

Draft Order laid before Parliament under section 320(3) of the Housing and Regeneration Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No. [000]

**HOUSING, ENGLAND AND WALES
HOUSING, NORTHERN IRELAND**

**The Housing and Regeneration Act 2008
(Consequential Provisions) Order 2008**

Made - - - -

XXX

Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred by sections 320 and 321 of the Housing and Regeneration Act 2008⁽¹⁾, makes the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008.

(2) Subject to paragraph (3), this Order comes into force on the day section 5 of the Housing and Regeneration Act 2008 comes into force (“the commencement date”).

(3) The following provisions of this Order come into force on the day section 158 of the Leasehold Reform, Housing and Urban Development Act 1993⁽²⁾ is repealed (which is provided for in paragraph 63 of Schedule 8 to, and in Schedule 16 to, the Housing and Regeneration Act 2008)—

- (a) paragraph 44 of Schedule 1 and the related entry in Schedule 3, and
- (b) the consequential repeal in the Planning and Compulsory Purchase Act 2004⁽³⁾ set out in Schedule 3.

Interpretation

2. In this Order—

“the CNT” means the Commission for the New Towns,

“the HCA” means the Homes and Communities Agency.

(1) 2008 c. 17.
(2) 1993 c. 28.
(3) 2004 c. 5.

Extent

3.—(1) Subject to paragraph (2), this Order extends to England and Wales only.

(2) In so far as it relates to section 16 of the Consumer Credit Act 1974⁽⁴⁾, this Order extends to England and Wales and to Northern Ireland.

Consequential amendments: Part 1 of the Housing and Regeneration Act 2008

4. The enactments specified in Schedule 1 to this Order have effect with the amendments specified.

Transitional and saving provisions

5. The amendments, modifications and repeals made by this Order have effect subject to the transitional and saving provisions in Schedule 2 to this Order.

Repeals

6. The enactments specified in Schedule 3 to this Order are repealed to the extent specified.

Consequential modification of modified right to buy provisions

7.—(1) References to the “Housing Corporation” —

- (a) in the modified enactments, and
- (b) in the enactments to which the modified amendments relate,

shall be treated as references to the “Homes and Communities Agency”.

(2) In this article—

“modified amendments” means the amendments which, by virtue of paragraph 4 of Schedule 1 to the Leasehold Reform, Housing and Urban Development Act 1993 (Commencement and Transitional Provisions No. 1) Order 1993 ⁽⁵⁾, did not have effect in relation to the operation of Part V of the Housing Act 1985 as applied by the Local Government Reorganisation (Preservation of Right to Buy) Order 1986⁽⁶⁾; and

“modified enactments” means—

- (a) the Housing (Preservation of Right to Buy) Regulations 1993⁽⁷⁾, and
- (b) the Housing (Right to Acquire) Regulations 1997⁽⁸⁾.

⁽⁴⁾ 1974 c. 39.

⁽⁵⁾ S.I. 1993/2134.

⁽⁶⁾ S.I. 1986/2092.

⁽⁷⁾ S.I. 1993/2241, amended by S.I. 1999/1213.

⁽⁸⁾ S.I. 1997/619.

Signed by authority of the Secretary of State for Communities and Local Government

Date

Name
Minister of State
Department for Communities and Local
Government

SCHEDULE 1

Amendment of enactments consequential on Part 1 of the Housing and Regeneration Act 2008

Consumer Credit Act 1974

1.—(1) Section 16 of the Consumer Credit Act 1974⁽⁹⁾ (exempt agreements) is amended as follows.

(2) In subsection (6B)(a) after “and Wales,” insert “the Homes and Communities Agency, the Welsh new towns residuary body”.

(3) After subsection (6B) insert—

“(6BA) In subsection (6B)(a) “the Welsh new towns residuary body” means the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981.”⁽¹⁰⁾.

Housing Act 1985

2. The Housing Act 1985⁽¹¹⁾ is amended as follows.

3. In section 4(1) (other descriptions of authority)—

(a) in paragraph (b) for “Commission for the New Towns” substitute “new towns residuary body”, and

(b) after paragraph (f) insert—

“(g) “new towns residuary body” means—

(i) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008; and

(ii) in relation to Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a) (i) to (iii) of the New Towns Act 1981.”.

4. In section 6A (meaning of “the Relevant Authority”) after subsection (4) insert—

“(4A) This section is subject to any provision made elsewhere in this Act.”.

5.—(1) Section 30 (application of provisions to new town corporations, etc.) is amended as follows.

⁽⁹⁾ 1974 c. 39. Section 16(6A) and (6B) was inserted by section 22 of the Housing and Planning Act 1986 (c. 63). Section 16(6B) was amended by Schedule 17 to the Housing Act 1988 (c. 50) and Schedule 18 to the Government of Wales Act 1998 (c. 38).

⁽¹⁰⁾ 1981 c. 64. Section 36(1) was amended by paragraph 5 of Schedule 5 to the Housing and Regeneration Act 2008.

⁽¹¹⁾ 1985 c. 68. Section 4 was amended by section 62(7) of the Housing Act 1988 (c. 50) and paragraph 41(3) of Schedule 13 to the Local Government and Public Involvement in Health Act 2007 (c. 28). Section 6A was inserted by Schedule 17 to the Housing Act 1988 (c. 50). Section 45 was amended by paragraph 8(2) and (3) of Schedule 16 to the Government of Wales Act 1998 (c. 38). Section 50(2) was amended by paragraph 8 of Schedule 15 and Schedule 18 to the Government of Wales Act 1998. Section 51(6) was amended by paragraph 9 of Schedule 15 to the Government of Wales Act 1998. Section 80(1) was amended by section 83(2) and Schedule 18 to the Housing Act 1988 and paragraph 5 of Schedule 16 and Schedule 18 to the Government of Wales Act 1998. Section 427A was inserted by paragraph 32 of Schedule 5 to the Housing and Planning Act 1986 (c. 63). Sections 421 to 425 and 427 and 427A were amended by paragraph 77 of Schedule 11 to the Local Government and Housing Act 1989 (c. 42). Sections 450A and 450B were inserted by section 5 of the Housing and Planning Act 1986. Section 450B was amended by Schedule 16 to the Government of Wales Act 1998. Section 458 was amended by paragraph 37 of Schedule 5 to the Housing and Planning Act 1986 and Schedule 16 to the Government of Wales Act 1998. Section 554(2A) was inserted by paragraph 61 of Schedule 17 to the Housing Act 1988. Further amendments were made to the Housing Act 1985 which do not affect the provisions being amended by this Order.

(2) In subsection (1) for “new town” substitute “development”.

(3) After subsection (1) insert—

“(1A) Section 25 also applies in relation to the new towns residuary body as it applies in relation to a local housing authority.”.

(4) In the heading, for “new town” substitute “development”.

6.—(1) Section 45 (disposals to which sections 46 to 51 apply, etc.) is amended as follows.

(2) In subsection (2) in the definition of “public sector authority”—

(a) for “new town” substitute “development”, and

(b) after “an urban development corporation,” insert—

“the Homes and Communities Agency,

the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a) (i) to (iii) of the New Towns Act 1981,.”.

(3) In subsection (2A) for the words from “Secretary of State” to “him (” substitute “Welsh Ministers if the freehold has been conveyed by them (or by the Assembly constituted by the Government for Wales Act 1998, the Secretary of State”.

7. In section 50(2) (offences)—

(a) omit “or”,

(b) for “new town” substitute “development”, and

(c) after “corporation,” insert—

“or

the Welsh Ministers”.

8. In section 51(6) (meaning of qualified accountant) for “new town” substitute “development”.

9. In section 57 (index of defined expressions: Part 2) in the Table for the entry for “new town corporation” substitute—

“new towns residuary body

section 4(1)(g)”.

10.—(1) Section 80 (the landlord condition for secure tenancies) is amended as follows.

(2) In subsection (1)—

(a) for “new town” substitute “development”, and

(b) after “an urban development corporation,” insert—

“in the case of a tenancy falling within subsections (2A) to (2E), the Homes and Communities Agency or the Welsh Ministers (as the case may be), ”.

(3) Before subsection (3) insert—

“(2A) A tenancy falls within this subsection if the interest of the landlord is transferred to—

(a) the Homes and Communities Agency as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008, or

(b) the Welsh Ministers as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981.

(2B) A tenancy falls within this subsection if it is entered into pursuant to a contract under which the rights and liabilities of the prospective landlord are transferred to the Homes and Communities Agency or the Welsh Ministers as mentioned in subsection (2A)(a) or (b) (as the case may be).

(2C) A tenancy falls within this subsection if it is granted by the Homes and Communities Agency or the Welsh Ministers to a person (alone or jointly with others) who, immediately before it was entered into, was a secure tenant of the Homes and Communities Agency or the Welsh Ministers (as the case may be).

(2D) A tenancy falls within this subsection if—

- (a) it is granted by the Homes and Communities Agency or the Welsh Ministers to a person (alone or jointly with others),
- (b) before the grant of the tenancy, an order for possession of a dwelling-house let under a secure tenancy was made against the person (alone or jointly with others) and in favour of the Homes and Communities Agency or the Welsh Ministers (as the case may be) on the court being satisfied as mentioned in section 84(2)(b) or (c), and
- (c) the tenancy is of the premises which constitute the suitable accommodation as to which the court was so satisfied.

(2E) A tenancy falls within this subsection if it is granted by the Homes and Communities Agency or the Welsh Ministers pursuant to an obligation under section 554(2A).”.

(4) After subsection (4) insert—

“(5) In this Act and in any provision made under this Act, or made by or under any other enactment, a reference to—

- (a) a person within section 80 or 80(1) of this Act, or
- (b) a person who satisfies the landlord condition under this section,

includes a reference to the Homes and Communities Agency or to the Welsh Ministers so far as acting in their capacity as landlord (or, in the case of disposals, former landlord) in respect of a tenancy which falls within subsections (2A) to (2E) above but, subject to this, does not include the Homes and Communities Agency or the Welsh Ministers.

(6) Subsection (5)—

- (a) applies whether the person is described as an authority, body or landlord or in any other way and whether the reference is otherwise expressed in a different way, and
- (b) is subject to any provision to the contrary.”.

11.—(1) Section 421 (housing subsidy) is amended as follows.

- (2) In subsection (1) for “new town” substitute “development”.
- (3) In subsection (2) for “body’s” substitute “corporation’s”.

12. In section 422(1) (calculation of housing subsidy) for “new town” substitute “development”.

13.—(1) Section 423 (the base amount) is amended as follows.

- (2) In subsection (1) for “new town” substitute “development”.
- (3) In subsection (2) for “authority” substitute “corporation”.

14. In section 424 (the housing costs differential) for “new town”, wherever appearing, substitute “development”.

29.—(1) Schedule 2 (grounds for possession of dwelling-houses let under secure tenancies) is amended as follows.

(2) In Part 1 in Ground 7, in paragraph (a), for “new town” substitute “development”.

(3) In Part 3 in Ground 12, in paragraph (a), for “new town” substitute “development”.

30. In Schedule 3 (grounds for withholding consent to assignment by way of exchange) in Ground 5, in paragraph (b), for “new town” substitute “development”.

31.—(1) Schedule 4 (qualifying period for right to buy and discount) is amended as follows.

(2) In paragraph 7(1)—

(a) for “paragraph 7A” substitute “paragraphs 7A and 7B and”,

(b) for “new town” substitute “development”, and

(c) after “an urban development corporation” insert—
“the Commission for the New Towns,”.

(3) After paragraph 7A insert—

“**7B** The landlord condition shall be treated as having been satisfied in the case of a dwelling-house let under a tenancy falling within section 80(2A) to (2E) at any time if, at that time, the interest of the landlord belonged to—

(a) the Homes and Communities Agency, or

(b) the Welsh Ministers.”.

32. In Schedule 5 (exceptions to the right to buy) in paragraph 5(1)(b) for “new town” substitute “development”.

Housing Associations Act 1985

33. The Housing Associations Act 1985(**12**) is amended as follows.

34. In section 85(4) (meaning of “recognised body” and “relevant advance”) after “new town corporation” insert—

“the Welsh Ministers so far as they are or were exercising functions in relation to property transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981,”.

35. In section 106(1) (minor definitions) in the definition of “new town corporation” omit “the Commission for the New Towns or”.

Housing Act 1988

36. The Housing Act 1988(**13**) is amended as follows.

37. In section 34(1)(d) (new protected tenancies and agricultural occupancies restricted to special cases) for “a new town” substitute “the Commission for the New Towns or a development”.

38.—(1) Section 35 (removal of special regimes for tenancies of housing associations etc) is amended as follows.

(12) 1985 c. 69. Section 85(4) was amended by Part 4 of Schedule 18 to the Government of Wales Act 1998 (c. 38).

(13) 1988 c. 50. Section 34(1)(d) substituted by paragraph 104 of Schedule 11 to the Local Government and Housing Act 1989 (c. 42). Section 35(2)(d) substituted by paragraph 105 of Schedule 11 to the Local Government and Housing Act 1989. Section 38(4) was amended by paragraph 106 of Schedule 11 to the Local Government and Housing Act 1989

(2) In subsection (2)(d) for “a new town” substitute “the Commission for the New Towns or a development”.

(3) In subsection (4)—

(a) in paragraph (a) for “new town” substitute “development”, and

(b) before paragraph (c) insert—

“(ba) the interest of the landlord belongs to the Homes and Communities Agency or the Welsh Ministers and the tenancy or licence falls within section 80(2A) to (2E) of the Housing Act 1985; or”.

39.—(1) Section 38 (transfer of existing tenancies from public to private sector) is amended as follows.

(2) In subsection (3) for “(4A)” substitute “(4ZA), (4A), (4BA)”.

(3) In subsection (4) for “a new town” substitute “the Commission for the New Towns or a development”.

(4) After subsection (4) insert—

“(4ZA) In relation to any time on or after the coming into force of this subsection, subsection (4) applies as if—

(a) the references to the Commission for the New Towns were references to the new towns residuary body;

(b) in the case of a disposal by the English new towns residuary body, the reference to section 37 of the New Towns Act 1981 were a reference to section 47 of the Housing and Regeneration Act 2008; and

(c) in the case of a disposal by the Welsh new towns residuary body, the words “made pursuant to a direction under section 37 of the New Towns Act 1981” were omitted.”.

(5) After subsection (4B) insert—

“(4BA) The references in subsections (4A) and (4B) to a body which would have been specified in subsection (1) of section 80 of the Housing Act 1985 if the repeal of provisions of that section effected by this Act had not been made includes a reference to the new towns residuary body.”.

(6) In subsection (5)(a)—

(a) for “new town” substitute “development”, and

(b) after “1985” insert “or to the English new towns residuary body”.

(7) After subsection (5) insert—

“(5A) In this section “new towns residuary body” means—

(a) in relation to times before the coming into force of this subsection, the Commission for the New Towns; and

(b) in relation to other times—

(i) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008 (and any reference to the English new towns residuary body shall be construed accordingly); and

(ii) in relation to Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned

National Health Service Act 2006

51. The National Health Service Act 2006(**18**) is amended as follows.

52. In section 256(2) (power of Primary Care Trusts to make payments towards expenditure on community services) for paragraph (b) substitute—

- “(b) the Homes and Communities Agency,
- (ba) the Welsh new towns residuary body.”.

53. In section 268(3) (persons displaced by health service development) for paragraph (d) substitute—

- “(d) the Homes and Communities Agency,
- (e) the Welsh new towns residuary body.”.

54. In section 275(1) (interpretation) at the end insert—

““Welsh new towns residuary body” means the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a) (i) to (iii) of the New Towns Act 1981.”.

National Health Service (Wales) Act 2006

55. The National Health Service (Wales) Act 2006(**19**) is amended as follows.

56. In section 194(2) (power of Local Health Boards to make payments to certain bodies towards expenditure on community services) for paragraph (b) substitute—

- “(b) the Homes and Communities Agency.”.

57. In section 196(2) (power of Welsh Ministers to make payments to certain bodies towards expenditure on community services) for paragraph (b) substitute—

- “(b) the Homes and Communities Agency.”.

58. In section 199(3) (bodies with which Welsh Ministers may make arrangements in relation to persons displaced by health service development) for paragraph (d) substitute—

- “(d) the Homes and Communities Agency.”.

Housing and Regeneration Act 2008

59. In Schedule 7 to the Housing and Regeneration Act 2008(**20**) (transfer schemes: tax) omit paragraph 9.

SCHEDULE 2

Transitional and saving provisions

General savings

1. The modifications made by this Order do not affect the validity of anything done (or having effect as if done) by or in relation to the CNT or the Housing Corporation before the commencement date.

(18) 2006 c. 41.

(19) 2006 c. 42.

(20) 2008 c. 17.

Functions transferred from the CNT to the HCA or the Welsh Ministers

2.—(1) Anything which, on the commencement date, is in the process of being done by or in relation to the CNT may, so far as it relates to any function transferred by this Order from the CNT to the HCA or the Welsh Ministers, be continued by or in relation to the HCA or (as the case may be) the Welsh Ministers.

(2) Anything done (or having effect as if done) by or in relation to the CNT for the purposes of or in connection with any function transferred by this Order from the CNT to the HCA or the Welsh Ministers shall, if in force or effective on the commencement date, have effect as if done by or in relation to the HCA or (as the case may be) the Welsh Ministers so far as that is required for continuing its effect on and after the commencement date.

(3) Any enactment, instrument or other document passed or made before the commencement date shall have effect, so far as necessary for the purposes of or in consequence of sub-paragraph (1) or (2), as if any references (however expressed) to the CNT were references to the HCA or (as the case may be) the Welsh Ministers.

(4) The references in sub-paragraphs (1) and (2) to things done include references to things omitted to be done.

(5) The references in sub-paragraphs (1) to (3) to the HCA or the Welsh Ministers are to be read as including references to them acting in a particular capacity or in relation to particular matters.

3. The HCA shall be treated as included in the list of bodies in section 50(2) of the Housing Act 1985 in respect of any failure by the CNT to perform a duty imposed by section 48 of that Act which is treated by virtue of paragraph 2(2) above as if it were a failure by the HCA.

Functions of the CNT which cease to be exercisable

4.—(1) Sub-paragraph (2) applies where, by virtue of this Order, functions cease to be exercisable by the CNT and are not transferred to any other person.

(2) Any repeal made for this purpose by this Order of any reference (however expressed) to the CNT does not apply so far as the reference applies in relation to times, circumstances or purposes before the commencement date.

Functions of the Housing Corporation transferred to the HCA

5.—(1) Anything which, on the commencement date, is in the process of being done by or in relation to the Housing Corporation may, so far as it relates to any function transferred by article 7 of, or paragraph 21 of Schedule 1 to, this Order from the Housing Corporation to the HCA, be continued by or in relation to the HCA.

(2) Anything done (or having effect as if done) by or in relation to the Housing Corporation for the purposes of or in connection with any function transferred by article 7 of, or paragraph 21 of Schedule 1 to, this Order from the Housing Corporation to the HCA shall, if in force or effective on the commencement date, have effect as if done by or in relation to the HCA so far as that is required for continuing its effect on and after the commencement date.

(3) Any enactment, instrument or other document passed or made before the commencement date shall have effect, so far as necessary for the purposes of or in consequence of sub-paragraph (1) or (2), as if any references (however expressed) to the Housing Corporation were references to the HCA.

(4) The references in sub-paragraphs (1) and (2) to things done include references to things omitted to be done.

Other provisions

6.—(1) The amendments made by paragraphs 22 and 24 of Schedule 1 to this Order do not apply in relation to any loans which—

- (a) were made by the Housing Corporation by virtue of section 450B of the Housing Act 1985(21) before the commencement date; and
- (b) are outstanding or otherwise in force or effective on that date.

(2) Section 450B of that Act (and any regulations made under it) continue to apply in relation to such loans without the amendments made by paragraphs 22 and 24 of Schedule 1 to this Order but as if references (however expressed) to the Housing Corporation were references to the HCA.

(3) Paragraph 5 above applies to functions transferred by sub-paragraph (2) above as it applies to the functions transferred to the HCA as mentioned in sub-paragraphs (1) and (2) of paragraph 5.

7. Any repeal by this Order of an enactment which amends or partially repeals an enactment which is repealed by the Housing and Regeneration Act 2008 is subject to any transitional, transitory or saving provision made, by an order under section 322 of that Act, in relation to the enactment repealed by that Act.

SCHEDULE 3

Repeals

<i>Title</i>	<i>Extent of repeal</i>
Housing Act 1985 (c. 68)	In section 50(2), the word “or”. In section 434, the entry in the Table for “new town corporation”.
Housing Associations Act 1985 (c. 69)	In section 106(1), the words “the Commission for the New Towns or” in the definition of “new town corporation”.
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 35(3)(d)(xviii).
Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)	In Schedule 21, paragraph 2 and the italic heading before it.
Housing Grants, Construction and Regeneration Act 1996 (c. 53)	In section 59, the entry for “new town corporation”. In section 101, the definition of “new town corporation”.
Government of Wales Act 1998 (c. 38)	In Schedule 15, paragraph 8.
Planning and Compulsory Purchase Act 2004 (c. 5)	In Schedule 7, paragraph 18 and the italic heading before it.
Housing and Regeneration Act 2008 (c. 17)	In Schedule 7, paragraph 9.

(21) Sections 450B was inserted by section 5 of the Housing and Planning Act 1986 and was amended by Schedule 16 to the Government of Wales Act 1998. The Housing (Service Charge Loans) Regulations 1992 (No. 1708) were made under the power in section 450B and were amended by S.I. 2000/1963.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments and modifications to, and repeals of, provisions in primary legislation that make reference to the Urban Regeneration Agency, the Commission for the New Towns, English Partnerships and the Housing Corporation. These amendments, modifications and repeals are in addition to those in the Housing and Regeneration Act 2008 itself and are consequential on the coming into force of provisions of that Act relating to the establishment of the Homes and Communities Agency, in particular, in relation to it being the successor to those bodies in relation to a number of their functions.

The amendments, modifications and repeals are subject to transitional and savings provisions, the main purpose of which is to ensure, as far as necessary, that anything done by the predecessor bodies is treated as done by the Homes and Communities Agency (or Welsh Ministers, as the case may be), and to ensure that anything being done by one of those bodies on the commencement date may be continued by the Homes and Communities Agency (or Welsh Ministers, as the case may be).