gives the regulator a power to direct the HCA not to give financial assistance to a specified registered provider. The regulator's direction may only be made in respect of the HCA's power to give financial assistance under clause 22 in connection with social housing.

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

- the regulator has decided to hold an inquiry into affairs of the registered provider under clause 203 (and the inquiry is not concluded),

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- the regulator has received notice in respect of the registered provider under clause 145 (moratorium), or
- the regulator has appointed an officer of the registered provider under clause 268 (and the person appointed has not vacated office).

210. *Subsection (3)* states that a direction may prohibit the HCA from giving assistance of a specified kind (whether or not in pursuance of a decision already taken and communicated to the registered provider). This means that the regulator could prohibit some forms of financial assistance while allowing others. It also means that the regulator could prohibit financial assistance even where, for example, a funding agreement is already in place.

211. *Subsection (4)* prevents the regulator from issuing a direction prohibiting grant to a registered provider where that grant is to be given in respect of discounts given by the provider on disposals of dwellings to tenants. This ensures that the Regulator's powers do not interfere with the HCA's statutory duty to pay grants under clause 39 (duty to give financial assistance in connection with certain disposals).

212. *Subsection (5)* states that a direction shall have effect until withdrawn.

### ***Information***

#### **Clause 108 - Collection**

213. Clause 108 gives the regulator, for purposes connected with its functions, the power to require documents or information from any person it believes may possess them, concerning the financial or other affairs of registered providers or the activities or proposed activities of a registered provider or a person who has applied to become a registered provider.

214. The regulator is likely to use this power to follow up concerns raised by tenants, local authorities or others by asking for specific information from the provider in addition to standard performance information obtained under clause 201. The regulator may ask for the same types of information from profit-making registered providers as from non-profit providers.

215. *Subsection (2)* provides that a requirement may not be imposed on a person other than the body to which the document or information relates, unless the body has been required to provide the document or information but failed to do so; or the regulator thinks the body is unable to provide it.

216. *Subsection (3)* provides that the regulator may specify the form and manner in which it is to be provided and when and where it is to be provided.

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

218. *Subsection (5)* specifies that it is an offence to fail to comply with a request for information made by the regulator under this power unless the person has a reasonable excuse. *Subsection (3)* of clause 109 provides that a person guilty of this offence is liable on summary conviction to a fine up to level 5 (currently £5000) on the standard scale.

219. *Subsection (6)* further specifies that it will also be an offence intentionally to alter, suppress or destroy information or documents to which a request for information by the regulator under this clause relates. *Subsection (4)* of clause 109 provides that a person guilty of this offence is liable either on summary conviction to a fine up to the statutory maximum (currently £5000), or on conviction on indictment to imprisonment for a term of no more than 2 years, or a fine, or both.

220. *Subsection (7)* provides that if a person who has been required to provide information by the regulator under this power fails to comply, then the regulator may apply to the High Court for an order to remedy that person's failure to provide the information required. *Subsection (6)* of clause 109 provides that such an order may include a provision for costs.

**Clause 109 – Section 108: supplemental**

221. *Subsection (1)* of clause 109 limits the power to require information in clause 108 such that the regulator cannot require a person to disclose anything that they would be entitled to refuse to disclose in High Court proceedings on the grounds of legal professional privilege.

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

223. *Subsections (5)* provides that prosecutions may only be brought by or with the consent of the regulator or the Director of Public Prosecutions.

**Clause 110 - Disclosure**

224. Clause 110 governs the way in which information may be disclosed to and disclosed by the regulator in certain circumstances.

225. *Subsection (1)* provides that a public authority may disclose information to the regulator provided that it is for a purpose connected with the regulator's functions. *Subsection (8)* defines a "public authority" as a person with functions of a public nature, without restriction as to the location where those functions are carried out.

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226. *Subsection (2)* provides for the regulator to disclose information to a public authority (as defined in *subsection (8)*) for any purpose that is either connected with the regulator's own function, or with the functions of the public authority to which the information is disclosed.

227. *Subsection (3)* provides that the regulator may disclose information to a person acting on its behalf (but who is not a public authority) for a purpose connected with the regulator's functions, for example an appointed auditor.

228. *Subsections (4), (6) and (7)* provide that such disclosures may be subject to restrictions on further disclosure and that any disclosure in contravention of such a restriction is an offence. A person who is guilty of this offence will be liable on conviction to a fine not exceeding level 3 (currently £1000) on the standard scale.

229. *Subsection (5)* means that a public authority or the regulator will not be able to disclose information under this clause if doing so would breach a statutory prohibition on disclosure imposed by other legislation.

### **Chapter 3 - Registration**

#### ***Introduction***

#### **Clause 111 - Overview**

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

#### **Clause 112 – The register**

231. *Subsection (1)* of clause 112 requires the regulator to keep a register of persons providing social housing. Only those persons on the register will be subject to regulation by the social housing regulator. This replaces the current requirement on the Housing Corporation under section 1 of the 1996 Act.

232. *Subsection (2)* of clause 112 requires the regulator to make the register publicly available. This replaces the more restrictive provision in section 1(1) of the 1996 Act that the register is made available at reasonable times at the Housing Corporation's head office.

#### ***Eligibility***

#### **Clause 113 - Eligibility for registration**

233. *Subsection (1)* of clause 113 indicates that an English body is eligible for registration if it satisfies the conditions of this clause, and does not fall within the exceptions specified in clause 114. "English body" is defined in clause 80.

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

235. Registration is not compulsory for persons that provide social housing as defined by clause 69. However, grant funding might, for example, be conditional on being registered.

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

237. *Subsection (3)* requires that the body must satisfy any relevant criteria that have been set by the regulator in respect of:

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

238. *Subsection (4)* requires that before the regulator sets any criteria for eligibility for registration, the regulator must consult:

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

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

239. This clause sets out the exceptions to clause 113(1).

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

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

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

243. *Subsection (5)* gives the Secretary of State the power to make regulations defining when a person is controlled by an authority for the purposes of subsection (4).

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244. *Subsection (6)* provides that the definition of person controlled by a local authority may be expressed by reference to a document identified in regulations under section 21(2)(b) of the Local Government Act 2003.

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

245. *Subsection (1)* of this clause provides that the register kept under clause 112 must designate each registered person as either a non-profit organisation or a profit-making organisation. The restriction in section 2(2) of the 1996 Act that requires RSLs to be non-profit making is not replicated.

246. *Subsections (2) to (6)* define a non-profit organisation.

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

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

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

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

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

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

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

## **Procedure**

### **Clause 116 - Entry**

253. *Subsection (1)* of this clause provides that the regulator shall register any person who is eligible for registration as defined in clause 113 and who applies to the regulator to be registered.

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

255. *Subsection (3)* specifies that this clause is subject to clause 117 (fees).

256. *Subsection (4)* provides that once a body has been registered, it will remain registered unless and until it is removed under the provisions of clause 118 or 119.

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

### **Clause 117 - Fees**

258. This clause gives the regulator the power to set fees for registration. The regulator may make the initial registration under clause 116 conditional on payment of a fee, and may make continued registration conditional upon payment of annual fees.

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

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

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

- a) aggregate fee income the regulator receives matches the amount of expenditure it incurs in performing its functions,
- b) each fee is reasonable and proportionate to the costs to which it relates, and



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- c) actual or potential registered providers can see the relationship between the amount of a fee and the costs to which it relates.

262. *Subsection (6)* specifies that the principles under *subsection (5)* for setting fees:

- a) shall provide for clause 97(3) (the regulator's power to give financial assistance to a registered provider by lending money or giving a guarantee or indemnity with the consent of the Secretary of State) to be disregarded for the purpose of subsection (5)(a),
- b) may provide for specified or potential expenditure under the remainder of clause 97 (financial assistance) to be disregarded.

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

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

**Clause 118 - De-registration: compulsory**

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

- is no longer eligible (as provided for in clauses 113 and 114)
- has ceased to carry out activities, or
- has ceased to exist.

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

267. *Subsection (3)* requires the regulator to take all reasonable steps to inform a body that it has been deregistered on the grounds that it is no longer eligible for registration or has ceased to carry out activities. This will ensure that the body knows it no longer has to comply with regulation, though will still be required by clause 171 to seek disposal consent (see clause 185).

**Clause 119 - De-registration: voluntary**

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

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

- the registered provider no longer is, or does not intend to continue to be, a provider of social housing in England
- the registered provider is subject to regulation by another authority whose control the regulator believes to be sufficient, or
- in accordance with such other criteria as the regulator has published in respect of de-registration, in accordance with *subsection (7)*.

270. *Subsection (3)* requires the regulator to consult relevant local authorities (as defined in the Housing Associations Act 1985) in whose area the registered provider carries out its activities as it considers appropriate, before deciding whether or not to comply with a request under subsection (1).

271. *Subsection (4)* provides that the regulator may not consent to a de-registration application from a non-profit registered provider if it considers it is sought with a view to enabling the body to distribute assets to its members.

272. *Subsection (5)* requires the regulator, when considering whether to grant a request to de-register by a registered provider (profit-making or non-profit), to have particular regard to any conditions the regulator has placed on disposals of land (for example relating to the use of disposal proceeds) and any conditions of grant.

273. *Subsection (6)* provide that the regulator must notify the registered provider, and any local authority consulted, of its decision.

274. *Subsection (7)* provides that the regulator must publish criteria on the additional grounds that a registered provider may de-register.

**Clause 120 - Notice**

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

- the Charity Commission, if the registered provider is a registered charity,
- the Financial Services Authority, if the registered provider is an industrial and provident society,

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- the registrar of companies for England and Wales, if the registered provider is a registered company.

276. *Subsection (2)* provides that in notifying these bodies, the regulator will advise whether the body has been registered with a profit-making or non-profit designation under clause 115(1).

277. *Subsection (3)* provides that if the regulator changes the designation under clause 115(8), the regulator will also advise the relevant bodies.

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

**Clause 121 - Appeal**

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

- to refuse to register that body
- to deregister that provider
- to refuse to deregister that provider.

280. *Subsection (2)* prohibits the regulator from de-registering a body while an appeal to the High Court is pending.

**Chapter 4 – Registered providers**

*General provisions*

**Clause 122 - Payments to members etc.**

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

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

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

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

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

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

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

**Clause 123 - Disposal of property**

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

**Clause 124 – Complaints**

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

**Clause 125 - Voluntary undertaking**

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

289. *Subsection (1)* provides that a registered provider may give an undertaking in respect of any matter concerning social housing.

290. *Subsection (2)* provides that the regulator may prescribe a procedure to be followed in giving an undertaking.

291. *Subsections (3) and (4)* provide that the regulator must have regard to any undertaking made in this way by a registered provider when exercising a power under Chapters 6 or 7 of this Part of the Bill. The regulator may also take into account the extent to which undertakings having been made in this way by a registered provider, have been honoured by the provider, when deciding whether to exercise powers under Chapters 6 or 7.

292. One of the purposes of this provision is to enable registered providers to formally notify the regulator of actions that they propose to take, and believe are necessary to ensure that their affairs are managed in accordance with the standards set by the regulator under clauses 191 and 192. It provides a mechanism by which such commitments can be brought to the attention of the regulator, and require the regulator to take account of those undertakings

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when determining whether to investigate the performance of providers, and to take enforcement action where providers have not complied with regulatory requirements.

**Clause 126 – Sustainable community strategies**

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

**Accounts**

294. Clauses 127 to 143 broadly replicate in Part III of Schedule 1 to the 1996 Act (as amended by paragraphs 17 to 23 of Schedule 11 to the Housing Act 2004).

**Clause 127 - Directions**

295. *Subsections (1), (2) and (3)* give the regulator the power to give directions to registered providers about the preparation of accounts for the purpose of ensuring that accounts are prepared in a proper form and that they present a true and fair view of a registered provider's state of affairs as far as it concerns social housing, including its present and past social housing assets and funds. This replaces paragraph 16(1) of Schedule 1 to the 1996 Act. A direction may be given to a profit-making registered provider only in so far as its accounts relate to social housing activities.

296. *Subsection (4)* provides that a direction may provide specifically for how registered providers that are charities should distinguish in their accounts between social housing activities and other matters. This replaces paragraph 16(2) of Schedule 1 to the 1996 Act.

297. *Subsection (5)* provides that directions under this power may make general provision, or provision specific to particular cases, and that provision may vary according to different cases or types of provider.

298. *Subsection (6)* provides that where directions relate to more than one provider, those directions must first be consulted on by the regulator with bodies appearing to represent the interests of registered providers. *Subsection (7)* requires the regulator to make arrangements to ensure that providers to whom directions apply are made aware of their requirements.

**Clause 128 - Submission to regulator**

299. This clause replaces paragraphs 16(5) to 16(8) of Schedule 1 to the 1996 Act. It requires all registered providers to send a copy of their accounts to the regulator within six months of the end of the year to which they relate. These accounts must be accompanied by an auditor's report, or, if an enactment requires a report other than an auditor's report, that other report. The report must specify whether the accounts comply with any relevant directions under clause 127.

### **Clause 129 - Companies exempt from audit**

300. This clause applies in relation to a registered provider which is a registered company, other than a registered charity, which is exempt from the audit requirements of the Companies Act 2006 by virtue of section 477 of that Act, because it is a small company. Registered providers in this category must cause an accountant's report to be prepared, in accordance with clause 130 and made to the company's members in respect of the company's individual accounts for any financial year in which the company takes advantage of its exemption from audit. 'Individual accounts' has the same meaning as in section 396 of the Companies Act 2006.

### **Clause 130 - Exempt companies: accountant's report**

301. *Subsection (1)* of this clause specifies that the report required by clause 129 must be prepared by a reporting accountant eligible under clause 131.

302. *Subsection (2)* requires the report to state whether the individual accounts are in accordance with the company's accounting records kept under section 386 of the Companies Act 2006.

303. *Subsection (3)* requires that on the basis of information contained in the accounting records the report must also state whether the accounts comply with Part 15 of the Companies Act 2006, and whether the company is entitled to exemption from audit under section 477 of that Act (small companies' exemption) for the year in question.

304. *Subsection (4)* requires that the report must give the name of the reporting accountant and be signed and dated. *Subsection (5)* requires that the report is signed by the reporting accountant (where it is an individual) or an authorised person (where the reporting accountant is a firm). *Subsection (6)* defines the meaning of 'firm'.

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

305. This clause specifies who is eligible to act as a reporting accountant for a company. Under *subsections (1) to (3)*, a person is eligible if the person is not prohibited from acting as an auditor and is:

- a) a member of one of the professional accountancy bodies listed in *subsection (4)* and under its rules entitled to engage in public practice and not ineligible for appointment as a reporting accountant, or
- b) subject to the rules of one of the professional accountancy bodies listed in *subsection (4)* in seeking appointment or acting as a statutory auditor under Part 42 of the

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Companies Act 2006, and under those rules is eligible for appointment as a statutory auditor.

306. *Subsection (4)* lists the professional accountancy bodies mentioned in *subsections (1) to (3)*. *Subsection (5)* allows the Secretary of State to amend the list by Order.

307. *Subsection (6)* defines the rules of those bodies, which are rules which the body has power to enforce and which are relevant for the purposes of Part 42 of the Companies Act 2006 (statutory auditors) or this clause.

308. *Subsection (7)* specifies that an individual or a firm may be appointed as a reporting accountant; and that section 1216 of the Companies Act 2006 applies to the appointment of a partnership constituted under the law of England and Wales, Northern Ireland, or any other country or territory in which a partnership is not a legal person.

### **Clause 132 - Application of Companies Act**

309. This clause specifies the provisions of the Companies Act 2006 which apply to the reporting accountant and to the report as they apply to an auditor of the company and an auditor's report on the company's accounts (with any necessary modifications). The provisions, listed in *subsection (2)* are.

- (a) sections 423 to 425 (duty to circulate copies of annual accounts),
- (b) sections 431 and 432 (right of member or debenture holder to demand copies of accounts),
- (c) sections 434 to 436 (requirements in connection with publication of accounts),
- (d) sections 441 to 444A (duty to file accounts with registrar of companies),
- (e) section 454(4)(b) and regulations made under that provision (functions of auditor in relation to revised accounts),
- (f) sections 499 to 502 (auditor's right to information), and
- (g) sections 505 and 506 (name of auditor to be stated in published copies of report).

310. *Subsection (3)* specifies that in sections 505 and 506 of the Companies Act 2006 as they apply by virtue of this clause in a case where the reporting accountant is a firm, any reference to the senior statutory auditor shall be read as a reference to the person who signed the report on behalf of the firm.

**Clause 133 - Exempt companies: extraordinary audit**

311. This clause applies where, in accordance with clause 129 a company appoints a reporting accountant to prepare a report in respect of its accounts for any year. The regulator may require the company to cause a qualified auditor to audit its accounts and balance sheet for that year, and to send a copy of the report to the regulator by a specified date. A requirement may not be imposed before the end of the financial year to which it relates. *Subsection (4)* of the clause also defines ‘qualified auditor’ in relation to a company.

**Clause 134 - Non-audited industrial and provident society**

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

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

314. *Subsection (5)* defines “qualified auditor” and “year of account” for the purposes of this clause.

**Clause 135 - Charity**

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

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

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

318. *Subsection (5)* defines “period of account” for the purposes of this clause.

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



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**Clause 136 - Charity: audit**

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

321. The purpose of this clause is to define whether a charity must appoint an auditor to produce a report under clause 137 or a reporting accountant to produce a report under clause 138 on the accounts required under subsection (3) of clause 135.

322. *Subsection (2)* specifies that if either of the conditions specified in subsection (4) or subsection (5) are met, then the requirements for an auditor's report under clause 137 apply. Otherwise, the requirements for an accountant's report under clause 138 apply.

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

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

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

**Clause 137 - Charity: auditor's report**

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

327. Where an auditor has been appointed under either clause 136 or 139, the auditor's report on the charity's accounts must meet the requirements of this clause.

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

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

330. *Subsection (4)* specifies that the auditor will carry out such investigations as are necessary to reach an opinion on whether the charity has complied with clause 130 (2), and whether the accounts are consistent with the accounting records that the charity is required to keep.

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

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

**Clause 138 - Charity: accountant's report**

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

334. The clause specifies the requirements for an accountant's report on the charity's accounts as required by clause 136(3).

335. *Subsection (2)* specifies that the report must say whether the accounts are consistent with the accounting records of the charity. *Subsection (3)* specifies that the report must say whether, on the basis of the accounting records, the accounts comply with the requirements of the Charities Act 1993 and that the basis on which an accountant's report rather than an auditor's report is permitted, as set out in clause 136, has been correctly established.

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

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

**Clause 139 - Charity: extraordinary audit**

338. Where under clause 136(3) the charity is required to appoint a reporting accountant, this clause provides that the regulator has the power to require the charity also to appoint a qualified auditor to audit the accounts, and to send to the regulator a copy of the auditor's report. The regulator may only use this power in the year following the year to which the accounts relate.

339. *Subsection (4)* defines "qualified person" and "period of account" for the purposes of this clause.

**Clause 140 - Charity: auditor's powers**

340. This clause requires that a charity must give a person appointed to prepare a report on the charity's accounts under clause 136 or 139, whether they are an auditor or a reporting accountant, access to documents that relate to the charity's social housing activities, and must provide to that person such information or explanation as they require

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**Clause 141 – Offences**

341. This clause replaces certain aspects of paragraph 19 of Schedule 1 to the 1996 Act.
342. *Subsection (1)* specifies certain offences in relation to the accounting requirements.
343. *Subsection (4)* specifies that where one of the offences in subsection (1) is committed by a registered provider, then every officer of the registered provider is guilty of an offence. *Subsection (5)* specifies that it is a defence for an officer to show that he or she has done everything that could be reasonably expected to ensure compliance by the registered provider.
344. *Subsection (6)* provides that a person guilty of an offence under this clause is liable on summary conviction to a fine not exceeding level 5 (currently £5000) on the standard scale.
345. *Subsection (7)* provides that proceedings for the offences under this clause may only be brought by, or with the consent of, either the regulator or the Director of Public Prosecutions.

**Clause 142 - High Court**

346. This clause replaces sub-paragraph (5) of paragraph 19 of Schedule 1 to the 1996 Act.
347. Where a registered provider has failed to do one of the things listed in clause 141(1), the regulator may apply to the High Court for an order for the purpose of remedying the failure. A High Court order for this purpose may make provision for costs.

**Clause 143 - Disclosure**

348. This clause replaces paragraph 19A of Schedule 1 to the 1996 Act, concerning the disclosure of information by auditors and reporting accountants.
349. *Subsection (1)* specifies that this clause applies to information that a person has received while acting either as an auditor or a reporting accountant of a registered provider.
350. *Subsection (2)* permits persons in receipt of information as described in *subsection (1)* to disclose that information to the regulator for a purpose connected with the regulator's functions even if there is otherwise a duty of confidentiality on those persons, and regardless of whether or not the regulator has requested the information.
351. *Subsection (3)* clarifies that disclosure of information in this way includes expression of an opinion on that information.
352. *Subsection (4)* defines "reporting accountant" for the purposes of this clause.

***Insolvency etc.***

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

**Clause 144 - Preparatory steps: notice**

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

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

356. Any step to enforce security over land held by a registered provider must be notified by the person taking that step. The step must be of a description prescribed for that purpose by the Secretary of State by order - this replaces section 39(3) of the 1996 Act.

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

358. The passing of a resolution for the winding up of a registered provider that is a registered company or an industrial and provident society must be notified by the registered provider. The exception to this is the passing of a resolution for winding up that requires the regulator's consent under clause 161 or 163. This exception replaces section 40(5) of the 1996 Act.

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

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

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

**Clause 145 - Moratorium**

362. *Subsection (1)* of this clause and clause 146 provide that a moratorium on the disposal of land by a registered provider begins when one of the specified steps is taken in respect of that registered provider. This replaces the provision of section 42(1) of the 1996 Act.

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

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

365. *Subsection (3)* provides that the step taken is not itself invalidated if the notice required in subsection (2) is not given to the regulator but that the end of the moratorium period specified in clause 146(2) depends upon the notice being given to the regulator. This subsection replaces the provision of section 41(5) of the 1996 Act.

366. *Subsection (4)* requires the regulator to give the HCA a copy of any notice received under clause 145.

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

368. Any step to enforce security over land held by a registered provider must be notified by the person taking that step if the step is of a description by the Secretary of State by order - this replaces section 39(3) of the 1996 Act.

369. The presenting of a petition for the winding up of a registered provider that is a registered company or an industrial and provident society (but not by the directors or other governing body of the provider) must be notified by the petitioner.

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

371. A decision by the directors or other governing body of a registered provider to move a resolution for the winding up of the registered provider (where it is a registered company or an industrial and provident society) must be notified by the registered provider.

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

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

**Clause 146 - Duration of moratorium**

374. This clause replaces the provisions of sections 43(1) to 43(6) of the 1996 Act.

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375. *Subsection (1)* specifies that the moratorium begins when one of the steps specified in clause 145 is taken.

376. *Subsection (2)* specifies that the moratorium ends 28 working days after the regulator has received notice under clause 144(2) unless the moratorium is extended as provided for in subsection (3) of this clause or cancelled as provided for in subsection (5) of this clause. “Working day” is defined by clause 274.

377. *Subsection (3)* allows the regulator to extend the moratorium for a specified period provided that the registered provider’s secured creditors, who the regulator is able to locate following reasonable enquiries, have consented to the extension. There is no limit to the number of extensions that may occur provided the secured creditors consent to those extensions.

378. *Subsection (4)* requires that, when the moratorium is extended, the regulator must notify the registered provider, and any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land, and the HCA.

379. *Subsection (5)* allows the regulator to cancel the moratorium if it is satisfied that it is unnecessary to make proposals under clause 151.

380. *Subsection (6)* requires the regulator to consult the person who took the step specified in clause 145 that triggered the moratorium before cancelling the moratorium as provided for in subsection (5).

381. *Subsection (7)* requires the regulator to give notice to the registered provider and those of its secured creditors the regulator is able to locate after making reasonable enquiries when the moratorium ends and to provide an explanation of the effects of clause 147. The latter requirement does not apply where the regulator has cancelled the moratorium under subsection (5).

382. *Subsection (8)* sets out that the regulator must notify the HCA when a moratorium ends.

383. *Subsection (9)* specifies that any further steps taken during a moratorium do not have the effect of either starting a new moratorium or of altering the existing moratorium’s duration as defined in this clause.

**Clause 147 - Further moratorium**

384. This clause replaces the provisions of sections 43(7) and (8) of the 1996 Act.

385. *Subsection (1)* of the clause defines when the provisions of this clause apply. It applies if a moratorium ends other than by cancellation by the regulator under clause 146(5),

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and a further step specified in clause 145 is taken in relation to the same registered provider within 3 years from the end of that moratorium.

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

387. *Subsection (3)* allows the regulator to impose a further moratorium for a specified period but only if all of the registered provider's secured creditors whom the regulator is able to locate after making reasonable enquiries consent to that further moratorium.

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

389. *Subsection (5)* provides that all of the provisions in clauses 144 to 158 apply to a further moratorium imposed by the regulator under this clause as they would to a first moratorium, except for clause 146(2).

**Clause 148 - Effect of moratorium**

390. This clause together with clause 149 replaces the provisions of section 42(2) to 42(6) of the 1996 Act.

391. *Subsection (1)* provides that the HCA may not give the registered provider a direction under section 36(4) (to repay or reapply grant) and may not take steps to enforce such a direction against the registered provider, during a moratorium.

392. *Subsection (2)* provides that the registered provider's land may not be disposed of without the regulator's prior written consent during a moratorium, and that any purported disposal without such consent is void.

393. *Subsection (3)* provides that clause 149 sets out the exceptions to subsection (1), and are therefore disposals which do not require the regulator's prior written consent during a moratorium.

394. *Subsection (4)* provides that the regulator's consent may be given before the moratorium begins and may be subject to conditions.

395. *Subsection (5)* provides that the requirement for the regulator's prior written consent under this clause does not prevent a liquidator from disclaiming land as onerous property during a moratorium.

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396. *Subsection (6)* includes within the definition of “land” in this clause any present or future interest in rent or other receipts arising from land.

**Clause 149 - Exempted disposals**

397. *Subsection (1)* provides that the list of exceptions set out in this clause do not require the regulator’s prior written consent under clause 148. This replaces the provision of section 42(3) of the 1996 Act.

398. *Subsections (2) to (8)* set out the following exceptions:

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

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

**Clause 150 – interim manager**

400. This clause gives the regulator power to appoint an interim manager during a moratorium. The appointment of an interim manager comes to an end at the end of the moratorium, on a date specified in the appointment, or on the agreement of proposals under clause 151. Proposals themselves may provide for the appointment of a manager under clause 154.

401. *Subsection (5)* provides that an interim manager shall have any power specified in the appointment, and any other power in relation to the registered provider’s affairs required by the manager for the purposes specified in the appointment. However, *subsection (6)* provides that an interim manager manager’s powers are more limited than those of a manager



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appointed under clause 154; an interim manager may not dispose of land or grant security over land.

**Clause 151 - Proposals**

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

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

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

404. *Subsection (3)* allows the proposals to include the appointment of a manager as described in clause 154 to implement some or all of the regulator's proposals.

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

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

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

**Clause 152 - Proposals: procedure**

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

- the registered provider (replaces section 44(2)(a) of the 1996 Act),
- its tenants as far as it is reasonably practicable (replaces section 44(2)(a) of the 1996 Act),

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- the Financial Services Authority, if the registered provider is an industrial and provident society (replaces section 44(3)(a) of the 1996 Act),
- the Charity Commission, if the registered provider is a registered charity (replaces section 44(3)(b) of the 1996 Act).

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

- the registered provider and its officers,
- such of its secured creditors as the regulator is able to locate after making reasonable enquires, and
- any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land.

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

- the members and officers of the registered provider,
- its tenants, and
- its unsecured creditors.

410. Subsections (2) and (3) replace the provisions of section 44(7) of the 1996 Act.

411. *Subsection (4)* specifies that the regulator's proposals have effect if all of the registered provider's secured creditors to whom proposals were sent agree to those proposals by giving written notice to that effect to the regulator.

412. *Subsection (5)* provides that further modifications to the proposals may be made and that these shall also have effect if all of the registered provider's secured creditors to whom the proposals were sent agree to those modifications by giving written notice to that effect to the regulator, and the regulator consents.

413. Subsections (4) and (5) replace the provisions of section 45(1) of the 1996 Act.

414. *Subsection (6)* requires the regulator to send a copy of the proposals agreed under subsections (4) or (5) to the following:

- the registered provider and its officers,

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- its secured creditors to whom the original proposals were sent,
- any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land,
- the Financial Services Authority, if the registered provider is an industrial and provident society,
- the Charity Commission, if the registered provider is a registered charity.

415. *Subsection (7)* requires the regulator to make arrangements for bringing the agreed proposals to the attention of the following:

- the members of the registered provider,
- its tenants, and
- its unsecured creditors.

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

417. *Subsection (8)* allows for the proposals to be amended by agreement between the regulator and the secured creditors to whom the original proposals were sent. Where such amendments are made and agreed, the provisions of clauses 151 and 152 apply to the amended proposals as they did to the original proposals. This replaces section 45(5) of the 1996 Act.

**Clause 153 - Proposals: effect**

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

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

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

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

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

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

**Clause 154 - Manager: appointment**

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

423. *Subsection (1)* provides that this clause applies where agreed proposals provide for the appointment of a manager.

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

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

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

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

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

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

**Clause 155 - Manager: powers**

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

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

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

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

- a) to sell or otherwise dispose of land by public auction or private contract;
- b) to raise or borrow money;
- c) to grant security over land;
- d) to grant or accept surrender of a lease;
- e) to take a lease;
- f) to take possession of property;
- g) to appoint a solicitor, accountant or other professional to assist the manager;
- h) to appoint agents and staff (and to dismiss them);
- i) to make payments;
- j) to bring or defend legal proceedings;
- k) to refer a question to arbitration;
- l) to make any arrangement or compromise;
- m) to carry on the business of the registered provider;
- n) to carry out works and do other things in connection with the management or transfer of land;
- o) to take out insurance;
- p) to use the registered body's seal
- q) to execute in the name and on behalf of the registered provider any deed, receipt, or other document;
- r) to do anything incidental to a power in paragraphs (a) to (q).

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

**Clause 156 - Manager of industrial and provident society: extra powers**

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

435. *Subsection (1)* specifies that this clause applies to a manager appointed under clause 154 to implement proposals where the registered provider is an industrial and provident society.

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436. *Subsection (2)* specifies that the appointment of the manager may include the power to make and execute on behalf of the registered provider an instrument that has the effect of transferring its engagements, or providing for its amalgamation with another industrial and provident society.

437. *Subsection (3)* provides that an instrument for amalgamation has the same effect as a resolution under section 50 of the Industrial and Provident Societies Act 1965.

438. *Subsection (4)* provides that an instrument for transferring engagements has the same effect as a transfer of engagements under sections 51 and 52 of the Industrial and Provident Societies Act 1965.

439. *Subsection (5)* requires a copy of the instrument to be sent to and registered by the Financial Services Authority.

440. *Subsection (6)* specifies that the instrument does not take effect until the copy is registered.

441. *Subsection (7)* specifies that the copy must be sent to the Financial Services Authority for registration within 14 days of the execution of the instrument, but that the copy registered is not invalid if it is registered after that time.

**Clause 157 - Assistance by regulator**

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

443. *Subsection (1)* gives the regulator the power to give financial or other assistance to a registered provider for the purpose of maintaining its position while the regulator develops proposals under clause 151.

444. *Subsection (2)* gives the regulator the power to give financial or other assistance either to a registered provider or to a manager appointed under clause 154 to assist or facilitate the implementation of proposals agreed in accordance with clause 151.

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

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

- making grants,
- making loans,

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

**Clause 158 - Applications to court**

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

448. *Subsection (1)* gives the registered provider the right to apply to the High Court where it thinks that an action taken by a manager appointed under clause 154 is not in accordance with agreed proposals.

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

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

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

451. *Subsection (4)* gives a person who is bound by proposals as defined in clause 148 the right to apply to the High Court if that person thinks that another person bound by the same provisions in clause 153 has breached the requirements of that clause.

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

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

***Restructuring and dissolution***

**Clauses 159 to 165**

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

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**Clause 159 - Company: arrangements and reconstructions**

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

455. The effect of *subsections (2) to (4)* is to render the arrangements under various statutory provisions ineffective without the consent of the regulator.

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

- voluntary arrangements made by the directors of a company with its creditors under Part 1 of the Insolvency Act 1986. (This re-enacts section 13(5) of Schedule 1 to the 1996 Act).
- an agreement or compromise with creditors that has been sanctioned by a court order in accordance with section 899 of the Companies Act 2006 (this replaces paragraph 13(2) of Schedule 1 to the 1996 Act which relates to the such arrangements made under section 425 of the Companies Act 1985). *Subsection (3)(b)* also requires that a copy of the consent should be delivered to the registrar of companies before the court order is effective.
- an agreement under section 900 of the Companies Act 2006 where the application to the court for an order sanctioning an agreement under section 899 Companies Act 2006 is in respect of an agreement to reconstruct a company or amalgamate two or more companies and it provides for the transfer of the whole or part of the undertaking or property of one or more of the companies involved in the scheme (this replaces the first sentence of paragraph 13(3) of Schedule 1 to the 1996 Act which related to the arrangements made under section 427 of the Companies Act 1985).

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

**Clause 160 - Company: conversion into industrial and provident society**

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

459. *Subsection (2)* specifies that where there is a resolution to convert a company into an industrial and provident society under section 53 of the Industrial and Provident Societies Act 1965, the registrar of companies may only register that resolution if the regulator has consented in writing to the resolution and a copy of that consent accompanies the resolution



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sent to the registrar of companies. This re-enacts paragraph 13(4) of Schedule 1 to the 1996 Act.

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

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

**Clause 161 - Company: winding up**

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

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

464. *Subsection (3)* provides that the requirement to send a copy of the special resolution to the registrar of companies under section 30 of the Companies Act 2006 is satisfied only if a copy of the regulator's consent accompanies the special resolution. Failure to comply with section 30 of the Companies Act 2006 is an offence. Subsection (3) replaces paragraph 13(6)(b) of Schedule 1 to the 1996 Act which referred to the earlier equivalent provision in section 380 of the Companies Act 1985.

**Clause 162 - Industrial and provident society: restructuring**

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

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

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

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

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

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

- registered by the regulator as a registered provider, and be designated as a non-profit provider in accordance with clause 115, and that
- for the purposes of the regulator's functions and powers, pending the completion of the registration process by the regulator of the new body, the new body will be treated as if it were registered already as a non-profit organisation.

**Clause 163 - Industrial and provident society: winding up**

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

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

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

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

**Clause 164 - Industrial and provident society: dissolution**

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

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

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an instrument of dissolution as defined in section 58 of the Industrial and Provident Societies Act 1965.

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

**Clause 165 - Winding up petition by the regulator**

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

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

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

- the registered provider is not carrying out the objects specified in its constitution, or
- the registered provider is unable to pay its debts as that inability is defined in section 123 of the Insolvency Act 1986, or
- the regulator has directed the registered provider to transfer its land to another person under the power conferred on it by clause 252.

480. Clauses 166 to 168 re-enact the powers of the Housing Corporation in paragraph 15 of Schedule 1 to the 1996 Act as powers of the regulator. These powers relate to the transfer of assets on dissolution of non-profit registered providers of social housing.

**Clause 166 - Transfer of property**

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

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

482. *Subsection (2)* provides that in either of the two cases in subsection (1), any surplus property remaining after the registered provider's liabilities have been satisfied will either be

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transferred to the regulator, or, if the regulator directs, to another registered provider that it specifies.

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

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

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

- Industrial and Provident Societies Act 1965,
- Insolvency Act 1986,
- Companies Act 2006.

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

**Clause 167 - Section 166: supplemental**

487. *Subsection (1)* specifies that this clause applies to property transferred to the regulator in accordance with clause 166(2)(a).

488. *Subsection (2)* specifies that the regulator may only dispose of property transferred to it under clause 166(2)(a) to another registered provider.

489. *Subsection (3)* applies if the registered provider dissolved or wound up under clause 166(1) is a charity. It specifies that any property transferred to the regulator under clause 166(2)(a) from a charity may only be disposed of to a registered provider that is both a charity and has objects that are similar to those of the charity from which the property was transferred to the regulator.

490. *Subsection (4)* provides that if the property transferred to the regulator from the charity wound up or dissolved under clause 166(1) is subject to a mortgage or charge, the regulator may either dispose of that land subject to that mortgage or charge, or subject to a new mortgage or charge in favour of the regulator.

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### **Clause 168 - Extension of clauses 166 and 167**

491. This clause reserves a power for the Secretary of State to provide, through regulations, for the application of clauses 166 and 167 in respect of registered providers that are charities, but are not registered companies, either in specified circumstances and with specified modifications.

## **Chapter 5 - Disposal of property**

### *Introductory*

#### **Clause 169 - Overview**

492. This clause provides an overview of the Chapter.

#### **Clause 170 - Power to dispose**

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

494. This clause replaces section 8 of the 1996 Act which gives RSLs power to dispose of land subject to section 9 of that Act. Note that the reference in section 8(2) of the 1996 Act to section 39 of the Settled Land Act 1925 is replaced by clause 186.

### *Regulator's consent*

#### **Clause 171 - Requirement of consent**

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

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

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

498. *Subsection (3)* provides that disposal consent may not be given to a non-profit registered provider if the regulator believes that consent is being sought to enable disposal of assets to its members.

#### **Clause 172 - Exceptions**

499. This clause lists exceptions to the requirement for consent in clause 171.

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

- (a) an assured tenancy,
- (b) an assured agricultural occupancy,
- (c) an agreement that would be an assured tenancy of an assured agricultural occupancy but for any of paragraphs 4 to 8, paragraphs 12(1)(h) and 12ZA to 12B of Schedule 1 to the Housing Act 1988 (exclusions),
- (d) a secure tenancy, or
- (e) an arrangement that would be a secure tenancy but for any of paragraphs 2 to 12 of Schedule 1 to the Housing Act 1985 (exclusions).

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

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

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

504. *Subsection (5)* states that consent is not required for a disposal in pursuance of a tenant's right to acquire under section 16 of the 1996 Act, or clause 178.

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

**Clause 173 - Procedure**

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

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

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

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

510. *Subsection (5)* requires the regulator, before giving a consent, to consult:

- a) the HCA,

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- b) one or more bodies appearing to it to represent the interests of registered providers, and
- c) one or more bodies appearing to it to represent the interests of tenants.

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

**Clause 174 - Disposal without consent**

512. This clause states that a disposal by a registered provider is void if it required the regulator's consent and that consent had not been given. There are two exceptions. The first exception is when the disposal is of land other than a dwelling by a non-profit registered provider. This replicates section 9(5) of the 1996 Act. The second exception is when the disposal is by a non-profit registered provider of a single dwelling, and the provider reasonably believes at the time of the disposal that the buyer intends to use the property as their principal residence. This replaces the provision in section 9(4) of the 1996 Act and aims to protect individual purchasers if they unwittingly purchased a home from a registered provider who did not have consent to dispose of the property.

*Proceeds*

**Clause 175 - Separate accounting**

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

**Clause 176 – Use of proceeds**

514. This clause replicates section 25 of the 1996 Act. It enables the regulator to specify the purposes to which funds in the disposal proceeds fund may be applied, and ensures that proceeds from sales under right to acquire and other disposals programmes are reinvested in new social housing.

*Tenants' rights and duties*

**Clause 177 - Application of Housing Act 1996**

515. This clause provides that sections 11 to 15 of the 1996 Act apply in relation to disposals by registered providers with the modifications set out in subsection (3).

**Clause 178 – Right to Acquire**

516. This clause reproduces the effect of section 16(1) of the 1996 Act in relation land in England. It provides that an assured or secure tenant of a registered provider has the right to

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acquire if the provision of the dwelling was publicly funded and has remained in the social rented sector since that provision, and if the tenant satisfies certain qualifying conditions.

517. These qualifying conditions are equivalent to those for Right to Buy and are defined with reference to the Right to Buy legislation – Part V of the Housing Act 1985. “Publicly funded” and “remained in the social rented sector” are defined at clause 179 and 180 respectively.

518. *Subsection (3)(b)* refers to a person who provided the dwelling by means of grant by the Housing Corporation under section 27A of the 1996 Act. This replicates the effect of section 16A of the 1996 Act, which gives the right to acquire to tenants whose homes were provided under the Housing Corporations power to give grants to non-RSLs.

**Clause 179 – Interpretation: “publicly funded”**

519. This clause defines when a dwelling is “publicly funded”. This replaces section 16(2) of the 1996 Act, and refers to grants under sections 18 or 27A of the 1996 Act, to homes funded through the disposals proceeds fund, or acquired since 1st April 1997 by a registered provider from a public sector landlord. In addition it refers to dwellings provided in fulfilment of a condition imposed by HCA.

**Clause 180 – Interpretation: “remained in the social rented sector”**

520. This clause defines when a dwelling has “remained in the social rented sector”. This replaces sections 16(3) and 16A(4) of the 1996 Act. It provides that a dwelling has remained within the public sector if the freeholder has been, continuously, a registered provider, a registered social landlord or a public sector landlord and if each leaseholder was either a registered provider, a registered social landlord, public sector landlord or an individual holding otherwise than under a long tenancy. In addition, a dwelling provided under section 27A of the 1996 Act shall be treated as having remained in the social rented sector if it has been used exclusively for purposes permitted under the original grant or any other purposes agreed to by the Housing Corporation or the HCA.

**Clause 181 - Interpretation: other expressions**

521. This clause provides a number of definitions in relation to this group of clauses.

**Clause 182 – Right to acquire: supplemental**

522. This clause provides that section 17 of the 1996 Act applies in relation to a right to acquire under clause 178 with certain modifications. Section 17 of the 1996 Act gives the Secretary of State power, by order, to specify the amount or rate of discount given on the exercise of the right to acquire, and to designate rural areas in which the right to acquire does not arise. It also applies the provisions of Part V of the Housing Act 1985 (Right to Buy) in relation to the right to acquire, subject to any exceptions or modifications made by regulations by the Secretary of State.



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**Clause 183 – Right to acquire: consequential amendments**

523. This clause makes consequential amendments to sections 16, 16A, 20 and 21 of the 1996 Act, to restrict their application to properties in Wales.

*Miscellaneous*

**Clause 184 - Unregistered housing associations**

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

**Clause 185 - Former registered providers**

525. This clause ensures that clauses 170 to 174 (provisions on disposals) continue to apply in respect of any property owned by a person at the time it was registered. This is equivalent to section 9(6) of the 1996 Act.

**Clause 186 – Trustees**

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

**Clause 187 – Charities**

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

*Consents under other legislation*

**Clause 188 – Consent to disposals under other legislation**

528. Under section 171D of the Housing Act 1985, sections 81 and 133 of the Housing Act 1988 and section 173 of the Local Government and Housing Act 1989 a registered provider must obtain the consent of the Secretary of State before disposing of dwellings in relation to which a tenant has a Preserved Right to Buy (section 171D of the Housing Act 1985) or on the first onward disposal of dwellings acquired through transfer from a housing action trust, a local authority or a new town corporation. This clause provides that the functions of the Secretary of State in considering such consents are transferred to the Regulator.

**Clause 189 – Section 188: consequential amendments**

529. This clause makes amendments to the Housing Act 1985, the Housing Act 1988 and Local Government and Housing Act 1989 which are consequential on clause 188.

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530. *Subsection (1)* amends section 171D of the Housing Act 1985 to replace references to “Secretary of State” with “appropriate authority”, which in relation to a disposal in England by a registered provider means the Regulator of Social Housing, in relation to any other disposal in England means the Secretary of State, and in relation to any such disposal in Wales means the Welsh Ministers.

531. *Subsections (2), (3) and (4)* make similar amendments to section 81 of the Housing Act 1988, section 133 of the Housing Act 1988 and section 173 of the Local Government and Housing Act 1989 respectively.

## **Chapter 6 – Regulatory powers**

### **Clause 190 - Overview**

532. Clause 190 describes the contents of Chapter 6.

### ***Standards***

#### **Clause 191 – Provision of social housing**

533. *Subsection (1)* of clause 191 gives the regulator the power to set standards for registered providers in respect of the social housing that they own. These standards may be in relation to the nature, extent and quality of accommodation, facilities and services provided by them in connection with social housing.

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

- a) criteria for allocating accommodation,
- b) terms of tenancies,
- c) levels of rent (and the rules may, in particular, include provision for minimum or maximum levels of rent or of increase or decrease of rent),
- d) maintenance and repair,
- e) procedures for addressing complaints by tenants against landlords,
- f) methods for consulting and informing tenants,
- g) methods of enabling tenants to influence or control the management of their accommodation and environment,
- h) policies and procedures required by section 218A of the 1996 Act in connection with anti-social behaviour,
- i) landlords’ contribution to the environmental, social and economic well-being of the areas in which their property is situated, and
- j) estate management.

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

**Clause 192 - Management**

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

**Clause 193 - Code of Practice**

537. *Subsection (1)* of this clause gives the regulator a power to issue a code of practice which relates to, clarifies or amplifies standards issued under clauses 191 and 192.

538. *Subsection (2)* of this clause gives the regulator the power to have regard to codes of practice issued under subsection (1) when considering whether registered providers have met the requirements of standards issued under clauses 191 and 192.

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

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

**Clause 194 - Consultation**

541. *Subsection (1)* provides that the regulator, before it sets standards, or issues, revises or withdraws a code of practice, must consult bodies representative of registered providers, and the tenants of registered providers, and the secured creditors of registered provider, the HCA and the Secretary of State, or ensure that they have been consulted.

542. *Subsection (2)* requires that before setting a standard which would apply, or before issuing, revising or withdrawing a code of practice which applies or would apply to charities, the regulator must consult the Charity Commission.

**Clause 195 - Direction by Secretary of State**

543. *Subsection (1)* gives the Secretary of State power to direct the regulator to set a standard under clause 191 or about the content of a standard under that clause, or for the regulator to have regard to specified objectives when setting a standard under clauses 191 or 192.

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544. *Subsection (2)* gives the Secretary of State the power to give a direction under *subsection (1)(a)* or *(b)* only if it relates in the Secretary of State's opinion to one of three issues: the quality of accommodation, rent, or involvement by tenants in the management by registered providers of accommodation.

545. *Subsection (3)* requires the Secretary of State to have particular regard to the regulator's objectives in deciding whether to give a direction.

546. *Subsection (4)* requires the Secretary of State to consult the regulator, the HCA, and bodies appearing to the Secretary of State to represent the interests of tenants and of registered providers before giving a direction.

547. *Subsection (5)* requires that before giving a direction about a standard which would apply to charities, the regulator must consult the Charity Commission.

548. *Subsection (6)* allows a direction to disapply the requirement for the regulator to consult under section 194 in relation to specified matters.

549. *Subsection (7)* provides that the regulator must comply with any direction given and *subsection (8)* requires that the Secretary of State publish each proposed direction for consultation; each response to a consultation; and each direction.

### **Clause 196 – Supplemental**

550. *Subsection (1)* specifies that failure to meet standards set under clauses 191 or 192 will be grounds for exercising the powers of the regulator to intervene and enforce compliance as set out in Chapter 7.

551. *Subsection (2)* of this clause specifies that the regulator, having set standards, must make arrangements to bring them to the attention of those registered providers to whom the standards apply.

552. *Subsection (3)* of this clause gives the regulator the power to revise or withdraw standards that have been previously set under powers in clauses 191 and 192. If this power is exercised by the regulator, the same requirements for consultation that are set out in clause 194 will apply as when standards are originally set.

553. *Subsection (4)* makes clear that standards may be expressed by reference to documents prepared by others. This recognises that other bodies, or stakeholders acting as a group, may propose and consult on documents, which the Regulator may then approve and issue.

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554. *Subsection (5)* of this clause provides that standards set by the regulator under clauses 191 and 192 may apply generally or may be limited in their application, and that the standards may be different for different cases, circumstances or areas.

**Monitoring**

**Clause 197 - Survey**

555. *Subsection (1)* specifies that this section applies where the regulator suspects that a registered provider is failing to maintain the premises to be surveyed, in accordance with standards, as specified under clauses 191 or 192 of this Part.

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

557. *Subsection (3)* defines “authorised person” for the purposes of subsection (2) as a member of the regulator’s staff or any other person who has been authorised in writing by the regulator for the purposes of carrying out a survey under this power.

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

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

560. *Subsection (6)* requires that the registered provider who has received the notice required under subsection (5) must then give each occupier of the premises to be surveyed a minimum of 7 days’ notice of the survey.

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

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

**Clause 198 - Survey: supplemental**

563. *Subsection (1)* provides that the authorised person carrying out the survey, or seeking entry to the premises to carry out the survey must, when requested by the occupier, provide to that person a copy of the authorisation to carry out the survey.

564. *Subsection (2)* provides that the regulator may require the registered provider to pay some or all of the costs of the survey and the report.

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565. *Subsection (3)* specifies that a registered provider who fails without a reasonable excuse to comply with the requirement to give occupiers due notice of a survey under clause 197 subsection (6) commits an offence. Similarly, a registered provider or an officer of a registered provider who obstructs an authorised person exercising the power to survey a premises under clause 197 also commits an offence.

566. *Subsection (5)* specifies that a person guilty of offences under subsections (3) or (4) is liable on summary conviction to a fine not exceeding level 3 (currently £1000) on the standard scale.

567. *Subsection (6)* provides that proceedings for an offence under this section may only be brought by or with the consent of either the regulator or the Director of Public Prosecutions. This replicates the provisions of the 1996 Act.

### **Clause 199 - Inspection**

568. This clause provides for the regulator to appoint inspectors to inspect registered providers to ascertain their performance in respect of standards of social housing provision, or their financial and other affairs.

569. *Subsection (2)* explains that the appointed inspector may be one or more members of the regulator's staff or other persons, with written authorisation to conduct that inspection.

570. *Subsection (3)* requires the inspector to produce a written report after the inspection has been completed.

571. *Subsection (4)* requires the regulator to provide a copy of that report to the registered provider, and to the regulator may publish the report and related information. *Subsection (5)* provides that such an inspection may either be general or specific.

572. *Subsection (6)* provides that the Secretary of State may by order authorise the regulator to charge fees for inspections carried out under this clause. *Subsection (7)* requires a registered provider to pay any fee charged for inspection. *Subsection (8)* provides that the Secretary of State must consult with the regulator, bodies representative of registered providers, the Audit Commission and appropriate others, before making an order under subsection (6). *Subsection (9)* requires the regulator to set out a scale of fees for inspections having consulted the Secretary of State and bodies representative of registered providers.

### **Clause 200 - Inspector's powers**

573. This clause provides that an inspector appointed under clause 199 may require any person to provide him with documents or information relating to the financial affairs and activities of a registered provider. It allows the inspector to require access to the registered provider's premises and be afforded facilities in which to carry out an inspection.

**Clause 201 - Performance information**

574. This clause gives the regulator a power to require registered providers to prepare an annual report containing an assessment of its performance in relation to any standards the regulator has set under clauses 191 and 192, and to send that report to the regulator within a specified period.

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

576. *Subsection (3)* specifies that it is an offence not to comply with a requirement made by the regulator under this clause without a reasonable excuse. The penalty for any person found guilty of that offence on summary conviction will be a fine of up to level 5 (currently £5000) on the standard scale.

**Clause 202 - Publication of performance information**

577. This clause requires the regulator to publish at least once a year information about the performance of registered providers including information likely to be useful to tenants, potential tenants and local authorities.

**Clause 203 - Inquiry**

578. This clause gives the regulator the power to hold an inquiry if it believes that a registered provider may have mismanaged its affairs. “Mismanagement” is defined in clause 274.

579. *Subsections (2) to (4)* provide that the regulator will appoint one or more individuals to conduct the inquiry, of which at least one must be independent of the regulator. These individuals are the “inquirers” for the purpose of these clauses. Individuals are independent of the regulator if neither they, nor members of their family, are members or employees of the regulator now, or at any point within the previous five years.

**Clause 204 - Inquiry: supplemental**

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

581. They may consider the affairs of any body that, at the time with which the regulator is concerned, was a subsidiary or associate of a registered provider. The meanings of “subsidiary” and “associate” are defined in clause 270.

582. The inquirers may make interim reports. They must make a final report on the matters to which they have been directed by the regulator. The regulator may arrange for the publication of all or part of either interim reports or the final report produced by the inquirers.

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as brought from the House of Commons on 1st April 2008 [HL Bill 47]*

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

**Clause 205 - Inquiry: evidence**

584. *Subsection (1)* gives the inquirer the power, by giving a notice, to require persons to provide specified documents and information.

585. *Subsection (2)* explains that the notice may require evidence to be given on oath (and the inquirer may administer oaths for that purpose).

586. *Subsection (3)* limits the power in subsection (1) so that it can only be exercised over documents or information that the regulator would have a power over under clause 108.

587. *Subsection (4)* specifies that the provisions of clause 108 (3) to (7), and clause 109 apply to this clause modified as necessary to the specific purpose of the clause.

**Clause 206 – Inquiry: charities**

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

**Clause 207 – Extraordinary audit**

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

590. *Subsection (1)* specifies that where the regulator has decided to hold an inquiry under clause 203, 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.

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

*Subsection (3)* requires the auditor appointed under subsection (1) to report to the regulator on the matters and in the form determined by the regulator, once the audit has been completed

592. *Subsection (4)* limits the use of inquiries in respect of registered providers which are also registered charities. This is equivalent to paragraph 28 of Schedule 1 to the 1996 Act. This ensures the independence of charities while respecting the Charity Commission’s own role as regulator of charities in their non-housing activities.

593. *Subsection (5)* specifies that the cost of the audit, including the auditor’s remuneration, will be met by the registered provider.



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### **Management and constitution**

#### **Clauses 208 - 211**

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

#### **Clause 208 - Non-profit providers only**

595. This clause restricts the application of clauses 208 to 211 to non-profit registered providers as provided for by the regulator's designation on the register under clause 115.

#### **Clause 209 - Industrial and provident society: change of rules**

596. This clause applies only to industrial and provident societies. *Subsection (2)* provides that an amendment of the society's rules requires consent if it alters the society's objects, provides about the distribution of assets to members, or enables the society to become, or cease to be, a subsidiary or associate of another body.

597. *Subsection (3)* provides that an amendment which requires consent is effective only if the regulator has first given consent in writing. *Subsection (4)* provides that the regulator may not consent to an amendment which it thinks would turn the society into a profit making organisation. *Subsection (5)* provides that a society must notify the regulator of any amendment which does not require consent.

598. *Subsection (6)* provides that, in relation to an amendment which requires consent, the requirement to send copies of amendments of rules to the Financial Services Authority under section 10(1) of the Industrial and Provident Societies Act 1965 is only satisfied if it is accompanied by a copy of the regulator's consent under subsection (3).

599. *Subsection (7)* provides that this clause shall also be treated as if it were part of the Industrial and Provident Societies Act.

600. *Subsection (8)* gives the Secretary of State power, by order, to amend the list in subsection (2).

#### **Clause 210 - Charity: change of objects**

601. This clause re-enacts paragraph 10 of Schedule 1 to the 1996 Act and applies only to registered charities that are not registered companies.

602. *Subsection (2)* provides that the Charity Commission must first consent in writing to any amendment of the charity's objects if such a change is to be effective. *Subsection (3)* provides that the Charity Commission must consult the regulator before giving consent under subsection (2).

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**Clause 211 - Companies: change of articles**

603. This clause re-enacts paragraph 11 of Schedule 1 to the 1996 Act and applies only to registered companies.

604. *Subsection (2)* provides that an amendment of the company's articles of association requires consent if it alters the company's objects, provides about the distribution of assets to members, or enables the company to become or cease to be a subsidiary or associate of another body.

605. *Subsection (3)* provides that an amendment of the articles of association which requires consent is effective only if the regulator has first given consent in writing.

606. *Subsection (4)* provides that the company must notify the regulator of an amendment of the articles of association which does not require consent, or a change to its name or registered office.

607. *Subsection (5)* prohibits the regulator from permitting changes to the constitutions of a registered provider which is a company, that would turn the registered provider into a profit-making body that could distribute significant dividends and/or profits.

608. *Subsection (6)* provides that a company must notify the regulator of a change of name or registered office and of any amendment which does not require consent.

609. *Subsection (7)* provides that, in relation to an amendment which requires consent, the requirement to send copies of resolutions to the registrar of companies under section 30 of the Companies Act 2006 is only satisfied if it is accompanied by a copy of the regulator's consent under subsection (3). Failure to comply with the requirement to send copies of resolutions under section 30 of the Companies Act 2006 is an offence.

610. *Subsection (8)* gives the Secretary of State power, by order, to amend the list in subsection (2).

***Guidance***

**Clause 212 - Use of intervention powers**

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

**Clause 213 - Consultation**

612. Before giving guidance under clause 202, the regulator must consult bodies representative of registered providers, bodies representing the interests of the tenants of social housing, and the HCA.

### ***Managers of social housing***

#### **Clause 214 - Accreditation**

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

614. *Subsection (2)* provides that the regulator may approve a scheme operated by someone else – a trade body for example. *Subsection (3)* provides that approval may be withdrawn.

615. *Subsection (6)* provides that standards set under clause 191 may refer to accreditation.

### **Chapter 7 – Enforcement powers**

#### **Clause 215: exercise of enforcement powers**

616. This clause applies where the regulator is deciding whether to exercise a power under Chapter 7, which contains the regulator's enforcement powers, which power under Chapter 7 to exercise, or how to exercise a power under Chapter 7. It provides that in all these circumstances, the regulator shall consider:

- (a) the desirability of registered providers being free to choose how to provide services and conduct business;
- (b) whether the failure or other problem concerned is serious or trivial;
- (c) whether the failure or other problem is a recurrent or isolated incident;
- (d) the speed with which the failure or other problem needs to be addressed.

#### **Clause 216 - Overview**

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

#### **Clause 217 - Grounds for giving notice**

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

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619. *Subsections (2) to (11)* specify the cases where an enforcement notice is applicable as required by subsection (1)(a) as follows:

- that a registered provider has failed to meet a standard of social housing established by the regulator under clauses 191 or 192,
- that the affairs of a registered provider have been mismanaged,
- that the registered provider has failed to comply with an earlier enforcement notice
- that the registered provider has failed publish information in accordance with a requirement under clause 227(3) or 239(3),
- that it is required to protect the interests of tenants,
- that it is necessary to protect the assets of a registered provider,
- that a registered provider has failed to comply with an undertaking that it has given to the regulator as provided for in clause 125,
- that the registered provider has failed to pay an annual fee under clause 117(2),
- that an offence under this Part has been committed by a registered provider
- that a registered provider has failed to comply with an order made by an ombudsman appointed by virtue of clause 124.

620. *Subsection (12)* provides that where the regulator is satisfied that an offence has been committed in respect of a registered provider by an individual (eg a member of staff), the regulator may serve an enforcement notice on the individual rather than the provider and, in such cases, references in this Part of the Bill to registered provider can be read as references to that person.

**Clause 218 - Content**

621. This clause sets out what an enforcement notice must include. It must specify which of the cases in clause 217 are the grounds for the enforcement notice, the specific action which the registered provider must take which is the substance of the notice, the date by when the specified action must be taken, and the effect of clauses 212 to 224.

622. *Subsection (2)* permits the regulator to specify in an enforcement notice that the notice must be published in a specified manner

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**Clause 221 – Notifying HCA**

623. This clause requires that, if the regulator gives an enforcement notice, it should send a copy to the HCA.

**Clause 222 - Appeal**

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

**Clause 223 - Withdrawal**

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

**Clause 224 - Sanction**

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

627. *Subsection (2)* provides that where the enforcement notice has been served on a person under clause 217(12), the regulator may only either use the powers to require the payment of a fine as set out in clauses 225 to 234, or take steps to instigate a prosecution in relation to the offence which provided grounds for service of the enforcement notice.

628. *Subsection (3)* provides that a person who has been served with an enforcement notice under Case 9 of clause 217 may be prosecuted for the offence which gave grounds for the enforcement notice only if they have not complied with that enforcement notice.

***Penalty***

**Clause 225 - Overview**

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

**Clause 226 - Grounds for imposition**

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

631. *Subsections (2) to (7)* of this clause specify the cases where the regulator may issue a fine. These cases are where:

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- the registered provider has failed to meet a standard of social housing established under clauses 191 or 192,
- the affairs of the registered provider have been mismanaged,
- the registered provider has failed to comply with an enforcement notice,
- the registered provider has failed to comply with an undertaking that it has given to the regulator,
- the registered provider has failed to pay an annual fee under section 117(2), and
- where offences under this Part of the Bill have been committed by the registered provider.

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

633. *Subsection (9)* requires that the regulator must be satisfied beyond reasonable doubt in respect of the grounds at subsection (7).

#### **Clause 227 - Imposition**

634. This clause provides that a penalty is imposed by a written notice being served on a registered provider. *Subsection (2)* requires the notice to specify which of the cases listed in subsections (2) to (7) of clause 226 is the basis for the notice, the amount of the penalty that must be paid, how the penalty must be paid, the deadline for the payment of that fine, and any interest or additional penalty payable in the event of late payment.

635. *Subsections (3) and (4)* require that the penalty notice explain the effect of clauses 233(1), (3) and (6), and clause 234. These state that a penalty is treated as a debt to the regulator; that interest is treated as penalty; that, if an offence is punished with a penalty, it may not also be punished through prosecution; and that the provider can appeal to the High Court.

636. *Subsection (5)* provides for the Secretary of State to make further regulations about the period for payment of fines, the content of the penalty notice and the way in which a penalty notice may be served.

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**Clause 228 - Amount**

637. *Subsection (1)* provides that the amount of the fine for a case covered by the ground in clause 226(6) may be no more than the maximum amount that the court could impose in those cases.

638. *Subsection (2)* specifies that, other than where the ground for imposition is set out in clause 226(6), the maximum amount of penalty that the regulator may impose is £5,000.

639. *Subsection (3)* gives the Secretary of State the power to amend the maximum penalty specified by order.

**Clause 229 - Warning**

640. This clause sets out a warning procedure which it calls a “pre-penalty warning”. This process must be carried out before a fine can be imposed by a penalty notice as set out in clause 227. The pre-penalty warning must be given to the provider concerned and must include the following-

- the grounds which the regulator is satisfied are met and are the basis for the fine,
- a warning that the regulator is considering imposing a fine on the specified grounds,
- an indication, if the regulator is able to give one, of the likely amount of the fine,
- an explanation of the arrangements specified in clauses 230 to 234 for:
  - a)making representations concerning the contents of the warning,
  - b)what is done with the proceeds of the fine,
  - c)how a penalty notice may be enforced; and
  - d)rights of appeal.

**Clause 230 - Representations**

641. This clause allows providers issued with a warning to make representations to the regulator about its proposed action. The warning issued under clause 217 must provide for a minimum period for the provider to make representations to the regulator.

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

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

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

**Clause 231 – Notifying HCA**

645. This clause requires that, if the regulator imposes a penalty, it must send a copy of the penalty notice to the HCA

**Clause 232 - Destination**

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

**Clause 233 - Enforcement**

647. This clause specifies how fines will be enforced, and provides for late payment or non-payment of fines. Fines are treated as a debt to the regulator once a penalty notice is issued under clause 227.

648. *Subsection (2)* gives the Treasury a power to make regulations permitting the regulator to charge interest on fines that are not paid by the date specified in the penalty notice and to impose additional fines where the original fine is not paid by the specified deadline. In such cases, *subsection (3)* provides that the additional sums are also treated as fines, and that these additional amounts may have the effect of increasing the penalty above the limit set by clause 228.

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

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

651. *Subsection (6)* specifies that if the penalty notice is served on a person under clause 214 subsection (7), he or she may not be prosecuted for the offence which is the ground for requiring the payment of a fine.

**Clause 234 - Appeal**

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



### **Compensation**

653. Clauses 235 to 244 describe the arrangements for the regulator to exercise a power to require a registered provider to pay compensation to certain classes of people.

#### **Clause 235 - Overview**

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

#### **Clause 236 - Grounds for award**

655. This clause specifies the grounds on which the regulator may require a registered provider to pay compensation. The regulator must be satisfied either that the registered provider has failed to meet a standard of social housing established by the regulator under clauses 191 or 192 of this Part, or that the registered provider has failed to comply with an undertaking that it has given to the regulator.

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

#### **Clause 237 - Nature**

657. This clause indicates those circumstances under which compensation may be awarded. *Subsection (1)* provides that it should be awarded to a person or persons who have suffered as a result of the failure that forms the basis for awarding compensation as defined by clause 236.

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

#### **Clause 238 - Social housing ombudsman compensation**

659. This clause provides for the regulator's power to require a provider to pay compensation to be co-ordinated with the arrangements for approved ombudsman schemes. All registered providers must be a member of an approved ombudsman scheme under clause 124 and those schemes may provide for the ombudsman to determine that one of its members should pay compensation in respect of a case brought by an individual against that member.

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

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

**Clause 239 - Imposition**

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

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

- the grounds on which compensation is awarded, which must be one or more of the grounds specified in clause 236,
- the amount of the compensation award,
- the person or persons who are to be compensated,
- any interest or additional compensation payable in the event of late payment, and
- the period within which that compensation must be paid.

664. *Subsection (4)* requires that the notice explain the effect of clauses 243(1) and (3), and clause 244.

665. *Subsection (5)* requires the Secretary of State to make regulations about the period within which compensation must be paid, and gives the Secretary of State the power to make regulations about the form and content of compensation notices and the manner in which a compensation notice may be given

**Clause 240 – Impact**

666. This clause requires the regulator to take account of any information available to it about the financial situation of the registered provider when considering awarding compensation and when considering the amount. In particular it must consider the likely impact on the provider’s ability to provide services and avoid jeopardising its financial viability, existing financial commitments, and ability to remedy the problem.

**Clause 241 - Warning**

667. This clause sets out a warning procedure. Warning must be given before compensation can be imposed by a compensation notice as set out in clause 239. *Subsection (1)* requires that the pre-compensation warning must be given to the registered provider concerned and must include the following-

- the grounds which the regulator is satisfied are met and are the basis for awarding compensation,

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- a warning that the regulator is considering awarding compensation to specified persons,
- an indication, if the regulator is able to give one, of the likely amount of the compensation award,
- an explanation of the arrangements specified in clauses 242 to 244 for:
  - making representations concerning the contents of the warning,
  - how a compensation notice may be enforced; and
  - rights of appeal.

668. *Subsection (2)* requires that the regulator consult the ombudsman for the scheme to which the registered provider belongs before issuing a pre-compensation warning.

669. *Subsection (3)* requires the regulator to give the HCA, and any other person that it thinks appropriate, a copy of the pre-compensation warning. In doing so, *subsection (4)* sets out that it should particularly take into account, when considering to whom it would be appropriate to send a copy, any person who has provided information as a result of which the regulator is considering making an award of compensation.

670. *Subsection (5)* requires the regulator to indicate in its pre-compensation warning whether the regulator would accept a voluntary undertaking under section 125 instead of compensation.

671. *Subsection (6)* provides that the regulator may combine the pre-compensation warning with warnings about the use of its other enforcement powers.

#### **Clause 242 - Representations**

672. This clause makes arrangements for providers issued with a warning to make representations to the regulator about its proposed action. The warning issued under clause 241 must provide for a minimum period for the provider to make representations to the regulator.

673. *Subsection (2)* specifies that the minimum period must be at least 28 days beginning with the date on which the registered provider receives the pre-compensation warning.

674. The representations may pertain to any matter connected with the contents of the warning, but in particular with whether compensation should be awarded, and the likely amount of the compensation.

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675. *Subsection (4)* provides that at the end of the period for representations the regulation must consider any representations that have been made, and then decide whether to direct the registered provider to pay compensation.

**Clause 243 - Enforcement**

676. This clause specifies how compensation notices will be enforced, and makes provisions for late payment or non-payment of compensation. Compensation is treated as a debt to the person or persons to whom it has been awarded.

677. *Subsection (2)* gives the Treasury a power to make regulations permitting the regulator to charge interest on compensation that is not paid by the date specified in the compensation notice and to award additional compensation where the original compensation award is not paid by the specified deadline. *Subsection (3)* provides that in such cases, the additional sums are also treated as compensation.

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

**Clause 244 - Appeal**

679. This clause gives a provider who has been served with a compensation notice the right to appeal to the High Court against the regulator's award of compensation, or the amount of compensation awarded, or both.

***Management etc.***

**Clause 245 - Overview**

680. This clause describes the powers in this Chapter as being enforcement powers in relation to how providers manage their affairs or are constituted.

**Clause 246 - Management tender**

681. *Subsection (1)* specifies that the regulator may use this power where it is satisfied that a registered provider has failed to meet standards set under either clause 191 or 192, or that its affairs in relation to social housing have been mismanaged, as defined in clause 274.

682. If the regulator is satisfied that one of the conditions in subsection (1) is met, *subsections (2) and (3)* gives it the power to require the registered provider to tender out the management of its social housing, in whole or in part. The regulator will specify the process that the provider is to follow in putting the services out to tender and making an appointment as a result of that process.

683. The extent of the services to be tendered out may be restricted either by reference to the type of services concerned, or in relation to a specific part or parts of the social housing stock owned by the registered provider.

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684. The regulator must specify certain matters if it exercises this power, as follows:

- the constitution of the panel which has the responsibility for selection, which must include provision for ensuring tenants' interests will be represented on that panel,
- provision for ensuring that the procurement process follows best practice, and
- the terms and conditions on which the manager is to be appointed, that will include the setting of the required standards, how those standards will be monitored and enforced, and resources.

**Clause 247 - Section 246: Supplemental**

685. *Subsection (1)* requires that the regulator, before it requires a registered provider to out its management functions under tender under clause 246(2), must give the registered provider a notice which:

- states the grounds on which it may decide to require the provider to tender out its management functions,
- warns the provider that it is considering using this power, and
- explains the effect of the clause.

686. *Subsection (2)* specifies that the notice must specify a period during which the registered provider may make representations to the regulator. The period must be at least 28 days and begin on the date the provider receives the notice.

687. The notice served under clause 247(1) must be copied to the HCA, and to any other person that the regulator thinks appropriate. In determining who the regulator thinks is appropriate for this purpose, it must have regard to any person who has provided information that has directly or indirectly led the regulator to satisfying itself that the use of this power is warranted.

688. The notice served under clause 247(1) must advise the registered provider on whom it is served about the provisions for the provider to make voluntary undertakings to the regulator under clause 125, and the extent to which it would accept an undertaking instead of using this power.

689. *Subsection (5)* allows the regulator to use this enforcement power in conjunction with some of the other enforcement powers that it has under Chapter 7.

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690. *Subsection (6)* provides that in deciding whether to require a management tender, the regulator must have regard to the views of the relevant tenants, the registered provider, the HCA and, if appropriate, any relevant local housing authority.

691. *Subsection (7)* requires the regulator to send the HCA notice of its final decision to impose a requirement.

692. A registered provider served with a notice by the regulator under this clause has a right of appeal to the High Court.

**Clause 248 - Management transfer**

693. The powers set out in these clauses are exercisable following an inquiry as provided for under clause 203, or an audit under clause 207.

694. *Subsection (2)* provides that the regulator may require a registered provider to transfer the management of some or all of its management functions to another specified person.

695. The regulator may use this power where it is satisfied that one of the conditions specified in *subsection (1)* is met, which are that-

- a registered provider has failed to meet the requirements of a standard set by the regulator under clause 191 or 192,
- the affairs of the registered provider have been mismanaged, in respect of social housing,
- some or all of a registered provider's management of its social housing is likely to be improved by the transfer of those management functions.

696. *Subsections (3) to (5)* set out the nature of the requirement that will be specified by the regulator.

697. *Subsection (3)* provides that the regulator may determine the scope of the requirement to transfer management.

698. *Subsection (4)* provides that the requirement will specify the terms and conditions of the appointment, including the remuneration of the person to whom the management is to be transferred, and that these will be determined in accordance with the scope of the management functions to be transferred.

699. *Subsection (5)* gives the person to whom the management functions are to be transferred the powers necessary to carry out the activities specified in the requirement. The powers may be specified by the regulator in the requirement. In addition the person to whom

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management is transferred by the requirement will have any other powers in relation to the registered provider's business that are necessary to give effect to the requirement.

**Clause 249 - Section 248: supplemental**

700. This clause specifies the process by which the power in clause 248 is exercised. Following a statutory inquiry, and having decided that it should direct the transfer of management, *subsection (1)* requires the regulator to serve the registered provider with a notice specifying-

- which of the grounds set out in clause 248(1) applies,
- that it is considering directing the transfer of the registered provider's management functions as a consequence, and
- setting out the effects of this clause.

701. *Subsection (2)* specifies that notice must specify a period during which the registered provider may make representations to the regulator. The period must be at least 28 days and begin on the date the provider receives the notice.

702. The regulator must send a copy of that notice to the HCA and to any other person that it thinks appropriate, with particular consideration to any person who has been involved in identifying to the regulator the matters that form the basis for the regulator's use of this power

703. The notice must draw to the registered provider's attention the provisions of clause 125 which provide for a registered provider to make a voluntary undertaking to the regulator at any time on any matter, and the notice must also indicate the extent to which the provision of a voluntary undertaking under that provision would be accepted instead of, or in mitigation of, the direction to transfer management which the regulator is considering.

704. The notice may be combined with notices about the use of other enforcement powers available under Chapter 7. *Subsection (6)* provides that the regulator should have regard to the 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, in deciding whether to direct a registered provider, following an inquiry, to transfer management to a specified person.

705. *Subsection (7)* requires the regulator to notify the HCA of any requirement to transfer management functions to a specified person.

706. *Subsection (8)* gives the registered provider subjected to a requirement under clause 248(2) the right of appeal to the High Court.

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**Clause 250 - Appointment of manager**

707. This clause gives the regulator the power either to appoint an individual as manager of the registered provider, or to require the registered provider to appoint an individual as manager as set out in *subsection (2)*.

708. The regulator may do this if it is satisfied that a registered provider has failed to meet a standard set out in either clause 191 or 192, or that its affairs have been mismanaged in relation to social housing.

709. *Subsections (3) to (5)* set out the nature of the requirement or the appointment that will be specified by the regulator.

710. *Subsection (3)* provides that the regulator may determine the matters in respect of which the manager is to be appointed.

711. *Subsection (4)* provides that the appointment of a manager, or the requirement to appoint a manager, will specify the terms and conditions of appointment, including the remuneration of the manager, and that these will be determined in accordance with the scope of the appointment of the manager, or the requirement to appoint a manager under *subsection (3)*.

712. *Subsection (5)* gives the appointed manager the powers necessary to carry out the activities specified in the requirement or the appointment. The powers may be specified by the regulator in the requirement of the appointment. In addition, the appointed manager will have any other powers in relation to the registered provider's business that are necessary to give effect to the requirement of the terms of the manager's appointment.

**Clause 251 - Section 250 supplemental**

713. Before it imposes a requirement under *subsection (2)* of clause 250 the regulator must serve a notice on the registered provider specifying which of the grounds listed in *subsection (1)* of that clause apply, warning that it is considering the use of the power set out in clause 250, and explaining the provisions of clause 251.

714. The effect of *subsection (2)* is that notice must specify a period during which the registered provider may make representations to the regulator. The period must be at least 28 days and begin on the date the provider receives the notice.

715. *Subsection (3)* provides that the regulator must send a copy of that notice to the HCA and to any other person that it thinks appropriate, with particular consideration to any person who has been involved in identifying to the regulator the matters that form the basis for the regulator's use of this power.



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716. *Subsection (4)* provides that the notice must draw to the registered provider's attention the provisions of clause 125 which provide for a registered provider to make a voluntary undertaking to the regulator at any time on any matter, and the notice must also indicate the extent to which the provision of a voluntary undertaking under that provision would be accepted instead of, or in mitigation of, the appointment of a manager or the direction to appoint a manager which the regulator is considering.

717. *Subsection (5)* provides that the notice may be combined with notices about the use of other enforcement powers available under Chapter 7.

718. *Subsection (6)* requires the regulator to notify the HCA if it appoints a manager or imposes a requirement on a registered provider to appoint a manager.

719. *Subsection (7)* gives the regulator the power to require the appointed manager to report to it in relation to matters specified in the manager's appointment.

720. *Subsection (8)* gives the registered provider the right of appeal to the High Court.

**Clause 252 - Transfer of land**

721. Clauses 252 and 253 replace paragraph 27 and 29 of Schedule 1 to the 1996 Act.

722. This clause applies to non-profit registered providers only.

723. *Subsection (1)* sets out the cases where this clause applies. These cases are:

- the provider has failed to meet a standard under clauses 191 or 192,
- there has been mismanagement of a provider's affairs in relation to social housing,
- transfer of the land of a provider would be likely to improve the management of that land.

724. *Subsection (2)* gives the regulator power to require that the registered provider should transfer its land either to the regulator or to another non-profit registered provider.

725. *Subsection (3)* specifies that this power may not be used in respect of a registered charity.

726. *Subsection (4)* provides that this power may be used in respect of a charity that is not registered with the Charity Commission, but that the charity's land may only be transferred to another charity whose objects the regulator thinks are similar to those of the transferring charity.

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**Clause 253 - Section 252: supplemental**

727. *Subsection (1)* provides that a transfer under clause 252 shall be on terms specified in or determined in accordance with the regulator's formal requirement.

728. *Subsection (2)* specifies that the price attached to the transfer shall be at least the amount certified by the district valuer as the amount that the property to be transferred would fetch if sold by a willing seller to another non-profit registered provider.

729. *Subsection (3)* provides that the terms of the transfer will include provision for the payment of debts or liabilities in respect of the land to be transferred, whether or not they are secured by a charge on the land.

730. *Subsection (4)* requires that the Secretary of State must consent to a requirement for a transfer of land under clause 252, both in respect of the transfer itself, and the terms of that transfer.

**Clause 254 – Amalgamation**

731. This clause relates only to non-profit registered providers. *Subsection (1)* sets out the cases where this clause applies. These cases are:

- a registered provider which is an industrial and provident society has failed to meet a standard under clauses 191 or 192,
- the affairs of a registered provider which is an industrial and provident society have been mismanaged in relation to social housing,
- the amalgamation of an industrial and provident society with another industrial and provident society would be likely to improve the management of its social housing.

732. *Subsection (2)* gives the regulator power to bring about the amalgamation of the society with another industrial and provident society.

733. *Subsection (7)* provides that any body created by virtue of an amalgamation must be registered by the regulator and designated as a non-profit organisation.

***Restrictions on dealings***

**Clause 255 – Restrictions on dealings during inquiry**

734. This clause allows the regulator to make an order to restrict the transactions which a non-profit registered provider may enter into or the payments it makes, and may order anyone holding money or securities on behalf of the provider not to part with them. This clause applies where an inquiry is in progress and:

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- (a) the regulator has reasonable grounds for believing the provider has failed to meet a standard and it is in the interests of tenants or its assets require protection;
- (b) as a result of an interim report from an inquiry, the regulator is satisfied that the provider has failed to meet a standard or its affairs have been mismanaged.

735. The restrictions in the order are automatically lifted 6 months from the date the final report from the inquiry is issued, or the Regulator can lift it sooner. This power may only be used in relation to a registered charity if the charity has received public assistance (defined in clause 273).

**Clause 256 – Restrictions on dealings following inquiry**

736. This clause gives the regulator similar powers to those in clause 255, but following rather than during an inquiry. An order under this clause has effect until revoked by the regulator.

**Clause 257 – Restrictions on dealings: supplemental**

737. This clause is supplemental on clauses 255 and 256. It requires the Regulator to take all reasonable steps to give at least 14 days' notice to the provider and the person holding money or securities on its behalf. Contravention of an order is an offence punishable by fine.

*Suspension and removal of officers*

**Clause 258 – Suspension during inquiry**

738. This clause applies where-

- (a) the regulator has reasonable grounds for believing the provider has failed to meet a standard and it is in the interests of tenants or its assets require protection;
- (b) as a result of an interim report from an inquiry, the regulator is satisfied that the provider has failed to meet a standard or its affairs have been mismanaged.

739. The regulator may suspend an officer, employee or agent who it considers contributed to that failure or mismanagement. The suspension comes to an end 6 months after the final report, or the regulator can end it sooner. The regulator may only suspend an officer of a registered charity if it has received public assistance and must notify the Charity Commission.

**Clause 259 – Removal or suspension following inquiry**

740. This clause gives the regulator similar powers to those under clause 258, but permits permanent removal following (rather than during) an inquiry, and suspension pending a decision on permanent removal. The regulator must take all reasonable steps to give at least 14 days' notice to the person and the provider.

**Clause 260 – Suspension under section 258 or 259: supplemental**

741. This clause is supplemental to clauses 258 and 259. It allows the regulator to give directions to the registered provider about the performance of the suspended or removed person's functions or any other matter arising from the suspension, and allows the regulator to appoint a person to perform the suspended person's functions.

**Clause 261 – Disqualification of removed person**

742. This clause disqualifies anyone from acting as an officer of a registered provider if they have been removed (not suspended) under clause 259, or under parts of previous Acts which now only apply to Wales. The regulator may waive a disqualification if the person applies for a waiver. If they do act as an officer while disqualified, their acts are not invalid by reason only of the disqualification – if their acts were automatically void, this could cause problems for the provider.

**Clause 262 – Register of disqualified persons**

743. This clause requires the regulator to keep a register of disqualified persons and waivers which is publicly available.

**Clause 263 – Acting while disqualified: offence**

744. This clause makes it an offence for a person to act as an officer while disqualified, which can make them liable to imprisonment or a fine.

**Clause 264 – Acting while disqualified: other consequences**

745. This clause permits the regulator to require repayment of part or all of any benefits received by a person acting as an officer while disqualified.

**Clause 265 – Removal of officers**

746. This clause replicates the effect of paragraphs 4 and 5 of Schedule 1 to the 1996 Act. The clause gives the regulator the power to remove officers from the governing bodies of registered providers that have been designated as non-profit providers by the regulator. *Subsection (2)* defines an officer for each of the constitutional forms of a non-profit provider, which are a registered charity, an industrial and provident society or a registered company.

747. *Subsections (3) to (9)* specify the seven cases under which the regulator may remove an officer, which are:

- where the officer has been adjudged to be bankrupt,
- where the officer has made an arrangement with creditors,
- where the officer has been subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 (or the equivalent statutory provision for Northern Ireland),

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- where the officer has been subject to an order under section 429(2) of the Insolvency Act 1986 (which occurs where a person fails to make a payment under a county court administration order under the County Courts Act 1984),
- where the officer is disqualified under section 72 of the Charities Act 1993 from being a charity trustee (whether this is in relation to their position as an officer of the registered provider that is a charity or as an officer of a different charity),
- where the officer is incapable of acting by reason of mental disorder,
- where the officer is impeding the proper management of the registered provider by reason of absence or failure to act.

#### **Clause 266 – Section 265: supplemental**

748. Clause 266 is supplemental on clause 265. It provides that before making an order under clause 265 the regulator must give the officer concerned and the registered provider 14 days' notice.

#### **Clause 267 – Appeal against removal or suspension**

749. This clause gives anyone removed or suspended under clauses 257, 258 or 265 a right of appeal to the High Court.

#### **Clause 268 – Appointment of new officers**

750. This clause gives the regulator the power to appoint a person as an officer of a non-profit registered provider. *Subsection (1)* specifies that the regulator may do this where:

- a. it is to replace an officer removed under clause 265,
- b. the registered provider has no officers on its governing body, or
- c. the regulator thinks that the additional officer is necessary for the proper management of the registered provider's affairs.

751. *Subsection (2)* specifies that "officer" for this clause has the same meaning as in clause 265. *Subsection (3)* specifies that the regulator may appoint more than a minority of the officers of a registered provider only if the provider has fewer officers than required by its constitution.

752. *Subsection (4)* says that the regulator's power in subsection (1) overrides any restrictions in the registered provider's constitution on the eligibility requirements for officers, or the number of officers that the registered provider may have.

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753. *Subsection (5)* requires that an order made by the regulator under subsection (1) must specify the period for which, and the terms on which, the person is appointed as an officer. It also provides that the regulator may renew the appointment when the period specified in the order under subsection (1) expires, and that the new officer appointed by the regulator may resign or retire as allowed in the registered provider's constitution.

754. *Subsection (6)* provides that an officer appointed by the regulator under subsection (1) has the same standing, in terms of rights, powers and responsibilities, as if he or she had been appointed as an officer under the constitution of the provider.

755. *Subsection (7)* provides that the regulator may only make an appointment in relation to a registered charity if one of the conditions in clause 273 is fulfilled (which are the conditions that the registered charity has received either homes or financial assistance that are relevant to the functions of the regulator under the specified statutory provisions), and the regulator has consulted the Charity Commission before making the order under subsection (1).

756. *Subsection (8)* enables the Secretary of State to provide for other circumstances in which the regulator may appoint more than a minority of the officers of a registered provider.

## **Chapter 8 – General**

### ***Interpretation***

#### **Clause 269 - Officer**

757. This clause defines “officer” in relation to registered providers.

#### **Clause 270 - Subsidiary and associate**

758. This clause defines the terms “subsidiary” and “associate” for the purposes of this Part.

#### **Clause 271 - Family**

759. This clause clarifies when a person is considered to be a member of the family of another person, for the purposes of this Part.

#### **Clause 272 - Disposal**

760. This clause defines what is a disposal of a property for the purposes of this Part.

761. *Subsection (2)* makes it clear that granting an option to require a disposal at some point in the future will be treated as making a disposal

#### **Clause 273 – Charities that have “received public assistance”**

762. This clause defines ‘public assistance’ for the purposes of Part 2. Public assistance includes grant given by the HCA under clause 22; assistance for privately let accommodation under section 24 of the Local Government Act 1988; assistance in relation to housing

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transfers under section 34 of the Housing Act 1985 or section 135 of the Leasehold Reform, Housing and Urban Development Act 1993; and various other housing grants including social housing grant under section 18 of the 1996 Act.

**Clause 274 - General**

763. This clause defines a number of terms, either directly or by reference to other Acts.

**Clause 275 - Index of defined terms: Part 2**

764. This clause sets out a table listing expressions defined within this Part.

*Miscellaneous*

**Clause 276 - Consequential amendments**

765. This clause provides that in secondary legislation made before the commencement of this Part a reference to ‘registered social landlords’ will be treated as including a reference to ‘registered providers of social housing’.

**Clause 277 – Transitional**

766. This clause provides that registered social landlords which, at the date clause 63 comes into force, were in a register maintained by the Housing Corporation under section 1 of the 1996 Act are to be entered in the register maintained by the regulator under clause 112 as non-profit registered providers.

**PART 3 – OTHER PROVISIONS**

**Chapter 1 - Sustainability certificates**

*General*

767. This Chapter provides for the introduction of mandatory sustainability rating for new homes in England and Wales. This will be information in the form of either a certificate showing the results of assessment against sustainability standards, or a statement that there is no certificate because no assessment has been made. Sustainability standards already exist in the Code for Sustainable Homes (“the Code”). Since April 2007, the Code has operated on a voluntary basis in England only. The purpose of sustainability standards is to improve the sustainability of new homes during both the construction and the lifetime of the home.

768. The Chapter includes provision for extension of the provisions to conversions of existing buildings and to non-residential properties, although there are no present proposals to use those powers.

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769. The Chapter applies to England and Wales. Any power to make delegated legislation under the Chapter is to be exercised by the appropriate national authority: the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales.

**Clause 278 - Certificates for new homes**

770. This clause places a duty on a person selling a newly constructed residential property to give the purchaser of the property information about the sustainability of the new property free of charge before the sale is agreed. This information is in the form of either a sustainability certificate or a statement that there is no sustainability certificate for the property (*subsections (1), (2), (4) and (9)*).

771. The sustainability certificate can be given as either an interim certificate (if the property has not been completed yet) or a final certificate (available after the property has been built and assessed). Where an interim certificate is given before sale, the final certificate must be given at a later point to be prescribed in regulations, which may be after the sale is completed (*subsections (3), (10) and (11)*).

772. The clause provides for powers to make regulations to bring forward the point at which a sustainability certificate or statement of non-assessment must be supplied, to make exceptions to the duties under the clause, and to provide for alternative duties where such exceptions apply (*subsections (5), (6) and (7)*). There is a defence of reasonable excuse for not complying with any of duties in this clause (*subsection (8)*).

**Clause 279 - Meaning of sustainability**

773. This clause defines the sustainability of a residential property in relation to the materials used in the property, other aspects of its design and construction, and any services, fittings and equipment provided in or in connection with the property (as well as related demolition and off site activities). Sustainability is the extent to which prescribed sustainability standards are met in these respects (*subsections (1) and (4)*).

774. Sustainability standards will be prescribed in regulations by the appropriate national authority for ensuring or furthering the following listed purposes (*subsection (2)*):

- health, safety, welfare and convenience of people in or about the property, and others who may be affected by it;
- efficient management of the property and of its construction;
- energy efficiency;
- water efficiency and minimising flood risk;
- efficient waste management;
- protecting or enhancing the environment; and
- preventing or detecting crime.



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775. The appropriate national authority can by regulations amend this list of purposes from time to time by adding to, removing or altering the items listed (*subsection (3)*).

**Clause 280 - Authorised assessors**

776. This clause ensures that assessments of sustainability for residential properties are carried out only by authorised assessors. The appropriate national authority must by regulations specify who are to be authorised assessors, and may make further provision about them (*subsections (1), (2) and (3)*).

777. Regulations may specify that authorised assessors be accredited under an accreditation scheme established or approved by the appropriate national authority, and may provide for the charging of fees under accreditation schemes (*subsections (4), (5) and (6)*).

778. Regulations concerning accreditation schemes must require the appropriate national authority to be satisfied that any scheme approved contains adequate provision for -

- ensuring that members of the scheme are fit and proper persons who are qualified to carry out assessments;
- ensuring that a code of conduct for members of the scheme is maintained and published;
- ensuring that members of the scheme have suitable indemnity insurance;
- facilitating the resolution of complaints against members;
- requiring certificates issued by members to be entered into the register of certificates (see paragraph on clause 281)
- keeping a public register of members of the scheme; and
- such other purposes as may be specified in the regulations (*subsections (7) and (8)*).

779. Regulations may also provide for accreditation schemes to contain provision about certificates and other documents within the scope of the scheme including the terms on which they may be provided (*subsection (9)*).

**Clause 281 - Register of certificates**

780. This clause empowers the appropriate national authority to make regulations about a register of sustainability certificates (*subsection (1)*). Regulations may also provide for interim certificates and other documents to be included on the register (*subsections (9) and (10)*).

781. The regulations under *subsection (1)* may provide in particular (*subsection (2)*) for:

- the register to be kept by or on behalf of the appropriate national authority or by such other person as the regulations may specify (*subsection (3)*);

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- the payment of a fee to enter a document onto the register (*subsection (4)*); and
- preventing the disclosure of the register or documents or information in it except in accordance with the regulations (*subsection (5)*);
- the circumstances in or purposes for which the register may, on payment of any fee, be inspected, documents or information may be copied or given, and disclosure made of anything so obtained (*subsections (6) and (7)*).

782. Contravention of a prohibition on disclosure from the register is a summary offence punishable by a fine not exceeding level 5 on the standard scale, currently £5,000 (*subsection (8)*).

### ***Enforcement***

#### **Clause 282 - Enforcement authorities**

783. This clause provides for every local weights and measures authority to enforce the duties in clause 278 in its area.

#### **Clause 283 - Power to require production of certificates or statements**

784. This clause empowers officers of an enforcement authority to require a seller of a newly constructed residential property to produce for inspection (or to provide a hard copy) of the sustainability certificate or statement of non-assessment (*subsections (1) to (3)*). The request may be made up to six months after the last day on which the person concerned could have complied with the duty under clause 278, and must be complied with within 7 days (*subsections (4) and (6)*). The duty in this clause is subject to a defence of reasonable excuse for not complying with it (*subsection (5)*).

#### **Clause 284 - Penalty charge notices**

785. This clause provides for enforcement officers to give a penalty charge notice to a person the officer believes has committed a breach of the duties set out in clause 278 or any regulations made under it or in clause 283. The notice may be given up to six months from the commission of the breach (*subsections (1) and (2)*). Schedule 9 has effect in relation to penalty charge notices (*subsection (3)*).

#### **Clause 285 - Offences relating to enforcement officers**

786. This clause provides for offences of obstructing an enforcement officer acting in pursuance of his duties under the Chapter (*subsection (1)*), and of impersonating an enforcement officer by purporting to act as one in pursuance of either clause 283 or clause 284 (*subsection (2)*). Both are punishable on summary conviction with a fine not exceeding level 5 on the standard scale, currently £5,000 (*subsection (3)*).

### ***Supplementary***

#### **Clause 286 - Grants**

787. This clause allows the appropriate national authority to make grants towards the development and subsequent operation of a register under clause 281 (*subsection (1)(a)*). Grants may also be made towards the development and operation of accreditation schemes or any other provision to be made in regulations under the Chapter (*subsection (1)(b)*). Such a grant may be subject to conditions including conditions for the purposes for which it may be used, and for full or partial repayment of it in specified circumstances (*subsection (2)*).

#### **Clause 287 - Suspension of duties**

788. This clause allows the appropriate national authority, by regulations, to suspend and revive the operation of any duty imposed by clause 278 (*subsection (1)*). Suspension may be for a specified time only, and a duty that has been revived may be suspended again (*subsections (2) and (3)*).

#### **Clause 288 - Disclosure of certificates**

789. This clause empowers the appropriate national authority to make regulations about the disclosure of sustainability and interim certificates, statements of non-assessment, any information derived from such documents, and any information collected by an authorised assessor in preparing a certificate (*subsection (1)*). The disclosure without reasonable excuse of anything whose disclosure is prohibited by regulations under *subsection (1)* is a summary offence punishable by a fine not exceeding level 5 on the standard scale, currently £5,000 (*subsection (2)*).

#### **Clause 289 – General powers to make regulations**

790. This clause allows the appropriate national authority to make provision for the general purposes, or any particular purpose of the Chapter, or in consequence of any provision made under the Chapter or for giving full effect to it (*subsection (1)*). Such regulations may in particular provide for:

- the form and content of certificates and statements of non-assessment, or for the form and content of such documents to be such as the appropriate national authority may approve;
- ways in which sustainability standards can be met;
- the issue of guidance; and
- any interaction between provision under the Chapter with provision made by other enactments in relation to home information packs or energy performance certificates (*subsections (2) to (4)*).

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#### **Clause 290 - Powers to extend Chapter**

791. This clause allows the appropriate national authority to extend the provisions of the Chapter to:

- non-residential buildings;
- newly converted buildings, both residential and non-residential; or
- prescribed descriptions of properties within any of these categories (*subsections (1), (2) and (5)*).

792. A property is newly converted for the purposes of the Chapter if it has been converted but not yet used for its intended purpose, is being converted, or its conversion is being designed (*subsection (3)*), and regulations may provide for the circumstances in which a building is to be treated as converted (*subsection (4)*).

793. The clause further allows for the appropriate national authority to broaden by regulations the definition of a purchaser in clause 291(1) so as to include descriptions of persons who are taking steps with a view to deciding whether to purchase residential properties (*subsections (6) and (7)*).

#### **Clause 291 - Chapter 1: interpretation etc.**

794. This clause provides for definitions of terms and phrases used in the Chapter (*subsections (1) to (7)*). *Subsection (1)* defines a purchaser as a person who has made an offer to purchase a property or has purchased it. Non-compliance with any requirement of the Chapter does not invalidate a sale or purchase of a property (*subsection (8)*).

#### **Clause 292 – Index of defined expressions: Chapter 1**

795. This clause presents the main definitions in the Chapter in tabular form.

### **Chapter 2 – Landlord and tenant matters**

#### ***Tenant empowerment***

#### **Clause 293 - Ballots before certain disposals to private landlords**

796. Clause 293 makes amendments to Schedule 3A to the Housing Act 1985. Schedule 3A outlines the consultation process necessary before a local housing authority can seek the consent of the Secretary of State to transfer ownership of occupied council housing to a private sector landlord (eg a housing association). The amendments add the requirement that the local authority must hold a ballot of affected tenants as part of the consultation process, and that a vote in such a ballot against transfer will prevent the Secretary of State granting consent to the transfer. The powers of the Secretary of State are exercisable in Wales by the Welsh Ministers.

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797. *Subsection (2)* sets out at what stage in the consultation process the ballot should take place, requires the local authority to conduct the ballot themselves or appoint an appropriate person to do so, and requires that, once the result of the ballot is known, the local authority must inform tenants of the result and, where the local authority intends proceeding with the transfer, inform them that they can, within 28 days, raise any concerns with the Secretary of State or (as the case may be) the Welsh Ministers.

798. *Subsection (3)* establishes that the Secretary of State cannot grant consent to a transfer where the majority of those voting in the ballot vote against the proposal.

799. *Subsections (4) and (5)* establish that these new provisions do not apply to consultations that have already begun, and make clear at what point a consultation can be deemed to have begun.

**Clause 294 - Management agreements: extending requirements to co-operate**

800. Clause 294 amends section 27AB of the Housing Act 1985. Section 27AB provides powers to the Secretary of State to make regulations requiring local housing authorities to enter into agreements with tenant management organisations over the management of their council housing. The amendments extend the list of what those regulations might include, and make other minor provisions. The powers of the Secretary of State are exercisable in Wales by the Welsh Ministers.

801. *Subsection (2)* permits the regulations to require the local authority to submit certain information to the tenant management organisation, and to require that the local authority co-operate in certain ways with that organisation.

802. *Subsection (3)* permits the regulations to determine that particular questions be determined by the person making the regulations as well as the authority, to set time limits on carrying out the requirements of the regulations, and to require that persons exercising functions under the regulations act in accordance with guidance or directions issued by the Secretary of State.

**Clause 295 - Requirements to co-operate in relation to certain disposals of land**

803. Clause 295 adds a new section 34A to the Housing Act 1985.

804. Section 34A(1) gives the appropriate person (in England the Secretary of State, in Wales the Welsh Ministers) powers to make regulations where a local housing authority has been served a notice by a group of tenants requesting a transfer of occupied council housing from ownership of the local housing authority to a named registered private sector landlord (e.g. a housing association).

805. Section 34A(2) sets out requirements that may be placed on the local housing authority in the regulations. These comprise:

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- providing assistance to the tenants (which could be financial support, accommodation, other facilities or training);
- arranging a feasibility study to look into the tenants' proposals;
- providing information to the tenants;
- co-operating in certain ways with the tenants;
- arranging ballots with respect to the proposals; and
- entering into an agreement for the disposal.

806. Section 34A(3) sets out two further matters that might be included:

- provision identifying the land and houses affected by the proposal, and
- provision requiring that the agreement between the local housing authority and the private sector landlord be in a form approved by the appropriate person.

807. Section 34A(4) sets out further procedural arrangements that might be included in the regulations:

- provision that certain questions arising from the regulations be answered by the authority or the appropriate person;
- setting time limits for carrying out requirements set in the regulations; and
- requiring persons exercising functions under the regulations to act in accordance with guidance or directions given by the appropriate person.

808. Section 34A(6) provides that the regulations must ensure that the local housing authority can make representations to the appropriate person before a decision to dispose is made.

809. The regulations are subject to the negative resolution procedure.

***Family intervention tenancies***

**Clause 296 - Family intervention tenancies: general**

810. This clause will enable local housing authorities and registered providers of social housing (in England) and registered social landlords (in Wales) to offer tenancies which will not be secure or assured tenancies to certain tenants who have lost or are potentially at risk of losing their secure or assured tenancy. These tenancies will be offered for the purposes of

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providing behavioural support services to tenants against whom a possession order for anti-social behaviour has been made or to tenants who could face possession proceedings on the grounds of anti-social behaviour.

811. *Subsection (1)* inserts a new paragraph 4ZA into Schedule 1 of the Housing Act 1985 (tenancies which are not secure tenancies).

812. Sub-paragraph (1) of the new paragraph provides that family intervention tenancies are not secure tenancies.

813. Sub-paragraph (2) provides that the tenancy can become a secure tenancy if the landlord so notifies the tenant.

814. Sub-paragraph (3) defines a family intervention tenancy for the purposes of this paragraph as a tenancy granted by a local authority to a person for the purposes of the provision of behaviour support services and against whom a possession order in respect of another dwelling house:

- has been made in relation to a secure tenancy on the grounds of anti-social behaviour or;
- could have been so made in relation to a secure tenancy; or
- could have been so made if the tenant had had such a tenancy.

815. Sub-paragraph (4) provides the new tenancy will not be a family intervention tenancy unless the local housing authority has served a notice under sub-paragraph (5).

816. Sub-paragraph (5) provides the information the notice must contain including that the tenant is under no obligation to enter into the tenancy or to surrender any existing tenancy or possession of a dwelling house. Entry into the tenancy will be voluntary.

817. Sub-paragraph (6) provides that the contents of the notice may be amended by regulations made by statutory instrument.

818. In addition the notice must contain advice to the tenant as to how they may be able to obtain assistance in relation to the notice (sub-paragraph (7)). And the type of advice to be provided in the notices may be provided for by regulation (sub-paragraph (8)) made by statutory instrument.

819. Regulations under this new paragraph 4ZA may contain transitional, transitory or saving provisions. These regulations will be subject to negative resolution.

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820. Sub-paragraph (11) provides definitions for the terms used in the new paragraph 4ZA. “Behaviour support services” is defined as support services provided by any person to the new tenant or persons living with them for the purposes of preventing the anti-social behaviour which has led to the local authority taking the possession action it has or of being of the opinion that such a possession claim could be made.

821. *Subsection (2)* inserts new paragraph 12ZA into Part 1 of Schedule 1 to the Housing Act 1988 (tenancies which cannot be assured tenancies).

822. New paragraph 12ZA mirrors the provisions in new paragraph 4ZA above in respect of family intervention tenancies granted by registered providers of social housing (in England) and registered social landlords (in Wales).

823. *Subsection (3)* provides that the new provisions in new paragraph 4ZA of Schedule 1 to the Housing Act 1985 and paragraph 12ZA of Part 1 of Schedule 1 to the Housing Act 1988 will not apply to any tenancy granted before this section comes into force.

**Clause 297 - Certain family intervention tenancies: termination**

824. This clause makes provision in relation to the termination of local housing authority family intervention tenancies.

825. *Subsection (1)* provides that a local authority should not serve a notice to quit on a tenant of a family intervention tenancy unless a notice under *subsection (2)* has been served on the tenant and either:

- the tenant has not requested a review of the kind specified in the notice (right to request, within 14 days of the service of the notice, a review of the authority’s decision to evict);
- the tenant withdraws the request for a review; or
- a notice under *subsection (4)(b)* has been served on the tenant (notice of the reasoning and decision of the requested review).

826. *Subsection (2)* sets out the required contents of the notice.

827. *Subsections (3)–(4)* explain what a local authority must do if a tenant requests a review of the local authority’s decision within 14 days of the service of the notice under *subsection (2)*. The local authority must carry out the review and serve notice of their decision and the reasons for it on the tenant.

828. *Subsection (5)* provides that an “appropriate authority” (i.e. the Secretary of State for England or the Welsh Ministers for Wales) may make regulations about the review procedure.



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829. *Subsection (6)* provides that regulations made under *subsection (5)* may contain:

- a description of the person who makes the review decision;
- the circumstances under which the tenant would be entitled to an oral review;
- whether or not and by whom the tenant can be represented during the review hearing.

830. *Subsection (7)* provides that any notice to quit or notice under *subsection (2)* served in respect of a family intervention tenancy, must also contain advice to the tenant about obtaining assistance in relation to the notice.

831. *Subsection (8)* provides that an “appropriate authority” (i.e. Secretary of State for England or the Welsh Ministers for Wales) may make regulations on the type of advice the notice to quit or notice under *subsection (2)* must include.

832. *Subsection (10)* effectively applies the provisions of this clause only to tenancies granted after the coming into force of this section.

***Possession orders***

**Clause 298 – Possession orders relating to certain tenancies**

833. Clause 298 introduces Schedule 10.

***Leasehold enfranchisement***

**Clause 299 – Right to acquire freehold: abolition of low rent test**

834. Clause 299 amends section 1 and repeals sections 1A(2), 1AA and 4A of the Leasehold Reform 1967 (“the 1967 Act”). These amendments have the effect of removing the low rent test contained in Part 1 of the 1967 Act as a means of determining eligibility for enfranchisement in relation to shared ownership houses.

835. The low rent test will remain for some purposes, for example, in determining the basis for valuing the freehold and when the claim is for a lease extension.

836. The test will continue to apply in respect of existing leases.

**Clause 300 - Shared ownership leases: protection for certain leases**

837. Schedule 4A to the Leasehold Reform Act 1967 provides for the exclusion of certain shared ownership leases of houses from the operation of Part 1 (the enfranchisement provisions) of that Act. Clause 300 inserts paragraph 3A into Schedule 4A. Paragraph 3A sets out the conditions that must be satisfied in order for a shared ownership lease granted by a landlord, other than a housing association, to be excluded from the operation of Part 1.

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838. The conditions are similar to those that apply in relation to shared ownership leases granted by housing associations, but additionally the appropriate national authority (being the Secretary of State in England, and the Welsh Ministers in Wales) may prescribe other conditions that must be satisfied or prescribe exemptions.

839. The clause gives to non-housing association the same protection against the risk of enfranchisement as is afforded to housing associations. In particular, the provisions can be used to prevent a tenant from acquiring the right to enfranchise before the tenant has acquired 100% of the equitable interest in the house.

840. The amendment will not apply to leases granted prior to the commencement of the clause.

**Clause 301 - Shared ownership leases: protection for hard to replace houses**

841. Clause 301 inserts paragraph 4A into Schedule 4A to the 1967 Act. The effect of paragraph 4A is that shared ownership leases granted by any provider that are not excluded from the operation of Part 1 of the Act by virtue of either paragraph 3 or 3A of Schedule 4A (because they do not comply with the conditions set out in either of those paragraphs) will nevertheless be excluded from the operation of Part 1 if they are situated within an area that is designated as a protected area and if they satisfy all the other requirements set out in paragraph 4A. The appropriate national authority (i.e. the Secretary of State in England, and the Welsh Ministers in Wales) has power to prescribe additional conditions that must be satisfied.

842. The appropriate national authority is also given power under paragraph 4A to designate an area as a protected area where it considers it is appropriate to do so to support the provision in the area of houses, or types of houses, which are available for occupation in accordance with shared ownership arrangements. The appropriate national authority must publish the criteria which will be taken into account by it in deciding whether to designate an area as a protected area, and must consult those likely to be affected by the designation.

843. Subject to the conditions in paragraph 4A being satisfied, this provision will allow any provider of shared ownership housing to grant leases that restrict the percentage share of the house that the tenant may acquire, and may also prevent the tenant from acquiring the freehold interest, if the house is in an area that has been designated as a protected area.

***Service charges***

**Clause 302 – Service charges: provision of information and designated accounts**

844. Clause 302 introduces Schedule 11 in relation to the provision of information about service charges and designated accounts.

***Right to buy etc: miscellaneous***

**Clause 303 – Exclusion of the right to buy: possession orders**

845. Clause 303 clarifies the circumstances where section 121(1) of the Housing Act 1985 applies so that a tenant subject to a possession order cannot exercise the right to buy, ensuring that these include a possession order which does not initially specify a date for possession.

**Clause 304 – Exclusion of the right to buy: demolition notices**

846. Clause 304 introduces Schedule 12.

**Clause 305 – Review of determination of value**

847. Section 128 of the Housing Act 1985 (“the Act”) provides that where a tenant who has applied for the right to buy is dissatisfied with the valuation provided by his landlord under section 125 of the Act, he may ask the district valuer (an officer of the Valuation Office Agency, a non-profit-making public body) for a determination of value. Clause 305 inserts new sections 128A and 128B into the Act to enable a district valuer, either at the request of the landlord or the tenant or on his own initiative, to review a determination of value which appears to have been based on faulty facts. A request or decision to review the original determination must be made within specified time limits, be in writing and set out the reason it is being made. A review may not be undertaken after the sale of the property has been completed. The specified time limits run from the date the landlord serves a notice on the tenant informing him of the determination under section 128. The district valuer will not know when such a notice has been served so provision is made to ensure that the district valuer is made aware of the service of the notice.

**Clause 306 – Approved lending institutions**

848. If a tenant buys his home under the right to buy and then resells it within five years, his former landlord may require him to repay some or all of the discount he received. This obligation is secured by a charge on the property. Usually a right to buy purchaser will rely on a loan by way of mortgage, and the lender will also protect the loan by a charge on the property. Charges are ranked chronologically, and the landlord’s charge would take precedence over the lender’s. However, if the lender is one of those specified in section 156 of the Housing Act 1985 or approved by the Secretary of State under that section (“approved lending institutions”) their charge may take precedence over the discount charge - i.e. they have the first charge on the property, giving them the best security for their loan.

849. Clause 306 removes the Secretary of State’s powers under section 156 to specify bodies as approved lending institutions and to revoke that status. The clause instead adds “authorised mortgage lenders” to the list in section 156(4) of automatically approved lending institutions. It also adds a definition of authorised mortgage lenders to section 622 of the 1985 Act. These are (i) bodies which are authorised by the Financial Services Authority (FSA) and (ii) European lenders automatically entitled to operate in the United Kingdom. The overall effect is to combine the process of approving lenders for right to buy purposes, currently carried out by the Secretary of State, with the process of authorising lenders carried

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out by the FSA. “Authorised insurers” and “authorised deposit-takers” are also automatically approved lending institutions under section 156(4) of the Act, and clause 314 (see below) amends the definitions of those bodies in section 622 of the Act to conform with the definition of authorised mortgage lender.

**Clause 307 – Former right to buy flats and other flats: service charge loans**

850. Clause 307 amends section 450C of the Housing Act 1985 to add a power for the Secretary of State (in Wales, Welsh Ministers) to make regulations allowing landlords, where they make loans to leaseholders to assist them in paying service charges, to do so on terms other than an interest bearing loan. A power is included to provide for charging for the services of the district valuer, since it may be appropriate to specify valuation of the flat by a district valuer in regulations. Fees charged by the district valuer are limited to recovery of expenses, and are governed by usual administrative law principles of reasonableness. Provisions for service charge loans under regulations made under the powers in sections 450A to 450C of the Housing Act 1985 apply only to properties sold under the right to buy.

**Clause 308 – Former right to buy and other flats: equity share purchases**

851. Clause 308 adds a new section 450D to the Housing Act 1985. This provides that the appropriate national authority may provide by regulations that where a local authority is the landlord of a flat let on a long lease to a tenant (commonly known as a leaseholder) who is liable to pay service charges in respect of repairs or improvements to the flat, the landlord may, with the tenant’s agreement, buy an equitable interest (i.e. a share) in the flat in order to help the tenant to pay service charges. The regulations may provide that this power is not available to specified types of landlords, and also how the purchase price is to be calculated (including provisions in respect of discounts, charges for the services of district valuers, and the tenant’s liability for the landlord’s administrative expenses in connection with the purchase). Fees charged by the district valuer are limited to the recovery of expenses and are governed by usual administrative law principles of reasonableness.

**Clause 309 - Other amendments**

852. Clause 309 corrects two errors in schedules to the Housing Act 1985 (“the Act”). The first correction, to Schedule 5 to the Act, removes an unintended right of further appeal to the High Court against the decision of a residential property tribunal, where tenants who have been refused the right to buy on the ground that the property is particularly suitable for occupation by elderly persons have appealed to a residential property tribunal. It was intended that the tribunal’s decision should be final; further appeal to the Lands Tribunal is already excluded. A possible right of further appeal to the High Court was inadvertently suggested by interaction between Schedule 5 and section 231 of the Housing Act 1996. The second correction amends a paragraph reference in Schedule 5A to the Act.

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### ***Other***

#### **Clause 310 – Disposals of dwelling-houses by local authorities**

853. Clause 310 introduces Schedule 13.

#### **Clause 311 - Financial assistance for information and other services**

854. Clause 311 widens the existing power contained in section 94 of the Housing Act 1996 for the Secretary of State in England and the Welsh Ministers in Wales to provide financial assistance for the giving of general advice in respect of residential landlord and tenant law, including advice about estate management schemes in connection with enfranchisement.

855. Financial assistance may now also be provided for the giving of information and training, and for the running of an alternative dispute resolution service.

856. The ability to provide assistance in such form and on such terms as the Secretary of State in England and the Welsh Ministers in Wales consider appropriate will remain.

### **Chapter 3 - Housing finance and other provisions**

#### ***Housing Revenue Account Subsidy***

857. These provisions provide a power for the appropriate person (the Secretary of State in England and Welsh Ministers in Wales) and those local housing authorities who keep a Housing Revenue Account to enter into agreements concerning Housing Revenue Account Subsidy. This enables the parties to agree that no Housing Revenue Account Subsidy is payable by or to the appropriate person. Agreements can be for either an authority's whole stock or for specified properties.

#### **Clause 312 - Exclusions from subsidy arrangements**

858. *Subsection (1)* inserts a new section 80B into the Local Government and Housing Act 1989 (the 1989 Act) which by virtue of subsection (2) of section 80B disapplies sections 79 to 80A of the 1989 Act where an agreement exists between the appropriate person (the Secretary of State in England and Welsh Ministers in Wales) and a local housing authority. An agreement disapplying sections 79 to 80A would have the effect that no Housing Revenue Account Subsidy was payable by or to the appropriate person in respect of the properties covered by the agreement.

859. *Subsection (3)* of section 80B gives examples of the kinds of terms and conditions that such agreements may contain. These include conditions specifying whether the agreement is to be for a fixed or indeterminate period, setting out the payments to or from the appropriate person for making the agreement, rent levels, the giving of information and the variation or termination of the agreement.

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860. *Subsections (4), (5) and (6)* of section 80B enable the appropriate person to make directions concerning the variation or termination of an agreement to deal with issues such as necessary transitional, consequential, incidental or supplementary changes. Directions cannot, however, override the terms of the original agreement without the consent of the relevant local housing authority. Directions may in particular deal with the return to the subsidy regime of an authority's housing stock.

861. *Subsection (8)* of section 80B defines key terms used in that section. In particular the definition of property ensures that the agreement can cover both current and future properties.

862. *Subsection (3)* amends paragraph 2 of Part 3 of Schedule 4 to the 1989 Act which currently provides authorities a very limited power to move credits from their Housing Revenue Account to the general fund, so that it does not apply in respect of those properties subject to an agreement under section the new 80B(1)(b).

***Homelessness and allocation of housing***

**Clause 313 - Armed forces: homelessness and allocation of housing**

863. Clause 313 amends section 199 of the Housing Act 1996, which sets out the circumstances when a person has a local connection with the district of a local housing authority. Housing authorities may take account of whether a person has a local connection with their district when considering the person's priority for an allocation of housing under Part 6 of the 1996 Act or when making inquiries about whether the person is homeless and owed a duty for the purposes of Part 7 of the 1996 Act. The effect of the amendment is that a person in the armed forces will now be able to establish a local connection with a district through residence or employment there, in the same way as a civilian.

***Other***

**Clause 314 – Amendments to Housing Act 1985: lending institutions**

864. Clause 306 removes the Secretary of State's powers under section 156 of the Housing Act 1985 to specify bodies as approved lending institutions and to revoke that status. It instead adds "authorised mortgage lender" to the list in section 156(4) of automatically approved lending institutions. "Authorised mortgage lender" is defined in section 622 of the 1985 Act as (i) bodies which are authorised by the Financial Services Authority (FSA) and (ii) European lenders automatically entitled to operate in the United Kingdom. Clause 314 amends two definitions in section 622 of the Housing Act 1985, those of 'authorised deposit taker' and 'authorised insurer', to bring the wording into conformity with the definition of "authorised mortgage lender", in each case by substituting a reference to paragraph 12 of Schedule 3 to the Financial Services and Markets Act 2000 instead of to paragraph 12(1) of that Schedule.

**Clause 315 – Building regulations: time limit for prosecutions**

865. This clause amends section 35A of the Building Act 1984 to extend to all provisions of building regulations longer time limits for bringing prosecutions for contraventions of those provisions. At present the longer prosecution time limits provided for by section 35A can apply only to contraventions of provisions of building regulations which were made for the purpose of furthering the conservation of fuel and power or otherwise in connection with the use of fuel and power, or for the purpose of reducing the emission of greenhouse gases, where those provisions have been designated in regulations.

866. The current time limit within which prosecutions for breaches of provisions of building regulations must be brought is six months from the date the offence is committed (in accordance with the standard provisions for summary offences set out in section 127(1) of the Magistrates' Courts Act 1980). The amendments in this clause will bring prosecutions for all building regulation contraventions within the time limit provisions in section 35A. Thus there will be an absolute limit of two years from the date the offence is committed within which summary proceedings must be commenced, subject to a requirement that proceedings must be brought within 6 months of the date on which sufficient evidence to justify a prosecution becomes known to the person who commences the proceedings.

867. *Subsection (5)* provides that the extended time limits for prosecution will not apply to any offence committed before the amendments to section 35A come into force, i.e. the amendments will not be retrospective.

**Clause 316 – Protected mobile home sites to include sites for gypsies and travellers**

868. Clause 316 amends the definition of a “protected site” in section 5(1) of the Mobile Homes Act 1983 by removing the exclusion for land occupied by a local authority as a caravan site providing accommodation for gypsies and travellers. The Mobile Homes Act 1983 will therefore apply to an agreement to station a mobile home (or caravan) on a local authority gypsy and traveller site.

**Clause 317 – Financial assistance for certain services about commonhold**

869. This widens the existing power contained in section 62 of the Commonhold and Leasehold Reform Act 2002 for the Lord Chancellor to provide financial assistance for the giving of general advice in respect of the law relating to commonhold land so far as relating to residential matters.

870. The Lord Chancellor may now also fund information, training and dispute resolution services in respect of the law of commonhold land so far as relating to residential matters.

871. Additionally, financial assistance for the provision of information, training, general advice and dispute resolution services may now be given in respect of any other matter relating to commonhold land and residential matters.

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872. The ability to provide financial assistance in such form and on such terms as the Lord Chancellor considers appropriate will remain.

#### **PART 4 – SUPPLEMENTARY AND FINAL PROVISIONS**

##### **Clause 318 – Orders and regulations**

873. Clause 318 makes general provision for orders and regulations under the Bill. It provides for regulations and orders to be made by statutory instrument except where specified otherwise (*subsection (2)*) and for the Parliamentary procedure which is to apply in respect of various instruments (*subsections (3) to (7)*).

874. *Subsections (6) and (7)* provide for the procedure to be followed in the National Assembly for Wales in relation to instruments made by Welsh Ministers.

##### **Clause 319 – Consequential amendments and repeals**

875. Clause 319 gives the Secretary of State power by order to amend, repeal or revoke enactments in order to make supplementary or consequential provisions for the purpose of giving full effect to the Bill. *Subsection (4)* enables Welsh Ministers to make consequential amendments and repeals in relation to matters where functions are exercised by Welsh Ministers. This clause also introduces Schedule 14.

##### **Clause 320 – Transitional, transitory or saving provisions**

876. Clause 320 enables the Secretary of State by order to make such transitional, transitory or saving provisions as are needed in connection with the coming into force of the Bill and for Welsh Ministers to have similar power in connection with Welsh provisions.

##### **Clause 321 – Financial provisions**

877. Clause 321 sets out how money is to be provided by Parliament for any expenditure incurred by a Minister of the Crown in connection with the Bill. Any sums received by a Minister of the Crown are to be paid into the Consolidated Fund so far as not required to be paid into the National Loans Fund.

##### **Clauses 322 - 324 – Extent; Commencement; Short title**

878. These clauses provide for the extent, commencement and short title of the Bill.

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

879. Schedule 1 sets out the constitution of the HCA, and includes provisions about its status, membership, procedure, delegation, appointment of its chief executive and other employees, pay and pensions, accounts and annual reports. The consent of the Secretary of



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State is required for certain key decisions of the HCA in relation to appointments and finances.

880. The Board of the HCA is to consist of not less than six members appointed by the Secretary of State. Paragraph 2 of the Schedule details the arrangements for the terms of appointment of members and includes provision about vacation of office.

881. Paragraph 3 makes provision about members' remuneration, allowances and pensions.

882. Paragraph 4 details arrangements for the appointment, terms and conditions, pay and pensions of the HCA's chief executive and staff. The Secretary of State must approve these arrangements.

883. Paragraph 5 enables the Secretary of State to fund the HCA and paragraphs 6 to 10 detail how the HCA is to organise its committees, including arrangements for members to declare interests, and for the delegation of functions.

884. Paragraphs 11 to 17 detail arrangements for the HCA's financial reporting of its accounts, and other administrative matters.

885. Paragraph 18 enables the Secretary of State instead of the HCA to appoint the first chief executive and to determine the terms and conditions of his service.

***Schedule 2 – Acquisition of land***

886. Schedule 2 makes further provision regarding the acquisition of land and new rights over land by the HCA.

887. It applies the Acquisition of Land Act 1981 (with modifications) to the acquisition of land and new rights over land. The 1981 Act sets out the standard compulsory purchase procedure, which is applied in the case of most compulsory acquisitions. In summary:

- The 1981 Act contains requirements as to publicity and notification, to enable any person to submit an objection to the Secretary of State within the specified period.
- A statutory objector is a “qualifying person” on whom section 12 of the 1981 Act requires notice to be served and includes owners, leaseholders, tenants and occupiers of any land in the compulsory purchase order, and any other person having a right to claim compensation for interference with rights they enjoy over land, or who are likely to be entitled to make a claim for compensation for “injurious affection” (decrease in value of retained land as a result of the acquisition and proposed use of the land which is being acquired).

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- If a relevant objection is made by a person with a statutory interest in the land, a public local inquiry will generally be held. It is also open to the statutory objectors to agree to their objections being considered through the written representations procedure.
- An inspector will prepare a report and the Secretary of State will then consider the findings of the report and the inspector's recommendation when deciding whether or not to confirm a compulsory purchase order.
- Where an order is confirmed, the usual compensation regime will apply, which is linked to the value of the land being acquired and may also include compensation for disturbance and other losses and, for example, legal costs in preparing a compensation claim.

888. Various statutory bodies – including the Urban Regeneration Agency under the 1993 Act - have the power to acquire land which is, or forms part of, a common, open space or allotment. The Acquisition of Land Act 1981 makes separate procedural provision in relation to such land. A compulsory purchase order in respect of any of these types of land will be subject to special parliamentary procedure (which ensures a high level of parliamentary scrutiny) unless the Secretary of State is satisfied that equivalent land has been given in exchange for such land or that certain other limited circumstances (for example, that the land area does not exceed a set maximum) apply. Provision is also made in respect of notice requirements, an opportunity for objections to be made and a power for the Secretary of State to hold a public local inquiry.

889. Part 1 of the Schedule makes provision for the extinguishment of private rights of way or rights in relation to apparatus and for apparatus to vest in the HCA (subject to any agreement between the HCA and the person in whom the right or apparatus is vested). Compensation is payable to any person who suffers loss as a result of the extinguishment of any such right or the vesting of any apparatus. These provisions do not apply to any right vested in, or apparatus belonging to, statutory undertakers for the purpose of carrying on their undertaking.

890. Schedule 2 also ensures that following a compulsory acquisition the usual regime for compensation applies. The compulsory acquisition legislation applied by Schedule 2 contains various provisions for the recovery or award of costs. Where any provision is made in respect of costs, or where there is a power to make an order in respect of costs, such provision would be governed by usual administrative law principles of reasonableness.

891. Part 2 of Schedule 2 also applies Part 1 (except section 31) of the Compulsory Purchase Act 1965 to the acquisition of land by agreement (so far as applicable).

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

892. Part 1 of Schedule 3 makes provision in respect of powers to override easements.

893. The HCA (or any person working on behalf of the HCA) will be able to carry out development or regeneration works on its land even if the works interfere with a right or interest in respect of that land. However any works undertaken under this provision must still comply with the relevant planning permission. This power does not authorise interference with rights of statutory undertakers that are for the purpose of their statutory undertaking. Part 1 is modelled on paragraph 5 of Schedule 20 to the Leasehold Reform, Housing and Urban Development Act 1993 (as it is proposed to be amended by the Planning Bill) which gave the Urban Regeneration Agency similar powers.

894. A right to compensation may arise under section 7 or 10 of the Compulsory Purchase Act 1965 in relation to an interference or breach in pursuance of this power. In addition, if compensation is payable by a third party and is not paid by them, the HCA can be held liable to pay that compensation.

895. Part 2 of Schedule 3 makes provision in respect of powers to extinguish public rights of way.

896. The Secretary of State may by order extinguish any public right of way over land owned by the HCA provided that the Secretary of State is satisfied that an alternative right of way has been, or will be, provided or that an alternative right of way is not required.

897. Part 2 sets out the statutory procedure that must be followed if the Secretary of State proposes to make an order to extinguish a public right of way. It includes a duty to consider objections and the power to hold a public local inquiry.

898. The Secretary of State must publish a notice stating the effect of the order and the time by when, and manner in which, any objections to the order must be made. The Secretary of State must serve a copy of the notice on the relevant local planning authority and the relevant highway authority. The procedure also includes a duty to consider any objections that are properly made, a power to give an objector an opportunity to have their objection heard, and a power for the Secretary of State to hold a public local inquiry if the Secretary of State considers the matters being discussed require such investigation.

899. Where an order under this power is made and any electronic communications apparatus is installed for the purposes of an electronic communications code network under, in, on, over, along or across the land over which the right of way subsisted, provision is made in this Part of the Schedule for the operator of the network to remove, or to serve a notice on the HCA of an intention to abandon, the apparatus within a three month period from the date the right of way is extinguished. The operator is entitled to recover the expense of providing

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any substitute apparatus from the HCA as a result of the removal or abandonment of the apparatus.

900. Part 3 of Schedule 3 makes provision in relation to burial grounds and consecrated land etc.

901. This Part makes provision in respect of burial grounds (which are defined as including any churchyard, cemetery or other ground, whether or not consecrated, which has at any time been set apart for the purposes of interment), consecrated land and other land connected to religious worship belonging to the HCA. This Part is modelled on equivalent powers given to the Urban Regeneration Agency in paragraph 6 of Schedule 20 to the Leasehold Reform, Housing and Urban Development Act 1993.

902. Any burial ground which has been used for the burial of the dead may not be used by the HCA until prescribed requirements about the removal and reinterment of human remains, and the disposal of monuments, have been complied with. Regulations made under this power must specifically make provision to enable relatives or personal representatives of any deceased person themselves to undertake the removal and reinterment of the remains of the deceased, and the disposal of any monument commemorating the deceased. The regulations must also require the persons in whom the burial ground is vested to meet the cost of the removal, reinterment and disposal (although the regulations may prescribe a maximum amount). The Secretary of State may also give directions regarding the removal and reinterment of human remains in any case, and the regulations must require compliance with any directions given.

903. The HCA may use consecrated land (other than burial grounds) provided that such use complies with requirements in regulations (which may be made by the Secretary of State under this Schedule) about the disposal of monuments and any provisions prohibiting or restricting use of the land while any church or other building (including any part of) used, or formerly used, for religious worship is on the land.

904. Use of any other land which is connected to religious worship (which is not consecrated land nor land which consists of, or forms part of, a burial ground) and at the time of acquisition by the HCA included a church or other building used, or formerly used, for religious worship, or the site of such a church or building, is subject to requirements in regulations (which may be made by the Secretary of State under this Schedule) about the disposal of monuments.

905. Subject to the regulations providing otherwise, the Schedule provides that no faculty (in ecclesiastical law a faculty is a privilege granted to allow something which is otherwise prevented by law) is required where the removal and reinterment of human remains, or the removal or disposal of any monuments, is carried out in accordance with regulations made under the power in this Schedule. In addition, the Schedule provides that section 25 of the Burials Act 1857 (which prohibits the removal of human remains without the licence of the

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Secretary of State except in certain cases) does not apply to a removal of human remains carried out in accordance with regulations made under this Schedule.

906. Part 4 of Schedule 3 makes provision in respect of powers in relation to open spaces.

907. The HCA may use any of its land which is, or forms part of, a common, an open space or an allotment in any way provided it is in accordance with planning permission, despite anything in legislation relating to that type of land or under which that land is specifically regulated. This clause is modelled on a power applied to the Urban Regeneration Agency contained in paragraph 7 of Schedule 20 to the Leasehold Reform, Housing and Urban Development Act 1993.

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

908. Schedule 4 is modelled on provisions in paragraphs 12 to 19 of Schedule 20 to the Leasehold Reform, Housing and Urban Development Act 1993.

909. “Statutory undertakers” for the purposes of Schedule 4 are defined as those persons who are or who are deemed to be “statutory undertakers” for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990. For example, this includes persons authorised by any enactment to carry on any railway, light railway, tramway, road or water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking as well as aviation, gas, water and electricity undertakers.

910. Part 1 of the Schedule enables the HCA to serve a notice on a statutory undertaker extinguishing certain rights over land of the HCA vested in, or belonging to, the statutory undertaker or stating that apparatus vested in, or belonging to, the statutory undertaker must be removed from land of the HCA. The statutory undertaker may serve a counter-notice objecting to the provisions of the notice and detailing the grounds of their objection. The provisions set out the subsequent procedure to be followed. A statutory undertaker is entitled to compensation if a right is extinguished or any requirement is imposed upon them under this Part of this Schedule. These provisions apply to the operator of an electronic communications code network as a statutory undertaker in certain circumstances.

911. Part 2 of the Schedule applies where apparatus of the statutory undertaker is situated on, under or over the land of the HCA and the statutory undertaker needs to remove or re-site the apparatus in order to carry out development. In such circumstances a statutory undertaker may serve notice on the HCA claiming the right to enter land of the HCA and remove or re-site the apparatus. The HCA may serve a counter-notice objecting to the provisions of the notice and detailing the grounds of objection. The provisions set out the subsequent procedure to be followed. If works are to be carried out, the statutory undertaker and the HCA may arrange for the HCA to carry out the works under the supervision of the undertaker. Statutory undertakers are entitled to compensation from the HCA in respect of any works carried out under this Part of this Schedule.

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912. Part 3 of the Schedule enables statutory undertakers to make representations to the Secretary of State and appropriate Minister for an extension or modification to their functions. The HCA may also make representations for the extension or modification of the functions of a statutory undertaker. Subject to specified conditions the Secretary of State and the Minister may make an order accordingly. The statutory undertaker or the HCA (that is, whoever made the representations) must publish a notice specifying the time by when, and manner in which objections may be made, and any other details the Secretary of State and Minister direct should be included. The provisions set out the subsequent procedure to be followed by the Secretary of State and the Minister in considering any objections and include the power to hold a public local inquiry. An order may, for example, give a statutory undertaker power to acquire land (whether compulsorily or by agreement) and to apply enactments relating to the acquisition of land, which would ensure compensation would be payable as usual in such cases. An order may give effect to any financial arrangements agreed between the HCA and the statutory undertaker, or specify a tribunal to determine the issue in the absence of any such financial arrangement. Orders under this Part of the Schedule are subject to special parliamentary procedure, which ensures a high level of parliamentary scrutiny.

913. Part 4 of the Schedule enables a statutory undertaker to be relieved of carrying out some of their obligations where they have made representations to the appropriate Minister and the Minister is satisfied that meeting those obligations has been made impracticable following certain specified acts or events. Subject to specified conditions the Minister may make an order accordingly. The statutory undertaker must publish and/or serve notices in accordance with any directions given by the Minister. The provisions set out the subsequent procedure to be followed by the Minister in considering any objections received and include the power to hold a public local inquiry. If an objection is properly made and not withdrawn the order will be subject to special parliamentary procedure. The provisions also set out how an order may be challenged.

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

914. Schedule 5 transfers certain functions of the Commission for the New Towns in Wales to the Welsh Ministers. In England the functions of the Commission for the New Towns will be carried out by the HCA. It also makes other consequential amendments to the New Towns Act 1981.

***Schedule 6 – Transfer schemes***

915. Schedule 6 provides for transfer schemes.

916. In relation to the transfer of employment rights and liabilities, Schedule 6 provides for an equivalent of regulation 5 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

***Schedule 7 – Transfer Schemes: Tax***

917. Schedule 7 makes provision relating to the tax implications of transfers of property, rights or liabilities under transfer schemes made under Clauses 53 or 67 and Schedule 6. It ensures that unwanted tax charges and reliefs do not arise as a consequence of such schemes.

918. *Paragraph 1* introduces the Schedule.

919. *Paragraph 2* defines the key concepts ‘transfer’, ‘transfer scheme’, ‘transfer between bodies’ and ‘transfer to government’ used elsewhere in the Schedule.

920. *Paragraph 3* contains other definitions used elsewhere in the Schedule.

921. *Paragraph 4* provides continuity of trade in connection with the computation of profits and losses for purposes of corporation tax in respect of periods wholly partly after the commencement of a transfer scheme.

922. *Paragraphs 5 and 6* provide for continuity of treatment for capital allowances in respect of property transferred under a transfer scheme.

923. *Paragraph 7* provides that, in respect of property transferred under a transfer scheme, for capital gains purposes, the transfer is to be taken as being for a consideration such that no gain nor loss accrues.

924. *Paragraph 8* provides that section 30 of the Taxation of Chargeable Gains Act 1992 shall be disregarded in respect of a transfer made under a transfer scheme.

925. *Paragraph 9* makes a consequential amendment to section 35(3)(d) of the Taxation of Chargeable Gains Act 1992.

926. *Paragraph 10* ensures continuity of treatment for transfers made under a transfer scheme for the purposes of intangible assets.

927. *Paragraph 11* ensures continuity of treatment for transfers made under a transfer scheme for the purposes of loan relationships.

928. *Paragraph 12* ensures that no stamp duty liability arises on a transfer made under a transfer scheme.

***Schedule 8 – Amendments of enactments: Part 1***

929. Schedule 8 contains consequential amendments to various enactments. The majority of these amendments remove references to the bodies that will be abolished, (i.e. the Urban

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Regeneration Agency, the Commission for New Towns and/ or “English Partnerships” (the name under which the Urban Regeneration Agency and the Commission for the New Towns have jointly operated)) and insert appropriate references to the HCA.

***Schedule 9 – Penalty charge notices***

930. Schedule 9 sets out what must be included in a penalty charge notice (paragraph 1). It provides for the penalty sum to be such sum not exceeding £1,000 as may be prescribed in regulations by the appropriate national authority (paragraph 2), and for this to be payable within 28 days or such extended period as the authority may allow (paragraph 3). It provides for review of notices by the enforcement authority on request made within that period (paragraph 4), for withdrawal of the notice by the authority if appropriate (paragraph 5), and for appeal to a county court from a confirmation of the notice upon review (paragraph 6). Provision is made for recovery of the penalty charge by the enforcing authority (paragraph 7), and for evidence to be given in writing in recovery proceedings (paragraph 8). There is provision for the enforcement authority to return payments of any charge where a notice is withdrawn or quashed (paragraph 9). Provision for service of notices is made (paragraph 10). The appropriate national authority may by regulations make provision supplementary or incidental to Schedule 9 for subjects including the form of penalty charge notices, circumstances in which they may not be given, methods of payment, and service (paragraph 11).

***Schedule 10 – Possession orders relating to certain tenancies***

931. Part 1 of Schedule 10 amends the Housing Act 1985, the Housing Act 1988, and the Housing Act 1996 to provide that where a possession order has been made against a tenant, secure, assured, introductory and demoted tenancies will end on the date the tenant is evicted (unless the tenant ends the tenancy before that date). The provisions will prevent the creation in future of “tolerated trespassers” who remain in occupation in the property but without the tenancy agreement or the relevant statutory provisions applying. Part 2 of the Schedule provides that where before commencement a tenant has already become a tolerated trespasser, a new tenancy will arise. Provision is made for the details of how this new tenancy will relate to the original tenancy.

932. Paragraphs 1 to 4 amend the Housing Act 1985. The amendments in paragraph 2 to section 82 ensure that where a possession order has been made in relation to a secure tenancy, the tenancy ends when the tenant is evicted. Paragraph 3 makes consequential amendments to section 85 which deals with the discretion of the court in possession proceedings, and gives the court wider powers to discharge or rescind a possession order.

933. Paragraph 4 amends Ground 1 of Schedule 3 to the Housing Act 1985, which sets out a landlord’s grounds for refusing to allow a secure tenant to exchange homes with another tenant. The amended wording ensures that the ground applies in all cases where a possession order has been made, regardless of the wording of the possession order.



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934. Paragraphs 5 to 9 amend the Housing Act 1988. The amendments in paragraph 6 to section 5 ensure that the tenancy will continue until the tenant is evicted. Paragraph 7 amends section 7(7) to the same effect with respect to fixed term tenancies which have ended.

935. Paragraph 8 makes consequential amendments to section 9 which deals with the discretion of the court in possession proceedings, and gives the court wider powers to discharge or rescind a possession order.

936. Paragraph 9 amends section 21 with respect to when possession orders in respect of assured shorthold tenancies take effect. Where the court grants a possession order terminating a fixed term or periodic assured shorthold tenancy, including any statutory periodic tenancy arising on or after the end of the fixed term, the tenancy will end when the tenant is evicted.

937. Paragraphs 10 to 13 amend the Housing Act 1996. Paragraphs 11 and 12 amend sections 127 and 130 to provide that where a possession order has been made in relation to an introductory tenancy, the tenancy will end when the tenant is evicted, and paragraph 13 makes similar provision for demoted tenancies by amending section 143D.

938. Paragraph 14 makes transitional provisions. The amended statutory provisions in Part 1 of the Schedule on when tenancies end will not apply where a possession order has already been made, except in two circumstances. These exceptions are, firstly, that they will apply where the tenancy ended after a possession order was made but a new tenancy arises under Part 2 of the Schedule; and secondly, that they will apply where a possession order was made before commencement and the tenancy has not yet ended (because commencement occurs before the date for possession specified in the possession order).

939. Paragraph 14(3) ensures that the wider powers of the court to discharge or rescind possession orders apply to all possession orders whenever made.

940. Paragraph 14(4) contains clarification of the reference to tenancies ending. Tenancies at present end on the date for possession specified in the possession order, but it is possible for the court subsequently to make an order varying the possession date to a date in the future. The effect of such an order is that the tenancy is restored without a break. Paragraph 14(4) clarifies that, where this has happened, the tenancy has not ended for the purposes of these provisions.

941. In Part 2 of the Schedule, paragraph 15 defines “an original tenancy” as a tenancy which ended as a result of a possession order (but not as a result of execution of the order – i.e. eviction).

942. Paragraph 16(1) provides that a new tenancy of the dwelling-house let under the original tenancy is treated as arising on the commencement date, between the ex-landlord and the ex-tenant, if three conditions are satisfied. These conditions are, firstly, that the home

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condition is met; secondly, that the ex-landlord is entitled to let the dwelling-house (for instance, that there has not been a stock transfer to a new landlord); and thirdly, that the ex-landlord and ex-tenant have not in the meantime entered into a new tenancy.

943. The remaining sub-paragraphs of paragraph 16 set out details in relation to the home condition. Paragraph 16(2) provides that the dwelling-house must have been the only or principal home of the ex-tenant throughout the termination period, and still be so on the commencement date. Paragraph 16(3) defines the termination period. Sub-paragraphs (4) to (6) ensure that the home condition will be met where the ex-tenant has been evicted from the property, but the warrant of eviction is subsequently set aside (leaving the possession order still in force). Where this happens, if the ex-tenant returns to the property the new tenancy arises on the first day of resuming occupation.

944. Paragraph 16(7) gives the appropriate national authority power by order to provide for other circumstances where the home condition is met.

945. Paragraph 17 specifies the nature in each case of the replacement tenancy. In all but one case, the replacement tenancy is of the same type as the original tenancy. The exception, in paragraph 17(a)(ii), is where the original tenancy was an introductory tenancy but during the termination period the landlord revoked the introductory tenancy regime. In such circumstances the replacement tenancy will be secure.

946. Paragraph 18 provides that the terms and conditions of the original tenancy immediately before it ended will apply to the new tenancy, subject to sub-paragraphs (2) to (6). Paragraph 18(2) enables changes made in the termination period in the amount of 'rent' to apply to the new tenancy, and paragraph 18(3) ensures that arrears of 'rent' owed for the termination period will be owed in respect of the new tenancy. Paragraph 18(4) gives the appropriate national authority a power to provide by order for other modifications of the terms and conditions of the new tenancy.

947. Paragraph 18(5) provides a safeguard by specifying that nothing in the preceding sub-paragraphs permits a term to be read into the new tenancy which could not have been applied to the original tenancy if it had not ended. For example, if the ex-landlord had been charging the ex-tenant higher "rent" during the termination period than would have been permissible had the tenancy been in force, the rent under the new tenancy will not be modified to take account of this.

948. Paragraph 18(6) refers to the situation where an original introductory tenancy has to be replaced by a new secure tenancy, and requires the terms and conditions to be modified as necessary to reflect this.

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949. Paragraph 19(1) provides that any statutory provisions relating to secure, assured, introductory or demoted tenancies apply to such a tenancy arising as a new tenancy under Part 2 of the Schedule.

950. Paragraph 19(2) and (3) provides that where the new tenancy is an introductory or demoted tenancy, the statutory provisions providing for the length of the tenancy are modified so as to secure that the new tenancy does not consist simply of the remainder of the one year period after taking into account the time spent under the original tenancy.

951. Paragraph 19(4) gives the appropriate national authority power by order to modify any statutory provision as it applies to a new tenancy.

952. Paragraph 20 deals with the effect which court orders made in the course of the possession proceedings in respect of the original tenancy have on the new tenancy. The possession order itself is to be treated, so far as practicable, as applying to the new tenancy, and paragraph 20(2) provides that any other court orders relating to occupation of the dwelling-house and made in contemplation of, in consequence of, or otherwise in connection with the possession order, must also be treated (so far as practicable) as applying to the new tenancy.

953. Paragraph 21 sets out circumstances in which the original tenancy and the new tenancy must be treated as the same and continuous tenancy, and deals with related matters. The two tenancies must be treated as the same and continuous for relevant purposes, which are listed in paragraph 21(2). These are succession rights; calculation of qualification periods for the right to buy (which includes the preserved right to buy and the right to acquire); and enabling the landlord to rely on ground 8 of Schedule 2 to the Housing Act 1985. In addition, the appropriate national authority may by order specify other relevant purposes.

954. Paragraph 21(3) gives the court a power to order that the original tenancy and the new tenancy are to be treated as the same and continuous for the purpose of a relevant claim, so that the claim may apply to the termination period. A relevant claim is defined in paragraph 21(4) as being a claim by either ex-landlord or ex-tenant against the other for breach of the tenancy agreement, or a claim by the ex-tenant against the ex-landlord for breach of statutory duty. Where a claim has already been made before the commencement date, it will only be a relevant claim if the proceedings have not yet been finally determined at that date. A power is given to the appropriate national authority to specify other types of claim as relevant for this purpose. Paragraph 21(5) defines when a claim is finally determined.

955. Paragraph 22 ensures that where tenants have been consulted pursuant to statutory requirements, the fact that occupants who were ex-tenants at the time were or were not allowed to vote does not mean that the consultation requirements were not complied with. The appropriate national authority is given a power to specify consultation requirements additional to those listed in paragraph 22(2).

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956. The effect of paragraph 23 is that where there are ex-tenants who were formerly joint tenants, the occupation of the dwelling-house as only or principal home by at least one of them is sufficient for the home condition to be met. It also gives the appropriate national authority power by order to modify the way Part 2 of the Schedule applies to joint tenancies.

957. Paragraph 24 repeats in relation to Part 2 of the Schedule the provision in paragraph 14(4), clarifying that where a tenancy which had formerly ended was restored (by the court varying the possession date in the order) such a tenancy then no longer counts as a tenancy which has ended for the purposes of these provisions.

958. Paragraph 25 contains definitions and interpretation of words and phrases used in the Schedule, and gives references to the paragraphs in which particular words and phrases are defined.

***Schedule 11- Service charges: provision of information and designated accounts***

959. Schedule 11 makes changes to the requirements in the Landlord and Tenant Act 1985 (“the 1985 Act”) and the Landlord and Tenant Act 1987 (“the 1987 Act”) regarding the information that landlords must supply to service charge payers and how service charge monies are to be held. The main amendments are to section 21 of the 1985 Act (as substituted by the Commonhold and Leasehold Reform Act 2002) and section 42A of the 1987 Act (as inserted by the 2002 Act). Section 21 of the 1985 Act and section 42A of the 1987 Act, as amended or introduced by the 2002 Act, have not been brought into force.

960. Paragraph 2 replaces section 21 of the 1985 Act. Subsection (1) provides the appropriate national authority (the Secretary of State in England, and the Welsh Ministers in Wales) with power to make regulations about the provision by landlords of dwellings of service charge information. Subsection (2) sets out the types of information that should be dealt with in those regulations. In particular, the regulations must (subject to exceptions) require a landlord to provide information about the service charges of the tenant and any “associated charges” (defined in subsection (8)); and the relevant costs relating to the service charges. Subsection (3) provides that the regulations must (subject to exceptions) require that a report by a qualified person be supplied with the information provided. Subsection (4) sets out the additional matters about which provision may be made in the regulations. In particular the regulations may make provision about the information and reports that need to be provided, the periods in relation to which information or reports are to be provided, the times at or by which they need to be provided, and the form and manner in which they may be provided. The regulations may also describe the persons who are “qualified persons” for the purposes of preparing the report that must accompany the information supplied by the landlord. Subsection (5) provides that the power under subsection (1) to make regulations is not limited in any way by the provisions of subsections (2) to (4).

961. Subsection (6) allows regulations made under section 21 to make different provision for different cases, descriptions of case or different purposes and to make supplementary, incidental, consequential, transitional or saving provision that is considered to be appropriate.

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Subsection (7) provides that the regulations will be subject to the negative procedure. Subsection (8) contains definitions.

962. Paragraphs 3 to 8 of the Schedule make amendments to sections 21A, 22, 23, 26 and 27 of the 1985 Act, which are consequential on the new terminology used in section 21. These sections enable tenants to withhold service charges if the provisions in section 21 are not complied with, provide rights of inspection of supporting documentation, deal with the situation where information is held by a superior landlord or there is a change of landlord and provide for exceptions. These amendments ensure that these provisions reflect where necessary the new terminology used in section 21.

963. Paragraph 9 omits section 28 of the 1985 Act, which defines the meaning of ‘qualified accountant’ for the purposes of providing a certificate supporting information supplied under the existing section 21. This is being replaced with the power to specify in regulations made under the new section 21(4) the persons who are qualified to provide a report on such information. Paragraph 10 removes the reference to ‘qualified accountant’ in the index of defined expressions in the 1985 Act.

964. Paragraphs 11, 12 and 13 amend section 42A of the 1987 Act. These amendments will allow one or more trust funds containing service charge monies held on behalf of different groups of service charge payers to be held by the landlord in one designated client account. Provision is made for regulations to be made to ensure that funds cannot be moved between designated client accounts unless conditions specified in the regulations are met.

965. The regulations to be made under section 42A may make different provision for different cases or different areas. The regulations are subject to the negative procedure.

966. Paragraph 14 amends section 78 of the Leasehold Reform, Housing and Urban Development Act 1993 which defines the persons able to carry out a management audit of premises under rights provided to long leaseholders by the Act. Instead of referring to section 28 of the 1985 Act (which is being repealed under paragraph 9 of this Schedule), it inserts a new class of auditor, being a person who is a member of a body which is a recognised supervisory body for the purposes of Part 42 of the Companies Act 2006, and disqualifies certain persons.

***Schedule 12 – Demolition notices***

967. Schedule 12 amends Schedule 5 to the Housing Act 1985 with respect to final demolition notices and Schedule 5A to that Act with respect to initial demolition notices, so that these notices will remain in effect if the landlord sells or transfers the property to another landlord which intends to continue with the demolition plans. To ensure this, the second landlord will be required to serve a continuation notice confirming that he intends to continue with the demolition plans.

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968. A continuation notice must give reasons for the proposed demolition and specify which of the required conditions applies. The notice may not vary the planned demolition date nor the expiry date of the original demolition notice.

969. The continuation notice is subject to the same requirements for notice and publication as the original demolition notice.

***Schedule 13 – Disposals of dwelling-houses by local authorities***

970. Schedule 13 amends certain provisions of the Housing Act 1985, the Housing Act 1988, the Housing Act 1996, and repeals and amends provisions of the Leasehold Reform, Housing and Urban Development Act 1993. The provisions concern the requirement for consent from the Secretary of State to large scale disposals of housing by local authorities. The intention of the amendments is to remove the requirement that local authorities must apply to the Secretary of State annually to be included in a large scale disposals programme for a particular financial year. The amendments do, however, retain the requirement for Secretary of State consent and provide that the Secretary of State may consider the exchequer costs of such disposals before consent is granted. Notwithstanding removal of provisions concerning the large scale disposals programme, English local authorities will be expected to engage with the HCA at an early stage when considering a large scale disposal.

971. *Paragraph 1(2)* amends section 34 of the Housing Act 1985, which applies to the grant of the Secretary of State's consent under section 32 or 33 of the Housing Act 1985 for the disposal of land held for housing purposes by a local authority.

972. *Paragraph 1(2)(b)* amends section 34 to provide that, when considering whether to grant consent, the appropriate national body (i.e. the Secretary of State, for England and the Welsh Ministers, for Wales) may, in the case of a large scale disposal, have regard to its estimate of the exchequer costs of such a disposal.

973. *Paragraph 1(2)(c)* adds the provision that the appropriate national body may make assumptions as to what the exchequer costs might be and defines "dwelling-house", "exchequer costs", "housing subsidies", "large scale disposal", "long lease", "relevant period", and "subsidiary" for the purpose of those cost calculations. The amendment also gives the appropriate national body the power by order to change the number of dwelling-houses in the definition of "large-scale disposal". The amendment also defines "a dwelling-house to be disregarded", "associates", and how the description of an authority might be framed for the purposes of the section.

974. *Paragraph 1(3)* makes identical amendments to section 43 of the Housing Act 1985 in relation to large scale disposals. Section 43 relates to the appropriate national body's powers to grant consent to a local authority to dispose of a house belonging to the local authority

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which fulfils certain conditions but is not held for housing purposes and is therefore not subject to consent under sections 32, 33 and 34 of the Housing Act 1985.

975. *Paragraph 2* makes consequential amendments to section 133(3) of the Housing Act 1988, which requires the consent of the appropriate national body before the first onward disposal of tenanted homes acquired after consent was given under either 34 or 43 of the Housing Act 1985. This amendment seeks to preserve the status quo by ensuring the amendments to sections 34 or 43 do not apply. Section 133 requires that, before granting consent, the Secretary of State shall take into account such matters considered when granting the original consent under section 34 or 43. This amendment does not change the position. The Secretary of State is not required to consider the exchequer costs of a further disposal. This is because a further disposal should have no impact on exchequer costs. If a local authority is the onward transferor, and so the transfer will effectively be the first transfer away from local authority ownership, the Secretary of State will be required to give consent under section 32 or 43 of the Housing Act 1985 and so will be considering the exchequer costs in any event.

976. *Paragraph 3(2)* repeals section 135 of the Leasehold Reform, Housing and Urban Development Act 1993. Section 135 requires that a local authority cannot dispose of more than 499 dwelling-houses (i.e. a large scale disposal) within a particular period without having first been accepted on to an annual disposals programme run by the Secretary of State.

977. *Paragraph 3(3)* amends section 136 of the Leasehold Reform, Housing and Urban Development Act 1993 to retain definitions included in section 135, including an expanded definition of “subsidiary”, which would otherwise be repealed.

978. *Paragraph 3(4)* deletes from section 137 of the Leasehold Reform, Housing and Urban Development Act 1993 transitional provisions relating to section 135, which are now redundant.

979. *Paragraph 4* amends the definitions of “social landlords” and “registered bodies” in section 51(2)(b), paragraph 5(1)(b) of Part 2 and paragraph 28(1)(b) of Part 4 of Schedule 1 to the Housing Act 1996. Those definitions included a body which had been the recipient of a large scale disposal of property by a local authority under section 135 of the Leasehold Reform, Housing and Urban Development Act 1993. This amendment ensures that the definitions capture organisations that in the past had inherited a large number of homes as a consequence of the (to be repealed) section 135 of the Leasehold Reform, Housing and Urban Development Act 1993, and, also, organisations that will in the future inherit such homes further to (amended) sections 34 and 43 of the Housing Act 1985.

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### **Schedule 14 – Repeals**

980. Schedule 14 contains the repeals of various enactments and will be supplemented by orders made under the power of the Secretary of State under clause 319 (power to make further amendments and repeals).

### **FINANCIAL EFFECTS**

981. The Housing and Regeneration Bill will incur public expenditure in a number of ways which are addressed in the accompanying Impact Assessment. This will amount to some £37.5 million of which one-off costs amount to some £23.5 million.

982. Most of the one-off costs will be incurred through establishing the HCA (Part 1) and the new social housing regulator (Part 2), together estimated to amount to £23 million. Local authorities may incur one-off costs of some £0.325 million in connection with:

- the provisions to provide the same security of tenure, and other rights and responsibilities, to gypsies and travellers on local authority sites as gypsies and travellers on private sites, and occupants of other types of residential caravan site, such as park home sites (clause 316); and
- the provision to enable service personnel to establish a local connection with the district in which they serve, for the purposes of applying to a local housing authority for an allocation of social housing or homelessness assistance (clause 313).

983. Ongoing costs of the proposed new social housing regulator are estimated to amount to £12.7 million. Local authorities may incur some ongoing costs in connection with the management of their gypsy and traveller sites under the new arrangements, which are estimated at some £0.625 million over 10 years.

### **PUBLIC SECTOR MANPOWER**

984. In most cases there will be minimal implications for net staffing levels in the public sector, including local authorities. The creation of the HCA is estimated to realise running costs savings of around £3m from 2010-11. Further details are set out in the Impact Assessment.

### **IMPACT ASSESSMENT**

985. An impact assessment of the Bill's provisions has been published alongside this Bill. It can be read on the Department for Communities and Local Government website at [www.communities.gov.uk](http://www.communities.gov.uk). Details of the carbon impact of each of the Bill's provisions can be found in the Impact Assessment.



## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

986. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Parliamentary Under Secretary of State for Communities and Local Government, Baroness Andrews, has made the following statement:

“In my view the provisions of the Housing and Regeneration Bill are compatible with the Convention rights”.

987. Part 1 of the Bill establishes the HCA which will replace the Urban Regeneration Agency, the Commission for New Towns and the investment functions of the Housing Corporation. The HCA will have powers to acquire land and rights over land, including compulsorily where authorised by the Secretary of State, and to override or extinguish rights in some circumstances. These powers are modelled on powers currently exercised by the Urban Regeneration Agency under the Leasehold Reform, Housing and Urban Development Act 1993. In addition, the Secretary of State will have power to designate an area in England and confer functions on the HCA, including local planning authority and hazardous substance authority functions, in relation to that designated area. The powers potentially raise issues under Articles 6 and 8 of and Article 1 of Protocol 1 to the European Convention on Human Rights. The objects of the HCA incorporate a clear public interest test and as a public body the HCA will be required to act in a manner which is compliant with the Human Rights Act 1998. Any powers conferred on the HCA must also be exercised in accordance with statutory procedures. For example Part 1 of Schedule 2 applies the procedures in the Acquisition of Land Act 1981 to the compulsory purchase of land and also provides for the usual compensation code to apply. Part 2 of Schedule 3 sets out the procedure for the consideration of the extinguishment of a public right of way. With regard to any planning functions which the HCA may have conferred upon it, the established procedures which protect individual human rights remain in place. These include the Secretary of State's powers to call in applications for the Secretary of State's own determination and to hear appeals against decisions of the local planning authority.

988. Part 2 of the Bill establishes a new regulator for social housing, the Office for Tenants and Social Landlords. The regulator will have a range of regulatory and enforcement powers in relation to registered providers of social housing. The Convention rights that might be engaged by the regulator's powers under Part 2 are Article 6, Article 7, Article 8 and Article 1 of the First Protocol. However the new regulator will be a public authority for the purposes of the Human Rights Act 1998. It will therefore be required by section 6 of that Act to act compatibly with the Convention rights when performing its functions. In addition, the regulator will be required to perform its functions with a view to achieving its statutory objectives, set out in clause 88. The tenth such objective (in subsection (11) of clause 88) requires the regulator to regulate in a manner which minimises interference and is proportionate, consistent, transparent and accountable. An explicit objective to minimise interference and act proportionately provides additional reassurance that the regulator will exercise its enforcement powers in a manner compatible with the Convention rights.

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989. Part 3 of the Bill includes a range of provisions some of which could potentially engage Convention rights.

990. Clause 296 provides that “Family Intervention Tenancies” (FITs) offered by local housing authorities and registered providers of social housing will not be secure or assured tenancies. These tenancies will be offered to tenants who have had a possession order against them, are likely to, or, in the opinion of the local authority or registered provider of social housing, could have such an order against them on the grounds of anti-social behaviour. FITs will provide behaviour support services to the tenant. These provisions potentially raise issues under Articles 6 and 8 and Article 1 of the First Protocol. In accepting a FIT a secure tenant will agree to give up the secure tenancy but is doing so voluntarily so there is no deprivation of property by the state engaging Article 1 of the First Protocol. In accordance with clause 297 any decision to end a local authority FIT tenancy will be subject to a statutory review procedure meeting the requirements of Article 6. In respect of Article 8 any interference may be justified under Article 8(2) in the interests of public safety, the prevention of disorder and crime and the rights and freedoms of others e.g. by balancing the rights of the FIT tenant with those of other tenants and neighbours who need to be protected from anti-social behaviour.

991. Clause 298 gives effect to Schedule 10 which amends the 1985, 1988 and 1996 Housing Acts to prevent secure, assured, introductory and demoted tenants subject to a possession order, but whom the landlord has allowed to remain in the property, losing their tenancy status and thus becoming what the courts have termed “tolerated trespassers”. In the case of all these tenancies the amendments will provide that in future where a court grants the landlord a possession order, the tenant will remain a tenant until either voluntarily leaving the property or being evicted. They will also provide that where secure, assured or introductory tenancies have already technically ended following a possession order, but with the former tenant still living in the property, a new tenancy (of the same type as before) will arise, and for some purposes will be deemed continuous with the previous tenancy. In the case of demoted and introductory tenants, this will mean that a new one year trial period will apply. The only exception would be if a local authority landlord has in the meantime revoked its election to run an introductory tenancy regime, in which case the new tenancy the former introductory tenant would acquire would necessarily be a secure tenancy.

992. The impact of the amendments will primarily be on tenants of local authorities and RSLs under secure and assured periodic tenancies. Although the amendments technically will apply also to private tenancies, including statutory periodic tenancies arising after the expiry of assured shorthold and other fixed term assured tenancies, in practice they will have little effect on these because private landlords are more easily able to obtain eviction of their tenants. Similarly, where landlords claim possession against demoted and introductory tenancies it is assumed that the landlord usually proceeds directly to eviction (the courts having no discretionary powers to delay this).

993. Several of the proposals affect entitlement to statutory or contractual rights. The Convention issues raised are therefore under Article 1 of the First Protocol. Although the measures deal with the legal status of tenants triggered by possession proceedings, they do not affect the process by which a landlord regains possession. It is therefore not considered that

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the right to respect for private and family life under Article 8 (which has been held to be engaged in possession proceedings) is relevant.

994. It is not considered that the amendments to statutory provisions for the future give rise to any interference with the property rights of tenants. They will enable property rights to continue. In occasional situations where a joint tenant has left the property, the continuation of responsibility as a tenant may be unwelcome to that tenant, but there are other remedies available in such circumstances. Continuation of tenancy rights does not amount to a deprivation of or control of the use of property rights.

995. So far as landlords are concerned, the provisions changing how tenancies will end in the future will result in landlords remaining subject to contractual and statutory duties regarding the tenancy, and being affected by the tenant's continuing rights. This may have financial consequences. However, Article 1 of the First Protocol relates only to existing possessions. It is therefore not considered that provisions changing the law in the future, so that the landlord loses the chance of a financial advantage, could be held to interfere with the existing property rights of landlords.

996. With regard to restoration of tenancy status where an existing possession order has been granted, there is technically a deprivation of an existing possession involved in deferring the landlord's entitlement to possession until eviction. It is not considered that this is in itself significant, because the landlord does not in fact have a right to enter or deal with the property in any way inconsistent with tenancy rights, so long as the tolerated trespasser lives there. Despite the tenant having become a tolerated trespasser and not having the benefit of the relevant statutory provisions in other respects, the possession proceedings are still conducted under the statutory rules.

997. Schedule 10 also amends Schedule 3 to the 1985 Act (grounds for withholding landlord's consent to assignment of a secure tenancy by way of exchange). Ground 1 of this Schedule is amended. This ground enables the landlord to refuse consent to the tenant exchanging tenancies with another tenant if the court has granted a possession order. The amendment ensures that all variations of wording used in possession orders, including that introduced in 2006 to limit the creation of further tolerated trespassers, are covered. No Convention issues are raised by this amendment, which merely clarifies the wording of the 1985 Act in order to maintain the current legal position that a landlord may refuse to agree to a tenant, subject to a possession order, exchanging properties with another tenant.

998. Clause 303 ensures that a secure tenant cannot exercise the right to buy where he or she is subject to a possession order. Technically, this may lead to a deprivation or control of the use of a possession under Article 1 of the First Protocol, but any such deprivation may not be permanent and in any event fulfils a clear public interest and is subject to conditions provided by law.

999. Clause 316 brings licence agreements between site occupiers and the local authority on sites providing accommodation for gypsies and travellers into the regulatory regime

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imposed by the Mobile Homes Act 1983 and, in particular, gives occupiers the protection of the implied terms contained in Schedule 1 of that Act.

## **COMMENCEMENT DATE**

1000. Clause 323 makes provision about commencement. In general the provisions of the Bill will be brought into force by order made by the Secretary of State on such days as may be appointed. Certain provisions of the Bill will come into force at the end of the period of two months beginning with the day on which the Act is passed; these are set out in subsections (2)(a) and (b) and (5)(a) of clause 323. Certain provisions will be brought into force in relation to Wales by order made by the Welsh Ministers; these are set out in subsections (3) and (5) of clause 323. All other provisions will come into force on a day as appointed by the Secretary of State by order (subsection (1) and (4)(a)).

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**Annex A**

<b>Provisions</b>	<b>Clauses and Schedules that affect the powers of the National Assembly for Wales</b>
The Homes and Communities Agency	<p>Clause 52 introduces Schedule 5. Clause 53 introduces Schedule 6 which amends the New Towns Act 1981 and transfers Welsh functions of the Commission for the New Towns to the Welsh Ministers.</p> <p>Clause 54 makes provision for the transfer of any residual assets of the Commission for New Towns in Wales to the Welsh Ministers.</p>
Sustainability certificates	<p>Clauses 278 - 292 provide for the introduction of mandatory sustainability rating for new homes in England and Wales. Powers are to be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.</p>
Tenant empowerment	<p>Clause 294 extends the list of matters that might be included in regulations imposing requirements on a local housing authority to enter into a management agreement with a tenant management organisation by amending the existing regulation making power in section 27AB of the Housing Act 1985. Powers are to be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.</p> <p>Clause 295 enables regulations to be made requiring a local housing authority to take forward a proposal for the transfer of the ownership of part of its social housing stock if requested to do so by tenants of those homes. The detailed provision will be set out in regulations made by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.</p>
Family intervention tenancies	<p>Clauses 296 and 297 will enable local housing authorities and registered providers of social housing in England and registered social landlords in Wales to offer tenancies which will not be secure or assured tenancies to certain tenants who have lost or are potentially at risk of losing their secure or assured tenancy. These tenancies will be offered for the purposes of providing behavioural support services to tenants against whom a possession order for anti-social behaviour has been made or to tenants who could face possession proceedings on the grounds of anti-social behaviour. The provisions contain regulation making powers that will be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales. The provisions will also be</p>

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	commenced separately for England and Wales by the Secretary of State and Welsh Ministers respectively.
Possession orders relating to certain tenancies	Clause 298 introduces Schedule 10 which includes seven delegated powers in relation to tolerated trespassers to be exercised by the Secretary of State in relation to England and by the Welsh Ministers in relation to Wales.
Service charges: provision of information and designated accounts	Clause 302 introduces Schedule 11 which makes changes to the requirements in the 1985 and 1987 Landlord and Tenant Acts about the information landlords will be required to supply to service charge payers and how service charges monies are held. The provisions contain regulation making powers that will be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales. The provisions will also be commenced separately for England and Wales by the Secretary of State and Welsh Ministers respectively.
Leasehold enfranchisement	Clause 301 enables the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to make separate regulations designating protected areas and to prescribe additional conditions to be included in shared ownership leases.
Right to buy etc: miscellaneous	<p>Clause 307 extends the scope of an existing power to make regulations regarding loans in respect of service charges on former right to buy flats and other housing authority flats. Powers are to be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.</p> <p>Clause 308 gives the appropriate national authority power to make regulations providing that a housing authority may purchase an equitable interest in a leasehold property of which it is a landlord. The power will be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.</p>
Disposals of dwelling-houses by local authorities	Clause 310 and Schedule 13 remove the requirement that local authorities must apply to the appropriate national body annually to be included in a large scale disposals programme for a particular financial year while enabling the appropriate national body to still consider the exchequer costs of any large scale disposals, by repealing section 135 of the Leasehold Reform, Housing and Urban Development Act 1993, and making consequential amendments to the Housing Act 1985, Housing Act 1988 and Housing Act 1996. The appropriate national body is the Secretary of State in England

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	and the Welsh Ministers in Wales.
Financial assistance for information and other services	Clause 311 widens the existing power contained in section 94 of the Housing Act 1996 for the Secretary of State in England and the Welsh Ministers in Wales to provide financial assistance for the giving of general advice in respect of residential landlord and tenant law, including advice about estate management schemes in connection with enfranchisement, information and training and running an alternative dispute resolution service. Powers are to be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.
Housing Revenue Account subsidy	Clause 312 disapplies sections 79 to 80A of the Local Government and Housing Act 1989 where an agreement exists between the appropriate person and a local housing authority. Such an agreement would have the effect that no Housing Revenue Account Subsidy was payable by or to the appropriate person in respect of properties covered by the agreement. The appropriate person is the Secretary of State in relation to England and Welsh Ministers in relation to Wales. Powers are to be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.
Armed forces: alteration of “local connection” test	Clause 313 amends section 199 of the Housing Act 1996, which sets out the circumstances when a person has a local connection with the district of a local housing authority. The provision will be commenced separately by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.
Protected mobile home sites to include sites for gypsies and travellers	Clause 316 will be commenced separately by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.
<b>Part 4</b> – Supplementary and final provisions	Clauses 319 and 320 enables the Secretary of State in relation to England and Welsh Ministers in relation to Wales to make orders or regulations to make supplementary, incidental, consequential, transitional, transitory or saving provisions.

# HOUSING AND REGENERATION BILL

## EXPLANATORY NOTES

*These notes refer to the Housing and Regeneration Bill  
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