

*These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004*

# **HOUSING ACT 2004**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Housing Act 2004 which received Royal Assent on 18th November 2004. They have been prepared by the Office of the Deputy Prime Minister in order to assist the reader in the understanding of it. They do not form part of the Act and have not been endorsed by Parliament.
2. The explanatory notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **SUMMARY**

3. This Act replaces the existing housing fitness standard with the Housing Health and Safety Rating System. It introduces two new licensing regimes for private rented properties. There is a new requirement for sellers or estate agents to produce a home information pack before marketing any residential property for sale along with provision for an ombudsman scheme for estate agents. The Act makes other provision about housing, including changing the right to buy scheme, strengthening the rights of park home owners, extending the power of the Housing Corporation to give social housing grant to non-registered social landlords and enabling local authorities to secure occupation of long-term empty private sector homes. It also establishes tenancy deposit schemes to safeguard deposits paid in connection with assured shorthold tenancies. Finally, it requires local housing authorities to assess the accommodation needs of Gypsies and travellers in their area, and produce a strategy on how these needs can be met.

### **BACKGROUND**

4. Details of the legislative framework for each Part of the Act is contained in the overview.
5. The Act takes forward provisions contained in the Housing Green Paper (2000) and subsequent policy statement, and responses to these documents.
6. The main provisions of the Act have been subject to public consultation and pre-legislative scrutiny following the publication of the draft Housing Bill in March 2003 (command paper 5793 available from Her Majesty's Stationery Office).
7. In relation to Part 5 of the Act, the contents of home information packs were the subject of the consultation paper, "Reforming the home buying and selling process in England and Wales; contents of the home information pack", published in March 2003 and available from the Office of the Deputy Prime Minister. Similar provisions to those in Part 5 were contained in Part 1 of the Homes Bill 2000 which fell when Parliament was dissolved for the general election in 2001.

## **OVERVIEW**

8. These notes are divided into seven main parts, reflecting the main parts of the Act.

[Part 1](#) - Housing conditions

[Part 2](#) - Licensing of houses in multiple occupation

[Part 3](#) - Selective licensing of other residential accommodation

[Part 4](#) - Additional control provisions in relation to residential accommodation

[Part 5](#) - Home information packs

[Part 6](#) - Other provisions about housing

[Part 7](#) - Supplementary and final provisions

### ***Expressions and abbreviations used throughout these notes***

9. *Local housing authority* is defined in section 261. Throughout these notes local housing authority has been abbreviated to LHA.
10. *Home condition reports* are defined in section 164 as documents which are prescribed by regulations under section 163 and dealing with the physical condition and energy efficiency of a residential property.
11. *Home information packs* are described in Part 5 of the Act. In section 148 they are given a general description as a collection of documents relating to the property being sold, or the terms on which it is being offered for sale. The actual content of a home information pack for a particular property will be prescribed in regulations made under section 163 and for most purposes, the Act defines the pack as something that fulfils the requirements of these regulations, or purports to.
12. *Home inspector* is not a term which is used in the Act, but it is used in these notes to describe a member of an approved certification scheme who may make home condition reports by virtue of section 164.
13. *House in Multiple Occupation* is defined in sections 254 to 260. Throughout these notes House in Multiple Occupation has been abbreviated to HMO.
14. *Interim Management Order* and *Final Management Order* are covered by Chapter 1 of Part 4 of the Act. For the purposes of these notes, they are referred to as IMOs and FMOs. Interim empty dwelling management orders and final empty dwelling management orders are covered by Chapter 2 of Part 4 of the Act. For the purposes of these notes, they are referred to as interim EDMOs and final EDMOs. Throughout the notes the expression management orders refers to all the above orders made under Part 4.
15. *Tenancy deposit schemes* are covered in Chapter 4 of Part 6 of the Act. Throughout these notes, tenancy deposit schemes has been abbreviated to TDS.
16. *Residential property tribunal* is defined in section 229 of the Act. Throughout these notes residential property tribunal has been abbreviated to RPT.
17. The Act confers powers to make secondary legislation and give approvals on *the appropriate national authority*. This is defined in section 261 to mean the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales.
18. Where these notes refer to "he" or "him", this can also be read as "she" or "her" unless stated otherwise.
19. References to the singular also include the plural unless stated otherwise.

### **Part 1: Housing conditions**

20. [Part 1](#) of the Act replaces the existing housing fitness standard contained in the Housing Act 1985 with the Housing Health and Safety Rating System. It also adapts and extends the powers of enforcement currently available to LHAs to tackle poor housing conditions.
21. These changes are intended to help LHAs to prioritise their intervention based on the severity of the health and safety hazards in the home.
22. The new framework is largely through free-standing provisions, although some of the provisions of the 1985 Act will remain in that Act with appropriate amendments.

### **Part 2: Licensing of houses in multiple occupation (HMOs)**

23. [Part 2](#) of the Act introduces a mandatory scheme to licence HMOs of a description contained in regulations. It is intended initially to apply this only to the larger higher risk HMOs of 3 or more storeys occupied by 5 or more people. LHAs are given power to extend licensing in their districts to other categories of HMO, subject to carrying out consultation and with the approval of the appropriate national authority.
24. The term HMO applies to a wide range of housing types, mainly in the private rented sector, that young lower-income single people, including some particularly vulnerable and disadvantaged groups, typically occupy. Physical and management standards in HMOs are often low. Current statutory controls on HMOs are confusing and have grown up over several decades.

### **Part 3: Selective licensing of other residential accommodation**

25. [Part 3](#) of the Act introduces a power for LHAs to introduce selective licensing to deal with particular problems in an area. Selective licensing will be primarily focused on:
  - areas of low housing demand, or that are likely to fall into that category; and
  - other areas suffering from anti-social behaviour
26. Low house prices in areas of low demand have resulted in an influx of unprofessional landlords purchasing properties to rent. These people frequently show no interest in managing their properties properly, often letting to anti-social tenants who cause a range of problems. This, in turn, can create misery for the local community and cause further destabilisation of these areas.
27. Although these problems tend to be concentrated in areas of low housing demand, other districts also suffer from the activities of poor landlords and anti-social tenants. Accordingly this power will be available to LHAs to tackle problems of anti-social behaviour in areas that do not experience low housing demand.
28. The Act provides a discretionary power, subject to carrying out consultation and to the approval of the appropriate national authority, for LHAs to license all private landlords in a designated area with the intention of ensuring that a minimum standard of management is met. In order for a scheme to be approved, such a selective licensing scheme must be shown to be co-ordinated with an authority's wider strategies to deal with anti-social behaviour and regeneration.
29. The Act also provides the appropriate national authority with powers to prescribe by regulation other circumstances in which discretionary schemes may be made.

### **Part 4: Additional control provisions in relation to residential accommodation**

30. [Chapter 1](#) of Part 4 contains provisions for enforcement action in respect of properties licensable under Parts 2 and 3 and for individual properties where a residential property tribunal is satisfied that a property, which is not required to be licensed, requires the

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intervention of the LHA. Chapter 2 enables LHAs to take over the management of long-term empty properties and to bring them back into occupation. Chapter 3 contains provisions on overcrowding in non-licensable HMOs.

## **Part 5 - Home information packs**

31. **Part 5** of the Act imposes new legal duties on people marketing residential properties in England and Wales. Before marketing a property, the seller or, more usually, their estate agent must have a home information pack of standard documents available for prospective buyers.
32. In England and Wales, an offer to buy a property and acceptance of that offer are usually made "subject to contract". Normally, the acceptance of an offer does not constitute a legally binding agreement, until an exchange of written contracts proves that an agreement has been reached. Between agreeing terms and exchanging contracts, both the buyer and seller commonly do a number of things. For the seller, this could include:
  - obtaining the title deeds to the property;
  - establishing title and producing Land Registry office copy entries where the property is registered;
  - replying to pre-contract enquiries;
  - preparing a draft contract.
33. The buyer will usually carry out local searches and make other enquiries of the local authority and other organisations. The buyer may also arrange a survey.
34. Therefore these documents and information are, under current practices, normally available only after terms have been negotiated and agreed "subject to contract".
35. **Part 5** of the Act aims to bring forward the availability of some of this information to the start of the process. It requires the person responsible for marketing a residential property to have a home information pack before marketing begins. The pack is expected to contain documents and information similar to those mentioned above, including a report on the condition of the property.

## **Part 6: Other provisions about housing**

36. The Act gives LHAs further tools to tackle anti-social behaviour in social housing. These measures complement those introduced by the Anti-social Behaviour Act 2003.
37. **Part 6** introduces changes to the Right to Buy (RTB) scheme. This is a statutory scheme enabling secure tenants to buy the homes that they live in, at a discount, from their landlord. Landlords are most often LHAs, but registered social landlords (and certain other social landlords) may also have tenants who have the RTB, or preserved RTB, both for historical reasons and as a result of large-scale voluntary transfers of properties from LHA ownership. Provisions in the Act will amend the RTB scheme with a view to tackling exploitation of the rules by property developers and tenants.
38. **Part 6** also contains provisions to better protect park home owners. These changes will help deter unscrupulous site owners from exploiting and harassing occupiers, and give a power to the Secretary of State to make further changes to the implied terms of occupation agreements.
39. Changes have been made to bring the treatment of local authority owned gypsy and traveller sites into line with that for privately owned caravan sites with regard to protection from unlawful eviction and harassment.

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40. The powers of the Housing Corporation and the National Assembly for Wales under the Housing Act 1996 are extended to allow them to give grants to persons other than registered social landlords for specified purposes.
41. **Part 6** extends eligibility for disabled facilities grant to include all those occupying caravans as their only or main residence.
42. A duty has been introduced upon LHAs to carry out assessments of the accommodation needs of Gypsies and Travellers residing in or resorting to their district, when they undertake a review of housing needs in the district.
43. **Part 6** sets up the office of Social Housing Ombudsman for Wales to investigate complaints against social landlords in Wales.
44. **Part 6** also establishes tenancy deposit schemes. These will protect tenants' deposits in the private rented sector and help to ensure that such deposits are not misappropriated by landlords or their agents.

### **Part 7: Supplementary and final provisions**

45. **Part 7** requires LHAs to keep registers of licences and management orders. It also provides for the approval of statutory codes of management practice, and for the making of management regulations, relating to HMOs.
46. For the purposes of Parts 1 to 4 of the Act it provides for documents and other information to be produced. It provides powers of entry to property and powers to prescribe the form of any notice, statement or other document required or authorised under the Act.
47. Other supplementary provisions provide for the way in which orders and regulations are to be made.
48. Provisions in Part 7, in conjunction with Schedule 14, provide a definition of HMO.

### **TERRITORIAL APPLICATION**

49. All provisions of the Act apply to England and Wales with two exceptions, section 228 and Schedule 12, which make amendments to the Housing Act 1996 so as to provide for a Social Housing Ombudsman for Wales. These amended provisions will only apply in relation to Wales.
50. Under Part 5 of the Act, the power to make orders and regulations for both England and Wales is conferred upon the Secretary of State. However, the National Assembly for Wales must be consulted before making any regulations which relate to residential properties in Wales (section 250(3)).

### **COMMENTARY ON SECTIONS**

#### **Part 1 - Housing Conditions**

##### ***Chapter 1 - Enforcement of Housing Standards: General***

##### ***Section 1: New system for assessing housing conditions and enforcing housing standards***

51. **Section 1** introduces a new system for assessing housing conditions that is to be used in the enforcement of housing standards. It replaces the existing system which is based on a test of fitness for human habitation under section 604 of the Housing Act 1985 (the 1985 Act).
52. Subsection (2) provides for the new system to operate by reference to the existence of category 1 or category 2 hazards (defined in section 2) in residential premises.

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53. Subsection (3) sets out the enforcement options which will be available to LHAs under the Act. These options are dealt with in more detail in Chapters 2 and 3 of Part 1, and in provisions of the 1985 Act which are substituted by Chapter 4 of Part 1.
54. Subsections (4) to (8) define some of the terms used in Part 1.
55. The purpose of the Housing Health and Safety Rating System (HHSRS) introduced by section 1 is to apply objective information to the taking of enforcement decisions by LHAs.

### ***Section 2: Meaning of "category 1 hazard" and "category 2 hazard"***

56. Subsection (1) provides a definition of "hazard" for the purposes of Part 1. It also provides for the prescription by regulations of two categories of hazard -
  - category 1 and category 2 - according to their seriousness as calculated under the method prescribed in regulations under subsections (2) and (3). It is intended that regulations under subsection (1) will describe 29 different types of hazards which can be assessed by LHAs.
57. Under subsections (2) and (3) a method for calculating the seriousness of each hazard which exists on residential premises may be prescribed by secondary legislation. The calculation will be based on the risk to the most vulnerable potential occupant of that dwelling, whether or not anyone, or a most vulnerable occupant, is resident in the premises at the time of the inspection, and the calculation will result in the hazard being given a score. That score will determine the band into which the hazard will fall. The regulations will prescribe that hazards falling within bands A to C are category 1 hazards, while those within bands D to J are category 2 hazards. Banding is intended to avoid the impression of spurious accuracy. The system relates poor housing conditions to the kinds of harm attributable to such conditions - it does not try to assess a specific health outcome in relation to the current occupant.
58. Under section 5, LHAs will have a general duty to take action to deal with category 1 hazards, and under section 7 they will have discretionary powers to take action to deal with category 2 hazards.
59. The enforcement action an LHA takes under the provisions of Part 1 will be based on (a) the band into which the hazard falls as a result of the HHSRS calculation; (b) whether the LHA has a duty or a power to act; and (c) the LHA's judgement as to the best means of dealing with that hazard.

### ***Section 3: Local housing authorities to review housing conditions in their districts***

60. Subsection (1) requires LHAs to keep under review the housing conditions in their district with a view to identifying what, if any, course of action should be taken by the LHA. This provision replaces, with modifications, section 605 of the 1985 Act.
61. Subsection (2) sets out the courses of action the LHA could take. These include the use of the enforcement powers under Part 1, the licensing of property and provision of management orders provided for under Parts 2 to 4, and the use of the powers enabling LHAs to declare a renewal area and provide financial assistance towards the cost of improvement and repair of residential property.

### ***Section 4: Inspections by local housing authorities to see whether category 1 or 2 hazards exist***

62. This provision replaces, with modifications, section 606 of the 1985 Act. Under subsection (1) if the LHA considers that it would be appropriate to inspect residential premises to establish whether or not there is a category 1 or category 2 hazard, the authority must arrange for an inspection to be carried out.

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63. Subsection (2) retains the complaint procedure in section 606 of the 1985 Act so that where an official complaint is made to a proper officer, that a category 1 or 2 hazard may exist on residential premises, or that an area should be dealt with as a clearance area, the proper officer must inspect the premises or area. An official complaint is a complaint made in writing by a local JP or a parish or community council.
64. Inspections of premises under section 4 must be carried out in accordance with regulations made under sub-section (4). Where an inspection is made following an official complaint and the proper officer concludes that a category 1 or category 2 hazard exists, or that an area should be declared a clearance area, he is required to make a report in writing to the LHA. The LHA must consider any such report as soon as possible.

### ***Section 5: Category 1 hazards: general duty to take enforcement action***

65. **Section 5** imposes a general duty on LHAs to take appropriate enforcement action where there is a category 1 hazard. Subsection (1) sets out the courses of action that may be available to the local housing authority:
  - to serve an improvement notice under section 11;
  - to make a prohibition order under section 20;
  - to serve a hazard awareness notice under section 28;
  - to take emergency remedial action under section 40;
  - to make an emergency prohibition order under section 43;
  - to make a demolition order under section 265(1) or (2) of the 1985 Act;
  - to declare a clearance area under section 289 (2) of the 1985 Act.
66. Under subsections (3) and (4), the LHA is under a duty to take the best course of action available to it in relation to the hazard. LHAs cannot simultaneously take more than one of the actions set out in subsection (2), for example make a prohibition order and serve an improvement notice dealing with the same hazard. This is to ensure that LHAs have properly considered the appropriate action and owners are not asked to comply unnecessarily with more than one requirement.
67. Subsection (5) enables an LHA to take the same course or a different course of action if the action already taken has not proved satisfactory. It also provides that, where an LHA has given notice, under section 289 of the 1985 Act, that it intends to declare a clearance area containing a property to which the duty in section 5 applies, but has decided to exclude that property from the area, it remains under a duty to take one of the remaining courses of action in section 5 in relation to the hazard.

### ***Section 6: Category 1 hazards: how duty under section 5 operates in certain cases***

68. **Section 6** enables an LHA, instead of making a prohibition order or a demolition order under section 5(2) in respect of a property, to make a determination under section 300(1) or (2) of the 1985 Act, enabling it to purchase the property if the LHA considers the property is capable of providing adequate accommodation for temporary housing use.
69. Subsections (3) and (4) have the effect of enabling LHAs to take emergency remedial action and another course of action as a single step rather than wait until the emergency action has proved effective. This is because the LHA will be aware that certain emergency remedial action will not have the effect of removing the category 1 hazard entirely.

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70. Sub-section (5) provides that the option of declaring a clearance area under section 5(2) is not available to an LHA in respect of a property if that property has already been proposed for inclusion within a clearance area but excluded from it.

***Section 7: Category 2 hazards: power to take enforcement action***

71. **Section 7** lists the enforcement powers available to LHAs where a category 2 hazard exists on residential premises. Subsection (2) sets out the courses of action that available to the LHA:
- to serve an improvement notice under section 12;
  - to make a prohibition order under section 21;
  - to serve a hazard awareness notice under section 29;
  - to make a demolition order under s265 (3) or (4) of the 1985 Act, but only in circumstances prescribed by the Secretary of State or, in relation to Wales, by the National Assembly for Wales;
  - to include the premises in the declaration of a clearance area under s289 (2ZB) of the 1985 Act, but only in circumstances so prescribed.
72. Subsection (3) makes clear that an LHA can take the same course or a different course of action if the action already taken has not proved satisfactory.

***Section 8: Reasons for decision to take enforcement action***

73. **Section 8** imposes a duty on LHAs to prepare a statement of reasons for their decision to take enforcement action. The statement should include an explanation as to why a particular course of action was taken rather than any of the other courses that were available.
74. A copy of the statement of reasons should be served on people who were served with the Part 1 notice or a copy of a Part 1 notice or order.
75. Under subsection (6) if the relevant enforcement action consists of declaring an area to be a clearance area, the statement of reasons must be published as soon as possible after the resolution declaring that the area be defined as a clearance area under section 289 of the Housing Act 1985 is passed, and in such manner as the authority consider appropriate.
76. **Section 8** is intended to ensure that the enforcement provisions of Part 1 do not give rise to disproportionate interference with Article 8 of the European Convention on Human Rights - respect for private and family life, and also with Article 6 and Article 1 of the First Protocol - the right to a fair hearing, and protection of property.

***Section 9: Guidance about inspections and enforcement action***

77. **Section 9** enables the appropriate national authority to give statutory guidance to LHAs on a number of matters. Guidance may be issued on the inspection of premises and the assessment of hazards on those premises (the technical guidance) and on the use of the enforcement functions (the enforcement guidance) set out in sections 5 and 7. There is a duty on LHAs to have regard to such guidance. It is intended that the technical guidance will include the profiles of the potential health and safety hazards, their causes and preventive measures. The enforcement guidance will apply both where an LHA is exercising a duty in respect of a category 1 hazard and where it is exercising a discretionary power to take action in respect of a category 2 hazard. Any guidance under section 9 must be laid in draft before each House before it is given.



***Section 10: Consultation with fire authorities in certain cases***

78. **Section 10** requires an LHA to consult the local fire and rescue authority before taking enforcement action in respect of a prescribed fire hazard in an HMO or in the common parts of a building containing flats. The form of any such consultation is not set out in the Act but advice on such consultation will be contained in the enforcement guidance to be given under section 9. In the case of action under the emergency measures in Chapter 3 of Part 1, the LHA must consult the local fire and rescue authority only so far as is practicable. A fire hazard prescribed for the purposes of consultation will be one which is prescribed in regulations under section 2.

***Chapter 2 – Improvement Notices, Prohibition Orders and Hazard Awareness Notices***

***Section 11: Improvement notices relating to category 1 hazards: duty of authority to serve notice***

79. Subsection (1) provides that if a category 1 hazard exists on any residential premises, serving an improvement notice is one of the courses of action available to an LHA in discharging its general duty under section 5 (to take the most appropriate enforcement action to deal with such a hazard). This is only the case where the premises in respect of which the notice is to be served are not the subject of a management order made under Part 4 of the Act. An improvement notice is a notice requiring the person on whom it is served to take the remedial action specified in the notice and remedial action means the action which will remove or reduce the hazard.
80. Subsection (3) provides that remedial action may be taken in relation to any dwelling or HMO, an individual flat or multiple flats within a building, any common parts of a building containing one or more flats and any external common parts. Subsection (4) restricts remedial action in respect of the non-residential part of any premises (for example, a shop under a flat) to cases where the deficiency giving rise to the hazard is located there, and the remedial action is necessary for the health or safety of actual or potential residential occupiers.
81. Subsection (5) provides that the remedial action must, as a minimum, remove the category 1 hazard, but may go further.
82. An improvement notice may be suspended in accordance with section 14.

***Section 12: Improvement notices relating to category 2 hazards: power of authority to serve notice.***

83. Subsection (1) enables an LHA to serve an improvement notice if it is satisfied that a category 2 hazard exists on residential premises and the premises in respect of which the notice is to be served are not the subject of a management order under Part 4.
84. Subsection (2) explains that an improvement notice is a notice requiring the person on whom the notice is served to take the remedial action specified in the notice.
85. Subsection (3) applies subsections (3) and (4) of section 11, which set out that remedial action may be taken in relation to any dwelling or HMO, an individual flat or multiple flats within a building, any common parts of a building containing one or more flats and any external common parts. Subsection (4) restricts remedial action in respect of the non-residential part of any premises (for example, a shop under a flat) to cases where the deficiency giving rise to the hazard is located there, and the remedial action is necessary for the health or safety of actual or potential residential occupiers.
86. Subsection (5) allows for only one improvement notice to be served where both a category 1 and a category 2 hazard exists.
87. An improvement notice may be suspended in accordance with section 14.

***Section 13: Contents of improvement notices***

88. **Section 13** sets out the mandatory contents of improvement notices, which include the details of the hazard and the category into which it falls, the remedial action to be taken and the period of time allowed for compliance. As more than one hazard may be dealt with in the same notice, the notice will be able to prescribe different deadlines for completion of the various actions required. The notice must also contain information about the right to appeal the notice and the time limits for such appeal. Under subsection (3), an improvement notice cannot require remedial works to start earlier than 28 days after the date of service of the notice.

***Section 14: Suspension of improvement notices***

89. **Section 14** provides for the suspension of an improvement notice at the LHA's discretion. A notice may for example be suspended until such time as the current occupant ceases to occupy the premises. The notice may specify an event, such as non-compliance with an undertaking given to the LHA by the person on whom the notice is served, that will trigger the end of the suspension. Guidance on the use of suspended notices will be given under section 9. The purpose of suspensions is to enable the LHA to prioritise action. Where an improvement notice has been suspended, any periods specified in the notice will run from the day when the suspension ends and the 28 day period is replaced with a period of 21 days from the day the suspension ends.

***Section 15: Operation of improvement notices***

90. **Section 15** provides for the operation of improvement notices. Notices, as a general rule, will come into operation 21 days after they are served. Notices whose operation is suspended will become operative at the end of the suspension period.
91. Subsection (5) provides for the notices against which appeals are brought under Part 3 of Schedule 1 to become operative in accordance with paragraph 19 of that Schedule. If an improvement notice is appealed to the residential property tribunal in accordance with Part 3 of Schedule 1 and that tribunal confirms the notice, it does not become operative until the time for an appeal to the Lands Tribunal has expired without an appeal having been brought or, if an appeal is brought, the time when a decision confirming the notice is given by the Lands Tribunal. Subsection (6) has the effect of preventing any appeal against the contents of a notice more than 21 days after it has been served.

***Section 16: Revocation and variation of improvement notice***

92. **Section 16** provides for the revocation and variation of improvement notices.
93. Subsection (1) requires an LHA to revoke an improvement notice if they are satisfied that the requirements of the notice have been complied with.
94. Where the notice relates to more than one hazard, this requirement applies to each of the hazards individually (see subsection (3)).
95. Subsection (2) provides a discretionary power for an LHA to revoke an improvement notice. In the case of a notice served under section 11 (in respect of a category 1 hazard), they may only do so if they are satisfied that there are special circumstances making it appropriate to revoke the notice. A notice served under section 12 (in respect of a category 2 hazard) may be revoked where the LHA considers that it is appropriate.
96. Subsection (3) provides that, where an LHA is required by subsection (1) to revoke only part of a notice that relates to a number of hazards, they may vary the remainder of the notice, as they consider appropriate.
97. Subsection (4) enables an LHA to vary an improvement notice, either with the agreement of the person on whom it was served or, where the notice has been suspended

under section 14, without their agreement but only to alter the time or events triggering the end of the suspension.

98. Subsection (5) provides that a revocation comes into force when it is made and subsection (6) provides that, where a variation is made with the agreement of the person on whom it is served, the variation shall come into force when it is made. If a variation is made without such agreement, the notice will become operative 28 days after the date on which the decision was made or, if an appeal against a variation or revocation is made, it will not come into force until the appeal has been dealt with (see subsection (7)).
99. Subsection (8) provides that an LHA may revoke or vary an improvement notice either in response to an application from the person on whom the notice was served, or on their own initiative.

### ***Section 17: Review of suspended improvement notices***

100. Section 17 requires an LHA to review a suspended improvement notice within a year of service of the notice, and at least annually thereafter. Subject to these requirements, LHAs may review suspended notices at any time. Copies of an LHA's decision on a review must be served on every person on whom the original notice was served, or on whom a copy of it was required to be served.

### ***Section 18: Service of improvement notices etc. and related appeals***

101. Section 18 gives effect to Schedule 1, which sets out the procedures for serving improvement notices, for revocation and variation of such notices, and for dealing with appeals against such notices.

### ***Section 19: Change in person liable to comply with improvement notice***

102. Section 19 makes provision for a change in circumstance where the original recipient of an improvement notice is no longer the person on whom it would have been appropriate to serve the notice. For example, an owner or landlord may have sold the property, or the manager of an HMO may have been replaced. In such cases, the requirement to comply with the improvement notice transfers to a relevant successor. This should not take new owners unawares, as improvement notices are land charges and will be revealed by the local search.
103. Subsection (4) provides that, in the event of a change in the liable person (for the meaning of which see subsections (7), (8) and (9)), the period for complying with a notice or bringing an appeal is unaffected.
104. Subsection (5) provides that, where the original recipient of an improvement notice has already incurred a liability - e.g. he has been fined for non-compliance or obstruction - he retains that liability despite the subsequent transfer of responsibility.

### ***Section 20: Prohibition orders relating to category 1 hazards: duty of authority to make order***

105. Subsection (1) provides that, if a category 1 hazard exists on any residential premises, making a prohibition order is one of the courses of action available to an LHA in discharging its general duty under section 5 to take the most appropriate enforcement action to deal with a such a hazard, so long as the premises in respect of which the order is to be made are not the subject of a management order under Part 4.
106. Subsection (3) provides that a prohibition order may prohibit the use of residential premises which are dwellings or HMOs, one or more flats contained in a building, the common parts of the building containing one or more flats, or external common parts of such buildings.

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107. Subsection (4) enables the use of the non-residential element of a building containing one or more flats to be prohibited, but only if the deficiency giving rise to the hazard is located there and the prohibition is necessary for the health or safety of actual or potential residential occupiers of the flat or flats within the premises.
108. Under subsection (5), a prohibition order can relate to more than one category 1 hazard.
109. Subsection (6) provides that the operation of an order may be suspended in accordance with section 23.

***Section 21: Prohibition orders relating to category 2 hazards: power of authority to make order***

110. Subsection (1) provides a discretionary power for an LHA to make a prohibition order if it is satisfied that a category 2 hazard exists on residential premises and the premises in respect of which the order is to be made are not the subject of a management order under Part 4 of the Act.
111. Subsection (3) applies subsections (3) of section 20, which provide that a prohibition order may prohibit the use of residential premises which are dwellings or HMOs, one or more flats contained in a building, the common parts of the building containing one or more flats, or external common parts of such buildings. It also applies subsection (4) which allows the prohibition of the use of the non-residential element of a building containing one or more flats, but only if the deficiency giving rise to the hazard is located there and the prohibition is necessary for the health or safety of actual or potential residential occupiers of the flat or flats within the premises.
112. Under subsection (4), an order may apply to more than one category 2 hazard and may relate to both category 1 and category 2 hazards while subsection (5) provides that prohibition orders under sections 20 and 21 can be combined if they relate to the same premises.

***Section 22: Contents of prohibition orders***

113. **Section 22** deals with the contents of prohibition orders. For each hazard to which it relates, whether the order is made under section 20 or 21 (that is, whether the hazard is a category 1 or 2 hazard) the order must set out: the nature of the hazard, the deficiency giving rise to it and the premises where it exists; the premises the use of which is prohibited by the order; and any remedial action which, if carried out, would result in the revocation of the order by the LHA. An order must also contain information regarding the right to appeal against a prohibition order and the time limits within which any appeal can be made.
114. Prohibition orders may prohibit the use of part or all of the premises for some or all purposes, unless approved by the LHA; or occupation of the premises or part of them by a particular number of households or occupants, or by particular descriptions of persons, unless approved by the LHA. So for example a prohibition order may prohibit the use of the top floor of an HMO for more than one household, or for persons over the age of 65 or under the age of 5.
115. Where a LHA is asked to approve a use which has been prohibited, that approval should not be unreasonably withheld. Any such refusal must be notified to the applicant within 7 days of the date of the decision to refuse.

There is an additional right of appeal against an LHA's refusal to permit the use of the premises for all or any purposes while the prohibition order is in operation, within 28 days of the date on which the decision was made.

***Section 23: Suspension of prohibition orders***

116. **Section 23** provides for the suspension of a prohibition order at the LHA's discretion. The order may specify an event, such as non-compliance with an undertaking given to the LHA by the person on whom the notice is served, that will trigger the end of the suspension, or may specify a time when the suspension ceases. For example, an order may be suspended until such time as a person of a particular description, e.g. a university student, ceases to occupy the premises.

***Section 24: Operation of prohibition orders***

117. **Section 24** provides for the operation of prohibition orders. As a general rule, they will come into operation 28 days after they are made. Orders whose operation is suspended will come into operation when the suspension ends.
118. Subsection (5) provides for orders against which appeals are brought under Part 3 of Schedule 2 to become operative in accordance with paragraph 14 of that Schedule. If a prohibition order is appealed to the residential property tribunal in accordance with Part 3 of Schedule 2 and that tribunal confirms the order, it does not become operative until the time for an appeal to the Lands Tribunal has expired without an appeal having been brought or, if an appeal is brought, the time when a decision confirming the notice is given by the Lands Tribunal.
119. Subsection (6) has the effect of preventing any appeal against the contents of an order more than 28 days after it has been made.

***Section 25: Revocation and variation of prohibition orders***

120. **Section 25** provides for the revocation and variation of prohibition orders.
121. Subsection (1) requires an LHA to revoke a prohibition order if it is satisfied that the hazard in respect of which the order was made no longer exists on the premises specified in the order.
122. Subsection (2) provides a discretionary power for an LHA to revoke a prohibition order. In the case of an order made under section 20 (in respect of a category 1 hazard), they may only do so if they are satisfied that there are special circumstances making it appropriate to revoke the order.
123. Subsection (3) provides that, where an order relates to a number of hazards, subsection (1) is to be read as applying separately to each hazard. Where a revocation applies only to certain of the hazards specified in an order, the LHA may vary the remainder of the order, as they consider appropriate.
124. Subsection (4) enables an LHA to vary a prohibition order. Subsection (5) provides that a revocation comes into force when it is made. Subsection (6) provides that, if a prohibition order is varied with the agreement of every person on whom the copies of the order were required to be served, the variation comes into force when it is made. Otherwise, by virtue of subsection (7), it comes into force 28 days after the decision to vary or, if an appeal against a variation is made, it will not come into force until the appeal has been dealt with.
125. Subsection (8) provides that an LHA may revoke or vary a prohibition order either in response to an application from any person on whom a copy of the order was required to be served, or on their own initiative.

***Section 26: Review of suspended prohibition orders***

126. **Section 26** requires an LHA to review a suspended prohibition order within a year of making the order, and at least annually thereafter. Subject to these requirements, LHAs

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may review suspended orders at any time. Copies of an LHA's decision on a review must be served on every person on whom a copy of the order was required to be served.

***Section 27: Service of copies of prohibition orders etc. and related appeals***

127. **Section 27** gives effect to Schedule 2, which sets out the procedures for making prohibition orders, for the revocation and variation of such orders, and for dealing with appeals against such orders.

***Section 28: Hazard awareness notices relating to category 1 hazards: duty of authority to serve notice***

128. Subsection (1) provides that, if a category 1 hazard exists on any residential premises, serving a hazard awareness notice is one of the courses of action available to an LHA in discharging its general duty under section 5, so long as the premises in respect of which the notice is to be served are not the subject of a management order under Part 4.
129. Subsection (2) defines a hazard awareness notice under this section as a notice advising the person on whom it is served that a category 1 hazard exists on the residential premises concerned.
130. Subsection (3) sets out the premises and common parts in respect of which a hazard awareness notice may be served. Subsection (4) enables notice to be served in respect of non-residential premises, but only if the deficiency giving rise to the hazard is located there, and it is desirable for the notice to be served in the interests of the health or safety of actual or potential residential occupiers.
131. Subsection (6) sets out the mandatory contents of hazard awareness notices under this section, which include the details of the hazard and the category into which it falls, the reasons for serving the notice and the details of any remedial action which the LHA consider it would be practicable and appropriate to take in relation to the hazard.
132. Subsection (7) provides that the requirements for the service of improvement notices, and copies of such notices, also apply to the service of hazard awareness notices under this section.

***Section 29: Hazard awareness notices relating to category 2 hazards: power of authority to serve notice***

133. Subsection (1) provides a discretionary power for an LHA to serve a hazard awareness notice if it is satisfied that a category 2 hazard exists on residential premises and the premises in respect of which the notice is to be served are not the subject of a management order under Part 4.
134. Subsection (2) defines a hazard awareness notice under this section as a notice advising the person on whom it is served that a category 2 hazard exists on the residential premises concerned.
135. Subsection (3) applies subsections (3) and (4) of section 28, which set out the premises and common parts in respect of which a hazard awareness notice may be served, and enable action to be taken in respect of non-residential premises if the deficiency giving rise to the hazard is located there, and it is desirable for the notice to be served in the interests of the health or safety of actual or potential residential occupiers.
136. Subsection (5) sets out the mandatory contents of hazard awareness notices under this section, which include the details of the hazard and the category into which it falls, the reasons for serving the notice and the details of any remedial action which the LHA consider it would be practicable and appropriate to take in relation to the hazard.

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137. Subsection (7) provides that the requirements for the service of improvement notices, and of copies of such notices, also apply to the service of hazard awareness notices under this section.

***Section 30: Offence of failing to comply with improvement notice***

138. Section 30 makes it an offence for a person on whom an improvement notice is served not to comply with that notice, and provides penalties for non-compliance.
139. Subsection (2) explains that compliance means beginning and completing any remedial action specified in the notice within a specified period. Such an offence is punishable by a fine not exceeding level 5 on the standard scale (currently £5,000).

***Section 31: Enforcement action by local housing authorities***

140. Section 31 gives effect to Schedule 3, which enables LHAs to take enforcement action in respect of improvement notices and recover related expenses.

***Section 32: Offence of failing to comply with prohibition order etc.***

141. Section 32 makes it an offence for a person, knowing a prohibition order has become operative, not to comply with that order, and provides penalties for non-compliance.
142. Such an offence is punishable by a fine not exceeding level 5 on the standard scale (currently £5,000).

***Section 33: Recovery of possession of premises in order to comply with order***

143. Restrictions on recovering possession under the Rent Act 1977, the Rent (Agriculture) Act 1976 or Part 1 of the Housing Act 1988 will not apply where a prohibition order is in force and the owner seeks possession of the premises. Therefore, where possession of the premises specified in a prohibition order is sought, for the purposes of complying with the prohibition order, the owner will be able to determine a tenancy by a notice to quit and then recover possession.

***Section 34: Power of tribunal to determine or vary lease***

144. Section 34 enables a lessor or lessee to apply to a tribunal for an order terminating or varying a lease on a property which is the subject of a prohibition order. Before making an order, the tribunal must take account of all the circumstances of the case, the respective rights and obligations of all parties to the lease and allow any sub-lessees to be heard.

***Section 35: Power of court to order occupier or owner to allow action to be taken on premises***

145. Section 35 provides that, where an occupier, owner, person having control of or managing the premises, or licence holder under Part 2 or 3 of the Act is preventing the putting into effect of any action required by an improvement notice or necessary to give effect to a prohibition order, a magistrates' court may order that person to permit that which the court considers necessary or expedient to be done on the premises.
146. Subsections (4), (5) and (6) make it an offence to fail to comply with an order of the court and provide penalties for non-compliance.

***Section 36: Power of court to authorise action by one owner on behalf of another***

147. Section 36 enables a magistrates' court to make an order allowing an owner of premises to enter those premises and, within a fixed period of time, to take any action required by an improvement notice or prohibition order. Before making an order, the court needs to be satisfied that such an order is necessary to safeguard the interests of the applicant,

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and that the LHA has been given notice of the application. The purpose of this provision is to ensure that an owner or superior landlord is able to deal with a problem where they have reason to believe that the person served with the notice may not take the necessary action.

***Section 37: Effect of improvement notices and prohibition orders as local land charges***

148. **Section 37** provides that an improvement notice or prohibition order which is in operation or is suspended, and in respect of which there is no outstanding appeal, is a local land charge. Local land charges protect buyers of land, by ensuring they are not caught unawares by obligations enforceable against successive owners.

***Section 38: Savings for rights arising from breach of covenant etc.***

149. **Section 38** provides that nothing in Chapter 2 prejudices any rights of an owner of property arising from any breach of covenant or contract by the lessee. The effect of subsection (2) is that, even where the owner has to take possession in order to comply with an improvement notice or prohibition order, he can still sue the tenant for breaches of contract or covenant by the tenant that occurred before he took possession. This section also protects the rights of tenants against their landlords.

***Section 39: Effect of Part 4 enforcement action and redevelopment proposals***

150. **Section 39** provides that an improvement notice or prohibition order ceases to have effect where a management order under Part 4 comes into force in relation to the premises the subject of the notice or order. Nothing in this section affects any right acquired or liability incurred before the notice or order ceases to have effect.
151. Under subsections (4) and (5) where land is in the process of being redeveloped in accordance with the owner's approved proposals (see further section 308 of the Housing Act 1985), the LHA is prevented from taking any action under Chapter 2 of Part 1 of the Act in relation to that land.

***Chapter 3 - Emergency Measures***

152. The purpose of the emergency measures in sections 40 to 45 is to enable local housing authorities to take emergency enforcement action against hazards which present an imminent risk of serious harm to the occupiers of residential premises. Their effect is that LHAs will themselves be able to take remedial action to remove a hazard, or prohibit the use of all or part of a property. The owner of a property will be able to appeal, but such an appeal will not prevent the action or prohibition from being put into effect. Action may begin and be completed before a notice is served.

***Section 40: Emergency remedial action***

153. **Section 40** enables a LHA, if it is satisfied that a category 1 hazard exists on residential premises which are not the subject of a management order in force under Part 4 of the Act, and is further satisfied that the hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises, to enter the premises at any time in order to take emergency remedial action.
154. Subsection (2) defines "emergency remedial action" as remedial action the LHA considers necessary to remove an imminent risk of serious harm. Where there is a category 1 hazard on premises which does not give rise to an imminent risk of serious harm, the LHA will need to consider taking one of the courses of action mentioned in section 5(2).
155. Subsection (3) limits emergency remedial action to premises in relation to which action could be taken by an improvement notice under section 11. Subsection (4) allows



action to be taken in respect of more than one category 1 hazard in the same premises. Subsection (5) applies paragraphs 3 to 5 of Schedule 3 (enforcement action by LHAs), subject to modifications, to emergency remedial action taken by a LHA, as they apply to an operative improvement notice which has not been complied with. The modifications are set out in subsection (6) and relate to the power of entry and the requirements as to the service of notice.

156. Subsection (7) requires the LHA, within 7 days of taking the emergency remedial action, to serve a notice of emergency remedial action under section 41. Copies of that notice should be served on those persons on whom the authority would be required under Part 1 to serve an improvement notice and copies of it. Subsection (8) applies section 240 (warrant to authorise entry) to enable the LHA to enter premises to take emergency remedial action. The Justice of the Peace to whom a warrant application is made must be satisfied there are reasonable grounds to believe the LHA would not gain admission without a warrant.

#### ***Section 41: Notice of emergency remedial action***

157. **Section 41** sets out the mandatory contents of the notice of emergency remedial action. Such a notice must include the details of the hazard, the premises in which the action has been or is to be taken and the nature of the remedial action, the date the action was or is to be started, and the right to appeal.

#### ***Section 42: Recovery of expenses of taking emergency remedial action***

158. **Section 42** applies, with minor and technical modifications, paragraphs 6 to 14 of Schedule 3 for the purposes of allowing LHAs to recover certain expenses incurred in taking emergency remedial action. The modifications are set out in subsection (3).

#### ***Section 43: Emergency prohibition orders***

159. **Section 43** enables an authority, if it is satisfied that a category 1 hazard exists on residential premises which are not the subject of a management order in force under Part 4 of the Act, and is further satisfied that the hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises, to enter the premises at any time in order to make an emergency prohibition order, prohibiting the use of all or any part of the premises.
160. Subsection (2) defines an emergency prohibition order as an order prohibiting the use of any premises with immediate effect. Subsection (3) applies the provisions of subsections 3 to 5 of section 20 and subsections 3 to 5 and 7 to 9 of section 22.
161. Subsection (4) applies Part 1 of Schedule 2 for the purposes of the service of copies of prohibition orders, with the modification that the order is to be served on the day it is made instead of within 7 days.
162. Subsection (5) applies other provisions of the Act to emergency prohibition orders as they apply to prohibition orders, including revocation and variation, enforcement and appeals.

#### ***Section 44: Contents of emergency prohibition orders***

163. **Section 44** sets out the mandatory contents of an emergency prohibition order, which include the details of the hazard, the remedial action which, if taken by the owner, would result in the revocation of the order, the date the order was made and the right to appeal against the order.

#### ***Section 45: Appeals relating to emergency measures***

164. **Section 45** provides for an appeal against a notice of remedial action or an emergency prohibition order to a residential property tribunal. An appeal must be made within 28

days of the date specified in the notice of emergency remedial action or the date on which the emergency prohibition order was made, as the case may be, subject to the tribunal's discretion to extend the period for appeal where there is good reason for the delay.

165. A tribunal may confirm, reverse or vary an emergency remedial action notice and may confirm, vary or revoke an emergency prohibition order.

#### ***Chapter 4 - Demolition Orders and Slum Clearance Declarations***

##### ***Section 46: Demolition orders***

166. **Section 46** substitutes a new section 265 of the Housing Act 1985 (power to make a demolition order). The new subsections (1) and (2) provide that if a category 1 hazard exists on any residential premises, making a demolition order is one of the courses of action available to an LHA in discharging its general duty under section 5 to take the most appropriate enforcement action to deal with a category 1 hazard.
167. New subsections (3) and (4) provide a discretionary power for an LHA to make a demolition order if it is satisfied that a category 2 hazard exists on residential premises and if the circumstances of the case are specified or described in an Order made by the Secretary of State or, in relation to Wales, by the National Assembly for Wales.
168. New subsection (5) prevents a demolition order from being made in respect of premises that are the subject of a management order in force under Part 4 of the Act. New subsection (6) prevents a demolition order from being made in respect of a listed building.

##### ***Section 47: Clearance areas***

169. **Section 47** amends section 289 of the Housing Act 1985 (declaration of clearance area) in order to align it with the hazard assessment and enforcement provisions in Part 1 of the Act. The effect of this realignment is to retain the link between poor housing conditions and enforcement action and it does not introduce factors which fall outside this consideration.
170. New subsection (2) provides that, if a category 1 hazard exists in each of the residential buildings in an area, and if the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, declaring a clearance area is one of the courses of action available to an LHA in discharging its general duty under section 5 to take the most appropriate enforcement action to deal with a category 1 hazard.
171. New subsection (2ZA) provides a discretionary power for an LHA to declare a clearance area if it is satisfied that the residential buildings in the area, as a result of their bad arrangement or the narrowness or bad arrangement of the streets; and any other buildings, are dangerous or harmful to the health or safety of the inhabitants of the area.
172. New subsection (2ZB) provides that, if a category 2 hazard exists in each of the residential buildings in an area, and if the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, the LHA may only declare the area to be a clearance area if the circumstances of the case are specified or described in an Order made by the Secretary of State or, in relation to Wales, by the National Assembly for Wales.

##### ***Section 48: Transfer of jurisdiction in respect of appeals relating to demolition orders etc.***

173. **Section 48** amends a number of provisions in Part 9 of the Housing Act 1985 in order to provide for the transfer of jurisdiction of appeals relating to demolition orders to

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the Residential Property Tribunal. This ensures that all appeals relating to enforcement options under Part 1 are heard by the Tribunal.

## ***Chapter 5 - General and Miscellaneous Provisions Relating to Enforcement Action***

### ***Section 49: Power to charge for certain enforcement action***

### ***Section 50: Recovery of charge under section 49***

174. Sections 49 and 50 provide powers for LHAs to charge, and to recover charges, incurred in respect of certain enforcement powers and duties exercised under Part 1. These provisions re-enact with modifications sections 87 and 88 of the Housing Grants, Construction and Regeneration Act 1996, which are repealed by Schedule 16 to this Act.

### ***Section 51: Repeal of power to improve existing enforcement procedures***

175. Section 51 repeals section 86 of the Housing Grants, Construction and Regeneration Act 1996, which provides a pre-notice procedure enabling forewarning to be given of the enforcement action contemplated by an LHA. The [Housing \(Fitness Enforcement Procedures\) Order 1996 \(SI 1996 No 2885\)](#) requires an LHA to issue a "minded to take action" notice prior to taking enforcement action.

### ***Section 52: Repeal of provisions relating to demolition of obstructive buildings***

176. Section 52 repeals the provisions in sections 283-288 of the Housing Act 1985 relating to the demolition of obstructive buildings.

### ***Section 53: Miscellaneous repeals etc in relation to fire hazards***

177. Section 53 repeals certain provisions of the Building Act 1984 and in a number of local acts dealing with fire safety in buildings. These provisions are made redundant by Part 1.

## **Part 2 – Licensing of Houses in Multiple Occupation**

### ***Section 55: Licensing of HMOs to which this Part applies***

178. Section 55 sets out the scope of the licensing provisions under Part 2 and the general duties on LHAs in relation to their licensing functions. The section provides that LHAs are required to license the types of HMOs prescribed in an order made by the appropriate national authority (that is initially to be those of 3 storeys and above occupied by at least 5 persons who constitute more than one household). It also provides that an LHA may license other categories of HMOs designated by it under an additional licensing scheme (see section 56).

179. Under subsection (5) certain duties are imposed on the LHA in connection with its functions. The LHA is required to promote the implementation of licensing; to ensure that it deals with licensing applications promptly and satisfy itself that no Part 1 functions remain to be discharged in respect of licensed HMOs as soon as possible and in any case within 5 years of the first application for a licence.

### ***Section 56: Designation of areas subject to additional licensing***

180. Section 56 permits an LHA to extend licensing beyond the scope of mandatory licensing (see section 55). An LHA can designate part or all of its area as subject to additional licensing for specified types of HMOs. An LHA must consider that a significant proportion of the HMOs (of the type it is considering licensing) are being managed ineffectively so as to give rise problems for the occupiers or members of the public. In considering the quality of management, LHAs must take into account the degree to which relevant codes of practice (if any) are being adhered to (see section 233).

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181. Before making a designation an LHA must consult with those likely to be affected by it and take account of any representations.

***Section 57: Designations under section 56: further considerations***

182. **Section 57** sets out further requirements that the LHA must consider before extending licensing to additional categories of HMO. These are:
- - ensuring the use of additional licensing is in accordance with the LHA's overall housing strategy and is part of a co-ordinated approach to deal with wider issues such as anti-social behaviour;
  - examining whether there are other courses of action that could be used to deal with the problems identified (e.g. voluntary accreditation schemes) and
  - concluding that additional licensing, whether on its own or in conjunction with other policies, will make a significant contribution to dealing with the problems.
183. Subsection (5) provides a definition of anti-social behaviour for the purposes of the Act.

***Section 58: Designation needs confirmation or general approval to be effective***

184. **Section 58** provides that designations for additional licensing schemes need to be confirmed (unless covered by a general approval, see below) by the appropriate national authority. A designation comes into force no earlier than 3 months after it has been confirmed. The section also provides that the appropriate national authority may give general approval to certain types of designations or specified LHAs. Where a designation has been made under a general approval it cannot come into force until at least 3 months after the designation is made.

***Section 59: Notification requirements relating to designations***

185. **Section 59** requires an LHA to publicise an additional licensing designation in accordance with requirements contained in regulations.

***Section 60: Duration, review and revocation of designations***

186. **Section 60** provides that a designation must from time to time be reviewed and can be revoked following a review, but in any case must end 5 years after it has been made. When a scheme is revoked notice of the revocation must be publicised in accordance with requirements contained in regulations.

***Section 61: Requirement for HMOs to be licensed***

187. **Section 61** provides that every HMO to which this Part applies must be licensed unless a temporary exemption notice is in force or it is subject to an IMO or FMO. However, section 72(4) makes clear that if a valid application has been made for a licence or temporary exemption notice, that no offence is committed.
188. An HMO is licensed for occupation by a maximum number of persons or households. An LHA is under a duty to take reasonable steps to ensure that applications for licences are made on behalf of all relevant HMOs in their area (that do not already have a licence).
189. Subsection (5) provides that the appropriate national authority may make regulations setting out how licensing provisions apply in the case of certain converted blocks of flats (as defined in section 257).

***Section 62: Temporary exemption from licensing requirement***

190. **Section 62** provides that an LHA may grant a temporary exemption from licensing for an HMO which would otherwise be required to be licensed, where the managers/owners

intend to take steps to ensure that the HMO no longer require a licence. A temporary exemption notice lasts for 3 months but is renewable for another 3 months in exceptional circumstances. Where the exemption is refused there is a right of appeal to the RPT.

### ***Section 63: Applications for licences***

191. **Section 63** provides that an application for a licence must be made to an LHA in accordance with its particular requirements, which may include the payment of a fee. The appropriate national authority may prescribe by regulations various matters concerning applications, including the content and format of application forms, the manner in which applications are made and the maximum fees that an LHA can charge. Subject to these regulations, an LHA can take account of all its costs of running the licensing scheme when setting the licence fee.

### ***Section 64: Grant or refusal of licence***

192. **Section 64** describes the grounds on which an LHA must decide whether or not to grant a licence. A licence must be granted if:

- the house is suitable for occupation by a certain number of persons or households as specified in the application or by the LHA, or can be rendered suitable for that number by imposition of conditions in the licence (see section 65 for tests of suitability);
- the proposed licence holder is a fit and proper person (see section 66 for definition of 'fit and proper'), as well as being the most appropriate person to be granted a licence i.e. they have management responsibility and are locally resident - this is intended to ensure that unfit landlords cannot use "front men" to apply for licences;
- the proposed manager of the HMO is the person having control of the house or an agent or employee of that person and is also a fit and proper person; and
- the proposed management arrangements are satisfactory.

### ***Section 65: Tests as to suitability for multiple occupation***

193. **Section 65** sets out what needs to be considered for a house to be suitable for occupation by a particular maximum number of households or persons. Regulations may prescribe minimum standards such as to the number, type and quality of toilets, washing facilities and food preparation facilities and certain other standards of facilities or equipment to be provided. An LHA may require different, but not lower, standards than those prescribed in the regulations when determining whether the HMO is reasonably suitable for the number of occupants.

### ***Section 66: Tests for fitness etc. and satisfactory management arrangements***

194. **Section 66** sets out the evidence that must be considered in determining whether someone is a fit and proper person to be a licence holder or a manager. These include whether that person (or a relevant associate e.g. a spouse or business partner) has committed offences involving fraud, dishonesty, violence, drugs or sexual offences. Spent convictions are not, in this context, taken into account. Evidence of unlawful discrimination in business, contravention of housing law or breach of any applicable code of practice (see section 233) is also relevant.

195. In addition the section sets out the matters to be addressed when considering whether or not the management arrangements for a HMO are satisfactory (in terms of the competence of the manager, management structure and funding).

### ***Section 67: Licence conditions***

196. **Section 67** provides that an LHA may include conditions in a licence relating to its management, use and occupation and its content and condition. Such conditions may include:
- restrictions or prohibitions on the use of parts of the house by occupants
  - requirements to take reasonable and practicable steps to prevent or reduce anti-social behaviour of the occupants or visitors
  - installing and making facilities and equipment available in good working order to meet prescribed standards under section 65
  - carrying out necessary works to such facilities and equipment within specified periods
197. Any such conditions will be in addition to those laid out in Schedule 4 which sets out mandatory conditions.
198. An LHA is required, as a general rule, to address health and safety issues through its Part 1 functions and not by means of licence conditions and it cannot set conditions which require changes to the terms or conditions of person's occupation of the HMO. For example, this means that a LHA would not be permitted to impose any condition limiting the level of rent payable.

### ***Section 68: Licences: general requirements and duration***

199. **Section 68** provides that a person controlling or managing an HMO must have a separate licence for each property and that each licence is valid for maximum of five years. Licences are non-transferable. Upon the death of a licence holder, a 3-month temporary exemption is automatically granted. This may be renewed for a further 3 months and there is a right of appeal to the RPT against any refusal to renew it.

### ***Section 69: Variation of licences***

### ***Section 70: Revocation of licences***

200. Normally the conditions of an HMO licence will remain the same for its duration. However, it may be necessary for the local authority to vary the licence in particular circumstances, particularly in relation to either to the maximum occupancy or the standards required for a particular number of occupants. Section 69 allows the local authority to vary a licence.
201. **Section 70** provides for the circumstances in which an LHA may revoke a licence. These are:
- with the agreement of the licence holder e.g. if the house is converted to single occupancy
  - where the licence holder has committed a serious breach of a condition of the licence or repeated breaches of such a condition
  - where the LHA no longer believes that the licence holder is a fit and proper person
  - where the LHA believes the property is no longer meets the standards required for a licence
202. There is also a power for the appropriate national authority to make regulations setting out other circumstances in which a licence may be revoked.

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203. **Part 2** of Schedule 5 sets out the procedure to be followed in respect of a variation or revocation of a licence and **Part 3** of Schedule 5 sets out the right of appeal to the RPT against variation and revocation decisions.
204. A variation or revocation made with the agreement of the licence holder takes effect immediately. Otherwise it does not come into effect until the time for making an appeal has expired, or any appeal against it is disposed of or withdrawn.
205. **Section 71: Procedural requirements and appeals against licence decisions**
206. **Section 71** gives effect to the procedural requirements and appeals procedure set out in Schedule 5.

### **Section 72: Offences in relation to licensing of HMOs**

207. **Section 72** makes it an offence punishable by a fine of up to £20,000 if a person controlling or managing an HMO does not have the required licence. However, no offence is committed by a person who has an outstanding application either for a licence or for a temporary exemption. An offence is also committed when a licence holder knowingly permits the HMO to be occupied by more persons than are permitted to occupy it under the licence. This too is punishable with a fine of up to £20,000. It is also an offence to breach any condition of a licence, punishable by a fine not exceeding level 5 (currently £5,000).
208. It is a defence for any of these offences if the person accused can demonstrate a reasonable excuse.

### **Section 73: Other Consequences of operating unlicensed HMOs: rent repayment orders**

209. **Section 73** confirms that notwithstanding any common law rule that unlawful contracts are not enforceable, a tenancy or licence in respect of an HMO remains enforceable, even if the landlord is required to obtain a licence under Part 2 of the Act but fails to do so. The section provides, however, that a landlord who receives rent while operating an unlicensed property could be liable to a penalty equivalent to any rent received during the period of the offence, up to a maximum of 12 months. The RPT has the power to make a 'rent repayment order', imposing this penalty where it determines that an offence has been committed under section 72(1).
210. An LHA is entitled to make an application for a rent repayment order to the RPT where a landlord or managing agent has committed an offence under section 72(1) (irrespective of whether there has been a prosecution), and Housing Benefit has been paid during any period when such an offence was being committed. An occupier who has paid money to the landlord is also permitted to make an application to the RPT for a rent repayment order where any rent was not paid out of Housing Benefit and where the landlord has been convicted of an offence under section 72(1), or an order has already been granted to an LHA in respect of the same property.

### **Section 74: Further provisions about rent repayment orders**

211. **Section 74** provides that where a landlord is actually convicted of an offence under section 72(1), and the LHA makes an application, the RPT is required to make a rent repayment order in respect of all Housing Benefit received by the landlord unless exceptional circumstances apply. In all other cases the RPT has discretion to make a rent repayment order for such an amount as is reasonable in the circumstances.

### **Section 75: Other Consequences of operating unlicensed HMOs: restriction on terminating tenancies**

212. **Section 75** provides that a landlord who is required to have a licence in respect of an HMO, but who does not have a licence, loses the right to automatic possession by use

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of section 21 of the 1988 Housing Act in relation to assured shorthold tenancies. This restriction ceases to apply if the landlord makes an application for a licence or for a temporary exemption notice.

### ***Section 76: Transitional arrangements relating to introduction and termination of licensing***

213. **Section 76** contains provisions for transitional arrangements dealing with the case of an HMO that becomes licensed for the first time. If the HMO is occupied by more people than is permitted under the licence, it is a defence under section 76(4) that the licence holder is taking reasonable steps to reduce the number of residents to comply with the terms of the licence.
214. The section also provides that an order made under section 270 may make provision for HMOs that are part of a registration scheme with control provisions (under Part 11 of the Housing Act 1985) when the licensing provisions commence. This is designed to smooth the process of licensing for LHAs who run registration schemes for HMOs by allowing them to passport registered HMOs directly into a licensing scheme.

### ***Section 77: Meaning of "HMO"***

215. **Section 77** provides that "HMO" means a house in multiple occupation as defined in sections 254 to 260 and includes any yard, garden, outhouses etc.

## **Part 3 - Selective Licensing of Other Residential Accommodation**

216. **(Where a provision in this Part is identical to one in Part 2 the reader is invited to refer to the explanatory note to the relevant section in that Part, but any reference to HMO should be read as "Part 3 house").**

### ***Section 79: Licensing of houses to which this Part applies***

217. **Section 79** sets out the scope of licensing under Part 3 and the general duties on LHAs in relation to their licensing functions. The section provides that licensing can apply to all houses in a designated area other than those occupied under an exempt tenancy or licence. Exemptions apply to houses occupied under tenancies granted by a Registered Social Landlord or to circumstances specified in an order made by the appropriate national authority. Subsection (5) requires LHAs to promote the implementation of any licensing scheme and ensure all licence applications are dealt with within a reasonable timeframe.

### ***Section 80: Designation of selective licensing areas***

218. **Section 78** provides that an LHA may designate an area as subject to selective licensing if:
- it is, or may become, an area of low housing demand (subsection (4) lists some characteristics that can distinguish such an area), and/or
  - it has a significant and persistent problem with anti-social behaviour where the inaction of private landlords is a contributory factor.
219. In the case of a designation under the first condition, the LHA must believe that the designation, together with other measures, will help lead to an improvement in the social or economic conditions in the area. In the case of a designation under the second condition, the LHA must believe that the designation, together with other measures, will help lead to a reduction in or elimination of the problem of anti-social behaviour.
220. The section also allows the appropriate national authority to specify other criteria for making a selective licensing scheme to deal with other housing challenges.



***Section 81: Designations under section 80: further considerations***

221. **Section 81** sets out further requirements that the LHA must consider before exercising the power to make designations under section 80. These are:

- ensuring the use of selective licensing is in accordance with the LHA's overall housing strategy and is part of a co-ordinated approach to deal with wider issues such as anti-social behaviour;
- examining whether there are other courses of action that could be used to deal with the problems identified (e.g. voluntary accreditation schemes) and concluding that additional licensing, whether on its own or in conjunction with other policies, will make a significant contribution to dealing with the problems.

***Section 82: Designation needs confirmation or general approval to be effective***

See note to section 58.

***Section 83: Notification requirements relating to designations***

See note to section 59.

***Section 84: Duration, review and revocation of designations***

See note to section 60.

***Section 85: Requirement for Part 3 houses to be licensed***

222. **Section 85** provides that all occupied houses to which the Part applies in a designated area must be licensed except if the house is an HMO which is required to be licensed under Part 2, or a temporary exemption notice is in force or it is subject to a management order under Part 4. It also requires that LHAs take reasonable steps to ensure that applications for licences are made in respect of all relevant properties in their area (that do not already have a licence).

***Section 86: Temporary exemption from licensing requirement***

See note to section 62.

***Section 87: Applications for licences***

See note to section 63.

***Section 88: Grant or refusal of licence***

223. **Section 88** describes the grounds on which an LHA may decide whether or not to grant a licence. The Section provides that a licence must be granted if:

224. the proposed licence holder is a fit and proper person (see section 89 for definition of 'fit and proper'), as well as being the most appropriate person to be granted a licence i.e. they have management responsibility and are locally resident - this is intended to ensure that unfit landlords cannot use front men to apply for licences;

- the proposed manager of the house is the person having control of the house or an agent or employee of that person and is also a fit and proper person; and
- the proposed management arrangements are satisfactory.

***Section 89: Tests for fitness etc. and satisfactory management arrangements***

225. **Section 89** sets out the evidence that must be considered in determining whether someone is a fit and proper person to be a licence holder or a manager. These include

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whether that person (or a relevant associate e.g. a spouse or business partner) has been engaged in offences of fraud, dishonesty, violence, drugs or sexual offences. Spent convictions are not, in this context, taken into account. Evidence of unlawful discrimination in business or contravention of housing law is also relevant.

226. In addition the section sets out the matters to be addressed when considering whether or not the management arrangements for a property are satisfactory (in terms of the competence of the manager, management structure and funding).

### ***Section 90: Licence conditions***

227. **Section 90** provides that an LHA may include conditions in licences it grants for the management, use or occupation of the house concerned. Such conditions may include:
- restrictions or prohibitions on the use of parts of the house by occupants
  - requirements to take reasonable and practical steps to control or reduce anti-social behaviour of the occupants or visitors
  - a licence may also include conditions requiring facilities and equipment to be made available for the purpose of complying with standards prescribed (if any) by the appropriate national authority and for keeping such facilities and equipment in repair and good order.
228. Any such conditions will be in addition to those laid out in Schedule 4, which sets out mandatory conditions.
229. An LHA is required, as a general rule, to address health and safety issues through its Part 1 functions and not by means of licence conditions and it cannot set conditions which require changes to the terms or conditions of a person's occupation of the house. For example, this means that an LHA would not be permitted to impose any condition limiting the level of rent payable.

### ***Section 91: Licences: general requirements and duration***

See note to section 68.

### ***Section 92: Variation of licences***

### ***Section 93: Revocation of licences***

230. **Section 92** allows the local authority to vary a licence if there is a change of circumstances or with the agreement of the licence holder.
231. **Section 93** provides for the circumstances in which an LHA may revoke a licence. These include:
- with the agreement of the licence holder e.g. because a new licence is to be granted to some other person
  - where the house ceases to be a Part 3 house and/or is granted an HMO licence under Part 2.
  - where the licence holder has committed a serious breach of a condition of the licence or repeated breaches of such a condition
  - where the LHA no longer believes that the licence holder is a fit and proper person or that the management of the house is no longer being carried out by fit and proper persons.
  - where the LHA believes the property is no longer meets the standards required for a licence.

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232. There is also a power for the appropriate national authority to make regulations setting out other circumstances in which a licence may be revoked.
233. [Part 2](#) of Schedule 5 sets out the procedure to be followed in respect of a variation or revocation of a licence and [Part 3](#) of Schedule 5 sets out the right of appeal to the RPT against variation and revocation decisions.

***Section 94: Procedural requirements and appeals against licence decisions***

234. [Section 94](#) gives effect to the procedural requirements and appeals procedure set out in Schedule 5.

***Section 95: Offences in relation to licensing of houses under this Part***

235. [Section 95](#) makes it an offence punishable by a fine of up to £20,000 if a person controlling or managing a [Part 3](#) property does not have the required licence. However, no offence is committed by a person who has an outstanding application either for a licence or for a temporary exemption. It is also an offence to breach any condition of a licence, punishable by a fine not exceeding level 5 (currently £5,000).
236. It is a defence for either of these offences if the person accused can demonstrate a reasonable excuse.

***Section 96: Other consequences of operating unlicensed Part 3 houses: rent repayment orders***

***Section 97: Further provisions about rent repayment orders***

See notes to sections 73 and 74.

***Section 98: Other Consequences of operating unlicensed Part 3 houses: restriction on terminating tenancies***

See note to section 75.

***Section 99: Meaning of "house" etc***

237. [Section 99](#) contains the definition of "dwelling" and "house". A house comprises one or more dwellings and includes any yard, garden, outhouses etc.

**Part 4 - Additional Control Provisions in Relation to Residential Accommodation**

***Chapter 1: Interim and Final Management Orders***

***Section 101: Interim and final management orders: introductory***

238. [Section 101](#) introduces Chapter 1 and explains what interim management orders (IMOs) are, what their purpose is and requires that they run for no longer than 12 months. The section also explains what final management orders (FMOs) are, what their purpose is and provides that they can run for no longer than 5 years. These management orders are designed to allow an LHA to step into the shoes of a private landlord and manage his property where he cannot be licensed or where there is some management problem which requires intervention by the LHA. An IMO is an interim measure designed to provide time for a longer-term management solution to be found, normally the grant of a licence under [Parts 2](#) or [3](#) or, if that is not possible, the making of an FMO.
239. The section also defines "house" and "third party" for the purpose of the Chapter.

***Section 102: Making of interim management orders.***

240. **Section 102** sets out the circumstances in which an IMO must or can be made. An IMO must be made when:
- a HMO or a Part 3 house ought to be licensed but is not and either there is no reasonable prospect of the house becoming licensed in the near future, or the health and safety condition is met (see section 104); or
  - the LHA intends to revoke an existing licence and either there is no prospect of a new licence being issued in the near future, or the health and safety condition will be satisfied.
241. A LHA can apply to the RPT for authority to make an IMO for an HMO that is not licensable under Part 2. In deciding whether to authorise the making of the order, the RPT must be satisfied that the Health and Safety Condition (see section 104) is satisfied and must also have regard to the degree to which the management of the HMO has been in compliance with any approved code of practice made under section 233.
242. An LHA may also apply to the RPT for authority to make an IMO in respect of a house other than an HMO if the conditions in section 103 are met. In either case the RPT may authorise the making of an IMO on such terms as are contained in the draft order submitted with the application or on such other terms as it considers appropriate.
243. The section provides that IMOs may be made to exclude part of a property occupied by a person who is the owner or long leaseholder of the entire house and that two IMOs may not be made in succession.

***Section 103: Special interim management orders***

244. **Section 103** sets out the circumstances in which an IMO can be made for properties that are not HMOs, but could potentially be licensable under Part 3 if the LHA were to make a designation under that Part. The appropriate national authority may prescribe when this power may be used, but it must relate to combating anti-social behaviour or other circumstances required for the instigation of a Part 3 licensing regime (see section 80). A RPT can only authorise the making of an order in respect of a house if it is satisfied that it is necessary to make the order to protect the health, safety and welfare of persons occupying or visiting or carrying out lawful activities in the vicinity of the house.

***Section 104: The health and safety condition***

245. **Section 104** defines the "health and safety condition" for the purposes of Section 102. The condition is satisfied when it is necessary to make an IMO or FMO in order to protect the health, safety and welfare of the occupiers of the house or persons occupying or owning property in its vicinity.
246. The condition can be satisfied if there is a threat to evict occupiers in order to avoid licensing under Part 2. It cannot be met where the threat relates to a category 1 or 2 hazard under Part 1 and the appropriate course of action is to take enforcement action under that Part.

***Section 105: Operation of interim management orders***

247. **Section 105** provides that an IMO normally comes into force when it is made, except if it is made to follow the revocation of a licence (in which case it comes into effect upon revocation). It also provides that an IMO will cease to have effect after 12 months, unless it provides for an earlier end date, or it is continued in force pending the disposal of an appeal against the making of an FMO.
248. **Section 106: Local housing authority's duties once interim management order in force**

*These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004*

249. **Section 106** sets out the LHA's obligations after making an IMO, the first of which is to ensure the health and safety of occupants (subsection (2)). Subsections (3) to (6) describe the duty of the LHA to sort out long term management arrangements for the property:

- where the house is licensable the LHA must grant a licence or make an FMO
- where the house is not licensable, the LHA must consider whether it should make an FMO or revoke the IMO and take no further action.

The duty to sort out the long term management arrangements must be complied with as soon as is practicable.

### ***Section 107: General effect of interim management orders***

250. When an IMO is in force, the LHA takes over most of the rights and responsibilities of the landlord including (subject to the rights of existing occupiers) the right to possession of the dwelling. It does not, however, become the legal owner of the dwelling. With the consent of the landlord, the LHA may grant occupation rights. An IMO is a local land charge and the LHA can apply to H. M. Land Registry for a restriction on dealing with properties subject to the order.

### ***Section 108: General Effect of interim management orders: leases and licences granted by the authority***

251. **Section 108** explains that a tenancy or licence granted by an LHA is to be treated as if it were a legal lease or licence granted by a legal owner.

### ***Section 109: General effect of interim management orders: immediate landlords, mortgagees etc***

252. **Section 109** provides that the landlord is no longer entitled to receive any rent from occupiers of the house; may not exercise any management functions in respect of it; and may not grant any tenancies. The rights of an owner to sell the house or any rights of a mortgagee are unaffected by an IMO, except to the extent that any right would prevent the LHA from granting tenancies or licences under section 107.

### ***Section 110: Financial arrangements while order is in force***

253. **Section 110** sets out the framework for financial arrangements. It permits the LHA to spend rent it receives on "relevant expenditure" (including its administrative costs and any amounts paid as compensation to a third party) with the balance being paid to the landlord, at such intervals with interest if appropriate (subject to a right of appeal). The LHA must keep accounts of relevant expenditure and income and make these available for inspection. A relevant person entitled to review the accounts may seek a declaration from the RPT that the amount of expenditure claimed is unreasonable and an order making the appropriate financial adjustments.

### ***Section 111: Variation of interim management orders***

254. **Section 111** provides that the LHA may vary an IMO at the request of a relevant person or on its own volition. Schedule 6 sets out the procedure to be followed when a variation is made or refused. No variation comes into force until the period for appealing against it has expired, or when any appeal is finally determined.

### ***Section 112: Revocation of interim management orders***

255. **Section 112** permits the LHA to revoke the IMO in certain circumstances. These are:

- if the house ceases to be required to be licensed;

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- if the LHA grants a licence;
- if the LHA makes an FMO; or
- other appropriate circumstances.

256. [Schedule 6](#) describes in more detail the procedures for revocation of IMOs. No revocation comes into force until the period for appealing against it has expired, or when any appeal is finally determined.

### ***Section 113: Making of final management orders***

257. [Section 113](#) provides that the LHA:

- must make an FMO if the house is licensable under part 2 or 3 and, when an IMO is ending, the LHA cannot grant a licence.
- may make an FMO for a non-licensable house where an IMO is ending and the LHA considers it necessary.

258. The section describes that FMOs may be made to exclude part of a property occupied by a person who is the owner or long leaseholder of the entire house.

### ***Section 114: Operation of final management orders***

259. [Section 114](#) provides that an FMO comes into force when the period for appealing against it expires (or if there is an appeal the date on which the order is confirmed). It also provides that an FMO will cease to have effect after 5 years, unless it provides for an earlier end date, or it is continued in force pending the disposal of an appeal against the making of a new FMO.

### ***Section 115: Local housing authority's duties once final management order in force***

260. [Section 115](#) provides that when an FMO is in force, the LHA must take steps to secure the proper management of the house through the management scheme (see section 119) and from time to time review the order and scheme and consider whether the order should remain in force.

### ***Section 116: General effect of final management orders***

261. The general effect of an FMO is largely the same as for an IMO. The principal difference being that a LHA does not require the consent of the landlord to grant occupation rights. Any occupation rights granted cannot be for a fixed term expiring after the order is due to expire, or terminable by notice of more than 4 weeks, without the consent of the landlord. But consent to create a tenancy equivalent to an assured shorthold tenancy is not needed, provided it is created more than 6 months before the expiry of the order.

### ***Section 117: General effect of final management orders: leases and licences granted by the authority***

262. [Section 117](#) has the same effect as section 108 (see note), but in relation to FMOs.

### ***Section 118: General effect of final management orders: immediate landlords, mortgagees etc***

263. [Section 118](#) has the same effect in respect of FMOs as section 109 does for IMOs.

### ***Section 119: Management scheme and accounts***

264. [Section 119](#) requires that an FMO must contain a management scheme. A management scheme only comes into force, after the landlord has the opportunity either to agree

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its terms or to appeal to a RPT. The section describes what such a scheme should include with Part 1 covering financial matters (e.g. rental income expected, projected expenditure on repairs and management) and Part 2 saying how the LHA intends to address the matters which caused them to make the FMO.

### ***Section 120: Enforcement of management scheme by relevant landlord***

265. **Section 120** provides that a relevant person may apply to the RPT for an order requiring the LHA to manage the property in accordance with the management scheme and for damages for non-compliance. The RPT may make such an order, or revoke the FMO, if it considers it is appropriate to do so.

### ***Section 121: Variation of final management orders***

266. **Section 121** has the same effect in respect of FMOs as section 111 does for IMOs.

### ***Section 122: Revocation of final management orders***

267. **Section 122** permits the LHA to revoke an FMO in certain circumstances. These are:

- if the house ceases to be licensable;
- if the LHA grants a licence;
- if the LHA makes a further FMO; or
- other appropriate circumstances.

268. **Schedule 6** describes in more detail the procedures for revocation of FMOs. No revocation comes into force until the period for appealing against it has expired, or when any appeal is finally determined.

### ***Section 123: Procedural requirements and appeals***

269. **Section 123** gives effect to the procedural requirements and appeals procedure set out in Schedule 6.

### ***Section 124: Effect of management orders: occupiers***

270. **Section 124** provides that occupiers of a house subject to an IMO or FMO retain the same legal status they had before the management order was made. Nothing in the section prevents the LHA from granting a private sector type tenancy, but provides that a tenant is not to be a secure tenant.

### ***Section 125: Effect of management orders: agreements and legal proceedings***

271. **Section 125** provides for an LHA, by serving written notice, to take the place of the landlord in legal proceedings, and as a party to agreements relating to the management of the house. It also permits a LHA to pass on the costs of any liability to pay damages that are incurred as a result of actions by the landlord. By way of examples of how the notice procedure may be used, the LHA can take over the utility contracts or can continue legal proceedings already in existence against a tenant.

### ***Section 126: Effect of management orders: furniture***

272. **Section 126** deals with furniture that tenants have the right to use, in furnished accommodation. Furnishings which the occupants are paying for, either through rent or a separate payment, becomes the possession of the LHA while an IMO or FMO is in force. This prevents the owner of a property from seeking to remove furniture and fittings from the property. "Furniture" includes any objects that are supplied as part of a property being "furnished".

***Section 127: Management orders: powers to supply furniture***

273. Section 127 permits an LHA to supply furniture to a house subject to an IMO or FMO, and to recover its expenditure as relevant expenditure.

***Section 128: Compensation***

274. Section 128 provides for compensation to be paid to third parties in respect of any interference or loss with their rights in consequence of an IMO or FMO. If the LHA refuses to grant compensation, or does not agree with the amount claimed, its decision may be challenged at the RPT (see Schedule 6). Under an FMO where a claim for compensation has been agreed it must be included in the management scheme.

***Section 129: Termination of management orders: financial arrangements***

275. Section 129 provides that, at the end of an IMO, any surplus of rent received over an LHA's relevant expenditure (and any amounts of compensation payable to third parties) must be paid to the landlord (unless a subsequent FMO stipulates not) with similar provisions for FMOs. Conversely, if the balance is in deficit, the LHA may recover that from the immediate landlord. Subsection 9 provides that a licence granted after the termination of a management order may contain conditions concerning the recovery of sums due to the LHA. The section also provides that if at the end of either an IMO or FMO, a new FMO is made, then the way any money held by the local authority is to be treated will be determined by the management scheme contained in that FMO. This provision will allow balances of income or deficit to be carried forward to a second or subsequent FMO.

***Section 130: Termination of management order: leases, agreement and proceedings***

276. Section 130 provides that, subject to a written notice being served, when an IMO or FMO ceases to be in effect the landlord replaces the LHA in legal proceedings, and as a party to agreements relating to the management of the house.

***Section 131: Management orders: power of entry to carry out work***

277. Section 131 provides that representatives of the LHA have the power to enter a house subject to an IMO or FMO to carry out works. If an occupier, having been notified, obstructs them, he commits an offence punishable by a fine of up to £5,000.

***Chapter 2: Interim and Final Empty Dwelling Management Orders***

***Section 132: Empty dwelling management orders: introductory***

278. Section 132 explains what interim and final empty dwelling management orders ("interim EDMOs" and "final EDMOs") are. EDMOs are similar to management orders under Chapter 1 of Part 4. They enable a local housing authority to step into the shoes of owners of unoccupied dwellings to secure the dwellings' occupation. The most significant difference in practice between interim and final EDMOs (apart from the period of time for which they may be made) is that under an interim EDMO, the local housing authority must obtain the consent of the owner before it can grant anyone a right to occupy the dwelling, whereas under a final EDMO, such consent is not required.
279. A "dwelling" is defined as a building intended to be occupied as a separate dwelling (such as a house) or a part of a building intended to be occupied as a separate dwelling (such as a flat) - provided it can be directly accessed without having to enter any non-residential accommodation in the building. For example, a flat above a shop would have to have its own access.
280. An EDMO is made against the person with the most relevant interest in the dwelling (the "relevant proprietor"). Where the dwelling is not subject to any lease, the relevant



proprietor is the freehold owner. Where the dwelling is subject to a lease, the relevant proprietor would be the leaseholder with the shortest unexpired term, provided it still has more than seven years to run. Where the dwelling is subject to a lease that has less than seven years left to run, the relevant proprietor would be the next person up in the chain of ownership with a lease of more than seven years or, if there is no such superior lease, the freeholder. Any other person with an interest in the dwelling is treated as a "third party" to an EDMO.

### ***Section 133: Making of interim EDMOs***

281. A LHA must apply to a RPT for authorisation to make an interim EDMO. An RPT may authorise it on the terms requested or may vary those terms. The dwelling must be wholly unoccupied (e.g. not occupied either lawfully or unlawfully) and not owned or controlled by a public body (see paragraphs (a) to (f) of paragraph 2(1) of Schedule 14). Prior to seeking such authorisation, a LHA must make reasonable efforts to notify the relevant proprietor and ascertain if he intends to take steps to bring the dwelling back into occupation and must take into account the rights of the relevant proprietor and the interests of the wider community.
282. When applying for authorisation to make an interim EDMO, a LHA may also ask the RPT to make an order to terminate an existing lease or licence of the dwelling. This allows for termination of a lease or licence where the dwelling is not being occupied. For example, if the relevant proprietor has granted a right of possession of the dwelling to someone who has no intention of occupying it as a device to avoid an EDMO being made.
283. The procedure for making an interim EDMO is equivalent to that for making a discretionary IMO (see explanatory notes for Chapter 1 of Part 4), with some minor modifications.

### ***Section 134: Authorisation to make interim EDMOs***

284. This sets out the matters which a RPT must consider in deciding whether to authorise an application by a LHA to make an interim EDMO. It must be satisfied that:
- the dwelling has been unoccupied for at least six months or such longer period of time as may be prescribed by an order made by the appropriate national authority;
  - if the order is not made there would be no prospect of the dwelling becoming occupied in the near future;
  - if the order is made the dwelling is likely to become occupied;
  - the local authority has complied with its duties under section 133 in seeking to make an interim EDMO; and
  - any requirements which may be prescribed by a further order made by the appropriate national authority have been complied with.
285. The RPT must also take into account the effect that making the order is likely to have on the community and the rights of the relevant proprietor and third parties. The LHA must consider if it should pay compensation to any third party for interference with their rights.
286. The RPT must be satisfied that the case does not fall within any category of exception as may be prescribed in regulations. The appropriate national authority may prescribe exemptions for a range of circumstances but in particular for the following description of dwellings: the principal homes of absent owners;
- the principal homes of absent owners;
  - second homes and holiday homes;

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- homes undergoing repairs or renovation or awaiting planning or building regulations approval;
- homes on the market for sale or letting; and
- homes where the relevant proprietor died less than a specified period of time before the application for an order was made.

***Section 135: Local authority's duties once interim EDMO in force***

287. Once an interim EDMO has been authorised, the LHA is required to take any steps it considers appropriate to secure occupation and proper management of the dwelling pending either the making of a final EDMO or the revocation of the interim EDMO. If it concludes that there are no steps it could take, it must either make a final EDMO or revoke the interim EDMO without taking further action. For example, if the LHA was unable to secure occupation of the dwelling because the relevant proprietor refused to give consent to allow the dwelling to be occupied, it might conclude that the only reasonable course of action open to it would be to revoke the interim EDMO and make a final EDMO. However, if the relevant proprietor gave consent but the LHA concluded that the cost of works to make the dwelling habitable would be prohibitive, it might conclude that the only reasonable course of action would be to revoke the interim EDMO and take no further action.

***Section 136: Making of final EDMOs***

288. A LHA may make a final EDMO either to replace an interim EDMO or to replace a previous final EDMO that has expired if it considers the dwelling is likely to become or remain unoccupied if it did not do so. But it cannot do so if the dwelling is unoccupied, unless it has taken reasonable steps to secure its occupation whilst the previous EDMO was in force.
289. The LHA must take into account the effects that making the order is likely to have on the community and the rights of the relevant proprietor and third parties. The LHA must consider if it should pay compensation to any third party for interference with their rights.
290. The procedure for making a final EDMO is equivalent to that for making an FMO (see explanatory notes for Chapter 1 of Part 4) with some minor modifications - principally to ensure that third parties are served with relevant notices.

***Section 137: Local housing authority's duties once final EDMO in force***

291. Once a LHA has made a final EDMO it must take steps to secure that the dwelling is occupied and properly managed in accordance with the management scheme contained in the order. However, unlike an interim EDMO, it does not require the consent of the relevant proprietor to grant rights of occupation.
292. A final EDMO must contain a management scheme (see paragraph 13 of Schedule 7).
293. A LHA must from time to time review:
- the operation of the order and the management scheme;
  - if the dwelling is unoccupied, whether there are any steps it could take to secure that it becomes occupied; and
  - whether it is necessary to keep the order in force.
294. If it considers there are grounds to vary the order it must do so.

*These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004*

295. Where a dwelling subject to a final EDMO is unoccupied and the authority concludes on a review that there are no steps it could take to secure that it becomes occupied or it concludes that keeping the order in force is not necessary, it must revoke the order.

### ***Section 138: Compensation payable to third parties***

296. This sets out the rights of third parties to apply to a RPT for an order requiring the LHA to pay compensation for interference with their rights in respect of the dwelling on which an interim EDMO is made. In addition, third parties may also request a LHA pays compensation for interference with their rights in respect of the dwelling on which a final EDMO is made. For example, compensation might be paid to a mortgage lender whose right to restrict letting of a dwelling subject to a mortgage is overridden.

## ***Chapter 3: Overcrowding Notices***

### ***Section 139: Service of overcrowding notices***

297. Sections 139 - 144 deal with the operation of overcrowding notices, which are applicable in HMOs that are not required to be licensed under Part 2. Overcrowding in larger HMOs is covered in Part 2 of the Act since a licence only permits a house to be licensed for a specified number of occupants. Section 139 permits LHAs to serve overcrowding notices in respect of HMOs that are not licensed or subject to an IMO or FMO. The LHA must give 7 days notice to all relevant persons (including occupiers) of its intentions and consider their representations. An overcrowding notice becomes operative 21 days after it is served, unless an appeal is made (see section 143). Contravention of a notice is punishable with a fine of up to £2,500.

### ***Section 140: Contents of overcrowding notice***

298. Section 140 provides that an overcrowding notice must either stipulate the maximum number of persons who may occupy each room or specify that a room is unsuitable for occupation. The notice must also cover the requirements of either section 137 or section 138. A section 138 notice may be withdrawn and replaced with a section 137 notice.

### ***Section 141: Requirements as to overcrowding generally***

299. Section 141 requires that the terms of the notice must not be breached by allowing an unsuitable room to be occupied as sleeping accommodation. It also provides that residents should not have to live in a room with members of the opposite sex with whom they are not living together as husband and wife (excepting children under 10).

### ***Section 142: Requirement as to new residents***

300. Section 142 is very similar in its effect to section 141 except that it covers occupation by new residents i.e. anyone not resident when the notice was served.

### ***Section 143: Appeals against overcrowding notices***

301. Section 143 provides that appeals against the imposition of overcrowding notices may be made to a RPT within 21 days of the notice being served, with notices not taking effect until the appeal process is concluded. The section also provides that the RPT may allow an appeal to be made after the end of the period if it is satisfied that there is good reason for the failure to appeal before the end of the specified period.

### ***Section 144: Revocation and variation of overcrowding notices***

302. Section 144 permits an LHA, on the application of a landlord, to revoke or vary an overcrowding notice. If the LHA refuses to revoke or vary the order, or fails to give a written decision within 35 days of the application, the applicant may appeal to a RPT.

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The section also provides that such appeals should be made within 21 days and the RPT may allow an appeal to be made after the period if it is satisfied that there is good reason for the failure to appeal before the end of the period. The section also provides the definition of relevant persons for the purposes of appeals.

#### ***Chapter 4: Supplementary Provisions***

##### ***Section 145: Supplementary Provisions***

303. Section 145 permits the appropriate national authority to make regulations supplementing the provisions on management orders where an LHA is to be treated as the lessee under a lease under any of these provisions.

##### ***Section 146: Interpretation and Modification of this Part***

304. Section 146 (in addition to setting out definitions) provides that the appropriate national authority may, by way of regulations, modify the provisions in Part 4 or section 263 in respect of section 257 HMOs (poorly converted blocks of flats).

#### **Part 5 - Home Information Packs**

##### ***Section 148: Meaning of "residential property" and "home information pack"***

305. For the purposes of this Part, a residential property means a single building or part of a building together with any ancillary land - a garden for example - that is, or is meant to be, occupied as a separate dwelling. The definition includes homes that are still under construction or not yet built and so the duties described elsewhere in this Part would potentially apply to homes being sold 'off-plan'.
306. In this section, the home information pack is given a general description as a collection of documents relating to the property being sold, or the terms on which it is being offered for sale. The actual content of a home information pack will be prescribed in regulations made under section 163 and for most purposes, the Act defines the pack as something that fulfils the requirements of these regulations, or purports to. The pack may include electronic documents and could indeed consist entirely of electronic documents. However, copies of the pack should be made available to a potential buyer in hard copy unless the buyer agrees that they can be made available in electronic form. Section 156 sets out when a copy of the pack should be provided.

##### ***Section 149: Meaning of "on the market" and related expressions***

307. The duties described later in this Part apply to a "responsible person" and sections 151 to 153 describe this further. Generally, a person becomes responsible when he puts a property "on the market" or makes public the fact that the property is "on the market". This section defines "on the market" and related expressions used throughout this Part of the Act.
308. References to "the market" are to the residential property market in England and Wales. A property is put "on the market" when its availability, or possible availability, for sale is advertised or otherwise made known to the public or a section of the public in England and Wales. This carries with it an intention to market the property, so does not apply where information about the sale of a property is made public unintentionally or inadvertently. A property is considered to remain on the market until it is taken off the market or is sold. The phrase "taken off the market" is not defined in the Act and carries its ordinary meaning.
309. The expression "section of the public" is not defined in the Act either but has been used in other legislation. Case law indicates that "the public" relates to the public at large. A "section of the public" indicates a more restricted group. Thus, for example, the placing of an advertisement in a national newspaper could be described as marketing to "the

public" but placing it in a local shop window would only be marketing to a "section of the public".

310. Family members, individuals or small, defined groups of people would not be considered a "section of the public" for these purposes. Marketing which is limited to such people will therefore not count as putting the property on the market. The duties in sections 155 to 158 will not apply to marketing of this kind, but the duty in section 159 may apply if the seller uses an estate agent to carry it out. Generally speaking, the seller would know these people in a private capacity and the property would therefore not be available for sale on the open market. Someone who revealed that they were going to market their property, with no intention of marketing, would not be affected by the duties in this Part of the Act.

### ***Section 150: Acting as estate agent***

311. A person acting as an estate agent for a seller of residential property can be a "responsible person" for the purposes of the duties imposed by this Part of the Act. This section identifies when and in what circumstances a person is to be regarded as acting as an estate agent for the seller. A person acts as an estate agent under the Act if his or her business is in England and Wales, and he acts under "marketing instructions" from the seller.
312. "Marketing instructions," mean instructions to introduce a potential buyer to the seller, or to sell the property by auction or tender. This is similar to the definition of estate agency work used in section 1 of the Estate Agents Act 1979. Marketing instructions would not include advertising-only instructions, so printing firms, web sites and newspapers that carry a "for sale" list or advertisements would not be acting as an estate agent simply by doing so. "Marketing instructions" imply that the person being instructed exercised some independent judgement about how a property is marketed. There are also likely to be contractual arrangements under which the estate agent earns a fee for introducing a potential buyer to the seller. It is not relevant for these purposes whether or not the person describes himself as an estate agent, so another professional such as a solicitor would be covered if he undertook these activities.
313. In order for the duties in this Part of the Act to apply, the estate agent's business must be carried out from a place in England and Wales. It does not matter if that place is not used exclusively or mainly for business purposes, such as a residential property. Nor does it matter that only part of the estate agent's business is not located in England and Wales. However, if a residential property in England and Wales is marketed only by an agent from another country who does not have a business in England and Wales, that agent will not be regarded as the responsible person. Instead, the seller would be considered to be the responsible person for the purposes of this Part, regardless of his place of residence.

### ***Section 151: Responsibility for marketing: general***

314. This section describes who is to be regarded as responsible for marketing a residential property that is being, or has been put, on the market in England or Wales, and is therefore required to have a home information pack.
315. The Act provides for various duties (and the penalties for breaching them) only to apply to the person who is responsible for marketing the property.
316. There are only two categories of person who can be responsible persons. These are the seller himself or someone who is acting as the seller's estate agent. Under section 153(2) described further below, a seller is not required to have a home information pack where there is another responsible person and the seller reasonably believes that this person is in possession of a pack which meets the requirements of the relevant regulations (made under section 163).

***Section 152: Responsibility of person acting as estate agent***

317. This section identifies when an estate agent becomes the responsible person and when his responsibility ceases.
318. A person acting as an estate agent (see section 150) becomes responsible when he first puts the property on the market or, if it is already on the market, makes public the fact that it is on the market. It does not matter whether the person describes himself as an estate agent.
319. The responsibility of an estate agent ceases when his contract with the seller is terminated and he (or anyone acting on his behalf) stops taking an action which makes public the fact that the property is on the market. The responsibility also ceases if the property is sold or otherwise taken off the market, even if this occurs before the contract is terminated or marketing actions have stopped.
320. The Act does not define "taken off the market" but this should be given its ordinary meaning. If an estate agent whose contract with the seller has ended wishes to cease being responsible under the Act and the property has not been taken off the market or sold, he must cease marketing activities. If some marketing activity has been taking place, for example, a "for sale" sign has been erected or an advert placed in a shop window, it would be necessary to take steps to discontinue that marketing activity - by taking down the "for sale" sign or removing the advert from the shop window.

***Section 153: Responsibility of the seller***

321. This section identifies when a seller becomes the responsible person and when his responsibility ceases. A seller becomes responsible when he first puts the property on the market or, if it is already on the market, makes public the fact that it is on the market. The latter situation could arise if, for example, there is more than one seller.
322. The seller's responsibility ends when he engages an estate agent to market the property on his behalf and stops taking any action designed to market the property himself. The seller's responsibility also ceases when any marketing actions taken on his behalf stop, other than those taken by his estate agent. The seller's responsibility also ends if the property is sold or is otherwise taken off the market even if this occurs before any marketing actions stop.
323. Individuals who market their own homes without the services of an estate agent will be responsible under the Act for their own actions. A casual acquaintance or friend of the seller who helps with the marketing of the home cannot become a "responsible person" for these purposes, even though they might be acting on the seller's behalf. The seller will also be responsible if he instructs an estate agent who does not have a place of business in England or Wales. As a general rule of thumb, a residential property marketed for sale in England and Wales should have at least one responsible person, whether they are the seller or an estate agent.
324. A "seller" in this Part of the Act is defined in section 177(1) as meaning a person contemplating disposing of a freehold or leasehold interest or an option for a freehold or leasehold interest. It does not necessarily mean that the seller owns the interest, so for instance a seller could include someone dealing with a deceased person's estate. "Seller" does not necessarily imply the authority to sell, as it will be for the buyer to check title documents and satisfy himself that the owner wishes to sell once he receives the home information pack. The contents of the pack will be prescribed in regulations under section 163 and will include evidence of title.

***Section 154: Application of Sections 155 to 158***

325. This section provides that where a residential property is on the market in England or Wales, the duties described in sections 155, 156, 157 and 158 apply to each "responsible

person" who markets it. The duties in these sections may be subject to the various exceptions or conditions described below.

***Section 155: Duty to have a home information pack***

326. This section provides that the "responsible person" must have a home information pack in his possession or under his control that complies with regulations made under section 163. The duty does not apply to sellers in cases where an estate agent is responsible for marketing the property and where the seller reasonably believes that the estate agent has a home information pack that complies with the regulations in his possession or under his control.

***Section 156: Duty to provide copy of home information pack on request***

327. This section requires a responsible person to provide a copy of the home information pack to a potential buyer where he makes a request for one. Nothing in the Act stops estate agents from making available general particulars or other descriptions of the property that they are marketing on the seller's behalf.
328. The "responsible person" is under a duty to provide a copy of the pack, or any part of it, within the "permitted period". In most cases this period is 14 days from the date of the request (subsection (9)). The seller may, however, apply either of the conditions described in section 157 before providing a copy and, where he does so, the permitted period starts from when they are complied with. Section 157 describes the effect of these conditions further.
329. Subsection (2) requires that the copy is a copy of the home information pack, or of the requested document from the pack, as it stands at the time when it is provided. In other words, the copy must be the most recent version. The pack, or document, must conform to any regulations made under section 163. Subsection (10) provides that copies should be in paper form unless the potential buyer agrees to them being made available in electronic form.
330. There are three circumstances in which the responsible person may turn down a request for a copy of the home information pack without breaching any duty. These are described in subsection (4). The first of these is where there are reasonable grounds to believe that the person making the request cannot afford the property. For example, the agent might know the financial circumstances of the person in question or the seller may want to exclude people who cannot demonstrate that they have arranged an "in principle" mortgage.
331. The second applies where the responsible person believes that the person making the request is not really interested in buying this particular property or one like it. An example of this might be a journalist posing as a buyer in order to see the home information pack relating to a celebrity's home. Another example might be a request for a copy from someone who the estate agent knows to be a habitual time waster.
332. The third arises if it is believed that the potential buyer is not a person to whom the seller would wish to sell the property. There are human rights implications here and this right of refusal simply reflects the current position where someone can refuse to deal with a particular person if he wishes to, and for no particular reason. However, the section makes it clear that these exceptions do not over-ride existing laws concerning racial, sexual and other types of discrimination.
333. Subsection (5) provides that the exceptions described above do not apply in cases where the responsible person knows or suspects that the person making the request for a copy of the home information pack is an officer of an enforcement authority. Sections 166 to 170 deal with enforcement further.
334. Subsection (6) provides that a seller who is marketing his own home (and is therefore treated as a "responsible person") is not under a duty to provide a copy of the home

information pack where there is another responsible person (such as an estate agent) and the seller reasonably believes that that other person has a pack in his control. This exception only applies where the seller informs the potential buyer that requests for copies should be made to that other responsible person (subsection (7)). So, a seller who employs an estate agent to market a property and markets it himself at the same time would not be under a duty to provide a copy of the pack provided he believed that the estate agent had the pack and informed the potential buyer of this.

335. Subsection (8) allows the responsible person to make a reasonable charge to cover the costs incurred in making and sending a copy of the pack.
336. Subsection (9) provides that the duty to provide a copy ceases to apply in cases where the responsible person ceases to be responsible before the end of the permitted period. Sections 152 and 153 set out when responsibility ceases.

### ***Section 157: Imposition of conditions***

337. This section permits a seller to decline to provide a copy of the home information pack if the potential buyer has failed to comply with one or both of the following conditions.
- The payment of a reasonable charge for making a copy of the pack and sending it.
  - The acceptance of specified terms relating to the use and onward disclosure of copies of home information pack documents. An estate agent acting for a seller cannot impose these terms on a potential buyer unless they result from the seller's instructions.
338. The seller will only avoid being in breach of the duty to provide copies of documents requested if the potential buyer is informed of the conditions before the end of the 14 day period following his request for a copy of the pack.
339. Where one or both conditions is applied the "permitted period" will be the period of 14 days following the day on which the potential buyer complies with it or them. In this respect, the potential buyer would comply by:
- Making the payment demanded, or
  - Reaching an agreement on the use or disclosure of copies.
340. The Act does not impose any restrictions on the conditions that can be imposed on a potential buyer which relate to the use or onward disclosure of pack information. There are privacy implications here and this right to impose conditions simply reflects the current position where a seller can enter into a confidentiality agreement with a potential buyer. As such, these conditions are likely to be construed using common law confidence principles. This would mean that the use of these conditions would not be completely limitless. Some examples of conditions that might be unenforceable are:
- Those attempting to restrict the use of information that is already in the public domain.
  - Those preventing or inhibiting compliance with a legal obligation, or attempting to do something which is unlawful.
  - Those which are inconsistent or conflict with this legislation or its purposes. For instance, it would be inconsistent with section 156(8) to use these conditions to require a potential buyer to pay more than a reasonable charge for making and sending a copy of the pack.
341. In addition, there may be practical limits to conditions restricting the use and onward disclosure of pack information. For instance, a condition that prevents or inhibits the successful completion of the conveyancing process is unlikely to be imposed by sellers



who genuinely wish to make a sale and is equally unlikely to be accepted by many potential buyers.

***Section 158: Duty to ensure authenticity of documents in other situations***

342. This section provides that where a responsible person provides a potential buyer with a copy of the home information pack or of any document (or part of a document) included in it, or allows him to inspect it, it must be an "authentic" copy. A document is not authentic unless it is a copy of (or of part of) the home information pack for the property and complies with regulations made under section 163.
343. **Section 156** provides that where a responsible person complies with a request for a copy of the home information pack, the copy supplied must comply with the requirements of regulations made under section 163. The similar duty imposed by this section covers other situations where the potential buyer sees or receives a copy of the pack otherwise than by virtue of his right under section 156. For example, he may be shown the copy without actually asking for it. Subsection (4) removes an unnecessary duplication of the duty in cases where a copy of the pack has been provided under section 156.

***Section 159: Other duties of person acting as estate agent***

344. This section imposes a separate duty that only applies where a property is being marketed by an estate agent in a way that is too limited to trigger the other home information pack duties.
345. The duty under this section will apply in cases where, when the estate agent undertakes the marketing activity (the "qualifying action"), the property is either not on the market at all, or is on the market but the agent is not a responsible person within the meaning of the Act.
346. So, for example, a person acting as estate agent who approaches a few buyers directly but does not market the property to a section of the public would be subject to this duty.
347. The duty imposed by this section on the estate agent is a duty to have a copy of the home information pack available when "qualifying action" is taken by him or is taken on his behalf. Subsection (3) defines "qualifying action" as action taken "with the intention of marketing the property" which communicates that the property is or may become available for sale but which does not put the property on the market or make public that it is on the market.
348. An estate agent is not in breach of the duty if, for example, he or she tells a spouse or colleague that a particular property is going on the market. This would not be a "qualifying action" within the meaning of the Part, provided that the communication was not itself aimed at marketing the property. Another example is where an estate agent is seen at a property that is not yet on the market and asked whether it is up for sale. If the estate agent were to answer, truthfully, "not yet but it will be as soon as the home information pack is ready" that would not be a "qualifying action" either. The home information pack duties are only triggered where any communications are part of a direct and intentional attempt to market the property in question.
349. Where the provisions of this section do apply, and an estate agent provides a copy of a document purporting to be from the home information pack for the property, it is his duty to ensure that it complies with any regulations made under section 163 and is an authentic copy.

***Section 160: Residential properties not available with vacant possession***

350. Where a residential property is not available for sale with vacant possession, the duties set out in sections 155 to 159 will not apply. A property that is being sold subject to a tenancy does not therefore have to be marketed with a home information pack. For

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the purpose of the Act, a property is presumed to be available with vacant possession unless the manner in which it is being marketed suggests differently.

351. Subsection (2) provides that any residential property marketed will be assumed to be available with vacant possession, and therefore subject to the home information pack duties, unless the manner in which the property is marketed makes it clear that it is not.

***Section 161: Power to provide for further exceptions***

352. This section allows the Secretary of State to prescribe in regulations other circumstances in which the duties described in sections 155 to 159 do not apply.

***Section 162: Suspension of duties under sections 155 to 159***

353. This section allows the Secretary of State by order to suspend any duty imposed by sections 155, 156, 158 and 159. Such a suspension may be time limited or indefinite and in either case can be revived. This power will only be used in exceptional circumstances.

354. ***Section 163: Contents of home information packs***

355. This section deals with the contents of the home information pack. It gives the Secretary of State power to prescribe the documents to be included in the pack, the time at which they should be included and the information that may be included in, or excluded from them. It also allows the Secretary of State to prescribe documents that may be included in the pack. In other words, optional pack documents.

356. Before prescribing any document for inclusion in the pack, the Secretary of State must be satisfied that it contains information that is relevant to the property being sold and concerns matters that are of interest to a potential buyer.

357. The contents of the home information pack will be specified in the regulations. Subsection (5) gives an indication of the sort of information that is likely to be considered relevant and includes:

- The terms of sale.
- Evidence of title.
- Information in public registers that is relevant to the property, such as replies to local searches.
- Information on the physical condition of the property.
- Information on the energy efficiency of the property.
- Any warranties and guarantees on the property.
- Information concerning service charges and other taxes and charges affecting the property.
- Replies to standard preliminary enquiries made on behalf of buyers;

358. This is information that is, for the most part, obtained by or on behalf of buyers or sellers under the current system. An item which, under current arrangements, is not normally available but which is intended to be included in the pack is information about the energy efficiency of the property. This will contribute towards the implementation of EU Directive [2002/91/EC](#) (Energy Performance of Buildings Directive) which requires member states to introduce requirements for energy performance certificates and to ensure that these are made available by the owner to prospective buyers when properties are sold.

359. Subsection (7) permits the Secretary of State to prescribe the form in which and the terms upon which a prescribed document may be prepared and who should prepare it.

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Subsection (8) provides that the power to prescribe the terms of a document includes the power to impose a requirement that three specified categories of person should be able to enforce terms under which the document is prepared. This is intended to ensure that buyers and lenders, as well as sellers, are able to rely on the contents of the pack, including the home condition report commissioned by the seller of a property.

360. Subsection (9) enables the Secretary of State to vary the contents of the pack. The regulations may make different provision for different areas, for different types of property or for other different circumstances. An example of the use of this power could be the exclusion of a home condition report from the home information pack where a new home was marketed for sale "off plan" before construction had started or been completed. In addition, different documentation will generally be required depending on whether the interest in a property is leasehold or freehold. It also allows the Secretary of State to vary the time at which particular documents should be included in the pack.

### ***Section 164: Home condition reports***

361. **Section 163** enables the Secretary of State to make regulations requiring the home information pack to include a document that contains information on the physical condition of the property and its energy efficiency. This is referred to as a "home condition report".
362. This section allows the Secretary of State to make further regulations where home condition reports must be part of a home information pack. Subsection (3) provides that regulations may require the home condition report to be prepared by a member of an approved certification scheme (these persons will be known as "home inspectors") and in accordance with the provisions of the scheme.
363. Subsection (4) provides that the Secretary of State may approve one or more suitable certification schemes, or withdraw approval from these schemes.
364. Before approving a scheme, subsection (5) provides that the Secretary of State must be satisfied on a number of points, that is,
- That home inspectors are appropriately qualified and that proper standards are maintained
  - That home inspectors have suitable indemnity insurance.
  - That an adequate complaint resolution procedure exists.
  - That arrangements are in place for requiring the registration of home condition reports where provision for a register is made under **section 165**.
  - That arrangements are in place for a public register of home inspectors
  - And any other issues required by the regulations.
365. Subsection (6) allows the regulations to require or authorise a certification scheme which is approved to contain any matters relating to the home condition reports, including the terms of engagement under which home inspectors can carry them out.

### ***Section 165: Register of home condition reports***

366. Regulations made under section 163 and 164 may be made requiring a home condition report made by a home inspector to form part of a home information pack. This section allows those regulations to make provision for a register of such home condition reports.
367. Subsection (2) provides that the regulations may specify that the register is to be kept by either the Secretary of State or some other person.
368. Subsection (3) provides that a person wishing to put a report on the register may be required to pay a prescribed fee for doing so.

369. Subsection (4) provides that information from the register may only be disclosed in the circumstances set out in the regulations. Subsection (7) provides that anyone who makes an unauthorised disclosure is guilty of a criminal offence and subject, on conviction, to a fine of up to level 5 on the standard scale (currently £5,000). Home condition reports which are properly compiled should not contain personal information about any person, but this provision allows the Secretary of State to ensure that appropriate controls are in place on the use of information so that privacy is safeguarded.
370. Subsection (5) provides that the regulations may prescribe the persons who may gain access to the register or any information contained in or derived from it, and the purposes for which such information may be used. These persons may, upon payment of a fee if required, inspect the register, take or be given copies of documents in the register or be given information contained in the register. The persons who are likely to be given access to the register include sellers, buyers and potential buyers, their professional advisers and, for the purposes of valuations, mortgage lenders.
371. Subsection (6) provides that the purposes for which the information in the register may be used can be public (such as the purposes of local enforcement authorities) or private (such as the purposes of mortgage lenders).

### ***Section 166: Enforcement authorities***

372. Sections 166 to 169 and Schedule 8 provide for the enforcement of the home information pack duties by local weights and measures authorities (who act through trading standards officers). This section places a duty on local weights and measures authorities to enforce the home information pack duties, including the duty to belong to an approved redress scheme as set out in section 173, in their areas. Local weights and measures officers are already responsible for enforcing the Property Misdescriptions Act 1991 and parts of the Estate Agents Act 1979. The enforcement of the home information pack duties is in many respects complementary to the activities of trading standards officers under those Acts.

### ***Section 167: Power to require production of home information packs***

373. This section sets out the powers of the enforcement authority to require the production of any document included in a home information pack for inspection and to take copies if it is deemed necessary. The section provides that the duty should be complied with within the period of seven days following the date of the request unless there is a reasonable excuse for not doing so.
374. The section also provides that the requirement cannot be made more than six months after the last day on which the person was under a duty to have a pack available for inspection.

### ***Section 168: Penalty charge notices***

375. Section 162 gives enforcement officers a power to give penalty charge notices to persons whom they believe have failed to comply with any of the duties described in sections 155 to 159, 167(4), or 172(1).
376. The section provides that a penalty charge notice may only be given within the six-month period following the date on which the breach of duty occurred (or the date of the last day of a continuing breach). It also introduces Schedule 8, which makes further provisions for fixed penalties.
377. Enforcement officers have a number of options other than giving a penalty charge notice when they believe that a breach has occurred. It is anticipated that they will simply provide advice or a warning in most cases. In more serious cases they may issue a formal caution. The penalty charge is likely to be in the region of £200.

***Section 169: Offences relating to enforcement officers***

378. This section provides that it is an offence to obstruct or impersonate an enforcement officer. Upon conviction, a person guilty of an offence under this section is liable to a fine not exceeding level 5 (currently £5,000 maximum).

***Section 170: Right of private action***

379. This section provides a right for potential buyers to take action against any responsible person who has not complied with the home information pack duty in section 156 to provide a copy of a prescribed document in response to a request.

380. If a potential buyer has not been given a copy of the pack in response to a request, he may commission his own version of a pack document and recover from the responsible person the reasonable costs of doing so. In order to recover costs in this way, the following conditions must be satisfied:

- The property is on the market, or the potential buyer and seller are in negotiations for the sale of the property.
- The potential buyer has not been provided with an authentic copy of the document. An authentic document is one which forms part of the most recent home information pack and complies with any regulations made under section 163 on content.

381. The potential buyer's rights described in this section still apply if the request was for a home information pack or part of a pack, but did not specify the particular document sought.

***Section 171: Application of Part to sub-divided buildings***

382. This section provides that the home information pack duties apply in cases where two or more dwellings located in a sub-divided building are marketed for sale as a single property, notwithstanding that some of those dwellings are available with vacant possession and others are not. This could cover, for example, a situation where a house that has been converted into flats is offered for sale with vacant possession as a single property. This might typically be a house with a separate flat in the basement or a house that has had a "granny flat" added to it.

***Section 172: Power to require estate agents to belong to a redress scheme***

383. This section provides that the Secretary of State may make an order requiring estate agents marketing homes with home information packs to belong to an approved redress scheme in which particular complaints are investigated by an independent person, known as "the ombudsman" (subsection (6)). Failure to comply with such an order is treated as a breach of duty under Part 5 of the Act. As section 175(1) describes, enforcement authorities must notify the Office of Fair Trading ("OFT") of any breaches of duty committed by estate agents. By virtue of section 175(3), such breaches of duty are treated in the same way as "undesirable practices" prescribed under section 3(1)(d) of the Estate Agents Act 1979 which the OFT may take account of in making an order under that Act prohibiting a person from practising as an estate agent.

384. Subsection (3) provides that, before making an order requiring all estate agents to belong to a redress scheme, the Secretary of State must be satisfied that he has approved one or more redress schemes such that every estate agent (other than one who has been prohibited under the Estate Agents Act) is eligible to join an approved scheme. The approval of redress schemes is dealt with in section 173.

385. Subsection (4) provides that the order may exclude certain estate agents from the duty to belong to a redress scheme. This power could be used to exclude others whose professional activities are already regulated. For instance, solicitors who act as estate agents should already be subject to the remit of the Legal Services Ombudsman.

386. Subsection (4) also provides that the order may limit the duty so that it applies only to prescribed relevant complaints. A relevant complaint is defined in subsection (6) as a complaint against an estate agent made by a seller or potential buyer and relating to an act or omission in the course of the agent's activities in relation to the home information pack. This includes the giving of advice as to whether a pack is required.
387. Subsection (5) allows membership of an approved redress scheme to be open to persons who are not subject to a duty to belong to an approved redress scheme. This could include estate agents who deal in commercial properties that are not subject to the home information pack duties. It also allows an approved redress scheme to provide, on a voluntary basis, for investigation and determination of complaints about agents' activities other than those relating to home information packs. It also provides that the scheme may specify cases or circumstances in which a complaint will not be investigated or determined. For instance, a scheme could exclude investigation of complaints about an act or omission taking place a significant time before the complaint was made.
388. Subsection (7) provides that, for the purposes of law relating to defamation, the investigation and determination of a complaint is to be treated in the same way as court proceedings. The effect of this is to allow the ombudsman to conduct investigations and determinations freely without the threat of defamation proceedings. Similar provision exists for most other statutory ombudsmen.

### ***Section 173: Approval of redress schemes***

389. This section provides that the Secretary of State may approve a redress scheme established by another body or establish one himself.
390. Subsection (2) requires the Secretary of State, when determining whether a scheme is satisfactory for these purposes, to consider the provisions of the scheme, the way in which it appears it will be operated and the interests of buyers and sellers and those of members of the scheme.
391. Subsection (3) provides that the Secretary of State can only approve a scheme that makes satisfactory provision on the following issues:
- The matters about which complaints may be made. These may include complaints that an estate agent failed to observe a code of practice.
  - The ombudsman's powers and duties with regard to complaints, including any circumstances in which he would not investigate or determine a complaint.
  - How the ombudsman will deal with providing information to other redress schemes (this could cover, for instance, the case of an agent switching schemes while a complaint was under investigation or immediately after the matter being complained of occurred).
  - How the ombudsman will deal with providing information to the Secretary of State or others who regulate the activities of estate agents (for example, the Office of Fair Trading).
392. Subsection (4) allows the Secretary of State to require that applications for approval of a scheme must be made in a particular way and subsection (5) requires the administrator of an approved scheme to notify the Secretary of State of any changes made to the scheme as soon as practicable.

### ***Section 174: Withdrawal of approval***

393. This section provides that the Secretary of State can withdraw approval of a redress scheme. Subsection (2) specifies that before withdrawing approval the Secretary of State must serve a notice on the scheme administrator stating: that he proposes to

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withdraw approval, the reasons why, and that representations may be made within a specified period, which must not be less than 14 days.

394. If after this, the Secretary of State still wishes to withdraw approval from the scheme, he must then give a second notice of his decision, with reasons, to the scheme's administrator. The withdrawal of approval will take effect from the date specified in the second notice. The scheme administrator must give a copy of this second notice to every member of the scheme.

### ***Section 175: Office of Fair Trading***

395. Subsection (1) provides that any breach of the home information pack duties by a person acting as estate agent may be notified to the Office of Fair Trading (OFT). Subsection (2) requires that the OFT must be notified where a penalty charge notice has either been given, confirmed or withdrawn and be notified of the outcome of any appeal against the confirmation of a notice. Under the Estate Agents Act 1979 (the 1979 Act), the OFT has powers to prohibit unfit persons from doing estate agency work and to issue warnings. In deciding whether to make a prohibition order, the OFT must be satisfied that one of the events specified in section 3(1) of the 1979 Act has occurred. These events include:

- the agent having been convicted of one of various specified offences;
- discrimination in the course of estate agency work;
- failure to comply with his obligations under the 1979 Act;
- engaging in a practice which, in relation to estate agency work, has been declared undesirable by an order made under section 3(1)(d) of the 1979 Act.

396. If the OFT is satisfied that any person is unfit to undertake estate agency work generally or of a particular description, it may issue an order prohibiting that person from doing any estate agency work at all, or of a type specified.

397. Subsection (3) provides that a breach of any duty under this Part of this Act (such as failure to market property with a home information pack or failure to belong to a redress scheme) amounts to an "undesirable practice" for the purposes of section 3(1)(d) of the Estate Agents Act 1979. The OFT could therefore use evidence of such a failure as a trigger to take enforcement action under section 3(1)(d) of the 1979 Act which could ultimately lead to the agent being prohibited from working in the estate agency business.

### ***Section 176: Grants***

398. This section enables the Secretary of State to provide grant assistance in connection with the development of proposals for regulations made under section 163 (Contents of the home information pack), the development costs of a certification scheme for home inspectors making home condition reports or the development of a register of home condition reports.

399. Grants given under this section may include conditions. These conditions can specify the purpose for which grant monies can be used. They can also require repayment of all, or part of, the grant in specified circumstances.

### ***Sections 177: Interpretation of Part 5***

400. This section contains definitions of expressions used in Part 5 of the Act. In particular, subsection (1) defines:

- "ancillary land" as land being sold with a house or flat - for example, a garden.
- "long lease" is a lease granted for more than 21 years, or one capable of perpetual renewal. For these purposes, "lease" does not include a mortgage term;

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- “potential buyer”, is a person who claims that he is or may become interested in buying a residential property.
- "sale" means the sale, agreement to sell, or creation of:
  - the freehold interest
  - the interest under a long lease, or
  - an option to acquire the freehold interest or the interest under a long lease
  - and "seller" means a person who is contemplating making such a sale.

401. Subsection (3) provides that a document actually in the possession of another person and not in electronic form can only be regarded as being under the possession or control of a person if he has the right to take immediate possession of it without payment. So, for example, if a seller terminates a contract with an estate agent and the former agent retains a paper copy of a home information pack, the pack can only be regarded as within the control of the seller if he does not owe the agent any money for the pack. This may be relevant in determining whether the seller has complied with any duty he has as a “responsible person” to market property with a home information pack.

402. Under subsection (4), a document which is held in electronic form is to be regarded as being in a person’s possession or control if he is able (using equipment available to him) to:

- View the document in a form that is visible and legible; and
- Produce a legible copy in documentary (e.g. paper) form.

### ***Sections 178: Index of defined expressions Part 5***

403. This section contains an index showing where definitions of expressions used in Part 5 of the Act can be found.

## **Part 6**

### ***Section 179: Extending the Period Of Introductory Tenancies***

404. Introductory tenancies are a type of tenancy offered by some local authority landlords to new tenants. If a landlord has chosen to adopt the scheme, it must be applied to all new tenants. After the introductory period, if a tenancy is deemed to have been conducted satisfactorily, it will automatically become secure. If, during the introductory tenancy, the landlord believes that the conduct of a tenancy has been unsatisfactory, it may be terminated by an administrative decision by the landlord, subsequently confirmed by the court if the process has been followed correctly.

405. [Section 179](#) introduces new sections 125A and 125B into the Housing Act 1996. It sets out the conditions under which the duration of an introductory tenancy may be increased by six months and the procedure by which the decision to do so may be reviewed.

406. Landlords will be able to assess the suitability of an introductory tenant, including in cases of anti-social behaviour, for an additional period. The new provisions only apply to new introductory tenancies granted after this section comes into force.

### ***Section 180: Extension of qualifying period for right to buy***

407. At present, the Right to Buy does not arise unless the tenant has occupied accommodation under a public sector tenancy (i.e. armed forces accommodation or as a tenant of one of the classes of public sector landlord specified in Schedule 4 to the 1985 Act) for a period of at least two years. This section will extend the qualifying period from 2 years to 5 years. In all other ways, qualification will remain subject to



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the requirements of Schedule 4. However, although tenants will in future have to wait 5 years instead of 2 years to qualify for the Right to Buy, the amount of discount for which they will qualify under section 129 of the 1985 Act will be equal to their current discount entitlement after 5 years. Hence, after 5 years, they will qualify for discount as follows:

- for a house, 35 per cent – under the current rules, tenants are entitled to 32 per cent after two years plus one per cent for each of the additional three qualifying years.
  - for a flat, 50 per cent – under the current rules, tenants are entitled to 44 per cent after two years plus two per cent for each of the additional three qualifying years.
408. The total amount of discount for which any tenant is eligible will however remain subject to the limits set by the Secretary of State under section 131 of the 1985 Act.
409. This section will only apply to wholly new tenancies that begin on or after the day on which it comes into effect. Therefore, it does not apply to:
- secure tenancies that begin or were agreed to before that day, or
  - individuals who were public sector tenants on that day and remain so up to the day on which they serve a notice under section 122 of the Housing Act 1985 applying for the Right to Buy - for example, secure tenants or tenants whose landlords are Registered Social Landlords who begin a new secure tenancy after the day on which this section comes into effect. This could happen because a secure tenant moves to a different property, or because a tenant of a Registered Social Landlord begins a new tenancy with a local authority landlord.

***Section 181: Exceptions to the right to buy: determination whether exception for dwelling-house suitable for elderly persons applies***

410. This section transfers jurisdiction for the determination of tenants' appeals against being denied the Right to Buy by their landlord, on the basis that the property falls within the exception for dwelling-houses suitable for elderly persons, from the Secretary of State to a residential property tribunal. The transfer only applies to appeals regarding properties in England.
411. **Paragraph 11** of Schedule 5 provides that the RTB does not arise if the dwelling:
- is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons; and
  - it was let to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more.
412. The section amends paragraph 11 so that appeals will be determined by a residential property tribunal in respect of England, and by the Secretary of State in respect of Wales. Devolution has resulted in the functions of the Secretary of State in this regard being transferred to the National Assembly for Wales.
413. The National Assembly for Wales will have power under section 229 of the Act to transfer jurisdiction for determining appeals from the Secretary of State to a residential property tribunal in respect of Wales under paragraph 11 in future, if it considers that this is appropriate.

***Section 182: Exceptions to the right to buy: houses due to be demolished***

414. Schedule 5 to the Housing Act 1985 sets out the exceptions to the Right to Buy. This section adds to Schedule 5 properties which are to be demolished during the next 24 months, where the landlord has served a final demolition notice and has followed the prescribed notification process. The Right to Buy would then not arise in respect of such properties. Landlords will be required to notify tenants affected by the decision to

demolish, giving reasons and the intended timetable for demolition, to inform tenants of the right to compensation under new section 138C (see the notes for section 183 below), and also to publicise decisions by placing a notice in a newspaper local to the area in which the property is situated, in any newspaper published by the landlord, and on their website (if they have one).

415. A final demolition notice cannot be served until the arrangements for acquisition of any premises to be demolished alongside the properties as part of a demolition scheme are finalised. This means that compulsory purchase issues must have been resolved before a final demolition notice can be served.
416. The landlord can make an application to the Secretary of State during the 24-month period for that period to be extended, but if he does not make such an application, he will be unable to serve any further demolition notice in respect of these properties for five years without the Secretary of State's consent. On receipt of an application, the Secretary of State can direct that the period be extended, but he may specify further notification requirements that the landlord must comply with in order for the exception to the Right to Buy to continue.
417. If the landlord subsequently decides not to demolish the property, he must serve a revocation notice upon affected tenants as soon as is reasonably practicable. If it appears to the Secretary of State that a landlord has no intention of demolishing properties subject to a final demolition notice, he may serve a revocation notice on affected tenants.

***Section 183: Right to buy: claim suspended or terminated by demolition notice***

418. Section 183 of the Housing Act 1985 requires a landlord to complete a Right to Buy sale as soon as all matters relating to the sale have been agreed or determined. Section 183, by the insertion of new section 138A into the Housing Act 1985, suspends that obligation in cases where an initial demolition notice has been served, following the prescribed notification process.
419. The content, period of validity, and the provisions concerning the termination and revocation of initial demolition notices are contained in Schedule 9. Such notices may be served in respect of properties that the landlord intends to demolish within five years. This period may not be extended. Schedule 9 requires landlords to notify tenants of their decision to demolish, giving reasons and the intended timetable for demolition. It also requires them to state (i) the effect of the initial demolition notice (ie, that while it is in force, the landlord's obligation to complete the Right to Buy sale is suspended), (ii) that it does not prevent new Right to Buy applications being made, and (iii) that where a valid Right to Buy claim has been made, the tenant may claim compensation in respect of expenditure reasonably incurred, before the notice was served, on the conveyancing process (see note for new section 138C below).
420. If the landlord subsequently decides not to demolish the property, he must serve a revocation notice upon affected tenants as soon as is reasonably practicable. If it appears to the Secretary of State that a landlord has no intention of demolishing properties subject to an initial demolition notice, he may serve a revocation notice on affected tenants.
421. If a initial demolition notice expires and demolition has not taken place, no further initial demolition notice can be served on that property for a period of five years.
422. **Section 183** inserts new section 138A into the Housing Act 1984, which provides that an initial demolition notice suspends the landlord's obligation to complete the Right to Buy, while new section 138B provides that a final demolition notice terminates an outstanding Right to Buy claim.
423. New section 138C provides that a landlord who serves either an initial or a final demolition notice upon a tenant who has established a valid Right to Buy claim is liable to compensate him for any reasonable costs that he has incurred in respect of the

conveyancing process - for example, the costs of legal advice and survey and search fees. Whether costs are reasonable or not can be decided by the county court in the event of disagreement between the tenant and the landlord (see section 181 of the Housing Act 1985). The tenant will have to claim the compensation within three months from the date on which the notice comes into force, and to provide receipts or other documents showing that the expenditure has been incurred.

#### ***Section 184: Landlord's notice to complete***

424. Under section 140 of the Housing Act 1985, a landlord may serve a 'first notice to complete' no earlier than 12 months after serving a notice under section 125 of the Housing Act 1985 (notice of purchase price etc). This requires the tenant to complete the Right to Buy sale within a period stated in the notice, which must be at least 56 days, and must be reasonable in the circumstances. However, if any relevant matters are still outstanding, the tenant may serve on the landlord within the specified period a written notice specifying those matters, and he does not then have to complete the sale within the specified period.
425. If the tenant does not comply with a notice under section 140, the landlord may serve on him a further written notice requiring him to complete the transaction within a further period stated in the notice, which must be at least 56 days, and must be reasonable in the circumstances. The landlord has discretion to extend this period. If the tenant does not comply with a notice under section 141 within the period specified by the landlord, his Right to Buy application is deemed to be withdrawn.
426. **Section 184** shortens the period before which a landlord may serve a first notice to complete under section 140 from 12 months to three months. The new total time limit is comparable to the time taken by private sellers and buyers to complete sales. As at present, it is for the landlord to decide whether and when to serve a notice, and whether to extend the period.

#### ***Section 185: Repayment of discount: periods and amounts applicable***

427. At present, if a person who has exercised their Right to Buy wishes to resell the property within three years of acquiring it, he or she is required to repay to the former landlord all or some of the Right to Buy discount which they received. This section extends this period from three years to five years, in respect of both the Right to Buy and the Rent to Mortgage schemes (sections 143-151 of the 1985 Act).
428. **Section 185** also makes three other separate changes. Firstly, it makes clear that former landlords have discretion as to whether or not to demand repayment of discount on early resale within the specified period in relation to purchases under both the Right to Buy and Rent to Mortgage schemes. This discretion is also available in relation to people who bought their properties before the coming into force of this section, and who are subject to a three-year discount repayment period that has not yet ended. Secondly, it changes the calculation of the amount of discount to be repaid from a flat-rate basis to a percentage basis, in relation to the Right to Buy only. Thirdly, it changes the repayment taper (i.e., the amount by which the level of discount which has to be repaid is reduced after each complete year since purchase) from one third per year to one fifth per year, in respect of both the Right to Buy and the Rent to Mortgage schemes.

#### **Discretion to waive repayment of discount**

429. Guidance will be issued as to the circumstances in which it is considered appropriate for a former landlord to agree to forego payment of part or all of the discount due for repayment, and will encompass situations where to waive repayment would alleviate potential hardship – e.g. where a buyer wishes to resell for reasons of severe illness, or sudden bereavement, or relationship breakdown (especially in cases of domestic violence).

## **Section 155A**

430. This provision applies to Right to Buy sales only, and recoups for the public purse a proportion of any appreciation in the value of a property originally sold with the benefit of discount, which is resold during the period within which the former landlord may demand repayment of some or all of that discount. However, it will also benefit Right to Buy purchasers whose property has fallen in value, as the amount they will have to repay will be reduced.
431. Section 155A provides that the maximum amount that the former landlord may demand (subject to the repayment taper) is that percentage of the resale price which is equal to the discount to which the tenant was entitled at the time of the original sale, where that discount is expressed as a percentage of the value of the property at that time. For example, if a tenant received discount equivalent to 10 per cent of the Right to Buy sale price, the landlord may demand repayment of 10 per cent of the property's resale value. However, this is also subject to the provisions of Section 155C (see note for section 186 below) regarding the value of improvements to the property made by the owner after purchasing it under the Right to Buy. The repayment taper is changed from one third per year to one fifth per year.

## **Section 155B**

432. Section 155B concerns the Rent to Mortgage scheme. It gives discretion to former landlords regarding the recovery of discount, and also extends the change in the discount repayment taper to the Rent to Mortgage scheme.

### ***Section 186: Repayment of discount: increase attributable to home improvements to be disregarded***

433. This section is designed to ensure that an owner who resells during the five-year period during which discount may be recovered retains the value of improvements he or she has made to a property after acquiring it, either under the Right to Buy or as a successor in title to the original purchaser.
434. The new section 155A inserted by Section 185 provides that the amount of discount to be repaid shall be a percentage of the resale value of the property. Section 186 inserts new section 155C, under which the resale value will be treated as net of the value of any improvements made by the current owner after acquiring the property and before disposing of it.
435. If the value of such improvements is disputed, it shall be determined by the District Valuer, so long as (a) it is reasonably practicable for him to do so and (b) the reasonable costs of his doing so are paid by the person making the disposal. If there is no agreement between the parties as to the value of improvements, and the District Valuer does not make a determination, there will be no disregard for the value of improvements.

### ***Section 187: Deferred resale agreements***

436. Section 155 of the Housing Act 1985 provides that tenants who exercise their Right to Buy and then make a 'relevant disposal' which is not an exempt disposal (generally a resale) within the discount repayment period must repay on demand some or all of the discount for which they qualified. Section 187 makes an agreement to transfer ownership of the property (other than an exempt disposal) made (i) in contemplation of the tenant exercising the Right to Buy and (ii) before the end of the discount repayment period a relevant disposal. This will be so even if it was agreed that the transfer of ownership would take place after the end of the discount repayment period. Such an agreement will then also trigger repayment of discount, from the date of the agreement to transfer ownership, not the date of the transfer itself.

***Section 188: Right of first refusal for landlord etc.***

437. **Section 188** requires that a covenant be inserted into all conveyances or grants to tenants requiring that, during the period of 10 years from the date of the conveyance or grant, the tenant purchaser (or any successor in title) must make an offer of first refusal to his former landlord, or such other person as the Secretary of State prescribes, before he can make a relevant disposal of the property (other than an exempted disposal) - this generally means a resale. The Secretary of State's functions in respect of Wales have been transferred to the National Assembly for Wales.
438. Such a covenant will be a local land charge and must be entered into the property's register of title by the Chief Land Registrar. This means that the covenant cannot be overlooked when resale is under consideration.
439. The Secretary of State has the power to prescribe by regulations such conditions as he considers appropriate for and in connection with the right of first refusal. He can:
- make provision to ensure that offers are made to a prescribed person. This is because the former landlord may not always be the most appropriate body to receive an offer of first refusal, as it may have transferred its remaining interest in that property, or in related properties (e.g. the other properties on an estate of which the property forms a part), to another body;
  - make provision which will allow other persons, such as other social landlords in the area, to be nominated to receive an offer of first refusal in place of the former landlord. This is so that if the former landlord does not wish to accept the offer, an alternative social housing provider will have the opportunity to purchase the property, thus maximising the chances that the property will be brought back into social housing; and
  - provide for time limits within which offers must be accepted, and for the circumstances in which the right of first refusal will lapse, so as to protect the interests of tenant purchasers wishing to sell their properties.
440. **Section 188** does not remove the current option under section 157 of the Housing Act 1985, in respect of properties in National Parks, areas designated under section 82 of the Countryside and Rights of Way Act 2000 as being of outstanding natural beauty, and areas designated as rural under section 157 itself, for landlords to require tenant purchasers to resell only to persons who have lived or worked locally for at least three years, as an alternative to imposing a right of first refusal covenant.

***Section 189: Information to help tenants decide whether to exercise right to buy etc***

441. Previously, landlords had a duty under section 104 of the Housing Act 1985 to provide general information about the express terms of their secure tenancies, the Right to Buy, and the landlord's repairing obligations. This section places an additional, more specific, duty on landlords to supply information to tenants about such matters as the Secretary of State specifies by Order, to help tenants decide whether to exercise the Right to Buy. The Secretary of State's functions in respect of Wales have been transferred to the National Assembly for Wales.
442. It is intended that the matters will mainly concern the responsibilities and consequences of being a homeowner, such as meeting the costs involved in buying and maintaining a property – for example, stamp duty, fees, and insurance - and then the costs of repairs and maintenance (including service charges levied on leaseholders who have bought flats).
443. Landlords will have to keep the information up to date, so far as is reasonably practicable, and must make the information available in accordance with the requirements of new section 121B of the Housing Act 1985, i.e. at the landlord's principal offices and such other places as it considers appropriate. The landlord must

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also publish the information and supply copies of it directly to tenants at such times as are prescribed by the Secretary of State.

### ***Section 190: Termination of rent to mortgage scheme***

444. The Rent to Mortgage scheme is a form of shared ownership for those tenants who cannot afford to buy their homes outright under the Right to Buy scheme. Section 190 will end the scheme. There will be a grace period of 8 months after Royal Assent, during which existing tenants who are eligible to buy under the Rent to Mortgage scheme can still do so.

### ***Section 191: Secure Tenancies: Withholding Of Consent To Mutual Exchange***

445. Mutual exchanges occur when two tenants of social landlords swap homes by legally assigning their tenancies to each other. The permission of the landlord of both tenants is required. The landlord of a secure tenant can not refuse permission unless the grounds set out in Schedule 3 to the Housing Act 1985 are met.
446. **Section 191** introduces a new Ground 2A into Schedule 3 of the Housing Act 1985. The landlord of a secure tenant may refuse an application if a specified type of injunction, an anti-social behaviour order or a possession order granted on the grounds of nuisance is in force or if court action to obtain such an order or a demolition order is pending against the tenant, the proposed assignee or a person who resides with either of them.
447. A demotion order is an order obtained under provisions inserted in the Housing Act 1985 and the Housing Act 1988 by the Anti-Social Behaviour Act 2003, which ends a secure or an assured tenancy and replaces it with a demoted tenancy, which is essentially a probationary tenancy.
448. An anti-social behaviour order is an order obtained under the Crime and Disorder Act 1998, which places specified limitations on the conduct of the individual against whom it is made.

### ***Section 192: Right to Buy: suspension by court order***

449. **Section 192** will enable landlords of secure tenants to seek an order suspending the right to buy for a specified period in respect of the tenancy on the grounds of anti-social behaviour. The court may only grant such an order if it is satisfied that the tenant or a person residing in or visiting the property has engaged or threatened to engage in anti-social behaviour (which includes using the premises for unlawful purposes), and that it is reasonable to make the order.
450. When deciding if it is reasonable to make the order, the court will consider, in particular, whether it is desirable for the property to be managed by the landlord during the suspension period, and to the effect the behaviour has had, or would have if repeated, on other people.
451. A suspension order will end any existing applications to exercise the RTB and prevent any new applications being made during the period specified by the court. The suspension of the RTB does not have any impact on the accumulation of discount or qualifying period.
452. The landlord may request, on one or more occasions, an extension to the suspension period, however the court may not extend the suspension period unless, since the making of the suspension order (or since the last extension) the tenant, or a person residing in or visiting the property, has engaged or threatened to engage in anti-social behaviour, and that it is reasonable to make the further order.
453. **Section 192** allows regulations to be made that will continue the effect of a suspension order where the secure tenant becomes an assured tenant, as he would otherwise be able

to exercise the Preserved Right to Buy (sections 171A-171H Housing Act 1985), or the Right to Acquire (section 16-17 Housing Act 1996), instead of the Right to Buy.

***Section 193: Right to buy: suspension of landlord's obligation to complete***

454. **Section 193** prevents a tenant from being able to compel completion of a Right to Buy sale if an application is pending for a demotion order, a suspension order, or a possession order sought on the basis of Ground 2 of Schedule 2 of the Housing Act 1985 (anti-social behaviour), until those proceedings have ended, and none of those orders have been made. If a demotion order or outright possession order is made, the tenant will lose their secure tenancy and thus also lose the right to buy. If a suspension order is made, it will end any existing applications to exercise the RTB and prevent any new applications being made during the period specified by the court.
455. A demotion order is an order obtained under the Anti-Social Behaviour Act 2003 which ends a secure tenancy and replaces it with a less secure form of tenancy, which is essentially a probationary tenancy. After the demotion period, normally one year, a tenant may become a secure tenant again and regain the right to buy.
456. A suspension order is an order suspending the right to buy for a specified period in respect of the tenancy on the grounds of anti-social behaviour obtained under section 192 of this Act.

***Section 194: Disclosure of information as to orders etc. in respect of anti-social behaviour***

457. This section allows any person to provide relevant information to a landlord of a secure tenant to enable the landlord to exercise its discretion under new sections 191 and 193. It also allows regulations to be made to allow information to be disclosed to a landlord of an assured tenant on the same basis in respect of applications for the preserved right to buy and the right to acquire. This section applies to information as to whether any of the specified orders or proceedings relating to anti-social behaviour are in force or pending.

***Sections 195-198: Disposals by local authorities***

458. These sections carry over the changes made in respect of the Right to Buy in sections 185-188 to voluntary disposals by local authorities of properties at a discount under section 32 of the Housing Act 1985.
459. Voluntary disposals by local authorities can be made under section 32 of the Housing Act 1985, but require the Secretary of State's consent. A General Consent has been issued permitting sales at a discount, but only on terms that mirror the Right to Buy scheme. Specific consent can be granted to sell properties on more generous terms, however, if necessary or desirable in particular circumstances.
460. With respect to section 197, and the landlord's right of first refusal, the Government wishes to preserve the existing position for local authorities in rural areas. Local authorities can choose between a right of first refusal, and a restriction requiring sales to be made only to local people. The General Consent will allow this freedom of choice to continue.

***Sections 199 -201: Disposals by Registered Social Landlords***

461. These sections carry over the changes made in respect of the Right to Buy in sections 185 -188 to voluntary disposals by Registered Social Landlords of properties at a discount under section 9 of the Housing Act 1996.
462. The voluntary disposal of properties by Registered Social Landlords (e.g. housing associations) under section 9 of the Housing Act 1996 requires the consent of the Housing Corporation. General consent has been given for properties to be disposed of

at a discount, on terms no more generous than the statutory Right to Buy or Right to Acquire scheme, where the Registered Social Landlord has a voluntary sales policy in place. Registered Social Landlords that do not have a voluntary sales policy in place require specific consent from the Corporation in respect of any disposals. Specific consent can be sought from the Housing Corporation if a Registered Social Landlord wishes to dispose of properties on more generous terms, if necessary or desirable in particular circumstances.

463. With respect to section 200, and the landlord's right of first refusal, the Government intends to allow Registered Social Landlords in rural areas to choose between a right of first refusal, and a restriction requiring sales to be made only to local people. The Housing Corporation's consent will allow this freedom of choice.

### ***Section 202: Right of assured tenant to acquire dwelling not affected by collective enfranchisement***

464. This section preserves the Right to Acquire for assured tenants of Registered Social Landlords (RSLs) in cases where long leaseholders living in the same block of flats as non-qualifying assured tenants enfranchise (i.e. purchase the freehold compulsorily).
465. Under the Leasehold Reform, Housing and Urban Development Act 1993, qualifying tenants of flats (i.e. long leaseholders) were given rights to collective enfranchisement. By Schedule 9, paragraph 3, where flats are let out to non-qualifying tenants (i.e. those who are not long leaseholders) by a housing association freeholder, and enfranchisement occurs, there is a mandatory leaseback by the new freeholder to the housing association of those flats, so that the housing association remains as the immediate landlord of the tenants. (Housing association includes RSLs in this context).
466. The Right to Acquire (RTA) is a statutory scheme under which some tenants of RSLs are given the right to purchase their rented home at a discount by section 16 of the Housing Act 1996. Previously, in order for the Right to Acquire to apply, section 16(3) (a) required that the freehold interest in the dwelling must at all times have been held by an RSL or a public sector landlord.
467. Therefore, when a group of RSL leaseholders enfranchise, the other RSL assured tenants in the same block who are not long leaseholders lose their statutory Right to Acquire their rented home. This was an unintended consequence of leasehold legislation.
468. **Section 202** extends the definition of freehold interest in the dwelling (in section 16(3) of the Housing Act 1996) so that it still applies even where a mandatory leaseback has taken place. The section thereby preserves the Right to Acquire for RSL assured tenants in cases where a group of leaseholders in the same block buy the freehold. The Right to Acquire is conferred also upon those from whom it has already inadvertently been removed.

### ***Sections 203 –205: Disposals by housing action trusts***

469. These sections carry over the changes made in respect of the Right to Buy in sections 185-188 to voluntary disposals by Housing Action Trusts of properties at a discount under section 79 of the Housing Act 1988.
470. Voluntary disposals by Housing Action Trusts can be made under section 79 of the Housing Act 1988, but require the Secretary of State's consent. Consent would not generally be given for disposals on terms more generous than the Right to Buy, but specific consent could be given to sell properties on more generous terms, however, if necessary or desirable in particular circumstances. Voluntary disposals by Housing Action Trusts are not common, but may become more frequent as the few remaining Trusts near the end of their work and need to find new owners for all their property.



471. Of the three remaining Housing Action Trusts, two will close in 2005 and the last will conclude its work by the end of 2007.

***Section 206: Particulars of site agreements to be given in advance***

472. **Section 206** substitutes section 1 and amends section 2 of the Mobile Homes Act 1983, which concern agreements made between a site owner and an occupier wishing to station a mobile home on a site, their terms, and the enforceability of the terms of that agreement.
473. Site owners are now required to provide a prospective occupier with a written statement of the terms of the occupation agreement 28 days before any agreement for the sale of the mobile home to the occupier is made. A shorter period can be agreed in writing between the parties if they so choose.
474. If a site owner has not provided the written statement in advance as required, he may not enforce any of the express terms of the agreement, unless he applies to court within six months of either the making of the agreement or of providing the statement (whichever is the later), for an order that the express terms should have full or partial effect. Where an express term is for the benefit of other occupiers of the site, it is considered more likely that a court will agree that it should be enforceable against the occupier. However the court will have to balance those considerations against how fair it is to the occupier to be bound by a term of which he had no, or insufficient, notice.
475. An occupier can rely upon express terms which are in their favour, even if the statement is not provided in time by the site owner, and can enforce such a term any time after the agreement has been made in the normal way by issuing court proceedings.
476. The existing power for either party to apply to court for an order to change or delete an express term - as opposed to enforcing a term - is preserved. However, the time limit has been changed so that applications must now be made within six months of the making of the agreement, or six months of receiving the written statement (whichever is later).
477. If a site owner fails to produce a written statement at all, the occupier can apply to the court any time after the making of an agreement for an order requiring the site owner to produce the written statement.
478. The provisions, which set out the requirements with which a statement must comply, and which give a power to the Secretary of State to prescribe further requirements, are also preserved.

***Section 207: Implied terms relating to termination of agreements or disposal of mobile homes***

479. **Section 207** amends paragraphs 6, 8 and 9 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 and adds Part 3 to that Schedule.
480. **Section 207(2)** amends paragraph 6, the grounds upon which a site owner may apply to court to end an agreement with an occupier, is to remove the “age” of the home as a relevant factor for termination of agreement. A site owner may continue to apply to court to end an agreement on the basis that the “condition” of a home is having a detrimental effect upon the amenity of the site, or is likely to have such an effect in the next five years. Section 207(2) also gives discretion to the court to adjourn termination proceedings to give the occupier time to effect particular repairs, if this would be reasonably practicable, and if the occupier has indicated that he is willing to carry out those repairs.
481. **Section 207(3)** amends paragraph 8, and applies where an occupier wishes to sell their home. Occupiers are only permitted to assign their occupation agreements to a person approved of by the owner, although this approval cannot be unreasonably withheld. A time limit of 28 days has been introduced, by the end of which the site owner must

approve the potential purchaser, unless it is reasonable for him not to do so, and also must give or withhold approval in writing. If the approval is given subject to conditions, the conditions must be specified. If approval is withheld, then reasons must be given. If at the end of the 28 day period, the occupier has not received a decision in writing, they can apply to the court for an order declaring that the person is approved. The duty to give approval is a contractual duty. Breach of this duty means that the occupier could seek an award of damages for breach of contract.

482. **Section 207(4)** makes similar provision where an occupier wishes to gift their home, and carries across the changes of paragraph 8 to paragraph 9.
483. By 207(5), a new duty is imposed on a recipient of an occupier's request for approval, where the recipient is not an owner, but does have an estate or interest in the site. The recipient will be under a duty to pass the request on to the owner.
484. The duty to pass on a request for approval is a statutory duty, breach of which entitles the occupier to seek an award of damages from a court.
485. These changes will generally apply to existing agreements, as well as to those made on or after the day on which this Act comes into force. However, they will not affect any application to terminate an agreement which has been made before the day that the section comes into force, nor will they affect any requests for approval made before that day.

#### ***Section 208: Power to amend terms implied in site agreements***

486. **Section 208** inserts a new power in the Mobile Homes Act 1983 for the appropriate national authority to make an order to prescribe new implied terms for site agreements and to amend or delete existing terms.
487. The first time this power is exercised, the order can affect the implied terms in existing agreements between site owners and occupiers, that is, agreements which were made before the day on which this order comes into force, so exercise of the power can have retrospective effect. However, future exercises of the power cannot be retrospective.
488. The appropriate national authority must consult organisations which are representative of interests which would be affected by such an order, such as those representing occupiers, and also those representing site owners. Both Houses of Parliament must approve any order made under the power.

#### ***Section 209: Protected sites to include sites for Gypsies***

489. **Section 209** amends section 1 of the Caravan Sites Act 1968 to extend the meaning of 'protected site' to include sites owned by County Councils providing accommodation for Gypsies. This will mean that sections 2-4 of the Caravan Sites Act 1968 will apply to these sites and the occupiers of them, i.e. the requirement for minimum length of notice in section 2,

the protection from unlawful eviction and harassment contained in section 3, and provision for the suspension of eviction orders in section 4. The change does not have any retrospective effect, i.e. it does not affect any notice given or proceedings begun before section 209 comes into force, or conduct occurring before that date.

#### ***Section 210: Extension of protection from harassment for occupiers of mobile homes***

490. **Section 210** amends section 3 of the Caravan Sites Act 1968 to give mobile home occupiers equivalent protection to that given to tenants in conventional housing against harassment and unlawful eviction.

491. **Section 210(2)** amends the existing offence in section 3(1) (offence where a person, with the specified intent, does acts calculated to interfere with the peace or comfort of the occupier etc.), so that “likely to interfere” is substituted for “calculated to interfere” with the peace or comfort. This should make it easier for local authorities to prosecute site owners who harass occupiers with the intention of making them leave their home, or to refrain from exercising any right or pursuing any remedy.
492. **Section 210(3)** makes it an offence for a site owner or his agent to do acts likely to interfere with an occupier’s peace and comfort or to persistently withhold services if he knows or has reasonable cause to believe this will cause the occupier to leave his home, or to refrain from exercising any right or pursuing any remedy. It enables local authorities to prosecute for harassment without needing to prove an actual intention on the part of the site owner (or agent) to harass.
493. **Section 210(4)** makes the offences in the Caravan Sites Act 1968 either-way offences instead of summary only. It also increases the maximum sentence available on summary conviction from 6 to 12 months' imprisonment. The maximum sentence for conviction on indictment is 2 years.

### ***Section 211: Suspension of eviction orders***

494. Section 4 of the Caravan Sites Act 1968 gives discretion to the courts to suspend eviction orders made in respect of most privately owned caravan sites. Section 205 extends this discretion to local authority owned and managed caravan sites, allowing the courts to suspend any order for periods of up to 12 months at a time. The change does not affect any proceedings begun before Section 211 comes into force.

### ***Section 212 : Tenancy deposit schemes***

495. **Section 212(1)** places a duty on the appropriate national authority to make arrangements to ensure that one or more tenancy deposit schemes (TDSs) are established to safeguard deposit monies paid in connection with assured shorthold tenancies.
496. **Section 212(2)** provides that TDS schemes will have two main purposes. They must aim to safeguard tenancy deposits paid in connection with an assured shorthold tenancy and to facilitate the resolution of disputes arising in connection with such deposits. All authorised tenancy deposit schemes must comply with the requirements of Schedule 10.
497. The appropriate national authority will be able to make arrangements with a body or person, known as the scheme administrator, to set up and manage a TDS on their behalf. The intention is for these to be contractual arrangements with private organisations. However, the sections do not limit these arrangements to just private organisations; the appropriate national authority is free to make arrangements with either private or public organisations.
498. Schemes are expected to be self-financing, but section 212(4) allows the appropriate national authority to give financial assistance, for example by way of a grant or to make payments to procure one or more schemes if necessary. The authority will also be able, if it wishes, to provide a financial guarantee for schemes, for example should the scheme be at risk from becoming insolvent. However, the appropriate national authority is under no obligation or duty to cover all, or any, of a scheme's financial obligations.
499. **Section 212 (7)** allows the appropriate national authority to make regulations giving additional powers to or conferring duties upon scheme administrators in connection with the arrangements made between the administrators and the appropriate national authority.
500. **Section 212(8)** defines a tenancy deposit as money, in the form of cash or otherwise, intended to be held as security against an assured shorthold tenants’ performance of his obligations or the discharge of his liabilities in connection with the tenancy.

***Section 213: Requirements relating to tenancy deposits***

501. From the time these provisions come into force all landlords and their agents will be required to ensure that any deposit required in relation to an assured shorthold tenancy is safeguarded by a tenancy deposit scheme. Landlords, agents or tenants will not be able to avoid the legislation by agreeing that a deposit should not be safeguarded by a scheme. If a deposit is required the landlord or his agent will always be required to comply with the provisions. Within 14 days of the landlord or his agent receiving a deposit he must ensure that the deposit is safeguarded by an authorised TDS in accordance with the scheme's requirements and give the tenant and, if relevant, the person who paid the deposit, such information as is prescribed by the appropriate national authority as to which scheme is safeguarding their deposit, how the scheme's initial requirements have been met and details of the relevant legislation which protects their deposit.

***Section 214: Proceedings relating to tenancy deposits***

502. The tenant, or the person, who paid the deposit, will be able to apply to the court for an order requiring the person holding the deposit to repay the deposit or to pay it into a custodial scheme in two circumstances. Firstly, where a landlord has not safeguarded a deposit in accordance with the initial requirements of a scheme or given the tenant the required information within 14 days. Secondly, where the landlord has informed the tenant that a particular scheme is safeguarding the deposit and the scheme has not been able to confirm this.
503. If at the court hearing the court is satisfied that the landlord has not complied with the initial requirements of a scheme or provided the information required by section 213 (6) (a) or that the deposit is not being safeguarded by an authorised scheme the court must either order the person holding the deposit to repay the deposit to the applicant or pay it into an authorised custodial scheme within 14 days of the order being made. The court must also order the landlord or his agent to pay the applicant an amount equivalent to three times the deposit.
504. Where a landlord or his agent has taken a deposit which could not be lawfully required, i.e. one which does not consist of money, the person who gave it to the landlord or his agent is entitled to recover it through the courts.

***Section 215: Sanctions for non-compliance***

505. The landlord may not serve a notice under section 21 of the Housing Act 1988 at any time where a deposit is not being safeguarded in accordance with an authorised scheme or where either the initial requirements of the scheme have not been met or the prescribed information regarding the safeguarding the deposit has not been given. Under section 21 of the Housing Act 1988 a landlord can obtain an order for possession of an assured shorthold tenancy at any point after the first 6 months of the tenancy providing that any fixed term has expired and that they have given the tenant at least 2 months notice. This is sometimes referred to as the 'notice only' ground for possession as there is no need to prove fault on behalf of the tenant.
506. A landlord also cannot use this 'notice only ground' for possession while they are holding a deposit which could not be lawfully required, i.e. one which consists of something other than money.

***Section 216: Overcrowding***

507. Subsection (1) enables the appropriate national authority to make provision by order for determining whether a dwelling is overcrowded for the purposes of Part 10 of the Housing Act 1985. Currently section 324 of that Act defines overcrowding with reference to the room standard set out in section 326 or the space standard set out in section 327.

508. By virtue of subsection (1)(b) and (c), an order may modify the operation of sections 139 to 144 of this Act, which enable LHAs to serve overcrowding notices limiting the number of persons occupying or likely to be occupying a HMO (other than a HMO which is subject to licensing under Part 2 and in respect of which a management order is in force under Part 4). An order under section 216 may remove the discretion of LHAs to serve notices under sections 139 to 144, so that overcrowding is regulated only by provisions of Part 10.
509. Subsection (2) provides that an order under section 216 may regulate the making by LHAs of determinations as to whether premises are overcrowded. It may prescribe the factors that LHAs must take into account in making such determinations, and the procedure to be followed. An order under subsection (1) may, virtue of subsection (3) modify or repeal any of the provisions of Part 10.
510. Subsection (4) provides that any reference to Part 10 of the Housing Act 1985 includes a reference to that Part as amended, and that an order under section 216 may modify either an Act or an earlier order.

***Section 217: Energy efficiency of residential accommodation: England***

511. **Section 217** imposes a duty on the Secretary of State to take all reasonable steps to ensure that by 2010 the general level of energy efficiency of residential accommodation in England has increased by at least 20%. The definition of residential accommodation is that contained in the Home Energy Conservation Act 1995. Subsection (2) clarifies that this duty does not affect the duty to designate an aim under the Sustainable Energy Act 2003.

***Section 218: Amendments relating to registered social landlords***

512. **Section 218** introduces Schedule 11 which amends previous legislation under which the relevant authority (the Housing Corporation in England and the National Assembly for Wales in Wales) is allowed to register and regulate Registered Social Landlords.

***Section 219: Disclosure of information to registered social landlords for the purposes of section 1 of the Crime and Disorder Act 1998***

513. **Section 219** amends section 115 of the Crime and Disorder Act 1998 (the 1998 Act) to allow registered social landlords to receive information where the disclosure is necessary or expedient for the purposes of any provision of the 1998 Act. The main effect of this is to allow them to receive information from other bodies to support their applications for anti-social behaviour orders under section 1 of the 1998 Act.

***Section 220: Additional power to give grants for social housing***

514. **Section 220** inserts a new section 27A into the Housing Act 1996 thereby extending the powers of the relevant authority (the Housing Corporation in respect of England, and the National Assembly for Wales in respect of Wales) to allow it to give grants to persons that are not registered social landlords (RSL). The Interpretation Act 1978 defines "persons" as including a body of persons corporate or unincorporate.
515. Grants may be given under this new power for the purposes set out in subsection (2), which are essentially the same social housing purposes for which social housing grant is currently provided to RSLs.
516. Subsection (3) provides the Secretary of State with an order-making power to make any provisions in connection with the making of grants considered necessary, in particular such an order may define any equity percentage arrangements, specify or define the bodies from whom prospective purchasers may obtain mortgages, and to establish the priority of such mortgages. An order under subsection (3) will be subject to negative resolution.

*These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004*

517. The grant under the new section 27A may be given subject to conditions and, in relation to any grant given by the Housing Corporation, subsections (3) and (5) allow the Secretary of State to prescribe, by order, conditions which must be imposed or matters about which the Housing Corporation must impose conditions, and any effects such conditions must achieve.
518. Where such conditions are prescribed by the Secretary of State, the Housing Corporation is under a duty impose those conditions on any grant it makes, (see subsection (7)(a)) and is prevented from imposing conditions itself which conflict with such prescribed conditions, (see subsection (7)(b)).
519. Subsection (6) places a duty on the relevant authority to specify the procedure to be followed for applications for grants; the circumstances in which grants will be payable; the method for calculating grant and any limitations on its amount; and, the manner in which grants will be paid.
520. The relevant authority will have the power under subsection (9) to impose conditions requiring a sum it has determined to be paid to it by the grant recipient in specified circumstances, with or without interest.
521. [Section 220](#) also inserts a new section 27B, which deals with what happens where a property built using grant provided under section 27A is transferred either to another non-RSL, or is transferred to an RSL.
522. This new section provides that, whenever a property for which grant is payable under section 27A is transferred to another non-RSL, the grant is treated as if it were payable to that other non-RSL. In the event of such a transfer the new section ensures that any conditions applied to the grant are transferred to the transferee where either the whole or part of the grant has been paid.
523. This new section also provides that, where a non-RSL transfers grant-funded property to an RSL, the grant is treated as if it had been given to the RSL under section 18 of the Housing Act 1996. This means that it will attract the grant conditions which would usually be imposed if the grant had been given under section 18.
524. For the purpose of new section 27B a property is transferred when it vests in or is leased for a term of years to, or reverts to, the transferee.

### ***Section 221: Extension of the Right to Acquire***

525. [Section 221](#) inserts a new section 16A into the Housing Act 1996. This new section gives tenants of properties funded through section 27A grant a right to acquire their home equivalent to the right enjoyed by tenants of RSLs under section 16 of the Housing Act 1996.
526. New section 16A applies section 16 of the 1996 Act, with modifications, in relation to dwellings funded wholly or in part by section 27A grant. Where grant is given under section 27A the Housing Corporation must notify the grant recipient that any dwelling funded under section 27A could be subject to a right to acquire, (see subsection (3)). Subsection (4) of the new section provides that a dwelling should be regarded as having remained within the social rented sector if it has been continuously used by the grant recipient, or a person treated as the grant recipient under section 27B, in accordance with the purposes for which the grant was given.

### ***Section 222: Rights of pre-emption in connection with assured tenancies***

527. [Section 222](#) enables landlords of shared ownership properties to include rights of first refusal in their shared ownership leases in order to help with the retention of affordable housing units.

528. Shared ownership is a part buy/part rent scheme, intended to help those on a low income into home ownership. Applicants buy a share of a property (typically between 25% to 75%) and pay rent to a housing association on the remaining share. The purchaser is granted a long lease and becomes the sole legal owner of the property, but the landlord retains a share of the equity equal to the percentage of the purchase price that was unpaid (e.g. 50%, if the purchaser bought a 50% share). The scheme provides a means of buying a home in stages at a lower initial cost than purchasing a property outright. Shared owners may, if they wish, purchase further shares in the property (a process known as "staircasing") when they can afford to do so and eventually own their home outright.
529. Enabling the landlord to buy back the property, where the tenant wishes to dispose of it, would prevent the loss of affordable housing stock to the open market, particularly in rural areas where replacement is difficult, and would allow the housing association to re-sell the unit in more affordable tranches.
530. Section 5 of the Housing Act 1988 would previously have operated so as to make a right of first refusal unenforceable. Shared ownership leases are generally assured tenancies, as because of the rental element they are not long leases at low rent.
531. [Section 222](#), by excluding rights of first refusal from section 5 of the Housing Act 1988, will allow landlords to insert and enforce rights of first refusal in shared ownership leases to assist with the retention of affordable housing units. If included in the lease, a right of first refusal will simply require the shared owner to offer the property back to the original landlord. There will be no obligation on the landlord to accept.

### ***Section 223: Allocation of housing accommodation by local authorities***

532. Local housing authorities are required to have an allocation scheme to determine priorities and the procedure to be followed when allocating housing accommodation. In framing their allocation scheme, local housing authorities must ensure that "reasonable preference" is given to certain categories of people. Section 167(2) (d) of the Housing Act 1996 provides that reasonable preference for an allocation is given to people who need to move on "medical or welfare grounds".
533. [Section 223](#) amends section 167(2)(d) of the Housing Act 1996 to make clear that "medical and welfare grounds" includes people who need to move on grounds relating to a disability.

### ***Section 224: Disabled facilities grant: caravans***

534. [Section 224](#) extends eligibility for Disabled Facilities Grant (DFG) to all those occupying caravans. DFG is a mandatory grant administered by local authorities under Part 1 of the Housing Grants, Construction and Regeneration Act 1996. It is available for adaptations that enable disabled occupants to live more independently in their homes.
535. The Regulatory Reform (Housing Assistance)(England and Wales) Order 2002 made DFG available to disabled occupants of "qualifying park homes". However, the definition of qualifying park home excluded some groups of caravan occupants from eligibility, including the majority of Gypsies and Travellers. Section 224 rectifies this situation by replacing the term "qualifying park home" with the term "caravan", and the term "pitch" with the term "land", in each place they appear in the 1996 Act. It also inserts a definition of "caravan" in the 1996 Act. A caravan is defined by reference to the Caravan Sites and Control of Development Act 1960, which contains the standard definition of "caravan" used in various statutes dealing with caravans and caravan sites. The definition is that a caravan is a structure designed or adapted for human habitation that is capable of being moved. The section requires a local authority to be satisfied that the caravan was stationed on land in its area at the time the application was made.

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536. This amendment does not apply to applications for DFG made before the date on which the section comes into force.

***Sections 225 & 226: Housing needs assessment***

537. **Section 225** requires local housing authorities to review the accommodation needs of 'gypsies and travellers' in their district when carrying out reviews of housing needs under s.8 of the Housing Act 1985.
538. **Section 225(1)** states that the gypsies and travellers who reside in an area (i.e. who currently live there), or who resort to an area (i.e. who pass through from time to time) will have their needs assessed.
539. The development of local authority housing strategies is covered by s.87 of the Local Government Act 2003. Under that section, the Secretary of State or the National Assembly for Wales may require an LHA to prepare and supply them with a strategy in respect of some housing matter. It is anticipated that the Secretary of State and the National Assembly for Wales will require LHAs to prepare and supply a strategy under that section in respect of the meeting of the accommodation needs of gypsies and travellers in their district.
540. **Section 225(3)** requires local authorities to take any such strategy into account when exercising their other functions. This can include functions relating to planning, education, social care etc as well as housing.
541. **Section 225(4)** states that local authorities must take into account any guidance issued when carrying out needs assessments and preparing strategies.
542. **Section 225(5)** also allows for regulations to be issued which define gypsies and travellers.
543. **Section 226** allows for the Secretary of State or the National Assembly for Wales to issue guidance on the carrying out of housing needs assessments and the preparation of strategies to meet those needs. It sets out the process by which guidance covering England must be laid before Parliament.

***Section 227: Removal of duty on local housing authorities to send annual reports to tenants etc***

544. **Section 227** removes section 167 from the Local Government and Housing Act 1989. This removes the statutory duty on local housing authorities to produce a report to tenants about its functions as a local housing authority.

***Section 228: Social Housing Ombudsman for Wales (SHOW)***

545. **Section 228** inserts a new subsection (7) after section 51(6) of the Housing Act 1996 to disapply section 51 of the Housing Act 1996 (schemes for the investigation of housing complaints) in relation to social landlords in Wales and then inserts new sections 51A, 51B and 51C. These sections, together with Schedule 12 (which inserts a new Schedule 2A into the Housing Act 1996), contain new provisions in respect of the office of the Social Housing Ombudsman for Wales ("the SHOW").
546. New section 51A sets up the office of the Social Housing Ombudsman for Wales to investigate complaints made against social landlords in Wales. The person who is the Local Commissioner for Wales shall be the SHOW. Provision is made for designation of the office, where there is more than one Local Commissioner. If the person who is the SHOW ceases to be the Local Commissioner, he shall also cease to be the SHOW. The power to remove a Local Commissioner for Wales from office under the Local Government Act 1974 is extended to allow for his removal on the grounds of incapacity or misbehaviour in the office of SHOW. The SHOW, rather than the National Assembly



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for Wales (“the Assembly”), is to investigate complaints made against social landlords in Wales. Schedule 2A contains further provisions about the SHOW.

- 547. New section 51B allows the Assembly to make provision by regulations about the investigation by the SHOW of complaints made about social landlords in Wales, in particular in respect of those matters outlined under section 51B(2)(a)-(h).
- 548. New section 51C defines the meaning of ‘social landlord in Wales’ and gives the Assembly the power to add to or amend the descriptions of landlords who are to be treated as social landlords (subject to consultation with such persons as the Assembly considers appropriate), and defines a “publicly-funded” dwelling.
- 549. Subsection 3 inserts further provision about the SHOW in Schedule 12 to this Act into the Housing Act 1996 - as a new Schedule 2A.

## **Part 7**

### ***Section 229: Residential property tribunals***

- 550. Section 229 provides that the jurisdiction under this Act or any other enactment given to a RPT is to be exercised by a Rent Assessment Committee constituted under the Rent Act 1977 and when exercising that jurisdiction a committee is a RPT. The section also provides that the appropriate national authority can, by order approved by both Houses of Parliament, confer additional jurisdiction on the RPT and modify the Act or any other enactment accordingly.

### ***Section 230: Powers and procedure of residential property tribunals***

- 551. Section 230 confers powers on the RPT to give directions in order to dispose of appeals and applications effectively so as to avoid the necessity for repeated appeals or applications in relation to the same matter. The section also gives effect to Schedule 13, which provides for regulations to govern tribunal procedures.

### ***Section 231: Appeals from residential property tribunals***

- 552. Section 231 provides that an appeal against a decision of the RPT is to the Lands Tribunal. An Appeal can only be made with the permission of the RPT or the Lands Tribunal and only within the time specified in the Lands Tribunal rules.

### ***Section 232: Register of licences and management orders***

- 553. Section 232 requires LHAs to keep an up to date register of all Part 2 or 3 licences, exemption notices, and management orders made under Chapters 1 or 2 of Part 4. The register must be available for public inspection and persons may take copies thereof (on payment of a fee).

### ***Section 233: Approval of codes of practice with regard to the management of HMOs etc***

- 554. Section 233 allows the appropriate national authority to approve, or approve a modification to, codes of practice in relation to the management of HMOs or properties described in the Schedule 14 (buildings which are not HMOs other than for the purpose of Part 1). Non-compliance with a code is not in itself an offence. However, failure to comply with an approved code may be used in evidence in any proceedings before a court or a tribunal.

### ***Section 234: Management regulations in respect of HMOs***

- 555. Section 234 provides that the appropriate national authority may make regulations with the aim of securing satisfactory standards of management in

HMOs of the description set out in the regulation. In particular the regulations may impose duties on the managers to repair and maintain the fabric of the building and facilities and equipment within it and upon the occupiers not to frustrate the manager in exercising his duties under the regulations. Failure to comply with the regulations is a criminal offence, subject to a level 5 (maximum £5,000) fine.

***Section 235: Power to require documents to be produced***

***Section 236: Enforcement of powers to obtain information***

556. **Section 235** allows an LHA to require the production of documentation that the authority might need to carry out its functions under Parts 1 to 4 of the Act and to investigate whether an offence committed under those Parts in relation to any premises. A notice requiring the production of documentation must specify or describe the documents, or class of documents, which must be produced and must specify a time and place at which they must be produced. The notice must explain the consequences of not complying with the notice. Once a document has been produced it may be copied by the person who receives it. Under subsection (6) document is defined as including information which is not in legible form, this might include for example documents held on computer in a zipped file. Only a "relevant person" can be required to produce documentation under this section and subsection (7) defines "relevant person" for the purpose of this section.
557. **Section 236** provides enforcement powers relating to section 235. Anyone failing to comply with a notice to produce a document commits an offence and is liable to a fine not exceeding level 5 on the statutory scale (currently £5,000). Anyone deliberately altering or destroying a requested document can be subject to an unlimited fine if tried in the Crown Court. Subsection (2) provides a defence of reasonable excuse for failing to comply with the notice.

***Section 237: Use of information obtained for certain other statutory purposes***

558. **Section 237** allows an LHA to use information that it has obtained for housing benefit or council tax purposes in order to carry out its functions under Parts 1 to 4 of this Act. So, for example, if several claims for housing benefit are made from the same address, the LHA will be able to use information obtained for the purposes of administering the claims to investigate whether the property in question ought to have a licence under Part 2 of the Act. This information may also help the LHA to decide the actual number of occupants of a dwelling, in relation to hazards under Part 1, particularly those which could be exacerbated by over-occupation, such as hazards from fire.

***Section 238: False or misleading information***

559. **Section 238** makes it an offence to knowingly or recklessly supply false or misleading information under Parts 1 to 4 or Part 7 of the Act, or to another person who will then use that information under Parts 1 to 4 or Part 7 of the Act. The maximum penalty on summary conviction is a fine not exceeding level 5 on the statutory scale (currently £5,000).

***Section 239: Powers of entry***

560. **Section 239** gives an LHA powers of access to properties in pursuance of its duties under Parts 1 to 4 and Part 7 of the Act. The power of entry is exercisable where an inspection is to take place under section 4, the premises to be inspected are the subject of an improvement notice or prohibition order or a management order under Part 4 of the Act is in force. The person exercising the power of entry must be authorised in writing and this authorisation should set out the purpose for which the entry is authorised. Before exercising the power of entry the person authorised to enter must give at least 24 hours notice to the owner or occupier of the premises that they intend to enter, however

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the power of entry may be exercised at any reasonable time, without giving prior notice if entry is required to ascertain whether an offence has been committed under sections 72, 95 or 233(3) of the Act. Permission under this section does not include a power to use force to obtain entry. This power of entry includes entry for the purpose of taking samples.

561. Examples of when this power could be used are: to gain access to a property to ensure that a house in multiple occupation (HMO) is suitable for multiple occupation and reaches the prescribed standards set out in Part 2 of the Act; or when the LHA wished to establish whether the provisions of an improvement notice or prohibition order have been properly complied with.
562. See section 243 for provisions as to which officers within a LHA are empowered to give authorisations under this section.

#### ***Section 240: Warrant to authorise entry***

563. **Section 240** enables a Justice of the Peace to issue a warrant authorising entry to premises for the purposes of an inspection under section 4, an inspection to determine whether any functions under Parts 1 to 4 of Part 7 of the Act should be exercised, surveying or examining premises which are the subject of an improvement notice, a prohibition order or a management order under Part 4. A warrant should specify the purposes for which the entry is allowed. A warrant to authorise entry may only be granted when either entry under section 239 has been refused, or the property is empty and immediate access is necessary, or prior warning of entry is likely to negate the purpose of access. A power of entry under a warrant may include the power to enter by force if necessary.

#### ***Section 241: Penalty for obstruction***

564. **Section 241** makes it a criminal offence to obstruct a representative of an LHA in carrying out the LHA's functions under Parts 1 to 4 and sections 239 and 240. The maximum penalty on summary conviction (conviction in the Magistrates' Court) is a fine not exceeding level 4 on the statutory scale (currently £2,500). Subsection (2) provides a defence of reasonable excuse for obstructing the representative.

#### ***Section 242: Additional notice requirements for protection of owners***

565. **Section 242** allows the owner of a property to require notice from the LHA of any relevant action taken under Parts 1 to 4 of this Act relating to their property. This provision is intended to ensure that any owner who is not actually managing or controlling his property is kept informed.

#### ***Section 243: Authorisations for enforcement purposes etc***

566. **Section 243** requires that a person exercising the powers set out in subsection (1), including the power to require the production of documents under section 235 and the power of entry under section 239, must be authorised by the appropriate officer of the local housing authority. Subsection (3) defines the appropriate officer as a person who is a deputy chief officer within the meaning of section 2 of the Local Government and Housing Act 1989 and whose duties consist of or include duties relating to the exercise of the relevant functions, or is an officer to whom such a person reports or is accountable.

#### ***Section 244: Power to prescribe forms***

567. **Section 244** allows the appropriate national authority to prescribe the form of any notice, statement or document required under the Act.

***Section 245: Power to dispense with notices***

568. Section 245 provides that the appropriate national authority may allow an LHA to dispense with the service of a notice if it is reasonable to do so. Before giving a dispensation, the appropriate national authority must have regard to the need to ensure as far as possible that the interests of any person are not prejudiced by the dispensation.

***Sections 246 - 248: Service of documents and things done electronically***

569. Sections 246 - 248 make provision for the service of documents, including the service of documents in electronic form.

***Section 249: Proof of designations***

570. Section 249 makes provision regarding proof of designations made by an LHA under Part 2 or 3 stating that a certified copy of the scheme is prima facie evidence that the scheme has been made.

***Section 250: Orders and regulations***

571. Section 250 makes provision in relation to orders and regulations made under the Act. Any power of the Secretary of State or the National Assembly for Wales to make orders or regulations under the Act is exercisable by statutory instrument. Under subsection (3), the Secretary of State must consult the National Assembly for Wales before making any regulations under Part 5 which relate to residential properties in Wales.
572. The section provides for different procedures to apply in different cases. Commencement powers, as is usual, have no form of Parliamentary procedure. Detailed and technical orders and regulations will be subject to the negative resolution procedure. Orders and regulations listed in subsection (5) are subject to the affirmative resolution procedure.

***Section 251: Offences by bodies corporate***

573. Section 251 makes provision in respect of offences by a body corporate, for example, a limited company. It provides that a representative of an organisation, that is a director, manager, secretary or other similar officer of the body corporate, is capable of being liable as well as the organisation itself.

***Section 252: Power to up-rate level of fines for certain offences***

574. Section 252 allows the Secretary of State to change the fines for certain offences in line with inflation.

***Section 253: Local inquiries***

575. Section 253 allows the appropriate national authority to require a local inquiry to be held in connection with the carrying out of its functions under the Act, if it considers that it is appropriate to do so.

***Section 254: Meaning of "house in multiple occupation"***

576. Section 254 provides a definition of a "house in multiple occupation". To fall within that definition a privately rented building must be
- a block of flats within the meaning of section 257; or
  - be subject to an HMO declaration; or
  - meet one of the three tests set out in the section.

577. The standard test in subsection (2) requires that unrelated occupiers of the building share basic amenities in living accommodation that is not a self contained flat or flats, or that the living accommodation lacks one or more of those amenities. Subsection (3) provides that a self contained flat can be an HMO if unrelated occupiers share basic amenities, or the flat lacks one or more of those amenities.
578. Subsection (4) applies to private rented converted buildings which meet the shared or lack of facilities tests in (2) and also buildings that include flats where the basic amenities for the exclusive use of the occupant are located outside of the main living accommodation.
579. [Section 254](#) also contains definitions of “self-contained flat”, “converted building” and “basic amenities”. In addition it exempts those buildings in Schedule 14 from the definition and provides regulation making powers for the appropriate national authority to amend this section and related provisions as they relate to the definition of HMO.

### ***Section 255: HMO declarations***

580. [Section 255](#) provides that where an LHA is satisfied that although not exclusively occupied by people as their main or only home, a building is occupied to a significant degree by such persons (and otherwise the occupation and building satisfies the HMO tests) it may issue a declaration that the building is an HMO. This could be used, for example, where it is not entirely clear that a building was being predominantly used as a hotel catering for short term guests or as a hostel accommodating permanent residents. An HMO declaration puts beyond doubt that such a building is to be regarded as an HMO. It must serve the declaration on the relevant persons as defined in the section and they have a right of appeal against the making of a declaration. The declaration does not come into force until the appeal process is finished, if on appeal the decision to make it is confirmed.

### ***Section 256: Revocation of HMO declarations***

581. [Section 256](#) provides that when an HMO declaration is in force and the LHA is satisfied that the test for making an HMO declaration is no longer satisfied, it can revoke the declaration and the building will cease to be an HMO. An LHA can revoke the declaration on its own volition or upon an application from a relevant person. If it decides not to revoke the declaration where it has been asked to do so, it must tell the applicant the reason for its decision. If the applicant is not satisfied with that decision there is a right to appeal. On appeal the tribunal may confirm the LHAs decision not to revoke the declaration or may reverse that decision and revoke it.

### ***Section 257: HMOs: certain converted blocks of flats***

582. [Section 257](#) defines the “converted blocks of flats” that are classified as HMOs. These are blocks that have been converted into self-contained flats that did not comply with the 1991 Building Regulations when they were converted and where less than two-thirds of the flats are owner-occupied.

### ***Section 258: HMOs: persons not forming a single household***

583. [Section 258](#) provides that persons do not form a single household for the purpose of section 254 unless they are members of the same family or they form a prescribed relationship under regulations made by the appropriate national authority. The section defines “family” for these purposes.

### ***Section 259: HMOs: persons treated as occupying premises as only or main residence***

584. [Section 259](#) sets out that in certain circumstances persons are to be treated as occupying accommodation as their only or main residence (notwithstanding they may have a home

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elsewhere) for the purpose of section 254. These are students and those in refuges fleeing domestic violence. The appropriate national authority may by regulations prescribe other descriptions of circumstances for the purpose of this section.

***Section 260: Presumption that sole use condition or significant use condition is met***

585. Section 260 provides that in any legal proceedings it is presumed in respect of a building that the sole use condition or the significant use condition is met, unless there is evidence to the contrary.

***Section 261: Meaning of "appropriate national authority", "local housing authority" etc.***

586. Section 261 gives the meaning of appropriate national authority. In relation to England, the expression means the Secretary of State. In relation to Wales it means the National Assembly for Wales. The section also defines the expression local housing authority.

***Section 262: Meaning of "lease", "tenancy", "occupier" and "owner" etc.***

587. Section 262 gives the meaning, for the purpose of the Act, of "lease", "tenancy", "occupier" and "owner", and derivations of those terms. In particular subsection (4) provides that the definition of "lessee" includes a statutory tenant. The expressions include lettings granted by the LHA, but the definition of "occupier" does not apply where any different definition is provided elsewhere in the Act for specific purposes.

***Section 263: Meaning of "person having control" and "person managing" etc***

588. Section 263 defines for the purpose of the Act that "person having control" is the person who receives (directly or as an agency or trustee) the market rents from the tenants for a given premises or is otherwise entitled to receive the rents if the premises were let (i.e. an owner) "Person Managing" is someone who receives the rents directly from the occupier (but "rent" includes ground rent), so such a person could be a managing agent.

***Section 264: Calculations of numbers of persons***

589. Section 264 provides that that the appropriate national authority can prescribe rules with respect to the calculation of numbers of persons for the purposes of any provision of the Act, any provision made under the Act or any order or licence made or granted under the Act.

***Section 265: Minor and consequential amendments***

590. Section 265 gives effect to Schedule 15 to the Act which contains minor and consequential amendments. Subsection (2) enables the Secretary of State to make supplementary, incidental and consequential provisions by order for the purposes of the Act. Subsection (3) allows such an order to modify any Act or subordinate legislation for those purposes. Any order made under subsection (3) is subject to the affirmative resolution procedure. The power in subsection (2) is also exercisable by the National Assembly for Wales in relation to provisions dealing with matters with respect to which the functions are exercisable by the Assembly.

***Section 266: Repeals***

591. Section 266 gives effect to Schedule 16 to the Act which contains repeals.

***Section 267: Devolution: Wales***

592. Functions of the Secretary of State under the Housing Acts of 1985, 1988 and 1996 are exercisable, as respects Wales, by the National Assembly for Wales, pursuant to the National Assembly for Wales (Transfer of Functions) Order 1999. This section provides

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that the reference in that Order to those acts is to be treated as a reference to those acts as amended by the Act.

### ***Section 268: The Isles of Scilly***

593. The Act applies to the Isles of Scilly, but section 268 allows the Secretary of State to make modifications as to how the Act applies, by order.

### ***Section 270: Short title, commencement and extent***

594. **Section 270** provides that in general the Act extends to England and Wales and makes provision for commencement. Details of commencement of each of the provisions of this Act are set out in a separate section at the end of these notes.
595. Subsection (9) enables the Secretary of State, by order, to make transitional provisions in connection with the coming into force of any provision of this Act and subsection (10) enables the National Assembly for Wales to make such provision for matters with respect to which functions are exercisable by the Assembly.

## **SCHEDULES**

### ***Schedule 1: Procedure and appeals relating to improvement notices***

596. **Schedule 1** sets out the procedures for serving, revoking and varying improvement notices, and the procedures and time limits for appeals against such notices.

### ***Schedule 2: Procedure and appeals relating to prohibition orders***

597. **Schedule 2** sets out the procedures for making, revoking and varying prohibition orders, and the procedures and time limits for appeals against such orders.

### ***Schedule 3: Improvement notices: enforcement action by local housing authorities***

598. **Schedule 3** enables enforcement action in respect of an improvement notice to be taken by LHAs either with or without agreement. It also enables authorities to recover the expenses they incur in taking such action without agreement, and provides a right of appeal by persons from whom they have sought recovery of expenses.

### ***Schedule 4: Licences under Parts 2 or 3: mandatory conditions***

599. **Schedule 4** sets out mandatory conditions to be attached to licences granted under Parts 2 or 3. Paragraph 1 sets out the conditions that LHA's are required to include in all Part 2 and 3 licences. Paragraph 2 sets out a condition that only applies to Part 3 licences. Paragraph 3 enables the appropriate national authority by regulations to amend paragraphs 1 or 2 by adding or removing conditions.

### ***Schedule 5: Licences under Parts 2 and 3: procedures and appeals***

### ***Schedule 6: Management orders: procedure and appeals***

600. **Schedule 5** sets out the procedures and appeal mechanisms in relation to licences under Parts 2 and 3. **Schedule 6** does so for management orders under Part 4. In each Schedule, Part 1 sets out the procedure the LHA must adopt in granting or refusing a licence, or in the case of Schedule 6, the making of orders. Part 2 of the Schedules are concerned with procedures relating to variation or refusal to vary and revocation and refusal to revoke licences and management orders. Part 3 of both Schedules sets out the rights to appeal against decisions and the mechanisms, which apply.

### ***Schedule 7: Further Provisions regarding empty dwelling management orders***

Paragraph 1 - Operation of interim EDMOs

*These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004*

601. An interim EDMO comes into force as soon as it is made and can normally last for a maximum period of 12 months.
602. [Paragraph 2](#) - General effect of interim EDMOs
603. When an interim EDMO is in force, the LHA takes over most of the rights and responsibilities of the relevant proprietor including (subject to the rights of existing occupiers) the right to possession of the dwelling. It does not, however, become the legal owner of the dwelling. With the consent of the relevant proprietor, the LHA may grant occupation rights. Where the relevant proprietor is a leaseholder, any grant must be for a term that is less than the relevant proprietor's lease.
604. A LHA (or an agent appointed by the authority) is not liable to any person with an estate or interest in the dwelling for any act or omission done in the performance of its duties under an interim EDMO, unless it is due to negligence.
605. An interim EDMO is a local land charge and the LHA may apply to have a restriction entered on the Land Register. This is to prevent any unauthorised dealings and to ensure the Land Register accurately reflects the status of the property.
606. [Paragraph 3](#) - General effect of interim EDMOs: leases and licences granted by authority
607. A tenancy or licence granted by a LHA is to be treated as if it were a legal lease or a licence granted by a legal owner.
608. [Paragraph 4](#) - General effect of interim EDMOs: relevant proprietor, mortgagees etc
609. A relevant proprietor is not entitled to receive any rent or other payments from persons occupying the dwelling and may not exercise any rights to manage the dwelling whilst an interim EDMO is in force. However, the relevant proprietor retains their rights to dispose of their interest in the dwelling (e.g. by selling it).
610. The validity of any mortgage or superior lease of the dwelling and any rights or remedies available to the mortgagor or lessor are unaffected, save where they would prevent the LHA exercising its power to grant a right of occupation.
- [Paragraph 5](#) - Financial arrangements while order is in force
611. Rent collected by a LHA from persons occupying the dwelling may be used to meet the costs incurred in performing duties in respect of the dwelling or to pay compensation payable to a third party or a dispossessed landlord or tenant. The authority must pay any remaining balance, plus interest (where appropriate), to the relevant proprietor.
612. The LHA must keep full accounts of income and expenditure and allow the relevant proprietor opportunity to inspect the accounts. The relevant proprietor may apply to a RPT to make an order declaring expenditure to be unreasonable and to require appropriate adjustment of the accounts.
613. [Paragraphs 6, 7 and 8](#) - Variation or revocation of interim EDMOs
614. A relevant proprietor or someone else with an interest in the dwelling is entitled to ask the LHA to vary or revoke an interim EDMO at any time.
615. The terms of an interim EDMO may be varied if the LHA considers it appropriate to do so.
616. A LHA may revoke an interim EDMO if:
- it concludes that there are no steps it can take to secure occupation of the dwelling;
  - it is satisfied that the dwelling will become or continue to be occupied following revocation;



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- it is satisfied that the dwelling is to be sold;
  - a final EDMO has been made to replace the order;
  - it concludes that it should revoke the order so it does not interfere with the rights of a third party; in any other circumstance it considers it appropriate to do so.
617. However, if the dwelling is occupied at the time the revocation is proposed, the LHA may only revoke with the consent of the relevant proprietor (unless the revocation is necessary so that a final EDMO may be made). This restriction is provided so that the relevant proprietor can not be required to manage tenancies he did not enter into. Therefore, if the LHA decides to revoke the order and hand back responsibility for the dwelling to the relevant proprietor, the relevant proprietor may request the LHA to bring to an end any occupation, before the relevant proprietor is willing to consent to the order being revoked..
618. The LHA may make revocation subject to payment of any expenditure incurred by it that has not already been recouped from rental income. It is entitled to refuse to revoke the order on the grounds that the property would be likely to be left unoccupied.
619. [Paragraph 9](#) - Operation of final EDMOs
620. A final EDMO comes into force when the time for appealing against it expires or, if an appeal is made, only when the RPT upholds it. The effect of this is that the relevant proprietor has the opportunity to prevent any final EDMO coming into force until either he accepts all the terms, or they have been considered by a RPT.
621. A final EDMO ceases to have effect after 7 years, unless:
- the order provides for it to cease to have effect earlier; or
  - the order provides for it to cease to have effect later and the relevant proprietor consents;
622. [Paragraphs 10, 11 and 12](#) - General effect of final EDMOs
623. The general effect of a final EDMO is largely the same as for an interim EDMO. The principal difference being that a LHA does not require the consent of the relevant proprietor to grant occupation rights. Any occupation rights granted cannot be for a fixed term expiring after the order is due to expire or terminable by notice of more than 4 weeks, without the consent of the relevant proprietor. But consent to create a tenancy equivalent to an assured shorthold tenancy is not needed, provided it is created more than 6 months before the expiry of the order.
624. [Paragraphs 13 and 14](#) - Management scheme and accounts
625. A final EDMO must contain a management scheme setting out how the LHA intends to carry out its duties and how it will account for monies expended and collected whilst it is operative. The LHA must keep full accounts of income and expenditure and provide anyone with a relevant interest in the dwelling reasonable access to inspect them.
626. The management scheme must include details of the following:
- Work the LHA intends to carry out to the dwelling and an estimate of expenditure;
  - The rent the dwelling might be expected to fetch on the open market and the rent the LHA will seek to obtain;
  - Any compensation payable to third parties;
  - Where the amount of rent payable is less than the open market rent, the management scheme must account for the difference. For example, the LHA is permitted to charge a sub market rent, but it must make up any shortfall out of its own resources.

627. The management scheme must also include details of how the LHA intends to pay the relevant proprietor any surplus remaining after deduction of its relevant expenditure and any compensation payable. The management scheme may also state if the LHA intends to carry over any surplus to a subsequent final EDMO or, where there is a deficit, how it intends to recover the deficit under a subsequent final EDMO.
628. A person affected by a management scheme who considers the LHA is not managing the dwelling in accordance with the management scheme may apply to a RPT for an order requiring the LHA to do so.
629. [Paragraphs 15, 16 and 17](#): Variation or revocation of final EDMOs
630. The rules on variation and revocation of final EDMOs are similar to those for interim EDMOs (see explanatory note on paragraphs 6, 7 and 8).
631. [Paragraph 18](#): Effect of EDMOs: persons occupying or having a right to occupy the dwelling.
632. [Paragraph 18](#) provides that a person who, prior to the making of an EDMO, had the right to occupy the dwelling retains the same legal status once the order is made.
633. [Paragraph 19](#): Effect of EDMOs: agreements and legal proceedings.
634. [Paragraph 19](#) provides for agreements relating to the management of the dwelling or the provision of services or facilities to it, in force at the time the EDMO is made and to which the relevant proprietor was a party, transfer to the LHA if it serves notice to that effect. The LHA can also take over certain legal proceedings commenced against the relevant proprietor on the service of notice to that effect.
635. [Paragraphs 20](#): Effect of EDMOs: furniture
636. [Paragraph 20](#) provides that any right to possession of furniture in the dwelling vests in the LHA whilst the EDMO is in force.
637. [Paragraph 21](#): EDMOs: power to supply furniture
638. A LHA may supply furniture to a dwelling subject to an EDMO and can recover the cost of it as relevant expenditure.
- 639.

### **Paragraph 22: Power of a residential property tribunal to determine certain leases and licences**

640. A RPT may, on application from a LHA, make an order determining a lease or licence in respect of a dwelling if it is satisfied that the dwelling is not being occupied and the local authority requires possession to secure occupation of it. In making an order determining a lease or licence, a RPT may require the LHA to pay compensation.
641. [Paragraph 23](#): Termination of EDMOs: financial arrangements
642. On termination of an interim EDMO, the LHA must pay to the relevant proprietor any balance of rent left after deduction of its relevant expenditure and any compensation payable to a third party or a dispossessed landlord or tenant. However, it is not required to pay any balance to the relevant proprietor where the order is followed by a final EDMO and the final EDMO provides for this.
643. On termination of a final EDMO, the LHA must pay any balance owed to the relevant proprietor, a third party or a dispossessed landlord or tenant in accordance with the management scheme.
644. If, on termination of an EDMO, there is a deficit after deduction of relevant expenditure, the LHA may be required to meet the deficit out of its own resources (unless it

subsequently recovers the deficit under a final EDMO). The LHA may only recover the deficit from the relevant proprietor if:

- the relevant proprietor has agreed to pay it;
- it relates to a service charge paid by the local authority;
- in the case of an interim EDMO, if the relevant proprietor unreasonably refused to consent to the grant of occupation rights;

645. Any sum recoverable is, until recovered, a charge on the dwelling.

646. [Paragraph 24](#); Termination of EDMOs: leases, agreements and proceedings

647. When an EDMO ceases to have effect the LHA ceases to be a party to a lease or licence to which it became a party under the order. The relevant proprietor takes over the LHA rights and obligations. The LHA may cease to have rights and liabilities under any other agreement or legal proceeding by serving a notice on the other party.

648. [Paragraph 25](#): EDMOs: power of entry to carry out work

649. A LHA has the right to enter a dwelling subject to an EDMO to survey its condition or to carry out works. Any occupier who prevents an officer, employee, agent or contractor of a LHA from carrying out their duties may be ordered to stop by a magistrate's court. Failure to comply with an order of the court is an offence. A LHA may apply to a court for a warrant to authorise entry to a dwelling subject to an EDMO.

650. [Paragraphs 26 to 37](#); Appeals

651. A person who is affected by an EDMO may appeal to a RPT against:

- a decision of a LHA to make a final EDMO;
- the terms of a final EDMO (including the terms of a management scheme);
- the terms of an interim EDMO on the grounds that they do not make provision regarding the interest or on the intervals at which surplus monies received by the LHA under the order are to be paid to the relevant proprietor;
- a decision of the LHA to vary or revoke an interim or final EDMO or its refusal to vary or revoke an interim or final EDMO.
- a decision of the LHA as to whether compensation should be paid to a third party in respect of interference with his rights in consequence of a final EDMO.

### ***Schedule 8: Penalty charge notices under section 168***

652. [Section 168](#) gives enforcement officers a power to serve penalty charge notices on someone who they believe has failed to comply with the home information pack duties in Part 5 of the Act. Schedule 8 sets out the details of the penalty charge regime.

653. A penalty charge notice may be given where it is believed that a person is committing, or has committed, a breach of duty under sections 155 to 159, 167(4) and 172(1). The penalty charge notice must specify a number of things, including a description of the alleged breach; the amount of the penalty; the name and address of the person to whom the penalty should be paid (and to whom any representations may be made); the method or methods of payment; the period for paying the penalty and the consequences of not paying the penalty within the period (paragraph 1).

654. A penalty charge notice may be served on a person if it is left at his address or delivered by post to that address. Paragraph 10 makes further provision on the service of notices to bodies corporate and partnerships.

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655. The amount of the penalty charge will be prescribed in regulations made by the Secretary of State and must not be more than £500. The period for paying the penalty cannot be less than 28 days and may be extended by the enforcement authority if it wishes to do so (paragraphs 2 and 3).
656. If the recipient of a penalty charge notice requests a review within the period specified in the notice (or any extended period), the enforcement authority must consider the recipient's representations, decide whether to confirm or withdraw the notice and notify the person of their decision.
657. If the enforcement authority decides to confirm the penalty charge, they must inform the recipient of his rights to appeal at the same time that they notify him of this decision. The recipient then has 28 days to appeal to the county court against the penalty charge although the courts have power to extend this period (paragraphs 5(2) and 6(1) and (2)).
658. The enforcement authority has the discretion to withdraw a penalty charge notice at any time, but must withdraw the notice if they believe:
- That there was no breach of the duty specified in the notice;
  - The procedural requirements relating to the notice were not properly observed; or
  - That it would be appropriate to do so given the circumstances of the case (paragraphs 4 and 5(1)).
659. If a penalty charge notice is withdrawn, the enforcement authority must refund any charge already paid (paragraph 7).
660. If a penalty charge has been confirmed, an appeal can be made on one or more of the following grounds:
- The recipient did not commit the breach of duty specified in the penalty charge notice;
  - The notice was not given within the period specified, or did not comply with some other requirement of the Schedule; or
  - It was inappropriate for the notice to be given in the circumstances of the recipient's case (for example if there was a purely technical breach of duty and it was inappropriate to do anything more than give advice or a warning) (paragraph 6(3)).
661. Where an appeal is considered by the County Court, the court may either uphold the penalty charge or quash it. Where it is quashed, the enforcement authority must refund any charge already paid (paragraph 7).
662. A penalty charge that is not paid, withdrawn or quashed is recoverable as a debt by the enforcement authority. The initial penalty charge notice and any notice confirming a charge must state this fact (paragraph 1, 5(2), and 8). Paragraph 8 prescribes when an enforcement authority can seek to recover any penalty charge debt, and paragraph 9 makes provision on the evidence to be used by an authority in recovery proceedings.
663. The Secretary of State may by regulations make further supplementary or incidental provision on penalty charge notices. These regulations may also prescribe the circumstances in which fixed penalty notices may not be served, the form of the notice and methods of payment (paragraph 11).

***Schedule 9: New Schedule 5A to the Housing Act 1985: initial Demolition Notices***

664. [Schedule 9](#) is related to section 183. See the notes for that section for details about initial demolition notices.

**Schedule 10: Provisions relating to tenancy deposit schemes**

665. All tenancy deposit schemes must comply with the provisions of Schedule 10.
666. The Schedule specifies the two types of TDS that can be secured, custodial and insurance-based and describes the specific provisions relating to each type.
667. Under custodial schemes, a tenant pays the deposit to a landlord or his agent, who is then required to pay the whole of this amount into a designated scheme account. The scheme administrator will then hold it until it is paid to the tenant or the landlord, in accordance with their agreement or following a court order, after the tenancy has ended.
668. Monies representing deposits must be held in a designated scheme account. The account must not contain any other monies except deposits and interest which has been accrued on those deposit amounts. When the scheme administrator returns a deposit to either the tenant or landlord they may return this amount with interest added, at a rate specified by the appropriate national authority. Any interest retained by the scheme administrator may be used to fund the administration of the scheme.
669. If at the end of a tenancy both the tenant and the landlord notify the scheme administrator that they have agreed that either the whole deposit is to be returned to one party or part of the deposit returned to both parties and the scheme administrator is satisfied that such an agreement has been reached, the scheme must pay out the deposit monies due to each party in accordance with the agreement within 10 days of receiving notification.
670. Where there has been a dispute over a deposit and either the tenant or landlord notify the scheme administrator that a court has reached a final decision on how the deposit is to be returned to the parties, (and the scheme administrator is satisfied that such a decision has been reached) the scheme must pay out the deposit monies due to each party in accordance with the decision within 10 days of receiving notification.
671. Under insurance-based schemes, the landlord retains the deposit and repays it to the tenant following agreement between them. Where there is a dispute the landlord must transfer the disputed amount of the deposit to a designated account held by the scheme administrator.
672. Where a tenant notifies the scheme administrator that they have requested the landlord pay them all or part of the deposit and this has not been paid to him within 10 days of this request being made, the scheme administrator must direct the landlord to pay the outstanding amount into a designated account within 10 days of being so directed.
673. Where either a court decision is made as to how much should be returned to either of the parties or the landlord and tenant has reached a decision (perhaps through alternative dispute resolution), the scheme administrator must pay this amount to the relevant party or parties. This payment should be made within 10 days of receiving notification that a decision has been made.
674. This payment should be made out of the amount held by the scheme administrator, which has been transferred by the landlord as directed. Where the amount to be paid out is less than the amount held, the scheme administrator must return the balance to the landlord. Where the amount to be paid out is more than the amount held, the scheme administrator must direct the landlord to pay him the difference within 10 days. However, the scheme administrator must still make the payment within 10 days of receiving notification that a decision has been made, to prevent the tenant from being disadvantaged by the landlord's failure to transfer the outstanding amount to the scheme administrator.
675. Schemes must ensure that the scheme administrator establishes and maintains adequate insurance coverage to allow for the scheme to make such payments where a landlord

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fails to reimburse the scheme. A scheme may require participating landlords to pay contributions towards this or charge any other administrative fees.

676. Where participating landlords are also members of the scheme, the landlord's membership may be terminated by the scheme administrator for a landlord's failure to reimburse the scheme as directed.
677. In line with the arrangements for custodial schemes set out in this Schedule, the designated account must not contain any amounts other than those paid into it by landlords as directed by the scheme administrator and the interest accruing on these amounts.
678. When the scheme administrator returns a deposit to either the tenant or landlord they may return this amount with interest added, at a rate specified by the appropriate national authority. Any interest retained by the scheme administrator may be used to fund the administration of the scheme. Nothing in the designated account apart from the interest generated can be used to fund the scheme.
679. A scheme must ensure that the tenant does not wrongly recover sums in respect of the deposit twice, that is, from the administrator and from the landlord. A scheme can require that it is reimbursed by the tenant where there has been double recovery by the tenant.
680. Where a tenant makes a request to a scheme administrator (whether the scheme is custodial or insurance-based) for confirmation that it is safeguarding their deposit, the scheme administrator must respond to the tenant as soon as possible. A timescale for this response is not specified, however it is likely that any contractual arrangements made between the appropriate national authority and the scheme administrator will set out an appropriate timeframe in more detail.
681. All schemes should offer some form of alternative dispute resolution (ADR) as a cheaper, quicker alternative to the courts. However, the use of such ADR facilities must not be compulsory; both parties have the option of taking the matter to court if they wish.

***Schedule 11: Registered social landlords***

682. [Schedule 11](#) makes amendments to the Housing Associations Act 1985, and the Housing Acts 1988 and 1996.
683. The relevant authority's (the Housing Corporation in relation England and the National Assembly for Wales in relation to Wales) powers to make or recover grants were previously restricted to matters that it had previously "determined" i.e. included in a formal statement (known as a "determination") published after consultation with bodies representative of registered social landlords (RSLs), and subject to the approval of the Secretary of State. Revised determinations were previously required not only to introduce new grant programmes but also for minor changes to detailed procedural arrangements related to grant payment and recovery of existing grant.
684. [Paragraph 1](#) removes the requirement on the relevant authority to make formal determinations concerning procedural (but not policy) matters relating to the giving or recovery of grant under section 87 of the Housing Associations Act 1985.
685. [Paragraphs 3 and 4](#) remove the requirement on the relevant authority to make formal determinations (as described in the note for paragraph 1 above) concerning procedural (but not policy) matters relating to the giving or recovery of grant under sections 50(2) and 52(2) of the Housing Act 1988 respectively.
686. [Paragraphs 5 and 6](#) remove the relevant authority's requirement that RSLs account separately for surplus rental income gained from properties funded by grant before 1988 (the Rent Surplus Fund).

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687. [Paragraphs 8 to 10](#) remove the requirement on the relevant authority to make formal determinations (as described in the note for paragraph 1 above) concerning procedural (but not policy) matters relating to the giving or recovery of grant under sections 18(2), 20(3) and 21(3) of the Housing Act 1996 respectively.
688. [Paragraph 11](#) amends the side note to section 28 of the Housing Act 1996, and to section 28(6) of that Act, to reflect the removal of the requirement on RSLs to account separately for Rent Surplus Fund income (see note in respect of paragraphs 5 and 6 above).
689. [Paragraph 12](#) increases the penalties previously specified in section 31(2)(b) of the Housing Act 1996 which apply where a person commits the offence of altering, suppressing or destroying a document required by the relevant authority in connection with the conduct of its regulatory powers under section 30 of that Act. Subparagraph (1) extends the range of maximum penalty appropriate on conviction on indictment from a fine not exceeding the statutory maximum, to imprisonment for a term not exceeding two years or a fine, or both. Subparagraph (2) provides that the revised range of penalty does not apply in relation to any offence committed before subparagraph (1) comes into force.
690. [Paragraph 13](#) extends the scope of statutory guidance issued by the relevant authority as currently listed in section 36(2) of the Housing Act 1996. In particular subparagraph (3) introduces a new subsection (2A) to section 36 of that Act adding governance, effective management and financial viability as matters about which the relevant authority can give statutory guidance and therefore have regard to when considering whether action needs to be taken in accordance with section 36(7). Subparagraph (4) extends section 36(7) to permit the relevant authority to consider whether action needs to be taken where there has been misconduct in the affairs of an RSL.
691. [Paragraph 14](#) amends paragraph 1(2) of Schedule 1 to the Housing Act 1996, to clarify that an RSL, which is a member of a Group Structure, may transfer funds to another RSL which is either a subsidiary or associate within that Group.
692. [Paragraph 15](#) amends paragraph 15 of Schedule 1 to the Housing Act 1996, in respect of the arrangements concerning the transfer of an RSL's net assets on dissolution or winding up. Subparagraph (2) extends the scope of paragraph 15(1)(b) of Schedule 1 to the Housing Act 1996 to include a company which is also a registered charity. Subparagraph (3) removes an anomaly which could otherwise have the potential to result in the assets of a charitable RSL, in the event of its dissolution or winding up, being passed to a non-charitable RSL.
693. [Paragraph 16](#) introduces a new paragraph 15A to Schedule 1 of the Housing Act 1996 which allows the Secretary of State to extend the provisions in paragraph 15 to apply to charitable RSLs which do not fall within the scope of paragraph 15(1), as amended, that is, charitable housing associations.
694. As such RSLs operate under a variety of constitutions, there are different ways in which such an RSL may be dissolved, wound up, or simply ceases to exist. As it would be too cumbersome to specify all the circumstances in which paragraph 15 is to apply to the RSL on the face of the Act, the Secretary of State may make regulations which will set out the circumstances in which the extension will apply and any modifications to paragraph 15 which may be considered necessary for that particular extension. Subparagraph (3) of new paragraph 15A specifies that regulations under this paragraph requiring the transfer of property of the charity will have effect notwithstanding anything in the terms of the RSL's trusts, nor any resolution, order or other thing done in connection with the termination of the charity.
695. [Paragraphs 17 to 21](#) make new provision allowing smaller RSLs to provide the relevant authority with accountant's reports rather than full audited accounts. Subparagraph (3)

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substitutes new subparagraphs (5) to (8) to paragraph 16 of Schedule 1 to the Housing Act 1996.

696. New subparagraphs (5) and (6) retain the current position for those RSLs where they are required to provide audited accounts under any other enactment's, and requires a copy of the accounts for all RSLs to be furnished to the relevant authority within six months of the end of the period to which they relate.
697. New subparagraph (7) introduces new rules where by virtue of any enactment the RSLs accounts are not required to be audited, for example these rules would apply to RSLs registered as a company under the Companies Act 1985 who, by virtue of section 249A are not required to provide fully audited accounts, but instead must provide an accountant's report.
698. New subparagraph (8)(a) of paragraph 16 to Schedule 1 of the Housing Act 1996 requires that RSLs to whom new subparagraph (7) applies, must provide the relevant authority with a copy of the reporting accountant's report within six months of the end of the period to which they relate. New subparagraph (8)(b) requires that such a report contain a statement from the reporting accountant giving their opinion on whether the RSL's accounts comply with the requirements laid down under paragraph 16 of Schedule 1 of the Housing Act 1996 (general requirements as to accounts and audit).
699. [Paragraph 18](#) introduces new paragraph 16A of Schedule 1 to the Housing Act 1996 specifying the criteria under which an RSL is permitted to provide the relevant authority with a reporting accountant's report in place of full audited accounts where the RSL is a company registered under the Companies Act 1985. Similarly paragraph 19 replaces paragraph 17 of Schedule 1 to the Housing Act 1996 specifying criteria in respect of RSLs which are industrial and provident societies, and paragraphs 20 and 21 amend and supplement paragraph 18 of Schedule 1 to the Housing Act 1996 in respect of RSLs which are charities.
700. In each case the relevant authority will retain the power to direct an RSL to appoint a qualified auditor to audit its accounts and balance sheet for that year, and forward to the relevant authority a copy of the auditor's report, irrespective of the new criteria.
701. [Paragraph 22](#) amends paragraph 19 of Schedule 1 to the Housing Act 1996 regarding compliance with accounting requirements. Subparagraph 22(2)(a) and (b) amend paragraph 19 to reflect the new arrangements exempting small RSLs from the need to produce fully audited accounts. Subparagraph 22(2)(c) amends subparagraph 19(2) by increasing the maximum fine from level 3 to level 5 where a responsible person, as defined in paragraph 19(1), fails to comply with the accounting requirements as defined in paragraph 19(2). Subparagraph 22(3) provides that the increased maximum penalty does not apply in relation to any offence committed before subparagraph 22(2) comes into force.
702. Subparagraph 22(4) introduces a new provision permitting the High Court, on the application of the relevant authority, to make an order that default arising from an offence under paragraph 19 of Schedule 1 to the Housing Act 1996 be made good, and that all incidental costs and expenses are borne by the RSL or by any of its officers who are responsible for the default.
703. [Paragraph 23](#) introduces a new provision in paragraph 19 of Schedule 1 to the Housing Act 1996. It exempts auditors or reporting accountants from their duty of confidentiality, where giving to the relevant authority, in good faith, information or an opinion on a matter which has become apparent in respect of an RSL while acting in the capacity of auditor or reporting accountant of that RSL. Subparagraph 23(2) specifies this exemption as applying whether or not the auditor or reporting accountant is responding to a request from the relevant authority.
704. [Paragraphs 24](#) and [25](#) introduce additional powers for a person conducting a statutory inquiry into the affairs of an RSL under Part 4 of Schedule 1 to the Housing Act 1996.



Subparagraph 4A of paragraph 20 of Schedule 1 introduces a provision permitting the person or persons conducting an inquiry to determine the procedures which are to be followed in connection with it. Subparagraph 20 (7) of Schedule 1 to the Housing Act 1996 is amended to permit an interim or final report under that paragraph to be published in such manner as the relevant authority considers appropriate. A new subparagraph 8 is introduced to paragraph 20 of Schedule 1 to the Housing Act 1996, permitting a local authority, if it thinks fit, to contribute to the expenses of the relevant authority in connection with a statutory inquiry conducted under paragraph 20.

705. **Paragraph 25** inserts a new paragraph 20A in Schedule 1 to the Housing Act 1996. New subparagraph 20A(1) enables the person or persons conducting the statutory inquiry to serve a notice to direct another person to attend at a specified time and place, and to give evidence and/or produce specified documents relating to any matter relevant to the inquiry. New subparagraph 20A(2) permits the person or persons conducting the inquiry to take evidence on oath or otherwise require the person examined to make and subscribe a declaration of truth. New subparagraph 20A(5) ensures that a notice given by the person or persons conducting an inquiry will be subject to the same enforcement arrangements as set out in section 31 of the Housing Act 1996, in respect of a notice given by the relevant authority under section 30 of that Act, except that increased penalties for a person guilty of an offence will apply as set out in subparagraph 20A(6).
706. New subparagraph 20A(7) introduces a new measure which will make a person liable to the penalties in subparagraph 20A(6), where, in purported compliance with a notice given under new paragraph 20A, that person knowingly or recklessly provides any information which is false or misleading in a material particular. New subparagraph 20A(8) requires that proceedings for an offence under subparagraph 20A(7) may be brought only by or with the consent of the relevant authority or the Director of Public Prosecutions.
707. **Paragraph 26** adds new subparagraphs 4, 5 and 6 to paragraph 21 of Schedule 1 to the Housing Act 1996, to introduce new offences in relation to the powers of a person appointed by the relevant authority to conduct a statutory inquiry into the affairs of an RSL. In particular new subparagraph 21(4) increases the level of penalty maximum for offences under subparagraph 21(3). New subparagraph 21(5) will make a person liable to the penalties in new subparagraph 21(4), where, in purported compliance with a notice given under new paragraph 21 of Schedule 1 to the Housing Act 1996, that person knowingly or recklessly provides any information which is false or misleading in a material particular. New subparagraph 21(6) requires that proceedings for an offence under subparagraph 21(5) may be brought only by or with the consent of the relevant authority or the Director of Public Prosecutions.

#### ***Schedule 12: New Schedule 2A to the Housing Act 1996***

708. **Schedule 12** inserts a new Schedule 2A into the Housing Act 1996 which makes further provision about the SHOW, in particular his status, remuneration, staff and advisers, delegation of functions, the provision and publication of reports and determinations, expenses, absolute privilege for communication, disclosure of information, accounts and audit, accounting officer and examinations into the use of resources.

#### ***Schedule 13: Residential property tribunals: procedure***

709. **Schedule 13** sets out the scope of procedural regulations relating to the jurisdiction of the RPT.

#### ***Schedule 14: Buildings which are not HMOs for the purposes of this Act (excluding Part 1)***

710. **Schedule 14** describes buildings that are not HMOs for the purposes of the Act (other than Part 1). These include buildings managed or controlled by Registered Social Landlords and other public sector bodies; buildings that are regulated by

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other legislation and prescribed as exempt; certain buildings occupied by religious communities; buildings occupied by freeholders and long leaseholders (with less than a prescribed number of lodgers or tenants) (which are not converted blocks within the meaning of section 257) and buildings occupied by no more than two people. Buildings that are managed by universities principally for the occupation of students are also exempt if the university is specified in a regulation to that effect.

## **CONCLUDING SECTIONS**

### ***Commencement***

#### ***On Royal Assent***

711. Sections 2, 9, 161 to 164, 176, 208, 216, 233, 234, 244, 248, 250, 252, 264, 265(2) to (5), 267 to 269 and 270 came into force on Royal Assent, as did any power conferred by any provisions contained in the Act to make orders or regulations.
712. Section 190 also came into force on Royal Assent (but the rent to mortgage scheme which is terminated by that section will end 8 months afterwards).

#### ***Two months after Royal Assent***

- The following sections come into force two months after Royal Assent
- Sections 180, 182 to 189 and 195 to 205 that make changes to the right to buy scheme and voluntary disposals;
- Sections 206, 207 and 209 to 211 on mobile homes;
- Section 217 on energy efficiency of residential accommodation in England;
- Sections 218 and 219 on registered social landlords;
- Section 222 on rights of pre-emption for social tenants
- Section 224 on the disabled facilities grant;
- Sections 245 to 247 on service of documents and licences in electronic form;
- Section 249 on proof of designations;
- Section 251 on offences by bodies corporate;
- Sections 253 to 263 on local inquiries, the meaning of house in multiple occupation and other general interpretation provisions;
- Schedules 9 and 11, except paragraphs 15 and 16, and Schedule 14.

#### ***By commencement order***

- The following provisions will be brought into force by commencement order:
- Part 1 - Housing Conditions (except sections 2 and 9 which come into force on Royal Assent);
- Part 2 - Licensing of HMOs;
- Part 3 - Selective licensing of other residential accommodation;
- Part 4 - Additional control provisions in relation to residential accommodation;
- Sections 179, 181, 191 to 194, 212 to 215, 220, 221, 223, 225, 226, 227, 229 to 232, 235 to 243, 265(1) and 266; and
- Schedules 10, 13, 15, 16 and paragraphs 15 and 16 of Schedule 11.

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- The provisions listed above, with one exception, will be commenced by the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales.
- Part 5 may be commenced by the Secretary of State in relation to both England and Wales.
- The National Assembly for Wales may make a commencement order in respect of section 228 and Schedule 12.

## **HANSARD REFERENCES**

<b>Stage</b>	<b>Date</b>	<b>Hansard Ref</b>
<i>House of Commons</i>		
Introduction	8 December 2003	Vol.415. Col.781
Second Reading	12 January 2004	Vol.416. Cols. 531 -642
Committee	20 January 2004 to 24 February 2004	Standing Committee E
Report and Third Reading	11 May 2004	Vol. 421. Cols. 161 - 287
Consideration of Lords Amendments	8 November 2004	Vol.426. Col. 608 - 672
Commons Consideration of Lords Reasons	17 November 2004	Vol. 426. Cols. 1416 - 1427
<i>House of Lords</i>		
Introduction	13 May 2004	Vol.661. Col. 390
Second Reading	07 June 2004	Vol. 662. Cols. 83 - 134
Committee 1 <sup>st</sup> Sitting	20 July 2004	Vol. 664. Cols. 135 - 169
Committee 2 <sup>nd</sup> Sitting	21 July 2004	Vol. 664. Cols. 260 - 330
Committee 3 <sup>rd</sup> Sitting	09 September 2004	Vol. 664. Cols. 695 - 814
Committee 4 <sup>th</sup> Sitting	13 September 2004	Vol. 664. Cols. 945 - 1018
Committee 5 <sup>th</sup> Sitting	14 September 2004	Vol. 664. Cols. 1055 -1166
Committee 6 <sup>th</sup> Sitting	16 September 2004	Vol. 664. Cols. 1294 - 1470
Report 1 <sup>st</sup> Sitting	13 October 2004	Vol.665. Cols. 273 - 355
Report 2 <sup>nd</sup> Sitting	19 October 2004	Vol. 665. Cols. 655 - 715
Report 3 <sup>rd</sup> Sitting	20 October 2004	Vol. 665. Cols. 778 - 918
Third Reading	03 November 2004	Vol. 666. Cols. 311- 395
Lords Consideration of the Commons Reasons	16 November 2004	Vol. 666. Cols.1365 - 1419
<i>Royal Assent - 18 November 2004</i>		House of Lords Hansard Vol. 666. Col. 1659
		House of Commons Hansard Vol. 426. Col 1518