

# HOUSING (WALES) ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 Regulation of Private Rented Housing**

##### *Section 2 – Meaning of key terms*

3. This section sets out the meaning of key terms used in Part 1 of the Act and makes it clear which type of tenancies are to be covered by the definition of “domestic tenancy”. The section further clarifies that the provisions of this Part apply only to “rental properties” located entirely in Wales.
4. [Section 2](#) also gives the power to Welsh Ministers, by order, to specify other forms of tenancy which are to be included in the definition of “domestic tenancy” and which would therefore become subject to the registration and licensing regime under Part 1.

##### *Section 3 – Licensing authority*

5. The Welsh Ministers are required to designate a licensing authority for the purposes of Part 1 of the Act; the licensing authority being the person or body carrying out the functions of maintaining a register, administering landlord registrations and granting agent and landlord licences in line with Part 1. They may designate one person to act as the licensing authority for the whole of Wales. Alternatively, different persons can be designated to act as licensing authorities for different areas of Wales provided that, when taken together, all of the areas in question cover the whole of Wales. There must not be more than one licensing authority for any one area.
6. Only a person who carries out public functions wholly or mainly in relation to Wales can be designated as a licensing authority. This includes the Welsh Ministers or a public body (which may include a local housing authority) but not Ministers of the UK Government.
7. The Welsh Ministers can make any provision they consider necessary or expedient when making an order designating a person as a licensing authority. Prior to making the order, the Welsh Ministers must consult any person they propose to designate and any other persons they consider appropriate, such as the local housing authority or authorities within the area covered by the proposed licensing authority.

##### *Section 4 – Requirement for a landlord to be registered*

8. A landlord who either offers or markets a dwelling for let, or lets one under a domestic tenancy must be registered with the licensing authority for the area in which that dwelling is located. Exceptions to this requirement are set out in section 5. A landlord for whom an exception does not apply, who is not registered and who does not have a reasonable excuse for not being registered commits an offence. Such cases would be heard in magistrates’ courts. If convicted, the landlord is liable to a fine, which would be determined according to the standard scale for fines. In this case, the fine would not exceed level 3.

***Section 5 – Exceptions to the requirement for landlord to be registered***

9. There are exceptions to the requirement in section 4(1) for a landlord to be registered. The requirement does not apply to a landlord who is a registered social landlord (registered social landlords are subject to separate registration by the Welsh Ministers under Part 1 of the Housing Act 1996) or a fully mutual housing association (whose membership is comprised entirely of tenants or prospective tenants of the properties provided by it). The Welsh Ministers have the power by order to specify other persons to whom the requirement to register in section 4(1) does not apply.
10. The other circumstances in which the requirement to register will not apply are: a) where a landlord has applied to be registered and the application is being considered; b) during the period of 28 days after a landlord has had the interest of the dwelling assigned to him or her, for example where the landlord becomes the freehold owner of the property; c) if a landlord is attempting to recover possession of a property and began steps to recover possession within 28 days of it being assigned to him or her.

***Section 6 - Requirement for landlords to be licensed to carry out lettings activities***

11. Subsection (2) set out what are “lettings activities” which if being carried out by a landlord require the landlord to hold a licence. They are arranging or conducting viewings of the dwelling with prospective tenants and checking the suitability of such persons, preparing a tenancy agreement (with the exception of solicitors) or preparing an inventory or schedule of the condition of a dwelling. The Welsh Ministers may omit or add to the list of what are considered to be letting activities.
12. A landlord must not do any of the things in subsection (2) unless he or she holds a licence issued by the licensing authority for the area in which the dwelling is located, arranges for an authorised agent to do the activity on his or her behalf, or an exception in section 8 applies. An “authorised agent”, as referred to in subsection (6), is a person who carries out letting and management work and holds a licence to do so for the area in which the dwelling is located, or a local housing authority. For the preparation of a tenancy agreement, it can also be a qualified solicitor, any person acting on behalf of a solicitor or any person specified in an order made by the Welsh Ministers.
13. Save where an exception in section 8 applies, a landlord who undertakes any lettings activities without a licence and without a reasonable excuse for not having a licence commits an offence and on conviction is liable to a fine, not limited by any levels on the standard scale, and the amount of which therefore will be determined by the magistrates' court.

***Section 7 – Requirement for landlords to be licensed to carry out property management activities***

14. Subsection 2 sets out what are “property management activities” which if being carried out by a landlord require the landlord to hold a licence. They are collecting rent, being the main point of contact for the tenant in relation to matters arising under the tenancy, making arrangements to repair or maintain the property, or to secure access to the property, checking the condition of the property, serving a notice to terminate the tenancy and, when a tenancy ends, checking, or arranging for the checking of, the condition or contents of the dwelling.
15. A landlord must not do any of the things in subsection (2) unless he or she is licensed to do so for the area in which the dwelling is located, or arranges for an authorised agent to do the activity on his or her behalf, or an exception in section 8 applies. An “authorised agent”, as referred to in subsection (7), can be a person who carries out lettings and management work and holds a licence to do so for the area in which the dwelling is located, or it can be a local housing authority. For the termination of a tenancy agreement, it can also be a qualified solicitor, any person acting on behalf of a solicitor or any person specified in an order made by the Welsh Ministers.

16. Save where an exception in section 8 applies, a landlord who undertakes any property management activities without a licence and without a reasonable excuse for not having a licence, commits an offence and on conviction is liable to a fine, not limited by any levels on the standard scale, and the amount of which therefore will be determined by the magistrates' court.

### ***Section 8 – Exceptions to requirements for landlords to be licensed***

17. There are exceptions to the requirement in sections 6 and 7 for a landlord to be licensed. The Welsh Ministers also have the power to specify by order other cases to which the requirements in those sections do not apply. Sections 6(1), 7(1) and 7(3) do not apply to registered social landlords or to fully mutual housing associations, for the same reasons as they are exempt under section 5 from needing to be registered. Exceptions also apply where a landlord has applied to be licensed and the application is being considered, and during the period of 28 days after a landlord has had the interest of the dwelling assigned to him or her, for example where the landlord has bought the property, and the sale has completed and transfer registered. An exception also applies if a landlord is attempting to recover possession of a property and began steps to recover possession within 28 days of the property being assigned to him or her.

### ***Section 9 - Requirement for agents to be licensed to carry out lettings work***

18. A person (which includes a body corporate, such as a company) who carries out “lettings work” (as defined in section 10) in respect of that dwelling on behalf of a landlord needs to be licensed to do so for the area in which the dwelling is located. An unlicensed person who carries out such work on a landlord’s behalf commits an offence punishable by a fine (unless that person can satisfy a magistrates’ court that they had a reasonable excuse for not being licensed).

### ***Section 10 – Meaning of lettings work***

19. **Section 10** specifies what is “lettings work”, for which an agent must be licensed in order to carry out such work. It is work which is done in response to instructions received from landlords seeking to find tenants for their rental property and work carried out in response to instructions received from people seeking to occupy a rental property, subject to certain exceptions set out in the section.
20. Subsections (2) and (3) exclude certain activities from the definition of lettings work provided the person engaged in those activities does not: a) undertake any other activity amounting to “lettings work”, and b) does not undertake any property management work (see section 12).
21. Subsection (4) sets out other activities that are not lettings work. This includes work carried out by people employed by or apprenticed to a landlord under a contract of service with a landlord (such that the employee would not need to be licensed, but the landlord would). The same applies to work carried out by an employee of or apprentice to an agent. It also excludes work carried out by a local housing authority on behalf of a landlord.

### ***Section 11 – Requirement for agents to be licensed to carry out property management work***

22. A person who acts on behalf of a landlord and who undertakes property management work without a licence, and without a reasonable excuse for not having a licence, is committing an offence and is liable on conviction to a fine, not limited by any levels on the standard scale, and the amount of which therefore will be determined by the magistrates' court.

### ***Section 12 – Meaning of property management work***

23. Subsection (1) sets out that “property management work” is any of the following: collecting the rent; being the main point of contact for the tenant on matters arising from the tenancy; making arrangements for repair or maintenance; arranging with a tenants or occupier of the dwelling to obtain access to it for any purpose; checking the condition of the property, or arranging for it to be checked; and serving notice of termination of the tenancy.
24. A person who does only one of the things listed in subsection (1)(b)-(f), but who does not collect rent and does no lettings work, as set out in subsection (10)(1), is not considered to be doing property management work for the purposes of section 11; and will not need to be licensed to carry out the work in question.
25. Subsection (3) sets out other work that is not property management work. This includes work done by a person under a contract of service with a landlord or work done by a person as part of an apprenticeship with a landlord. . Anything done by a local housing authority does not constitute property management work. The Welsh Ministers can add to the list of exceptions in subsection (3) by order.

### ***Section 13 – Offence of appointing an unlicensed agent***

26. A landlord of a dwelling that is marketed or offered for rent under a domestic tenancy, must not appoint, allow, or continue to allow a person to undertake lettings work on the landlord’s behalf in relation to the dwelling if that person does not hold a licence to do so for the area in which the dwelling is located and the landlord knows, or should know, that the person does not hold such a licence.
27. Similarly, a landlord of a dwelling which is let subject to a domestic tenancy must not appoint, allow or continue to allow a person to undertake property management work in respect of that dwelling subject to a domestic tenancy if that person does not hold a licence to do so for the area in which the dwelling is located and the landlord knows, or should know, that the person does not hold such a licence.
28. A landlord who fails to comply with these requirements commits an offence and is, upon conviction, liable to a fine not exceeding level 4 on the standard scale.

### ***Section 14 – Duty to maintain register in relation to rental properties***

29. A licensing authority must establish and maintain a register to record certain information about landlords, agents and the rental property let by or on behalf of landlords in their area. The information that must be recorded is set out in paragraph 1 of Schedule 1 for landlords, and paragraph 2 of that Schedule for agents.
30. Some of the information contained on a register maintained by a licensing authority will be available to the public. Paragraphs 3 to 5 of Part 2 of Schedule 1 describe the information which will be publicly available depending on the nature of the search carried out. Information, as set out in that Part, must be provided if a person provides a licensing authority with one of the following: the address of a rental property; the name or registration number or licence number of a landlord; the name or licence number of an agent appointed to carry out lettings work and property management work on behalf of a landlord.

### ***Section 15 – Registration by a licensing authority***

31. An application by a landlord to be registered must be made to the licensing authority for the area in which the dwelling is located. Subsection (1) provides that if the application is made in the required form, includes information required by regulations made by the Welsh Ministers or such other information required by the authority, and is accompanied by the required fee, the licensing authority must register the landlord

within a specified period. The registration fee and the period will also be set out in regulations made by the Welsh Ministers.

32. The licensing authority must assign a registration number to the landlord and inform the landlord of the registration and the registration number. A licensing authority can charge a further fee (as set out in regulations made by the Welsh Ministers) for continuing the registration after the fifth anniversary of the date the landlord was registered and, subsequently, after every fifth anniversary a further fee may be charged.

### ***Section 16 – Duty to update information***

33. A registered landlord must notify the licensing authority in writing of certain changes in order to ensure that the information set out in a register is kept up to date. These are set out in subsection (1). They are: any change in name in which the landlord is registered; the appointment of a person to carry out lettings or property management work on the landlord's behalf in respect of the property in question; the cessation of the such an appointment; and any assignment of the landlord's interest in a rental property. The Welsh Ministers can also, by regulations, specify other changes in respect of which the duty to notify will apply. A landlord who fails to comply with the duty to notify imposed by this section, and who does not have a reasonable excuse for failing to comply, is liable upon conviction to a fine not exceeding level 1 on the standard scale.
34. There is a time limit of 28 days within which the change(s) must be notified to the licensing authority. The period begins on the first day which the landlord knew, or should have known, of the change.

### ***Section 17 – Revocation of registration***

35. A licensing authority is able to revoke a landlord's registration in certain circumstances. They are: a) where the landlord has provided the licensing authority with false or misleading information when applying for registration under section 15 or when complying with the duty to notify the licensing authority of a change in circumstances under section 16; b) where the landlord has failed to notify the licensing authority of a change as required by section 16; and c) failing to pay a fee for remaining on the register (see section 15(4)).
36. Before revoking a registration, a licensing authority must take certain steps. It must notify the landlord of its intention to revoke the registration and the reasons for doing so. It must also allow the landlord 21 days to make representations in relation to the decision from the date that the landlord is notified. The process for giving notifications is set out in section 48.
37. After revoking a registration, the licensing authority must notify the landlord of the revocation and the reasons for doing so and provide information on the right of appeal. A landlord whose registration is revoked may appeal against the decision to a residential property tribunal. An appeal must be brought within 28 days of the landlord being notified of the decision. On appeal, a tribunal may confirm the licensing authority's decision to revoke a registration or direct the authority to register the landlord.
38. The day on which revocation of a landlord's registration takes effect depends on whether or not the landlord makes an appeal against the licensing authority's decision or a subsequent appeal (see subsection (8)).
39. The licensing authority must take certain action in the event of a landlord's registration being revoked. It must notify any person on the register who has been appointed by the landlord to undertake, on the landlord's behalf, lettings or property management work and it must also notify the tenants or occupiers of that landlord's registered rental properties.

### ***Section 18 – Licences that may be granted***

40. A licensing authority can only grant certain types of licence under this Part. These are a licence for its area for a landlord to carry out lettings activities (section 6) and property management activities (section 7) or a licence for its area for agents to carry out lettings work and property management work (sections 9 and 11 respectively).

### ***Section 19 – Licence application requirements***

41. An application for a licence in accordance with sections 6, 7, 9 or 11 must be made in the form required by the authority; be accompanied by such information as the Welsh Ministers specify by regulations; be accompanied by such other information the authority requires; and be accompanied by the required fee (as specified by regulations made by the Welsh Ministers). Before granting a licence, the authority must take steps to satisfy itself that the applicant is a fit and proper person (see section 20) and that requirements relating to training, as set out in regulations made by the Welsh Ministers under subsection (2)(b), are met or will be met.
42. **Section 19(3)** sets out what regulations under section 19(2)(b) may cover. The list set out in this subsection is not exhaustive and the regulations may cover other things. Regulations may be made authorising a licensing authority to specify requirements in relation to the content of training. Regulations may be made for fees to be charged to cover authorisation of training providers by the licensing authority or approval of training courses. Training may cover, among other things, the statutory obligations of both landlords and tenants, the contractual relationship, the role of an agent, and best practice in lettings work and property management.

### ***Section 20 – Fit and proper person requirement***

43. The licensing authority is required to decide whether or not an applicant for a licence is a fit and proper person to be licensed. The Welsh Ministers must issue guidance in relation to this decision. In reaching a decision, a licensing authority must have regard to all matters it considers appropriate, including certain evidence, which is set out in subsections (3) to (5).
44. The evidence falls into a number of categories. First, evidence which shows that the applicant has committed offences involving fraud or other dishonesty, violence, firearms or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003. Second, evidence which shows that the applicant has practiced unlawful discrimination or harassment on the grounds of any protected characteristic under section 4 of the Equality Act 2010, or has victimised a person contrary to that Act. Third, evidence which shows that the applicant has contravened any provision of law relating to housing, landlord or tenant. In addition, failure to comply with any licence condition, including the condition requiring a licence holder to comply with the code of practice issued under section 40, will be relevant evidence for determining whether a person is fit and proper to hold a licence.
45. A licensing authority must also consider whether the actions of a person associated with the applicant are relevant to the question of whether an applicant is a fit and proper person. An associate may be a person connected to the applicant on a personal, work or other basis.

### ***Section 21 - Determination of application***

46. A licensing authority must, within a period set out in regulations made by the Welsh Ministers, grant a licence if it is satisfied that the applicant meets the requirements specified in section 19. After granting the licence, the authority must assign a licence number and issue a licence which shows the licence number. It must also record the date the licence was granted and give the licence to the licence holder.

47. If an application for a licence is refused, the licensing authority must notify the applicant, give the reasons why, and provide information on the applicant's right to appeal the decision.

### ***Section 22 - Licence conditions***

48. Each licence granted will include a condition requiring the licence holder to comply with any code of practice issued by the Welsh Ministers (see section 40) and any other further conditions a licensing authority considers appropriate. Breach of a licence condition may lead to a person's licence being revoked (see section 25).

### ***Section 23 – Duty to update information***

49. A licence holder must notify the licensing authority in writing of any change in the name of the licence holder and other changes that are set out in regulations made by the Welsh Ministers. Notification should be made within 28 days of the first day on which the licence holder knew, or should have known, of the change(s).
50. A licence holder who fails to comply with the requirements of this section and who does not have a reasonable excuse for failing to comply, is liable upon conviction to a fine not exceeding level 4 on the standard scale.

### ***Section 24 – Amendment of licence***

51. A licensing authority may amend a licence granted by it. An amendment may be made to impose new conditions or remove or change the existing conditions attached to a licence. The only exception is the requirement to comply with the code of practice, which cannot be amended.
52. Before deciding to amend a licence, a licensing authority must do a number of things. It must notify the licence holder of its intention to make amendments and the reasons for doing so. It must also allow the licence holder time to make any representations. A period of 21 days must be allowed, beginning with the date the licence holder was notified. But the requirement to wait 21 days before making a decision to amend a licence does not apply if the licence holder consents to the amendment or if the authority considers that there are exceptional circumstances that warrant the changes being made without delay.
53. After amending a licence, the licensing authority must notify the licence holder of the amendment(s) and the reasons for the amendment(s). If a licence holder hasn't consented to the change, the authority must provide information on the licence holder's right to appeal to a residential property tribunal against the authority's decision. The date the amendment or amendments will take effect is determined in accordance with subsection (6).

### ***Section 25 – Revocation of licence***

54. A licence can be revoked by a licensing authority in certain circumstances. It may do this if a condition of the licence has been breached, if the authority is no longer satisfied that the licence holder is a fit and proper person, if the licence holder has, without a reasonable excuse, failed to comply with the duty to update information under section 23, or if both the licence holder and licensing authority have agreed that the licence should be revoked.
55. Before revoking a licence, the licensing authority must notify the licence holder of its intention to do so and the reasons for revocation. It must allow the licence holder time to make representations. The period allowed for the licence holder to make representations is 21 days beginning the day the licence holder was notified of the authority's intention to revoke the licence. But the duty to allow a licence holder the opportunity to make representations does not apply where revocation has been agreed to by the licence

holder or if the authority considers that there are exceptional circumstances which warrant a licence being revoked without delay.

56. After revoking a licence, the licensing authority must notify the licence holder of the revocation and the reasons for doing so. If a licence holder hasn't consented to the revocation, the authority must provide information on the licence holder's rights of appeal against the decision. The appeal period is the period of 28 days which begins with the date the licence holder was notified of the authority's decision, as set out in section 27(3)(a). The revocation takes effect in accordance with the date determined by subsection (5).
57. When a landlord's licence is revoked, the licensing authority must notify the tenants or occupiers of that landlord's registered rental properties. When a person's licence to undertake lettings work or property management on behalf of a landlord is revoked, the licensing authority must notify the landlord that appointed the person. Should a landlord's licence be revoked, the landlord would need to arrange for an authorised agent to carry out lettings work and property management work on the landlord's behalf.

### ***Section 26 – Expiry and renewal of licence***

58. A licence expires after a period of five years beginning with the date on which it was granted unless the licence holder applies for it to be renewed. Generally, sections 19 to 21 apply to applications to renew licences as they apply to applications for a first licence. The only difference is that on renewal, the licensing authority will not have to assign a new licence number to the licence holder (the existing number will be re-used).
59. Applying these sections to renewal applications means that: a) an application will have to be made in accordance with the requirements specified by section 19(1) (be accompanied by a fee and information etc.); b) before granting a renewed licence, the relevant licensing authority will need to be satisfied, in accordance with section 20, that the applicant for renewal is a fit and proper person and c) satisfied that any requirements specified by regulations in respect of training are met.
60. If an application for renewal is refused, the licence expires on a date determined in accordance with subsection (6). The applicant has 28 days beginning with the date the licence holder was notified of the decision to refuse the renewal application within which to bring an appeal.
61. If a licence holder dies, the licence expires automatically. Any renewal application made by the licence holder beforehand is treated as being withdrawn. The same applies in the case where a body corporate (a company, for example) is dissolved.

### ***Section 27 – Licensing appeals***

62. Applicants for a licence (including applicants for renewal of a licence) or holders of a licence can appeal the following decisions of a licensing authority: a decision to grant a licence subject to a condition (other than the requirement to comply with the code of practice issued by the Welsh Ministers); a refusal to grant a licence; amendment of a licence; or revocation of a licence. Appeals are made to a residential property tribunal.
63. An appeal must be made before the end of the 28 day period beginning with the date the applicant was notified of the relevant decision. The tribunal may allow an appeal after the end of this appeal period if it is satisfied there is good reason for the failure to appeal within the time limit. The appeal may be determined following consideration of matters of which the licensing authority was not aware.
64. After hearing an appeal, the tribunal may confirm the decision of the licensing authority. Alternatively, it may: a) where an appeal was made against a licence condition, direct the authority to grant a licence on the terms the tribunal considers appropriate; b) where an appeal was made against a decision to refuse an application for a licence or renewal of a licence, direct the authority to grant or renew the licence on the terms the tribunal



considers appropriate; c) where an appeal was made against a decision to amend a licence, direct the authority not to amend the licence or, alternatively, to amend the licence on the terms the tribunal considers appropriate; and d) where an appeal was made against a decision to revoke a licence, quash that decision.

65. If a licensing authority is directed by a tribunal to grant a licence, the licence is treated as if it had been granted under section 21(1).

### ***Section 28 – Prosecution by a licensing authority or a local housing authority***

66. Subsection (1)(a) lists the offences which may be prosecuted by a licensing authority which arise in relation to a dwelling located in its area. Criminal proceedings may alternatively be brought by a local housing authority, where the offence arises in respect of a dwelling in its area, where that authority is not the licensing authority for the area, the offences in question are ones listed in subsection (2). In such cases, the local housing authority must have obtained the consent of the licensing authority to bring proceedings.
67. This section does not affect any other power of the person designated under section 3(1) to bring legal proceedings. It also does not affect section 222 of the Local Government Act 1972, which relates to the power of local authorities to prosecute or to defend legal proceedings.

### ***Section 29 – Fixed penalty notices***

68. This section allows persons acting on behalf of licensing authorities, by notice, to offer persons suspected of committing an offence under this Part the opportunity to discharge any liability to conviction for the offence through payment of a fixed penalty. The offer can only be made by notice and the person making the offer must be authorised in writing by the licensing authority to do so. Fixed penalty notices may not be offered to persons suspected of having committed offences under section 13(3) or section 38(4).
69. Where a person is given a notice in respect of an offence, no proceedings for a conviction can be issued before a period of 21 days following the date of notice has expired. If the person pays the fixed penalty before the end of the period, that person may not be convicted of the offence. The process for giving notice is set out in section 48.
70. A notice must set out a number of matters. It must provide reasonable information on the circumstances alleged to constitute the offence. It must also state the period during which proceedings will not be taken, the amount of the fixed penalty and the person to whom and address at which, the fixed penalty may be paid.
71. The fixed penalty under this section is £150 unless the offence is one that attracts a fine that is not limited to the standard scale for fines, in which case it is £250. The Welsh Ministers have the power to vary these amounts by order.
72. Payment can be made by pre-paying and posting a letter containing the amount of the penalty in cash or otherwise, or by another method, which will need to be acceptable to the licensing authority. If posted, the payment is treated as having been made when the letter would ordinarily have been delivered in the post. Receipts from fixed penalty notices can only be used by a licensing authority for its functions relating to the enforcement of Part 1 of the Act.
73. The “licensing authority” for this section is defined in subsection (10)(a) to (d). A local housing authority that is not the licensing authority for its area can exercise the functions under this section in its area in relation to an offence under section 10(a); but the local housing authority needs the prior consent of the relevant licensing authority to do so.

### ***Section 30 – Rent stopping orders***

74. The licensing authority or the local housing authority for the area in which a dwelling is located, can apply to a residential property tribunal for a rent stopping order. A local housing authority that is not the licensing authority must have the consent of the licensing authority before making an application.
75. The effects of a rent stopping order granted by a tribunal are described in subsection (3) (a) to (e). A rent stopping order has the effect of stopping those rent/service charge payments (or parts of payments) owed by a tenant to a landlord which are payable in respect of a specified period. This period begins with a date specified in the rent stopping order and ends with a later date determined by the tribunal when the rent stopping order is revoked (see section 31). Amounts of rent/service charge paid by a tenant to a landlord which relate to that period must be repaid by the landlord. If repayment does not occur, the money is recoverable as a debt owed to the tenant by the landlord.
76. A tribunal can only make a rent stopping order if it is satisfied that an offence is being committed under section 7(5) or 13(3) (whether or not the person has been convicted or charged for the offence) and that certain steps have been taken by the authority making the application. The authority must give the landlord and tenant a notice of intended proceedings, which explains that the authority is proposing to apply for an order. It must also set out the reasons for seeking the order, the effect of the order, and it must explain how such an order may be revoked. The notice must allow the landlord to make representations to the authority within a period of not less than 28 days.
77. Additionally, and before granting an order, the tribunal must be satisfied that the period for making representations has expired and that the authority has considered any representations made to it. The date from which payments are stopped cannot be a date before the date on which the order is made.

### ***Section 31 – Revocation of rent stopping orders***

78. A residential property tribunal can revoke a rent stopping order. It can only do this if an application is made by the licensing authority for the area in which the dwelling is located, the local housing authority for the area in which the dwelling is located, or the landlord of the dwelling. It must also be satisfied that an offence under section 7(5), subject to the comments below, or section 13(3) is no longer being committed in respect of the dwelling. Insofar as relating to an offence under section 7(5), a rent stopping order can only apply to a contravention of section 7(1), which relates to doing certain things where a dwelling is subject to a domestic tenancy, and not a contravention of section 7(3), which relates to dwellings no longer subject to a tenancy. This is because rent stopping orders can only be issued where a dwelling is subject to a tenancy and, therefore, rent is being paid.
79. Where a tribunal revokes a rent stopping order, the effect is to restore the landlord's ability to receive rent for the property from a date determined by the tribunal.
80. If a rent stopping order is revoked, the authority that made the application must notify the tenant or occupier of the dwelling and the landlord. The latter does not apply if it was the landlord that made the application in the first place; in such a case, the licensing authority for the area in which the dwelling is located is required to notify the tenants or occupiers of the dwelling that the order is revoked.

### ***Section 32 – Rent repayment orders***

81. This section should be read in conjunction with section 33.
82. The licensing authority or the local housing authority for the area in which a dwelling is located, or a tenant of that dwelling can apply to a residential property tribunal for a rent repayment order. If it is not the licensing authority for the area in which the dwelling

is located, the local housing authority must have the consent of the licensing authority before applying.

83. A rent repayment order is made in respect of a dwelling. It requires the appropriate person to pay to the applicant such an amount as detailed in the order. Prior to making an order upon an application of a licensing authority or local housing authority, the tribunal must be satisfied of certain matters, these are different from the matters to which a tribunal must be satisfied in the event of an application being made by a tenant.
84. In relation to an application made by a licensing authority or local authority, the tribunal must be satisfied that an offence under 7(5) (requirement for landlords to be licensed to carry out property management activities) or 13(3) (offence of appointing an unlicensed agent) has been committed by the landlord of the dwelling in the 12 months prior to the date of the required notice of intended proceedings under this part, (whether or not the person has been convicted or charged for the offence). Applications from the licensing authority or the local housing authority may be made only in cases where a relevant award or awards of universal credit or housing benefit has been paid to any person in relation to that dwelling, that being the amount that the tribunal can direct to be repaid to the applicant authority.
85. Where an application is made by a tenant, a tribunal in granting an order, must be satisfied that a person has been convicted of a relevant offence; it may also make grant an order where it has already made an order as a result of an application by a licensing authority or local housing authority covering a relevant award or awards of universal credit or housing benefit paid in relation to the same tenancy.
86. The meaning of key terms used in this section are defined in subsection (9).

### ***Section 33 – Rent repayment orders: further provision***

87. This section sets out circumstances in which a rent repayment order must be made by a tribunal and the amount that the order must cover, this is when an application is made by a licensing authority or local housing authority. In addition the section sets out circumstances in which a tribunal may order a lesser amount than the amount of benefit received by the landlord where it would otherwise be unreasonable to order the full amount. The section also sets out other matters that should be taken into account by a tribunal when determining an amount to be set out in a rent repayment order.
88. All amounts determined by a tribunal and required to be repaid by an order can be recovered as a debt due to the applicant from the appropriate person.

### ***Section 34 – Power for the Welsh Ministers to make regulations in relation to sections 32 and 33***

89. The Welsh Ministers may make regulations that supplement the provisions in sections 32 and 33. Regulations may, for example, include provision to ensure that persons are not unfairly prejudiced by rent repayment orders or how amounts received by authorities from rent repayment orders are to be dealt with.

### ***Section 35 – Offences by bodies corporate***

90. This section deals with circumstances where offences are committed by bodies corporate, for example a company. If an offence is committed under this Part of the Act and it is proved to have been committed with consent, collusion or negligence on the part of a director, manager or company secretary, or a person purporting to act in such a capacity, that person as well as the body is treated as having committed the offence and both are liable to have proceedings brought against them. The reference to director, manager or company secretary covers any similar officer. Where the affairs of a body are managed by its members, the reference covers any officer or a member of the body.

***Section 36 – Requests for information from authorities and use of information by authorities***

91. A licensing authority can, for the purpose of exercising its functions under this Part, request certain information from a local housing authority. The information which can be requested is information obtained through the exercise by the local housing authority of its functions as local housing authority or information obtained in the exercise of its functions under Part 1 of the Local Government Finance Act 1992 (which relates to the administration of council tax). In addition, it includes information on housing benefit, which is administered by local housing authorities. The local housing authority to which such a request is made must comply with it unless doing so would be incompatible with its own duties or otherwise have an adverse effect on the exercise of its functions.
92. Similar provision applies allowing a local housing authority to request information from a licensing authority obtained in the exercise of its functions in this part, where required by the local housing authority for any purpose connected with its function under Part 1.

***Section 37 – Power to require documents to be produced or information given***

93. A person who has been authorised, in writing, by a licensing authority has the power to require a person to produce documents or to provide information which is reasonably required by the authority in connection with the exercise of its functions under this Part of the Act or for the purpose of enabling it to investigate whether an offence has been committed under this Part. Subsection (7) provides that a reference to a document includes information which is not in legible form (for example because it is stored on a computer server).
94. A relevant person must be given notice about the request. A “relevant person” means a person who applies for a licence, a person who has an estate or interest in a rental property, a person proposing to be involved in the letting or property management of a rental property, or a person who occupies a rental property.
95. A person can be asked to produce any documents specified or described in the notice or which falls within a category of document specified or described and which are in the person’s custody or control. They must produce them at a time, place and to a person specified in the notice, and in the form required. Documents that have legal professional privilege; for example, documents containing advice from legal professionals are not covered by the requirement.

***Section 38 – Enforcement of powers to obtain information***

96. A failure to do anything required by a notice issued under section 37 is an offence. If persons do not have a reasonable excuse for failing to comply, they are liable upon conviction to a fine not exceeding level 4 on the standard scale.
97. A person who intentionally alters, suppresses or destroys any document that that person has been required to produce by a notice will commit an offence. Upon conviction of such an offence, the person is liable to a fine not limited by any levels on the standard scale, and the amount of which therefore will be determined by the magistrates' court.

***Section 39 – False or misleading information***

98. A person who supplies any information to a licensing authority in connection with any of its functions under this Part that is false or misleading and who knows that it is false or misleading or is reckless as to whether it is false or misleading, commits an offence. An offence will also arise where a person supplies any information to another person, knows that the information is false or misleading or is reckless as to whether it is false or misleading, and knows that the information will be used for the purpose of supplying information to a licensing authority in connection with the exercise of its

functions under this Part of the Act. Persons convicted of offences under this section are liable upon conviction to a fine not limited by any levels on the standard scale, and the amount of which therefore will be determined by the magistrates' court.

#### ***Section 40 – Code of practice***

99. The Welsh Ministers must issue a code of practice which sets standards relating to letting and managing rental properties. The code may include standards relating to training. Compliance with the code is one of the conditions on which a licence is held (see section 22).
100. Before issuing a code, the Welsh Ministers must take reasonable steps to consult with persons involved in letting and managing rental properties and persons occupying such properties, or with persons who the Welsh Ministers consider to represent the views of those persons. A copy of the proposed code must be laid before the National Assembly for Wales and cannot be issued until it has been approved by the Assembly. The code can be amended but the same process applies. A code may be withdrawn in an amended code or by direction given by the Welsh Ministers.

#### ***Section 41 - Guidance***

101. When exercising its functions under this Part, a licensing authority must have regard to any guidance issued by the Welsh Ministers, as must a local housing authority exercising functions under this Part other than as licensing authority. The guidance must be published. Before giving, revising or revoking guidance under this Part the Welsh Ministers must consult such persons as they consider appropriate.

#### ***Section 42 – Directions***

102. The Welsh Ministers may give directions to a licensing authority or to a local housing authority exercising functions under this Part other than as licensing authority; and the relevant authority must comply with those directions in exercising its functions. The directions must be published and may be general in nature or specific.

#### ***Section 43 – Activity in contravention of this Part: effect on tenancy agreements***

103. Any contravention of this Part of the Act does not affect the validity of a tenancy agreement or the enforceability of any obligations under such an agreement. In such circumstances, a tenant will still be entitled to occupy the premises under a valid tenancy agreement. This does not, however, prevent rent being stopped or repaid in accordance with rent stopping or rent repayment orders.

#### ***Section 44 - Restriction on terminating tenancies***

104. A notice under section 21 of the Housing Act 1988 to terminate an assured shorthold tenancy cannot be issued if the landlord is not registered or if the landlord is carrying out lettings or property management activities without a licence or has not appointed a licensed agent to carry out such work on his or her behalf. This restriction does not apply to the period of 28 days beginning on the day on which the landlord is assigned an interest in the dwelling.

#### ***Section 45 – Landlords who are trustees***

105. If a landlord is made up of trustees, the trustees may register as a landlord under a name which is a collective description of the trustees as the trustees of the relevant trust instead of under their individual names.

***Section 46 – Regulations about fees***

106. The Welsh Ministers may make regulations that set out the fees payable for registration (section 14) and licensing (section 18).

***Section 47 – Information about applications***

107. A licensing authority must publish information about the form and content of registration and licensing applications and the information which is to be provided when making such applications.

***Section 48 – Giving notices etc. under this Part***

108. Where a person is required or authorised by a provision of this Part to notify another person of something or to give a document to that person, including a notice or a copy of a document, it may be given in a number of ways. It may be delivered to the person, delivered by post to the person's proper address, or left at the person's proper address. It may also be sent electronically provided the person to whom it is to be sent has indicated a willingness to receive a notice or documents by such means and has an address suitable for that purpose. Examples include an email address or a fax number. For a body corporate, such as a company, the document or notification may be given to the secretary or clerk of that body at its registered or principal office. For post, the "proper address" of a person is the person's last known address unless the person is a body corporate; in which case, its "proper address" is the address of its registered or principal office.

***Section 49 – Interpretation of this Part and index of defined terms***

109. This section indexes the defined terms used within Part 1 and includes other provision necessary for the interpretation of this Part.

**Part 2 Homelessness**

***Section 50 - Duty to carry out a homelessness review and formulate a homelessness strategy***

110. A local housing authority must, periodically, undertake homelessness reviews in its area. Based on the results of a review, it must formulate and adopt a homelessness strategy. The first strategy must be adopted in 2018. It must develop and adopt a strategy in every fourth year after 2018. The Welsh Ministers have the power to vary this timetable. An authority must take account of the strategy in exercising all its functions, not just those as a local housing authority. In carrying its duties under this section a local housing authority must have regard to the guidance issued by the Welsh Ministers under section 98.

***Section 51 – Homelessness reviews***

111. A local housing authority must undertake a homelessness review and publish the results. Subsection (1) sets out what must be included in the review. It includes the activities that are undertaken to prevent homelessness and the provision of accommodation and support for those who may become homeless in the authority's area. The homelessness review must also review the resources available to the authority, including those available for its functions other than housing, as well as those available to other public bodies and third sector organisations for such activities. Subsection (2) sets out how the results of the review must be published.

***Section 52 – Homelessness strategies***

112. A homelessness strategy is a strategy to achieve the objectives specified in subsection (1). They are: to prevent homelessness; that suitable accommodation is and

will be available for people who are or who may become homeless; that satisfactory support is also available for people who are or who may become homeless. An authority can consider any of its functions, not just its housing functions, when setting the strategy. Subsection (3) explains that the strategy can include action that the authority expects other relevant public authorities to take and action by any organisation – voluntary or otherwise – that can contribute to achieving the objectives. As stated in subsection (4), this requires the approval of the body concerned.

113. The strategy must include provision for people who are in particular need of support (subsection (6) refers). They include people leaving prison or youth detention, young people leaving care, people leaving the armed forces, people leaving hospital after inpatient treatment for a mental disorder and people receiving mental health services in the community.
114. A local authority must consult before adopting or modifying its strategy (see subsection (8)), which must be published. The requirements for publication are set out in subsection (9).

### ***Section 53 - Overview of this Chapter***

115. A local housing authority has duties to help people who are homeless or who are threatened with homelessness. This section describes what the provisions of this Chapter of Part 2 of the Act does or requires.

### ***Section 54 – Application of key terms***

116. The key terms used in this Part of the Bill include “homeless”, “threatened with homelessness”, “accommodation available for occupation”, and whether it is “reasonable to continue to occupy accommodation” which are explained in sections 55 to 57 respectively. Section 58 explains the meaning of “abuse” and “domestic abuse”. Section 59 explains “suitability of accommodation”.

### ***Section 55 - Meaning of homeless and threatened homelessness***

117. A person is homeless if they have no accommodation available to them that they have a lawful right to occupy. Such a right includes restrictions on someone else’s ability to recover possession of the accommodation. If a person does have a home, but cannot gain entry to it, they are also homeless. If a person’s home is moveable, such as a caravan or houseboat, but there is nowhere they can place it and live in it, they are also homeless.
118. Someone is considered to have accommodation only if it is reasonable for them to continue to occupy it (section 57 refers). A person is threatened with homelessness if it is likely that he or she will become homeless within 56 days.

### ***Section 56 – Meaning of accommodation available for occupation***

119. Accommodation can only be regarded as being available for occupation if it is also available to any other person with whom they normally live. This may be a family member or another person who may reasonably be expected to live with them.

### ***Section 57 – Whether it is reasonable to continue to occupy accommodation***

120. It is not reasonable to continue to occupy accommodation if it puts a person or a member of the person’s household at risk of abuse. Subsection (2) explains that “member of a person’s household” means someone who normally resides with that person as a member of the person’s family or another person who might reasonable be expected to live with them. The Housing Act 1996 referred to “violence”; this has now been changed to “abuse” to clarify that it should not be restricted to physical violence (see section 58).

121. In determining whether it is reasonable to continue to occupy accommodation, or would have been reasonable to continue in occupation where a person's occupation has ended, the local housing authority may consider the general circumstances which exist. The circumstances are those in relation to housing in the area of the local housing authority to which a person has applied for help in securing accommodation but the authority must also consider whether or not the accommodation is affordable for that person (subsection (3)). The Welsh Ministers may specify other circumstances in which it is to be regarded as reasonable or not reasonable to continue occupying accommodation and other matters to be taken into account or disregarded.

### ***Section 58 – Meaning of abuse and domestic abuse***

122. By "abuse" is meant physical violence, threatening or intimidating behaviour and any other form of abuse which may give rise, directly or indirectly, to the risk of harm. "Abuse" is "domestic abuse" if the victim is associated with the abuser. The meaning of "associated with" is defined in subsection (2). The application of the term in cases where there is an adopted child or adopted children is covered in subsections (3) to (4).

### ***Section 59 – Suitability of accommodation***

123. In determining suitability, a local housing authority must have regard to Part 1 of this Act and to the other Acts of Parliament listed in subsection (1). Subsection (2) requires the authority, when determining whether accommodation is suitable for a person, to have regard to whether or not the accommodation is affordable for the person. The Welsh Ministers may specify circumstances in which accommodation is not to be regarded as suitable and other matters that must be taken into account or disregarded.

### ***Section 60 - Duty to provide information, advice and assistance in accessing help***

124. A local housing authority must arrange the provision of a free service for people in its area or those who have a local connection with its area. This might include, for example, people who are seeking to move to the area to be nearer work or relatives. The service must provide information and advice about homelessness and should not be restricted to what help is available in the authority's area. It must also provide assistance with accessing any relevant help for those who are, or who may become homeless. It is not restricted to those who are threatened with homelessness within 56 days (see section 55) and must include assistance with accessing homelessness prevention services.
125. Subsection (2) requires that the service must include publication of information and advice about the help that is available for the homeless and how to access it. The authority must ensure the service is designed to meet the needs of groups who are at particular risk of becoming homeless. This includes people leaving prison or youth detention, young people leaving care, people leaving the armed forces, and people leaving hospital after inpatient treatment for a mental disorder or receiving mental health services in the community.
126. In arranging the service, an authority may work with other local housing authorities. The authority may provide the service directly. Alternatively or in addition, it might, for example, arrange for another authority or a voluntary advice agency to provide the service. The service may be combined with advice services provided under the Social Services and Well-being (Wales) Act 2014.
127. Sections 179(2) and (3), 180 and 181 of the Housing Act 1996 provided that local housing authorities might give financial and other assistance to homelessness advice providers. These provisions have not been replicated here, since general local authority powers are now available for this.



### ***Section 61 - Eligibility for help under this Chapter***

128. **Schedule 2** of the Act determines whether or not persons from abroad are eligible for help under the provisions of this Part.

### ***Section 62 - Duty to assess***

129. If a person (“an applicant”) applies to a local housing authority for accommodation or for help in keeping or finding accommodation and it appears to the authority that the person may be homeless or threatened with homelessness, it must carry out an assessment of the applicant’s case. The application does not have to be for assistance under this Chapter.
130. No assessment is required if a local housing authority has previously assessed that person, and the local housing authority to which the application has been made is satisfied that his or her circumstances have not changed since that assessment was carried out and there is no new information that materially affects the assessment.
131. The authority must consider whether the applicant is eligible for help (section 61 refers). If he or she is eligible, the authority must make an assessment of a number of things. These are set out in subsections (5)(a)-(d) and (6)(a)-(b). They include the circumstances that have caused the applicant to be homeless or threatened with homelessness, the person’s housing needs, the support needed by the person or those with whom they might reasonably be expected to live to retain accommodation that becomes available, and whether the authority owes a duty to the person under this Chapter.
132. The authority must keep its assessment under review while it considers it owes a duty, or may owe a duty, to the applicant under this Chapter (subsection (8)). Subsection (9) sets out two cases when an authority must review its assessment.
133. Subsection (10) clarifies that an authority does not have to assess whether a duty is owed under section 75, until such time as it reviews its assessment in the circumstances described by case 2 (see subsection (9)). Case 2 requires a review of an assessment if it appears to the authority that the duty to help secure accommodation under section 73 has or will come to an end and a duty may be owed to the applicant under section 75.
134. For example, there is no requirement to assess if an applicant is intentionally homeless, until case 2 applies. However, an authority has the option to investigate this earlier.
135. As a further example, with regard to priority need, an authority will still have to consider if an applicant appears to be in priority need for the purposes of considering its duties in respect of interim accommodation under section 68. However, it will not be obliged to carry out the investigations to satisfy itself of that until Case 2 applies, although it may do so before then.

### ***Section 63 – Notice of the outcome of assessment***

136. A local housing authority must notify an applicant of the outcome of its assessment. If its decision is against the applicant’s interests, it must give reasons for that decision in the notice it issues. The notice, which must be in writing, must inform the applicant of his or her right to a review of the decision and of the time period within which a request for a review must be made. The time period is set out in section 85(5); and unless the authority allows for a different period, the request will have to be made before the end of 21 days beginning with the day the applicant was notified of the decision. If the notice is not received by the applicant, it is treated as having been given if it is made available at the authority’s office for a reasonable period for collection by the applicant or by someone on the applicant’s behalf.

***Section 64 - How to secure or help to secure the availability of accommodation***

137. A local housing authority may help to secure suitable accommodation for occupation by an applicant in a number of ways: by arranging for a person other than the authority to provide something; by doing so itself, or by providing and arranging for something to be provided to someone other than the applicant. A list of examples is provided in subsection (2). The list includes information and advice, mediation, payment of grant or loan, guarantees on payments, help in managing debt, and accommodation.

***Section 65 - Meaning of help to secure***

138. Where a local housing authority is required to “help to secure” (rather than “to secure”) that suitable accommodation is available under this Chapter, or does not cease to be available, it must take reasonable steps to do so. In taking those steps, it can take into account the need to make the best use of the authority’s resources. It is not required to provide accommodation.

***Section 66 – Duty to help to prevent an applicant from becoming homeless***

139. If a local housing authority is satisfied that an applicant is threatened with homelessness (section 55(4) refers) and eligible for help (Schedule 2), it must help the applicant to ensure that suitable accommodation does not cease to be available for the applicant’s occupation. This duty does not affect the right of the authority to secure vacant possession of any accommodation.

***Section 67 – Circumstances in which the duty in section 66 ends***

140. The circumstances in which the duty in section 66 ends are set out in subsections (2), (3), or (4). These cover the following cases:
- where the authority is satisfied that the applicant has become homeless;
  - where the authority is satisfied both that the applicant is no longer threatened with homelessness and that suitable accommodation is likely to be available to the applicant for at least six months; or
  - where the authority is satisfied that the applicant, after being notified by the authority of the possible consequences of refusal or acceptance of the offer, refuses an offer of accommodation the authority considers suitable for the applicant which is likely to be available for the applicant’s occupation for at least 6 months.
141. **Section 79** sets out other circumstances when the section 66 duty might come to an end. For example, where a mistake has been made about a duty owed to an applicant, where an applicant withdraws his or her application, or in cases where an applicant fails, unreasonably, to co-operate with the authority in connection with helping to secure that the applicant does not become homeless.

***Section 68 - Interim duty to secure accommodation for homeless applicants in priority need***

142. Where it appears to an authority that an applicant may be homeless, eligible for help, and has a priority need for accommodation, the authority must secure that suitable accommodation is available to the applicant while it investigates and decides the applicant’s case.
143. Similarly, an authority is required by this section to secure suitable accommodation in respect of an applicant that a) the authority thinks has a priority need for accommodation (or an applicant whose case has been referred to a Welsh local housing authority by an English local housing authority under section 198(1) of the Housing Act 1996); and b) to whom the duty in section 73 (the duty to help secure accommodation for homeless applicants who are eligible for help) applies.

144. The duty under this section applies until it comes to an end in any of the circumstances described in section 69 or 79.

***Section 69 – Circumstances in which the duty in section 68 ends***

145. The interim duty to secure accommodation comes to an end in the circumstances set out in subsections (2) and (3), but see section 79 for further circumstances in which the duty ends.

***Section 70 - Priority need for accommodation***

146. Some people have a priority need for accommodation for the purposes of Chapter 2 of this Part. These are set out in subsection (1). The meaning of “looked after, accommodated or fostered” is defined in subsection (2). Terms such as “care home”, “clinical commissioning group”, “education functions”, “independent hospital”, “local authority in England”, and “Local Health Board” are defined in subsection (3).

***Section 71 – Meaning of vulnerable in section 70***

147. A person is considered to be vulnerable as a result of a reason mentioned in paragraph (c) or (j) of section 70 if, having taken all the person’s circumstances into account, the authority considers that the person would be less able to fend for himself or herself (as a result of that reason) if the person were to become street homeless than would an ordinary homeless person who becomes street homeless and this would lead to the person suffering more harm than would be suffered by the ordinary homeless person.
148. “Street homeless” means a person has no accommodation that he or she is entitled to occupy by way of an interest in it or court order, or by way of an express or implied licence to occupy it, or by virtue of a right conferred by law. The definition of “homeless” in sections 55 and 56 does not apply to this definition. This means that, for example, the accommodation need not be accommodation which it is reasonable to continue to occupy.

***Section 72 – Power to amend or repeal provisions about priority need for accommodation***

149. This allows the Welsh Ministers by order to amend or remove any conditions that relate to priority need, including the description of persons considered to be in priority need for the purposes of this Chapter of the Act. The Welsh Ministers must consult in accordance with the requirements of subsection (3) before making an order.

***Section 73 - Duty to help to secure accommodation for homeless applicants***

150. A local housing authority must help to secure suitable accommodation for an applicant’s occupation if satisfied that the applicant is homeless and eligible for help. This duty does not apply if the authority refers the applicant to another local housing authority (see section 80).

***Section 74 – Circumstances in which the duty in section 73 ends***

151. The duty under section 73 to help secure suitable accommodation ends in the circumstances described by subsections (2), (3), (4) and (5). The applicant must have been notified in accordance with section 84, which sets out the requirement for the applicant to be given notice that duties have ended.

***Section 75 – Duty to secure accommodation for applicants in priority need when the duty in section 73 ends***

152. Where the local housing authority is satisfied that an eligible applicant continues to be homeless, is not intentionally homeless and has a priority need, it must secure accommodation for that applicant. This section provides for applicants in priority need who could not be helped to secure accommodation under section 73. For qualifying applicants, this duty will follow on from the interim accommodation duty under section 68.
153. Subsection (3) explains the circumstances in which additional duties are owed to certain types of applicant who are intentionally homeless.

***Section 76 – Circumstances in which the duty in section 75 ends***

154. The duty under section 75 ends when, among other things, the applicant has refused accommodation deemed suitable by the local housing authority; or becomes homeless intentionally. It also ends if the applicant accepts a private rented sector offer of a suitable assured shorthold tenancy or an offer of social housing, or voluntarily ceases to occupy the accommodation offered as their main home.

***Section 77 – Meaning of intentionally homeless***

155. Subsections (2), (3) and (4) describe when an applicant is considered intentionally homeless and is therefore not owed the duty to secure accommodation under section 75(2). In some circumstances; for example, if the household contains children or young persons, the applicant may be owed the duty in section 75(3).
156. An intentionally homeless applicant may still be owed the interim housing duty for a short period (section 69 refers).

***Section 78 – Deciding to have regard to intentionality***

157. A local housing authority may have regard to whether a person has become homeless intentionally for the purposes of sections 68 and 75 only if it has decided to do so and follows the procedure for notification of the decision required by this section. The applicants or categories of applicants in respect of whom such a decision may be made will be set out in regulations made by the Welsh Ministers.

***Section 79 – Further circumstances in which the duties to help applicants end***

158. A local authority's duties under sections 66, 68, 73 and 75 come to an end in the circumstances described by subsections (2), (3), (4) or (5). The applicant must have been notified in accordance with section 84.

***Section 80 - Referral of case to another local housing authority***

159. A local housing authority can refer an applicant to another authority in England or Wales but only if they are in priority need and unintentionally homeless. The authority must be satisfied that certain conditions are met and the case must be one where if it was not referred, the authority would be subject to the duty to help secure accommodation in section 73. Subsection (3) sets out the conditions for referral that need to be met while subsection (4) explains when the conditions are not met.
160. The question of whether the conditions for referral are met will normally be agreed between the two authorities. If they cannot agree and where both authorities are in Wales, it will be in accordance with such arrangements as the Welsh Ministers may direct. Where the authority referring the case is in Wales and the other is in England, it will be in accordance with arrangements that the Welsh Ministers and the Secretary of State may jointly direct by order.

161. Consequential amendments have been made to the Housing Act 1996 to provide for referrals from local housing authorities in England to authorities in Wales (see Schedule 3).

### ***Section 81 - Local connection***

162. Subsection (2) sets out when a person has a local connection, while subsection (3) clarifies, for the purposes of subsection (2)(a), when residence in an area is not of a person's own choice. The Welsh Ministers may by order specify where a person is not considered to be employed in an area or the residence is not to be treated as of his or her choice. Subsections (5) and (6) refer to local connection in cases relevant to support for asylum seekers, as set out in the Nationality, Immigration and Asylum Acts 1999 and 2002.

### ***Section 82 - Duties to applicant whose case is considered for referral or referred***

163. Subsection (1) explains when a local authority, seeking to refer an applicant's case to another local housing authority, ceases to owe a duty under section 68 and section 73 to that applicant. Where the duties do not apply, the authority seeking to make the referral must secure suitable accommodation for occupation by the applicant until he or she is notified of the actual decision on whether conditions for referral are met.
164. When the decision has been made about referral, the applicant must be notified in accordance with section 84. If the decision is that the conditions for referral are not met, the authority continues to owe the applicant a duty under section 73 (the duty to help secure accommodation for homeless applicants). Where conditions for a referral are met and the authority to which the case is to be referred (the "notified authority") is in Wales, the notified authority then becomes subject to the duty under section 73 in respect of the applicant. In cases where the notified authority is in England, the case should be dealt with in accordance with section 201A of the Housing Act 1996.
165. Subsections (5) and (6) set out the position if the applicant seeks a review of the notifying authority's decision. Subsection (7) makes provision for notices which are not received to be treated as given if they are made available for collection.

### ***Section 83 – Cases referred from a local housing authority in England***

166. Where a case is referred to a local housing authority in Wales by a local housing authority in England under section 198 (1) of the Housing Act 1996 and the referral is accepted, the applicant is owed the same duties as if the applicant had applied in Wales. These are the interim duty to accommodate an applicant who is in priority need (section 68) and the duty to help to secure accommodation for homeless applicants (section 73). Subsection (3) provides that the definition of "applicant" in Chapter 2 includes such a person; this is to ensure that the other provisions apply to them as they apply to Welsh applicants. This will include, for example and where appropriate, section 75 (duty to secure accommodation etc.) and the provisions about review of decisions under sections 85 to 89.

### ***Section 84 – Notice that duties have ended***

167. Subsection (1) requires a local housing authority to notify an applicant if it concludes that its duty to the applicant under any of sections 66, 68, 73 or 75 has come to an end. This includes where it has referred the case to another authority or decided the conditions for such a referral are met. The notice must be in writing. Subsection (4) explains when a notice is treated as having been given, if not received by an applicant.

### ***Section 85 - Right to request review***

168. This section gives applicants the right to request a review of decisions made under Chapter 2 in relation to his or her case. The decisions which may be reviewed are

described in subsections (1) to (3). A request for review must be made before the end of a 21 day period beginning on the day the applicant is notified of the decision in question. The local housing authority may allow a longer period but agreement to this longer period must be given in writing.

#### ***Section 86 – Procedure on review***

169. The Welsh Ministers may make regulations for the procedure to be followed in connection with a review of a decision of a local housing authority under section 85. Subsection (2) illustrates what regulations may require or provide. Subsections (3) to (7) set out what a local authority must do to notify the applicant.

#### ***Section 87 – Effect of a decision on review or appeal that reasonable steps were not taken***

170. Where, on a review or an appeal of a decision under section 85(2), it is concluded that reasonable steps were not taken under the duty to secure suitable accommodation for an eligible applicant, section 73, which is the duty to help secure accommodation for homeless applicants, applies again. Where this happens, subsection (2) explains how the reference to the 56 day period in section 74(2) is to be interpreted.

#### ***Section 88 – Right of appeal to county court on point of law***

171. This makes provision allowing appeals to be made by an applicant to the county court on points of law arising in connection with a review under section 85.
172. A court may, on appeal, make such order it thinks fit, confirming, quashing or varying a decision made by a local housing authority. Subsection (5) gives the authority a power to provide temporary accommodation pending appeal if the applicant was owed a duty under sections 68, 75 or 82.

#### ***Section 89 - Appeals against refusal to accommodate pending appeal***

173. If an applicant has a right of appeal to the county court under section 88, he or she can also appeal against an authority's decision not to exercise its power to provide temporary accommodation under section 88(5).

#### ***Section 90 – Charges***

174. This makes provision allowing a local housing authority to require a person accommodated under this Chapter to pay reasonable charges for the accommodation.

#### ***Section 91 - Out-of-area placement***

175. So far as is reasonably practicable, a local authority must secure or help to secure accommodation for an applicant in its own area. If it secures accommodation in another authority's area, it must notify that authority in writing. The contents of the notice and when it must be given are set out in subsections (3) and (4) respectively.

#### ***Section 92 – Interim accommodation: arrangements with private landlord***

176. A local authority may, when discharging its functions under sections 68, 82 or 88(5), make arrangements with a private landlord to provide accommodation.

#### ***Section 93 - Protection of property***

177. A local authority has a duty to take reasonable steps to prevent the loss of the applicant's personal property or to prevent or mitigate damage to it when it becomes subject to the duties set out in subsection (2) if no suitable arrangements have been made or are being made to protect the property and it believes there is a danger that the property will be lost or damaged by reason of the applicant's inability to protect it or deal with it. The

authority continues to be subject to this duty even if the duties set out in subsection (2) come to an end.

178. The duty in subsection (1) is subject to any conditions the authority considers appropriate in a given case. Examples of the kind of conditions which an authority may impose are set out in subsection (4). An authority can take action to protect property even if an applicant is not in priority need.

#### ***Section 94 - Protection of property: supplementary provisions***

179. Subsection (1) gives a local authority a power to enter premises where the applicant usually resides or which were his or her last usual place of residence when taking action to protect an applicant's personal property. It also allows an authority to deal with the personal property in any way which is reasonably necessary.
180. Subsection (2) requires that the officer authorised to enter premises produce a written authorisation upon request while subsection (3) sets out what happens if a person obstructs the officer in the exercise of the power. The other subsections provide for delivery of the possessions to a location nominated by the applicant, the ending of the duty, and notices that must be given.

#### ***Section 95 – Co-operation***

181. A local authority in Wales must make arrangements that promote co-operation between its officers that exercise housing functions and those that exercise social services functions. It must do this with a view to achieving a number of objectives in relation to its area: to prevent homelessness, to provide suitable accommodation for people who may become homeless; to provide satisfactory support for people who are or who may become homeless; and to discharge its functions under this Part effectively.
182. An authority may request the co-operation of persons listed in subsection (5). They may be in England or Wales. If a request is made, the person to whom it is made must comply with the request unless doing so would be incompatible with their own duties or if it would otherwise have an adverse effect on the exercise of their functions. A local housing authority may also make requests for information to such a person if that information is required by the authority for the purpose of the exercise of its functions under this Part; the person to whom a request is made must comply with it unless the grounds mentioned above in respect of refusing requests for co-operation exist. If a person or body decides not to comply with any request made under this section, it must give written reasons for the decision to the authority that made the request. The list of persons in subsection (5) can be amended by the Welsh Ministers by order; but Ministers of the Crown may not be added to the list.

#### ***Section 96 - Co-operation in certain cases involving children***

183. Subsection (1) explains that the other provisions of this section apply only if a local housing authority has reason to believe that an applicant with whom a person under 18 years of age resides, or might reasonably be expected to reside, may be: ineligible for help; homeless but not likely to be owed duties under sections 68, 73 or 75; or threatened with homelessness but not likely to be owed a duty under section 66.
184. Subsection (2) requires a local housing authority to make arrangements for ensuring that the applicant be invited to consent to the referral of essential facts of his or her case to the social service department and, where consent is given, arrangements to make that department aware of those facts and of the subsequent decision of the authority in respect of his or her case. As set out in subsection (3), this does not affect any other power of the authority to disclose any information to its social services department without consent.

185. Where it makes a decision as a local housing authority that an applicant is ineligible for help, became intentionally homeless or became threatened with homelessness intentionally, a county or county borough council must make arrangements to ensure its housing department provides the social services department with such advice and assistance that it may reasonably request.

***Section 97 – False statements, withholding information and failure to disclose change of circumstances***

186. This creates an offence if a person knowingly or recklessly makes a false statement, or withholds information with the intent to induce a local housing authority to provide accommodation or assistance.
187. Subsection (2) requires an applicant, before a local housing authority’s decision on the application, to notify a local housing authority of any change of facts material to his or her case. This requirement must be explained to the applicant in clear language. If, after having had it explained, a person does not comply and does not have a reasonable excuse for failing to comply, he or she is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

***Section 98 – Guidance***

188. In exercising any of its functions relating to homelessness, a local authority in Wales must have regard to any guidance issued by the Welsh Ministers. This applies to all relevant departments of the councils. As set out in subsection (4), guidance issued under this part must be published.

***Section 99 – Interpretation of this Chapter and index of defined terms***

189. This section defines terms used within Part 2 or otherwise explains where definitions of terms may be found.

***Section 100 – Consequential amendments***

190. Part 1 of Schedule 3 sets out amendments to other Acts necessary in consequence of the provision made by this Part.

**Part 3 Gypsies and Travellers**

***Section 101 – Assessment of accommodation needs***

191. A local housing authority must carry out periodical assessments of the accommodation needs of Gypsies and Travellers residing in (i.e. who live there) or resorting to (i.e. stay in the area from time to time) its area. An assessment must be carried out within each “review period” (see subsection (3)). Subject to this requirement it will be for each local housing authority to decide when these assessments occur. The first assessment under this section will be carried out within one year of this section coming into force. In carrying out an assessment, a local housing authority must consult such persons it considers appropriate, with reference to guidance produced under this Part.
192. The duty to carry out assessments in this section will, once in force, replace the requirement imposed on Welsh local housing authorities by section 225 of the Housing Act 2004 to assess Gypsies and Travellers’ accommodation needs. Assessments under section 225 currently occur as part of authorities’ wider review of the accommodation needs of their areas under section 8 of the Housing Act 1985. Assessments of Gypsies and Travellers’ needs under the new system could still be carried out at the same time as reviews under section 8 of the 1985 Act; but this will be a matter for each local housing authority to consider in light of the requirement to carry out an assessment of accommodation needs under this section within each “review period”.



### ***Section 102 – Report following assessment***

193. After carrying out an assessment, a local housing authority must prepare a report. The report must detail how the assessment was carried out and summarise the consultation and any responses received. The report must also detail the accommodation needs of Gypsies and Travellers residing or resorting to the area. An authority must submit its report to the Welsh Ministers for approval.
194. The Welsh Ministers may approve an authority's assessment, with or without modifications, or reject it. If the assessment is rejected, the authority must revise and resubmit it or carry out another assessment. An authority's decision on how to proceed in this respect will be informed by the reasons the Welsh Ministers give for refusing to approve the assessment. Possible grounds for refusing to approve an assessment could be inadequate consultation or a failure to provide adequate evidence in support of an assessment of need. If another assessment is undertaken, the authority must, as required by section 101(2), consult such persons it considers appropriate and submit a new report to Ministers for their approval. A local housing authority must publish an assessment after it has been approved by the Welsh Ministers.

### ***Section 103 – Duty to meet assessed needs***

195. The duty in this section applies to a local housing authority only if the authority's assessment of accommodation needs is approved by the Welsh Ministers under section 102, and identifies unmet need in the authority's area in respect of sites on which Gypsies and Travellers may station mobile homes.
196. "Unmet need" in this context could be the absence of sites altogether or inadequate existing provision.
197. If the duty applies, a local housing authority is required to exercise its power to provide sites for mobile homes in section 56 of the Mobile Homes (Wales) Act 2013 so far as necessary to meet the identified need. But a local housing authority is not required to provide, in or in connection with any sites, working space and facilities for activities that Gypsies and Travellers normally carry out.
198. The duty to meet need under this section relates only to the provision of sites on which mobile homes may be stationed. However, any information collected as part of an assessment conducted under section 101 which relates to other accommodation needs of Gypsies and Travellers should inform a local housing authority's periodical reviews of the wider housing needs of its area under section 8 of the Housing Act 1985.

### ***Section 104 – Failure to comply with duty under section 103***

199. If the Welsh Ministers are satisfied that a local housing authority has failed to comply with its duty to meet assessed needs, they may direct the authority to exercise its powers under section 56 of the Mobile Homes (Wales) Act 2013 to meet the needs identified in its approved assessment. The Welsh Ministers must consult with the authority before issuing such a direction. The direction must be given in writing and may be varied or revoked by a subsequent direction. The authority must comply with the direction, which is enforceable by mandatory order on application by, or on behalf of, the Welsh Ministers.

### ***Section 105 – Provision of information upon request***

200. A local housing authority must, in connection with the exercise of its functions, provide the Welsh Ministers with information they require and at any times required. This information may be general or specific to a particular case.
201. Information provided to Ministers by virtue of this section will assist Ministers when they make decisions about how to exercise their other functions under this Part; for example, when considering whether to approve an assessment. Information that could

assist Ministers could be information gathered by local authorities about the frequency and number of unauthorised Gypsy and Traveller encampments in their areas (which could indicate insufficient site provision) or information about the steps a local housing authority is taking to provide Gypsy and Traveller sites where there is an identified need (which could inform a decision whether or not to direct an authority to exercise its powers under section 56 of the Mobile Homes (Wales) Act 2013 in a particular way).

### ***Section 106 – Guidance***

202. In exercising its functions under Part 3 of this Act, a local housing authority must have regard to any guidance issued by the Welsh Ministers. The guidance may be given generally to local housing authorities or to a specific description of authorities. It may be revised by further guidance, or withdrawn by way of further guidance or by notice. The Welsh Ministers must publish any guidance or notice.

### ***Section 107 – Duties in relation to housing strategies***

203. Where a local housing authority is required to have a strategy under section 87 of the Local Government Act 2003 in respect of meeting the accommodation needs of Gypsies and Travellers residing or resorting to its area, it must have regard to guidance issued by the Welsh Ministers when preparing the strategy. It must take the strategy into account in exercising its functions. “Functions” for this purpose includes any functions conferred upon it other than in its capacity as a local housing authority (local housing authorities in Wales are county or county borough councils which exercise a range of functions dealing with a variety of matters).
204. This section restates requirements currently imposed upon Welsh local housing authorities by section 225 of the Housing Act 2004. The relevant requirements in the 2004 Act will be repealed in so far as they relate to Welsh local housing authorities on the coming into force of this section (see the amendments contained in Part 2 of Schedule 3 to this Act).

### ***Section 108 - Interpretation***

205. This defines the terms “accommodation needs”, “Gypsy and Travellers”, and “mobile Homes”, which are used in this Part of the Act.

### ***Section 109 – Power to amend definition of Gypsies and Travellers***

206. The Welsh Ministers may, by order, change the definition of Gypsies and Travellers by adding, removing, or modifying a description of any persons. Amendments to the Mobile Homes (Wales) Act 2013 (which currently contains an identical definition of “Gypsies and Travellers”) may also be made by order in consequence of any amendment to the definition.

## **Part 4 Standards for Social Housing**

### ***Section 111 – Standards***

207. The Welsh Ministers may set standards for housing that is provided by a local housing authority. The local housing authority must meet the standards. Standards may be set in any or all of three areas. The areas, which are set out in subsection (1) are the quality of accommodation, the rent charged and service charges for the accommodation.
208. Standards may include rules with which the authority must comply. Relevant rules may make provision about the minimum or maximum levels of rent or service charges chargeable by local housing authorities; provision may also be made about maximum or minimum levels of increases or decreases in the amount of such rent or service charges.

209. The Welsh Ministers may revise or withdraw standards by issuing further standards. Standards may also be withdrawn by way of notice. The Welsh Ministers must publish all standards and notices given under this section.

### ***Section 112 – Guidance***

210. Guidance may be given by the Welsh Ministers which relates to, and expands upon, a standard set under section 111. In assessing whether a local housing authority has met a standard, the Welsh Ministers may have regard to the guidance. The Welsh Ministers may revise or withdraw guidance by issuing further guidance under this section. Guidance may also be withdrawn by way of notice. The Welsh Ministers must publish all guidance and notices given under this section.

### ***Section 113 – Consultation on standards and guidance***

211. Before making, revising or withdrawing standards set under section 111 or guidance given under section 112, the Welsh Ministers must consult: bodies that represent the interests of local housing authorities; bodies representing the interests of tenants; and any other persons the Welsh Ministers think it appropriate to consult.

### ***Section 114 – Information on compliance with standards***

212. A local housing authority must comply with any request from the Welsh Ministers for information relating to compliance with the standards set under section 111.

### ***Section 115 – Powers of entry***

213. This applies where a local housing authority may be failing to maintain or repair premises in accordance with a quality of accommodation standard set under section 111 or guidance given under section 112. The Welsh Ministers may authorise a person, in writing, to enter such premises in order to carry out a survey and examination. A copy of the survey must be given to the local housing authority which may be required to pay costs related to the survey.
214. The authorised person must give at least 28 days' notice to the local housing authority of his or her intention to enter the relevant premises; and, in turn, the authority must give at least 7 days' notice to an occupier, of the date of the inspection. An occupier of the premises being inspected or an agent of the occupier has the right to see the written authorisation of the person conducting the inspection.

### ***Section 116 – Exercise of intervention powers***

215. The intervention powers of the Welsh Ministers and related matters are set out in sections 117 to 127. In deciding whether to exercise an intervention power, which power and how it should be exercised, the Welsh Ministers must consider two factors. First, if the failure or likely failure to meet a standard is, or is likely to be, a one off or repeated incident. Second, the speed with which any non-compliance needs to be remedied.

### ***Section 117 – Grounds for intervention***

216. The grounds for intervention are that a local housing authority has failed, or is likely to fail, to meet a quality of accommodation standard, which is set under section 111.

### ***Section 118 – Warning notice***

217. Where the Welsh Ministers are satisfied that the grounds for intervention exist in relation to a local housing authority, a warning notice may be given to the authority. The Welsh Ministers must specify in any notice their reasons for believing the grounds exist, the remedial action required within a timescale and the likely action Ministers will take if the authority fails to act.

***Section 119 – Power of Welsh Ministers to intervene***

218. The power to intervene conferred upon the Welsh Ministers by this Part may be exercised after a warning notice has been given and if remedial action has not been undertaken within the specified timescale. The circumstances giving rise to the power to intervene must be monitored. Where the Welsh Ministers are satisfied that the grounds for intervention have been addressed or that exercising powers would be inappropriate for any other reason, they must notify the local housing authority in writing. Until any such notice is given, the power to intervene continues in effect. Where the Welsh Ministers have the power to intervene under this Part they are not limited to taking the action stipulated in a warning notice (given under section 118).

***Section 120 – Power to require local housing authority to obtain advisory services***

219. When the Welsh Ministers choose to exercise their power to intervene, they may do so by directing the local housing authority to enter into a contract or other arrangement with a person or class of person specified in the direction for the purpose of obtaining advice.

***Section 121 – Power to require performance of functions by other persons on behalf of authority***

220. When the Welsh Ministers choose to exercise their power to intervene, they may do so by directing the local housing authority or any of its officers as they consider appropriate, to ensure that the functions to which the grounds for intervention relate are discharged effectively on the local housing authority's behalf by a person specified in the direction.

***Section 122 – Power to require performance of functions by Welsh Ministers or nominee***

221. When the Welsh Ministers choose to exercise their power to intervene, they may direct that the functions of the local housing authority to which the grounds of intervention relate may be exercised by either the Welsh Ministers or a person nominated by them. The local housing authority must comply with the instructions of the person exercising functions in accordance with a direction given under this section.

***Section 123 – Power to direct exercise of other local housing authority functions***

222. If they consider it expedient to do so, the Welsh Ministers may issue a direction under section 121 or 122 which relates to the performance by a local housing authority of functions in addition to the functions to which the grounds for intervention relates. In deciding whether to apply a direction to these additional functions, the Welsh Ministers may have regard to financial and other considerations.

***Section 124 – General power to give directions and take steps***

223. If the Welsh Ministers consider it appropriate in order to deal with the grounds for intervention, they may give directions to the local housing authority or any of its officers or taking other steps they consider appropriate.

***Section 125 – Directions***

224. A local housing authority to which, or any of its officers to whom, a direction or instruction is given must comply with it. Directions or instructions may be given in respect of powers or duties which are normally exercisable subject to the authority's opinion or the opinion of its officers. For example, a power conferred on an authority may be exercisable only if the authority is satisfied that its exercise is likely to achieve a particular outcome. If an authority were directed to exercise the power by Ministers, it would have to exercise of the power irrespective of its opinion about the likelihood

of achieving the outcome in question. Directions given under this Part can be varied or revoked by a later direction and are enforceable by the Welsh Ministers applying for a mandatory order.

### ***Section 126 – Duty to co-operate***

225. A local housing authority must provide as much assistance as it can reasonably give to the Welsh Ministers and any person mentioned in subsection (2) when they exercise their functions under this Part.

### ***Section 127– Powers of entry and inspection***

226. The powers available under this section may be exercised by any of the persons mentioned in subsection (2). But the power to enter premises of a local housing authority does not include a right of entry to a dwelling.
227. These powers give a person mentioned in subsection (2) the right to inspect and take copies of any information recorded in any form kept by the authority and any other documents if the person considers the information relevant to the exercise of his or her functions under this Part. This includes a right of access to any computer and any associated apparatus or material on which information may be stored. The person or someone assisting them can require a person who has used a computer, someone who operates it on his or her behalf, or someone in charge of such equipment or material, to provide reasonable assistance.

### ***Section 128 – Exemption from offences relating to service charges for social housing***

228. Section 25 of the Landlord and Tenant Act 1985 is amended to exempt social landlords from criminal offence provisions where a landlord has failed to comply with certain duties in relation to providing tenants with information relating to service charges. Previously a local authority landlord had been exempted whereas a registered social landlord was subject to being penalised. Both types of social landlord are now required to comply with any standards issued by the Welsh Ministers which relate to service charges, and it is not necessary for there to be additional criminal sanctions.

### ***Section 129 – Application of duties relating to service charges to local authority tenancies***

229. This amends section 26(1) of the Landlord and Tenant Act 1985 so that the provision only applies to a local authority in England. Sections 18 to 25 of that Act relate to limitations on service charges and requests for information about costs, and these provisions apply in relation to all local authority tenancies in Wales.

### ***Section 130 – Consequential amendments***

230. Amendments to the Housing Act 1985 and Housing Act 1996 made in consequence of the provision made by this Part are set out in Part 3 of Schedule 3.

## **Part 5 Housing Finance**

231. **Sections 131 to 136** provide for the eleven local housing authorities that have retained their housing stock and operate a Housing Revenue Account, to buy themselves out of the existing Housing Revenue Account Subsidy system and for the subsidy system to be abolished. Section 131 will be brought into force after the exercise (as necessary) of powers contained in the other provisions of this Part. Sections 132 to 136 automatically come into force after the expiry of the 2 month period from the date on which the Act receives Royal Assent.

***Section 131 – Abolition of Housing Revenue Account subsidy***

232. Part 6 (Housing Finance) of the Local Government and Housing Act 1989 is to be amended so as to abolish the subsidy payable in relation to Housing Revenue Accounts, which are maintained by local housing authorities under that Act. This section will be brought into force by way of a commencement order.

***Section 132 – Settlement payments***

233. The Welsh Ministers have powers to issue a determination, which sets out the calculation and amount of a ‘settlement payment’ for each local housing authority that keeps a Housing Revenue Account. A ‘settlement payment’ is the amount that each local housing authority will be required to either pay to, or receive from, the Welsh Ministers in order to exit the Housing Revenue Account Subsidy system. A settlement payment may also be nil. As the Welsh Ministers currently receive negative Housing Revenue Account Subsidy from each local housing authority then a local housing authority will be required to make a settlement payment to the Welsh Ministers.

***Section 133 – Further payments***

234. The Welsh Ministers may make a further determination to correct a settlement payment made under Section 132. A further payment would only be made where there was an error, or a change in any matter that was taken into consideration, in the calculation or determination relating to a settlement payment made under section 132. Payments may be made by the Welsh Ministers to local housing authorities and vice versa. A determination under this section can be varied or revoked by a subsequent determination.

***Section 134 – Additional provision about payments***

235. Payments made under this Part must be made in such instalments, at such times and in accordance with arrangements determined by the Welsh Ministers. A payment by a local housing authority must be accompanied by whatever information the Welsh Ministers may require.
236. The Welsh Ministers may charge a local housing authority interest, and for any additional costs incurred, in the event of a late payment made under this Part.
237. A settlement payment and a further payment made by, or to, a local housing authority under Sections 132 and 133 is to be treated as “capital expenditure” or “capital receipt” for the purposes of Chapter 1 of Part 1 of the Local Government and Housing Act 2003.
238. Schedule 4 to the Local Government and Housing Act 1989 is amended so as to enable the interest and other additional costs charged under Section 134 (3) and (4) to be treated as a debit transaction in a local housing authority’s Housing Revenue Account.

***Section 135 – Provision of information upon request***

239. A local authority must provide the Welsh Ministers with the information they request for the purpose of the exercise of their functions under this Part. If an authority fails to comply with a request to supply information before the end of a specified period, the Welsh Ministers may exercise functions under this Part on the basis of such assumptions and estimates as they think fit. An information request could be made in relation to calculating the level of a settlement payment.

***Section 136 – Determinations under this Part***

240. A determination made by the Welsh Ministers under this Part may make different provision for different cases or types of cases, including for different areas, local housing authorities, or descriptions of authorities. Before making a determination under this Part, the Welsh Ministers must consult with representatives of local government

and such other persons they consider to be appropriate. If a determination relates to a particular local housing authority, they must also consult that authority. The Welsh Ministers must send, as soon as practicable, a copy of the determination to the authority or authorities to which it relates. Copies of determinations may be sent electronically (in line with existing provision in the Local Government and Housing Act 1989).

## **Part 6 Allowing Fully Mutual Housing Associations to Grant Assured Tenancies**

### ***Section 137 – Amendment of Schedule 1 to the Housing Act 1988***

241. The Housing Act 1988 (“the 1988 Act”) is amended to make provision for fully mutual housing associations (which include co-operative housing associations) to be able to grant assured tenancies.
242. Part 1 of the 1988 Act provides for the system of assured (including assured shorthold) residential tenancies. Schedule 1 to the 1988 Act sets out types of tenancy which cannot be assured tenancies; this includes, at paragraph 12(1)(h) of Schedule 1, tenancies offered by a fully mutual housing association (see below).
243. The effect of section 137 is to provide for an exception to the general restriction in paragraph 12(1)(h) of Schedule 1 of the 1988 Act where the conditions mentioned in section 137(3) are met in respect of a tenancy. Fully mutual housing associations will be able to opt-in to the assured tenancy regime by granting that tenancy as an assured tenancy. This will enable fully mutual housing associations to grant assured and assured shorthold tenancies so that their members may benefit from the statutory protection these tenancies provide, as set out in the 1988 Act.

### ***Section 138 – Amendment of Schedule 2 to the Housing Act 1988***

244. Schedule 2 to the 1988 Act is also amended to add a ground for possession of an assured tenancy granted by a fully mutual housing association. This is as a consequence of associations being able to opt-in to the assured tenancy regime.
245. If a tenancy is assured, the landlord may normally seek a court order to end a tenancy and recover possession of a home only on one or more of the grounds set out in Schedule 2. Part 1 of Schedule 2 sets out the grounds when a court has no discretion and must order possession if the ground is proved. This Section inserts an additional ground into Part 1 of Schedule 2 which provides for a possession order to be made on the ground that the fully mutual housing association has defaulted on a mortgage. This ground may not be used unless the association gives its tenant member a notice that this ground might apply before the tenancy is granted.
246. A “fully mutual housing association” is defined in section 45 of the 1988 Act by reference to the meaning given to the expression by Part 1 of the Housing Associations Act 1985. Section 1 of the 1985 Act contains the definition. In summary, it defines a housing association as a not-for-profit body whose purposes include providing housing. A “fully mutual” housing association means that membership is restricted to those who are tenants or prospective tenants. In addition, tenancies may only be granted to members. A “co-operative housing association” means a fully mutual housing association which is registered under the Industrial and Provident Societies Act 1965.

## **Part 7 Council Tax for Certain Types of Dwellings**

### ***Section 139 - Amount of tax payable for certain types of dwelling***

247. This amends the Local Government Finance Act 1992 as set out in Schedule 3, Part 4. It inserts new sections 12A and 12B into that Act.
248. New section 12A provides billing authorities in Wales (which are the county and county borough councils) with the discretion to increase the council tax payable on long-term

empty dwellings in their areas. The maximum increase is an additional 100 per cent of the standard council tax charge i.e. a 100 per cent council tax premium. There is scope to adopt a stepped approach to the premium with incremental increases applying over time.

249. A “long-term empty dwelling” is defined as one that has been both unoccupied and substantially unfurnished for a continuous period of at least one year. The Welsh Ministers may, by regulations, substitute a different time period of not less than one year, for that period. In determining whether a dwelling is a long-term empty dwelling, no account is to be taken of any period which pre-dates the coming into force of the section. In addition, no account is to be taken of any one or more periods of not more than 6 weeks during which the property is either occupied or substantially furnished (or both occupied and substantially furnished). The Welsh Ministers may, by regulations, substitute a different time period of not less than 6 weeks, for the 6 week period.
250. New section 12B provides billing authorities in Wales with the discretion to increase the council tax payable on dwellings occupied periodically in their areas (these dwellings are often termed “second homes”). The maximum increase is an additional 100 per cent of the standard council tax charge i.e. a 100 per cent council tax premium. A “second home” is defined as a home that is not a person’s sole or main residence and which is substantially furnished. On the first occasion that a billing authority decides to charge a second homes council tax premium, it must make its determination at least one year before the beginning of the financial year in which the premium will be charged.
251. A determination by a billing authority under new section 12A or new section 12B to charge a council tax premium will also disapply the discount available under section 11(2)(a) of the Local Government Finance Act 1992 (a discount on the amount of council tax payable in respect of dwellings in which there are no residents).
252. The Welsh Ministers may make regulations prescribing categories of dwelling in relation to which the council tax premium on empty properties or second homes cannot be charged. They may also, by regulations, vary the maximum council tax premium which can be charged on empty homes or second homes.
253. Billing authorities must have regard to guidance issued by the Welsh Ministers when applying the council tax premium on empty properties or second homes.
254. The arrangements for making, varying or revoking a determination to charge a premium in respect of long-term empty dwellings are set out in subsections (7) to (9) of new section 12A; and the arrangements for making, varying or revoking a determination to charge a second homes premium are contained in subsections (8) to (10) of new section 12B. In either case, a determination must be made before the start of the financial year in which it will apply. A determination can be varied or revoked, but only before the start of the financial year in which it will apply. Where a determination is made, the billing authority must publish a notice in at least one newspaper circulating in its area. The notice must be published within 21 days of the date of the determination.

## **Part 8 Amendment of the Leasehold Reform, Housing and Urban Development Act 1993**

255. The Leasehold Reform, Housing and Urban Development Act 1993 allows tenants of flats in England and Wales which are subject to certain long leases to exercise: a) a right of collective enfranchisement under Chapter 1 of that Act (a right to have the freehold of the building in which flats are contained to be purchased on behalf of the tenants); b) a right under Chapter 2 of that Act to acquire a new lease of their flats.
256. A claim to exercise either right is made by giving notice; section 13 of the 1993 Act deals with notices to claim to exercise the right of collective enfranchisement under Chapter 1, and section 42 of that Act deals with claims to exercise the right to acquire a new lease under Chapter 2.



257. Currently, section 99(5) of the 1993 Act requires notices given under sections 13 and 42 to be signed by the tenant or tenants giving notice if that tenant or those tenants are in Wales. The amendment to section 99(5) made by this section will allow tenants in Wales to choose whether to sign notices themselves or have notices signed on their behalf. This greater flexibility was introduced in relation to tenants in England earlier in 2014 by the Leasehold Reform (Amendment) Act 2014. The 2014 Act no longer has a purpose given the provision made by this section; accordingly, subsection (2) provides for its repeal.

## **Part 9 Miscellaneous and General**

### ***Sections 141 to 146.***

258. **Section 141** makes minor amendments to the Mobile Homes (Wales) Act 2013 (see Part 5 of Schedule 3). Section 142 makes provision so that a power to make an order or regulations under the Act must be exercised by statutory instrument and defines “local housing authority” to mean the council of a county or county borough in Wales. Section 144 provides the Welsh Ministers with a power, by regulations, to make any supplementary, incidental, consequential and transitional or saving provision they consider necessary or expedient for the purpose of, or in consequence of, giving full effect to the Act. Section 145 sets out the provisions that will come into effect on the date of Royal Assent, those that will come into force two months after Royal Assent, and those that will come into force by commencement orders made by the Welsh Ministers.

### ***Schedule 1 – Register of Private Rented Housing***

#### **Part 1 - Content of Register**

259. The information that a licensing authority is required to record in its register is set out in sub-paragraphs 1(a) to j) for landlords and sub-paragraphs 2(a)-(g) for agents.

#### **Part 2 – Access to Register**

260. A licensing authority must provide certain information to a person who makes a request for the information and provides the authority with the address of a property which is on its register. The information, mentioned in sub-paragraphs 3(2)(a)-(c), is: the name of the landlord of the property; the name of any person appointed to carry out lettings work and property management work on behalf of the landlord; and whether the landlord or person appointed is licensed to carry out that work. The person must also be notified of any rent stopping order that is in effect in relation to the property.
261. A licensing authority must provide a person with the information described by sub-paragraphs 4(2)(a) and (b) if that person makes a request for the information and provides the authority with the name of the landlord of a property or the name of a person appointed to carry out lettings and property management work in respect of the property. The request must be in respect of a property in the area for which the authority is the licensing authority. The information is whether the landlord is registered and whether the landlord or person appointed to carry out lettings and property management work on the property is licensed.
262. A licensing authority must provide a person with the information described in sub-paragraphs 5(2)(a) to (c) if that person makes a request for the information and provides the authority with the registration or licence number of a landlord of a rental property or provides the licence number of a person appointed to carry out lettings and property management work on the property on behalf of the landlord. The request must be in respect of a property in the area for which the authority is the licensing authority. The information is the name of the landlord and any person appointed to carry out lettings and property management work on the property on behalf of the landlord, whether the

landlord is registered, and whether the landlord or any person appointed to carry out lettings work and property management work on the landlord's behalf is licensed.

### ***Schedule 2 – Eligibility for help under Chapter 2 of Part 2***

263. A person from abroad who is ineligible for housing assistance is not eligible for help under sections 66, 68, 73 or 75 of Part 2 of the Act. There is a power for the Welsh Ministers or the Secretary of State to prescribe, by regulations, other descriptions of persons who are to be treated as a person from abroad who is ineligible for housing assistance. Paragraph 1(2) provides that persons subject to immigration control (within the meaning of the Asylum and Immigration Act 1996) are also not eligible for assistance under Part 2 (unless those persons fall within a class of person prescribed in regulations made by the Welsh Ministers or the Secretary of State).

### ***Schedule 3 – Minor and consequential amendments***

#### **Part 1 – Homelessness**

264. This makes minor and consequential amendments to various Acts as a result of the provisions in Part 2. Paragraphs 13 and 14 deal with cases referred to a local housing authority in England from a local housing authority in Wales.

#### **Part 2 – Gypsies and Travellers**

265. This amends the Local Government Act 2003 and the Housing Act 2004 and revokes the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (Wales) Regulations 2007. The Mobile Homes (Wales) Act 2013 is amended to provide for a consistent definition of “Gypsies and Travellers” between the 2013 Act and this Act.

#### **Part 3 – Standards for social housing**

266. This amends section 24 of the Housing Act 1985 to remove subsections (3) and (4), which require a local housing authority, when setting reasonable rents, to have regard to the principle that the rents for the tenancy or occupancy of its houses should bear broadly the same proportion to rents in the private sector. A local housing authority must, when setting reasonable rents under section 24 of the Housing Act 1985, comply with standards relating to rent or service charges set under section 111 and relevant guidance issued under section 112 of this Act.
267. As a result of an amendment to the Housing Act 1996, registered social landlords may be required to comply with rules specified in standards set under section 33A of the 1996 Act. The Welsh Ministers may revise and withdraw guidance on the standards. They must publish any guidance issued. They must also consult when setting, revising or withdrawing standards and when setting, revising or withdrawing any guidance.