

SCHEDULES

SCHEDULE 1

Article 5

Amendment of Part 2 of the Act

Chapter 1 (introduction)

1. In section 60 (structural overview), in the Table in subsection (4)—
 - (a) in the third column of the entry for Chapter 5, at the end insert “by private registered providers”,
 - (b) in the second column of the entry for Chapter 7, for “269” substitute “269B”, and
 - (c) in the fourth column of the entry for Chapter 7, at the end insert—
 - “(h) Censure of local authority employees”.
- 2.—(1) Section 75 (leaving the social housing stock: disposal with consent) is amended as follows.
 - (2) After subsection (1) insert—
 - “(1A) A dwelling ceases to be social housing if it is—
 - (a) disposed of with the Secretary of State’s consent in accordance with section 32 or 43 of the Housing Act 1985 (disposals by local authorities),
 - (b) appropriated with the Secretary of State’s consent in accordance with section 19(2) of that Act (appropriation by local authorities for some other purpose), or
 - (c) disposed of by a local authority with the Secretary of State’s consent in accordance with any other enactment.”
 - (3) In subsections (2) and (3), for “Subsection (1) does” substitute “Subsections (1) and (1A) do”.
 3. In section 76 (leaving the social housing stock: regulator’s direction), after subsection (2) insert—
 - “(3) A direction may not be made if the provider is a local authority.”
 4. In section 79 (English bodies), in subsection (1)(e)(i), after “1996 (c. 52)” insert “or a local authority in Wales”
 5. In section 80 (provider of social housing), after subsection (2) insert—
 - “(3) Persons listed in the register who are not local authorities—
 - (a) may be referred to in an enactment or other instrument as “private registered providers of social housing”, and
 - (b) are referred to in this Part as “private registered providers”.

Chapter 2 (the Social Housing Regulator)

6. In section 94 (studies), after subsection (2) insert—

Status: This is the original version (as it was originally made).

“(3) Nothing in subsection (1) permits the regulator, in relation to local authorities, to carry out or commission studies about the performance of housing functions other than their functions as a provider of social housing.”

7. In section 95 (financial assistance), in subsection (3), for “a registered provider” substitute “a private registered provider”.

8. In section 96 (evidence), in paragraph (d), at the beginning insert “the Commission for Local Administration in England or”.

9. After section 106 insert—

“106A Cooperation with the Audit Commission

(1) The regulator shall cooperate with the Audit Commission for Local Authorities and the National Health Service in England.

(2) In particular, the regulator shall consult the Audit Commission on matters concerning local authorities.”

10. In section 107 (collection), in subsection (1), for paragraph (b) substitute—

“(b) activities which are or may be carried out by—

(i) a person who is, or who has applied to become, a registered provider, or

(ii) a local authority in England which the regulator thinks may be, or may become, a provider of social housing.”

Chapter 3 (registration)

11.—(1) Section 112 (eligibility for registration) is amended as follows.

(2) In subsection (4)(b), for “registered providers” substitute “private registered providers”.

(3) After subsection (4) insert—

“(5) Section 114 deals with bodies falling within the exceptions in section 113.”

(4) The heading becomes “Eligibility for voluntary registration”.

12. The heading to section 113 becomes “Section 112: exceptions”.

13. After section 114 insert—

“114A Local authorities: duty to notify

(1) A local authority in England which is not subject to compulsory registration must notify the regulator as soon as it becomes subject to compulsory registration.

(2) For these purposes, an authority is subject to compulsory registration if—

(a) it is a provider of social housing, or

(b) it intends to become a provider of social housing.”

14. In section 115 (profit-making and non-profit organisations), after subsection (9) insert—

“(10) Subsection (1) does not apply to the entry of a local authority in the register (and, accordingly, references to “profit-making” and “non-profit” in connection with a registered provider do not refer to a local authority).”

15.—(1) Section 116 (entry) is amended as follows.

(2) In subsection (1)(a), after “registration” insert “under section 112(1)”.

- (3) In subsection (4), after “entered” insert “in the register under this section”.
- (4) In subsection (5), after “in the register” insert “under this section”.
- (5) After subsection (5) insert—
 - “(6) This section deals with voluntary registration; for the registration of local housing authorities and county councils, see section 114.”
- (6) The heading becomes “Entry in the register: voluntary registration”.
- 16.** In section 117 (fees), for subsections (1) and (2) substitute—
 - “(1) The regulator may charge—
 - (a) a fee for initial registration, and
 - (b) an annual fee for continued registration.
 - (2) Except in the case of a local authority, the regulator may make initial or continued registration conditional upon payment of the fee.”
- 17.**—(1) Section 118 (de-registration: compulsory) is amended as follows.
 - (2) In subsection (1), for “body” substitute “private registered provider”.
 - (3) After subsection (3) insert—
 - “(4) The regulator shall remove a local authority from the register if the regulator becomes aware that the authority—
 - (a) is no longer a provider of social housing, or
 - (b) no longer intends to become a provider of social housing (in the case of an authority which intended to become one but did not in fact do so).”
- 18.** In section 119 (de-registration: voluntary), in subsection (1), for “registered provider” substitute “private registered provider”.
- 19.**—(1) Section 120 (notice) is amended as follows.
 - (2) In subsection (1)—
 - (a) omit “and” at the end of paragraph (b), and
 - (b) at the end of paragraph (c) insert—
 - “, and
 - (d) in the case of a local authority, the Secretary of State.”
 - (3) In subsection (2), at the beginning insert “Except in the case of a local authority,”.

Chapter 4 (registered providers)

- 20.** In section 123 (disposal of property), at the end insert “by private registered providers”.
- 21.** In section 126 (sustainable community strategies), for “registered provider” substitute “private registered provider”.
- 22.** In section 127 (directions)—
 - (a) in subsection (1), for “registered providers” substitute “private registered providers”, and
 - (b) in subsection (6), for “registered providers” substitute “private registered providers”.
- 23.**—(1) Section 128 (submission to regulator) is amended as follows.
 - (2) In subsection (1), for “registered provider” substitute “private registered provider”.

Status: This is the original version (as it was originally made).

(3) After subsection (3) insert—

“(4) Each local authority which is a registered provider shall send copies of the following documents to the regulator so far as they relate to the provision of social housing—

- (a) any immediate report made under section 8 of the Audit Commission Act 1998 (immediate and other reports in public interest) in relation to its accounts;
- (b) its audited accounts, accompanied by any report made under that section at the conclusion of the audit.

(5) The local authority shall send the copies to the regulator as soon as the authority receives them.”

24. In section 141 (offences), for “registered provider”, in each place where it occurs, substitute “private registered provider”.

25. In section 142 (High Court), in subsection (1), for “registered provider” substitute “private registered provider”.

26. In section 143 (disclosure), in subsection (1)(a) and (b), for “registered provider” substitute “private registered provider”.

27. After the italic heading “Insolvency etc” and before section 144 insert—

“143A Application of rules about insolvency

This group of sections does not apply to local authorities.”

28. In section 144 (preparatory steps: notice), in the first entry in the Table, for “registered provider” substitute “private registered provider”.

29. In section 145 (moratorium)—

- (a) in subsections (1) and (2), for “registered provider” substitute “private registered provider”, and
- (b) in the first entry in the Table, for “registered provider” substitute “private registered provider”.

30. In section 147 (further moratorium), in subsection (1)(a), for “registered provider” substitute “private registered provider”.

31. In section 158 (assistance by regulator), in subsections (1) and (2), for “a registered provider” substitute “the registered provider”.

32. In section 159 (applications to court)—

- (a) in subsection (1), for “A registered provider” substitute “A private registered provider”, and
- (b) in subsection (2), for “a registered provider” substitute “a private registered provider”.

33. After the italic heading “Restructuring and dissolution” and before section 160 insert—

“159A Application of rules about restructuring and dissolution

This group of sections does not apply to local authorities.”

Chapter 5 (disposal of property)

34. At the end of the main heading to Chapter 5 insert “by private registered providers”.

35. In section 170 (overview), for “registered providers” substitute “private registered providers”.

36. In section 171 (power to dispose)—

(a) in subsection (1), for “registered provider” substitute “private registered provider”, and

(b) in subsection (2), at the end insert “or to a local authority which is a registered provider”.

37. In section 172 (requirement of consent), in subsection (1), for “registered provider” substitute “private registered provider”.

38. In section 174 (procedure), in subsection (5)(b), for “registered providers” substitute “private registered providers”.

39. In section 175 (disposal without consent), in subsection (1), for “registered provider” substitute “private registered provider”.

40. In section 177 (separate accounting), in subsection (1), for “registered provider” substitute “private registered provider”.

41. In section 178 (use of proceeds), in subsection (1), for “registered provider’s” substitute “private registered provider’s”.

42. In section 179 (application of Housing Act 1996)—

(a) in subsection (1), for “registered providers” substitute “private registered providers”, and

(b) in subsection (3)(a), for “registered provider” substitute “private registered provider”.

43. In section 180 (right to acquire)—

(a) in subsection (1)(a), for “registered provider” substitute “private registered provider”, and

(b) in subsection (3), for “registered provider” substitute “private registered provider”.

44. In section 181 (interpretation: “publicly funded”)—

(a) in subsection (3)(a), for “registered provider” substitute “private registered provider”, and

(b) in subsection (4)(a), for “registered provider” substitute “private registered provider”.

45. In section 182 (interpretation: “remained in the social rented sector”), in subsection (3)(a), for “registered provider” substitute “private registered provider”.

46. In section 184 (right to acquire: supplemental), in subsection (2)(c), for “registered providers” substitute “private registered providers”.

47. In section 186 (former registered providers), for “registered provider” substitute “private registered provider”.

48. In section 187 (change of use, etc), in subsections (1) and (2), for “a registered provider” substitute “a private registered provider”.

49. In section 188 (trustees), for “registered provider” substitute “private registered provider”.

50. In section 190 (consent to disposals under other legislation) for “registered providers” substitute “private registered providers”.

Chapter 6 (regulatory powers)

51. In section 194 (management), in subsection (1), for “registered providers” substitute “private registered providers”.

52. In section 201 (inspections), after subsection (7) insert—

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“(7A) An inspection carried out by a person under this section is taken for the purposes of paragraph 5 of Schedule 2A to the Audit Commission Act 1998 (inspections by other inspectors of organisations within Audit Commission’s remit) to be carried out by the regulator.”

53. In section 207 (inquiry: supplemental), for subsection (2) substitute—

“(2) The inquirer may consider the affairs of the following categories of registered provider only so far as relating to social housing—

- (a) profit-making organisations;
- (b) local authorities.”

54. In section 210 (extraordinary audit), in subsection (1), for “a registered provider” substitute “a private registered provider”.

55. After that section insert—

“210A Extraordinary report: local authorities

(1) Where an inquiry in respect of a local authority is being held, or has been held, under section 206, the Audit Commission must, at the request of the regulator, report to the regulator on the accounts and balance sheet of the local authority, so far as they relate to the provision of social housing.

(2) A report under this section may include in particular—

- (a) any matter that may be included in a report during or on completion of an audit of the local authority’s accounts under Part 2 of the Audit Commission Act 1998, and
- (b) copies of or extracts from any such report that has already been made.

(3) The Audit Commission may arrange for a report under this section to be prepared by an auditor (within the meaning of the Audit Commission Act 1998).

(4) The local authority shall pay the Audit Commission’s costs of preparing the report.

(5) “The Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England.”

Chapter 7 (enforcement)

56.—(1) Section 220 (grounds for giving notice) is amended as follows.

(2) In subsection (2), after “standard” insert “applicable to it”.

(3) In subsection (7), for “the assets of the registered provider” substitute “the registered provider is a private registered provider and its assets”.

(4) For subsection (9) substitute—

“(9) Case 8 is where the registered provider has failed to pay—

- (a) in the case of a private registered provider, an annual fee under section 117(1)(b);
- (b) in the case of a local authority, an initial fee or an annual fee under section 117(1) (a) or (b).”

57. For section 222 substitute—

“222 Notifying HCA etc

If the regulator gives an enforcement notice it must send a copy—

- (a) to the HCA, and
- (b) in the case of an enforcement notice given to a local authority, to the Secretary of State.”

58. In section 226 (overview), for “registered providers” substitute “private registered providers”.

59.—(1) Section 227 (grounds for imposition) is amended as follows.

(2) In subsection (1), for “registered provider” substitute “private registered provider”.

(3) In subsection (6), for “117(2)” substitute “117(1)(b)”.

60. In section 236 (overview), for “registered provider” substitute “private registered provider”.

61. In section 237 (grounds for award), in subsection (1), for “registered provider” substitute “private registered provider”.

62. In section 242 (warning), in subsection (1), for “registered provider” substitute “private registered provider”.

63. In section 245 (appeal) for “registered provider” substitute “private registered provider”.

64.—(1) Section 247 (management tender) is amended as follows.

(2) In subsection (1)(a), after “standard” insert “applicable to it”.

(3) In subsection (4)(b), after “practice” insert “(and consistent with any applicable procurement law)”.

65.—(1) Section 248 (section 247: supplemental) is amended as follows.

(2) In subsection (4)—

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

(b) for paragraph (b) substitute—

“(b) the Secretary of State (if the notice is given to a local authority), and

(c) any other persons the regulator thinks appropriate.”

(3) In subsection (7)—

(a) omit “and” at the end of paragraph (c), and

(b) for paragraph (d) substitute—

“(d) the Secretary of State (if the registered provider is a local authority), and

(e) if the regulator thinks it appropriate, any relevant local housing authority.”

(4) For subsection (8) substitute—

“(8) If the regulator imposes a requirement it must send a copy—

(a) to the HCA, and

(b) in the case of a requirement imposed on a local authority, to the Secretary of State.”

66.—(1) Section 250 (section 249: supplemental) is amended as follows.

(2) In subsection (4)—

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

(b) for paragraph (b) substitute—

“(b) in the case of a notice given to a local authority, the Secretary of State, and

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- (c) any other persons the regulator thinks appropriate (having regard, in particular, to any person who provided information as a result of which the notice is given).”
- (3) In subsection (7)—
 - (a) omit “and” at the end of paragraph (c), and
 - (b) for paragraph (d) substitute—
 - “(d) if the requirement would be imposed on a local authority, the Secretary of State, and
 - (e) if the regulator thinks it appropriate, any relevant local housing authority.”
- (4) For subsection (8) substitute—
 - “(8) If the regulator imposes a requirement it must send a copy—
 - (a) to the HCA, and
 - (b) in the case of a requirement imposed on a local authority, to the Secretary of State.”

67. After section 250 insert—

“250A Sections 247 and 249: local authorities

(1) This section makes further provision about the application of sections 247 and 249 in a case where the registered provider is a local authority.

(2) The regulator may act under those sections even if the local authority already has a management agreement in place.

(3) But while a section 247 or 249 arrangement is in force, the local authority may not give effect to a management agreement as respects functions of the authority which are the subject of the arrangement.

(4) Any duty the local authority may have to consult with respect to the exercise of its management functions (for example, a duty arising by virtue of section 27BA of the Housing Act 1985) does not apply so far as it is acting pursuant to a requirement imposed on it under section 247 or 249.

(5) A section 247 or 249 arrangement—

- (a) is not to be considered a management agreement, but
- (b) subsections (13) and (15) of section 27 of the Housing Act 1985 apply to it as they apply to a management agreement.

(6) In this section—

“management agreement” has the meaning given by section 27(2)(a) and 27B(4) of the Housing Act 1985;

“section 247 or 249 arrangement” means an arrangement which is entered into pursuant to a requirement imposed on a local authority under section 247 or 249 and by which functions of the authority are to be exercised by a manager on its behalf.”

68. In section 251 (appointment of manager)—

- (a) in subsection (1)(a) and (b), for “registered provider” substitute “private registered provider”, and
- (b) accordingly, in the heading, insert “of private registered provider” at the end.

69. In section 252 (section 251: supplemental), in subsection (9), for “registered provider” substitute “private registered provider”.

70. After section 252 insert—

“252A Appointment of advisers to local authorities

- (1) This section applies to a registered provider which is a local authority.
- (2) The power in subsection (3) is exercisable if the regulator thinks—
 - (a) that it is necessary to exercise it for the proper management of the authority’s affairs so far as they relate to the provision of social housing (its “social housing affairs”), or
 - (b) that it is desirable to exercise it in the interests of securing better services for the authority’s tenants.
- (3) The regulator may—
 - (a) appoint one or more advisers to assist the authority in relation to its social housing affairs (or a particular aspect of those affairs), or
 - (b) require the authority to appoint one or more advisers for that purpose.
- (4) Appointment shall be on terms and conditions (including as to remuneration) specified in, or determined in accordance with, the appointment or requirement.
- (5) A requirement under subsection (3)(b) may specify a process which the authority is required to implement for selecting and appointing advisers.
- (6) The authority must cooperate with any advisers appointed by virtue of this section.”

71. In section 253 (transfer of land)—

- (a) in subsection (1)(a) and (b), for “registered provider” substitute “private registered provider”,
- (b) in subsection (2)(b), for “registered provider” substitute “private registered provider”, and
- (c) accordingly, in the heading, insert “by private registered provider” at the end.

72. In the italic heading above section 256, insert “by non-profit registered providers” at the end.

73. In the italic heading above section 259, insert “of non-profit registered providers” at the end.

74. After section 269 insert—

“Censure of local authority employees

269A Local authorities: censure during or following inquiry

- (1) The regulator may give a censure notice to a local authority if—
 - (a) an inquiry under section 206 is in progress in respect of the authority, and
 - (b) either of the following cases applies.
- (2) Case 1 applies if the regulator has reasonable grounds for believing—
 - (a) that the affairs of the authority have been mismanaged, and
 - (b) that the interests of tenants of the authority, or its assets, require protection.
- (3) Case 2 applies if as a result of an inquirer’s interim report under section 207 the regulator is satisfied that the affairs of the authority have been mismanaged.
- (4) The regulator may also give a censure notice to a local authority if, as a result of an inquiry under section 206, the regulator is satisfied that the affairs of the authority have been mismanaged.

Status: This is the original version (as it was originally made).

- (5) A censure notice is a notice identifying an employee or agent of the authority who the regulator thinks has contributed to the failure or mismanagement.
- (6) The notice must include the regulator’s reasons.
- (7) The regulator shall send a copy of the notice to the employee or agent concerned.
- (8) No more than one employee or agent may be identified in a censure notice (but this does not prevent several notices being given in respect of the same failure or mismanagement).
- (9) Members of local authorities may not be identified in censure notices.

269B Response to censure notice

- (1) A local authority to whom a censure notice is given under section 269A must respond to the regulator in writing within 28 days of receipt of the notice.
- (2) The response must—
 - (a) explain what action (if any) the authority has taken or proposes to take in relation to the employee or agent,
 - (b) explain why the authority does not think the employee or agent has contributed to the failure or mismanagement, or
 - (c) explain why the authority does not think its affairs have been mismanaged.”

Chapter 8 (general)

75. In section 270 (officer), for “registered provider”, in each place it occurs, substitute “private registered provider”.

76. In section 276 (index of defined terms), insert the following entries in their appropriate place alphabetically in the Table—

<i>Expression</i>	<i>Section</i>
Censure notice	Section 269A
Private registered provider (of social housing)	Section 80