

# HOUSING AND REGENERATION ACT 2008

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## EXPLANATORY NOTES

### STRUCTURE OF THE ACT

#### **Part 2 – Regulation of Social Housing**

##### *Chapter 1 - Introduction*

##### **Preliminary**

##### *Section 59 – Purpose*

106. *Section 59* specifies the purpose of Part 2 of the Act, which is to regulate the provision of social housing by English bodies. “Social housing” is defined in sections 68 to 77. “English body” is defined in section 79.

##### *Section 60 - Structural overview*

107. *Subsection (1)* provides that the system set out in Part 2 broadly replicates the effect of the previous system for regulation of registered social landlords (RSLs) in England under Part 1 of the Housing Act 1996. RSLs are non-profit distributing providers of social housing, which in England are registered with the Housing Corporation.
108. *Subsection (2)* specifies that Part 1 of the 1996 Act will continue to operate in respect of Welsh RSLs as set out in section 61.
109. *Subsection (3)* specifies that certain provisions of the Housing Act 1996 are applied in England (these are specified in section 178) or are preserved, although they apply only in England (see section 124).
110. *Subsection (4)* sets out the contents and organisation of Part 2 of the Act which is as follows:
- Chapter 1: Introduction, including definitions of social housing, the regulator, English and Welsh bodies and registered providers of social housing
  - Chapter 2: Establishment of the Office for Tenants and Social Landlords as the regulator of social housing, including its constitution, objectives and its general powers
  - Chapter 3: Establishment of a register of providers of social housing, including provisions as to eligibility of providers, their profit or non profit designation, the procedure for registration and removal from the register, and the payment of registration fees
  - Chapter 4: Sets out a range of provisions which govern the constitutional arrangements of registered providers, including requirements for accounting, the operation of a moratorium where steps are taken in respect of the insolvency of registered providers, and controls on constitutional changes which result in their restructuring or dissolution

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- Chapter 5: Contains a number of provisions in relation to the disposal of property by registered providers, and the regulator’s powers in relation to such disposals
- Chapter 6: Sets out the regulator’s regulatory powers including the scope of its powers to set standards, the Secretary of State’s power to issue directions to the regulator in respect of standards and the regulator’s powers for survey, inspection, specifying performance information and carrying out inquiries
- Chapter 7: Gives the regulator various powers of enforcement, including the power to issue enforcement notices, require the payment of fines or compensation and make provision in relation to the management and constitution of registered providers, make restriction on dealings and give powers to suspend and remove officers.
- Chapter 8: Sets out provisions to assist the interpretation of Part 2 and also provides for repeals and consequential amendments

### ***Section 61 - Restriction of “registered social landlord” system to Wales***

111. This section operates so as to retain Part 1 of the Housing Act 1996 (“the 1996 Act”), but to restrict its application to Wales.
112. It does this by amending certain provisions of Part 1 of the 1996 Act.
113. *Subsection (1)* introduces the amendments in the following subsections and retitles Part 1 of the 1996 Act “Social Rented Sector in Wales”
114. *Subsection (2)* inserts into the 1996 Act a new section A1. This describes the new purpose of Chapter 1 which is that it “provides for the registration of social landlords in Wales”.
115. *Subsection (3)* substitutes “the Welsh Ministers” for references to “the Relevant Authority” in section 1 of the 1996 Act, and omits subsections (1A) and (1B) of that section.
116. *Subsection (4)* inserts a new section 1A after section 1 of the 1996 Act. This new section defines “Welsh body” as a charity whose address is in Wales and which is registered with the Charity Commission, or an industrial and provident society whose registered office is in Wales, or a Companies Act company whose registered office is in Wales.
117. *Subsection (5)* amends section 2 of the 1996 Act to restrict eligibility for registration to bodies that are:
  - Welsh, and
  - Principally concerned with Welsh housing (and a new subsection (2A) is inserted to give power to Welsh Ministers to decide when a body is principally concerned with Welsh housing).
118. *Subsections (6) to (8)* set out a number of consequential amendments.
119. *Subsection (9)* refers to sections 62 and 63 which make consequential amendments.

### ***Section 62 - References to Welsh Ministers***

120. This section sets out in a table those provisions of the 1996 Act where “Welsh Ministers” is to be substituted for references to the “Secretary of State”. These amendments are consequential on section 61.

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### ***Section 63 - References to National Assembly for Wales***

121. This section sets out in a table those provisions of the 1996 Act where “the National Assembly for Wales” is to be substituted for references to the “either House of Parliament” principally to reflect the effects of section 61.

### ***Section 64 - Dissolution of Housing Corporation***

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

### ***Section 65 – Transfer schemes***

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

### ***Section 66 – Interim arrangements***

124. This section confers on the Secretary of State the power to require the Housing Corporation to provide staff, premises, facilities or other assistance to the regulator or the HCA. This mirrors the provisions at section 53 allowing the Secretary of State to require the same of the Urban Regeneration Agency or the Commission for New Towns.

### ***Section 67 – Transitional arrangements***

125. This section permits the Secretary of State by order to transfer functions of the Housing Corporation to the regulator, the HCA, or both jointly or concurrently. This order may make provision in relation to English but not Welsh registered social landlords which is similar to any provision made by Part 2 of the Bill. This power would allow the regulator to maintain the current system through transitional arrangements for the period after its establishment but before the new regulatory system is fully in force; for example, before it had consulted on standards.

## **Social housing**

### ***Section 68 - Basic principle***

126. This section defines social housing for the purposes of this Act. Under this Act registered providers (defined at section 80) are primarily regulated in respect of their provision of social housing. The definition ensures that registered bodies will not be regulated in respect of their other activities, e.g. provision of housing for sale on the open market.
127. *Subsection (1)* explains that there are two types of social housing – (a) low cost rental accommodation (defined by section 69) and (b) low cost home ownership accommodation (defined by section 70).
128. *Subsection (2)* states that accommodation which becomes “social housing” by satisfying subsection (1)(a) or (b) remains “social housing” unless an event specified in sections 73 to 76 occurs (e.g. sale to a tenant, expiry of a lease or disposal with the regulator’s consent). This subsection ensures that, once designated as social housing, accommodation continues to be social housing and subject to the regulator’s standards (e.g. on rents and management) and enforcement powers unless one of the specified events occurs.
129. *Subsection (3)* refers to section 77 which ensures that certain accommodation is to be treated as “social housing” whether or not it satisfies subsection (1)(a) or (b). This will ensure that accommodation provided by existing RSLs is designated as “social housing” even if, for example, rents are not below market rents. This will ensure that homes

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subject to regulation under the existing regulation system remain regulated under the new system.

### ***Section 69 - Low cost rental***

130. This section defines low cost rental accommodation. Low cost rental accommodation is one of the two types of social housing referred to in section 69. This section now defines this by reference to a rent below the market rate (paragraph (b)) and rules designed to ensure that the accommodation is made available to people whose needs may not be adequately served by the commercial market. This might, for example, be for reasons of affordability, specialised/adapted housing, security of tenure or vulnerability (paragraph (c)).

### ***Section 70 - Low cost home ownership***

131. This section defines low cost home ownership accommodation.
132. *Subsection (1)* defines low cost home ownership accommodation as that which meets two conditions.
133. Condition 1 is that accommodation is made available on the basis of a shared ownership arrangement, an equity percentage arrangement or shared ownership trust.
134. Condition 2 is that the accommodation is aimed at people whose needs may not be adequately served by the commercial market. This could, for example, be for reasons of affordability, specialised/adapted housing, security of tenure or vulnerability.
135. *Subsection (4)* defines “shared ownership arrangements” as arrangements under a lease which:
- is granted on the purchase of an initial share, the price of which is calculated by reference to a percentage of the value of the accommodation or the cost of providing it; and
  - provides that the tenant (i.e. the purchaser), or the tenant’s personal representative, is entitled to a sum calculated by reference to the value of the accommodation. This means that when the property is sold, the purchaser is entitled to a sum in proportion to the share he or she has purchased.
136. This description is intended to capture traditional shared ownership schemes, such as the current New Build HomeBuy scheme, also described as “part-buy, part-rent”, where the purchaser buys a share in a property, and pays rent to the freeholder on the unowned share.
137. *Subsection (5)* defines “equity percentage arrangements”. These work on similar principles to traditional shared ownership but do not involve a shared ownership lease. The key features are that the owner of the property sells it (conveys it) to the purchaser in exchange for:
- an initial sum equivalent to a percentage of the value of the property at the time of sale, and
  - an agreement to pay further sums also calculated by reference to a percentage of the value of the property, and
  - the liability to make any payments under this arrangement is secured by a mortgage.
138. *Subsection (6)* defines “shared ownership trusts” as having the same meaning as in Schedule 9 to the Finance Act 2003.
139. *Subsection (7)* allows the Secretary of State to make regulations amending the definition of low cost home ownership accommodation, or any of the sub-categories specified in

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that definition. This is to ensure that innovative low cost home ownership schemes, not anticipated here, can be brought within the scope of regulation.

### ***Section 71 - Shared ownership low cost rental***

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

### ***Section 72 – Regulations***

141. *Subsection (1)* allows the Secretary of State to make regulations providing that specified property (or a specified class of property) is or is not to be treated as social housing. This allows the Secretary of State to ensure, for example, that all homes funded through public investment are designated as social housing. This is necessary to allow decisions on the classification of new types of social housing (in particular low cost home ownership arrangements) which are likely to be developed in future.
142. *Subsection (2)* states that the regulations may provide for property to be social housing despite not satisfying section 68(1)(a) or (b) – i.e. not meeting the definitions of low cost rental accommodation or low cost home ownership accommodation where the Secretary of State thinks the property is of a kind, or is provided in circumstances, that serve the needs of a group whose needs are not adequately served by the commercial housing market. This may, for example, cover housing for vulnerable people.
143. *Subsection (3)* states that the regulations:
- may override section 68(2)
  - are subject to section 68(3) and section 77
  - are subject to sections 69 and 70 (but may clarify doubt about the application of those sections).
144. *Paragraph (a)* means that the Secretary of State can make regulations which specify that certain property is not social housing, even if it had previously satisfied section 68(1) (a) or (b). This power is necessary to correct any errors of classification that become apparent over time.
145. *Paragraph (b)* means that the regulations cannot override sections 68(3) and 77 which ensure that homes currently regulated by the Housing Corporation under the 1996 Act are regulated under the new system.
146. *Paragraph (c)* means that the regulations can clarify the application of the definitions of low cost rental and low cost home ownership, but cannot fundamentally alter them. However section 70(7) separately allows the Secretary of State to make regulations amending the definition of low cost home ownership.
147. *Subsection (4)* states that the regulations may make provision by reference to-
- the opinion of the regulator or another specified person;
  - designation, agreement or other action by the regulator or another specified person.
148. This could, for example, include property funded under an agreement with the HCA and designated by the HCA as social housing.

***Section 73 - Leaving the social housing stock: sale***

149. This section states that a dwelling ceases to be social housing if it is sold to the tenant.
150. *Subsections (2) and (3)* state that the low cost rental accommodation and shared ownership accommodation are “sold to the tenant” when the tenant exercises a statutory or contractual right and as a result becomes the owner of either the freehold or the leasehold previously owned by the registered provider.
151. *Subsection (4)* states that low cost home ownership accommodation of the equity percentage kind is “sold to the tenant” when the buyer exercises a statutory or contractual right as the result of which the equity percentage arrangements come to an end.
152. *Subsection (5)* states that low cost home ownership accommodation of the shared ownership trust kind comes to an end when the purchaser exercises a statutory or contractual right as a result of which the trust comes to an end.

***Section 74 - Leaving the social housing stock: expired lease***

153. This section states that a dwelling ceases to be social housing if the provider holds a leasehold interest in the dwelling, and the leasehold interest expires.
154. *Subsection (2)* makes it clear that a lease from an associate or subsidiary of the provider is disregarded.

***Section 75 - Leaving the social housing stock: disposal with consent***

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

***Section 76 - Leaving the social housing stock: regulator’s direction***

156. This section allows the regulator to direct that a specific dwelling which has ceased to be low cost rental accommodation or low cost home ownership accommodation is to cease to be social housing.
157. The regulator may make a direction only on the application of the provider.

***Section 77 - Housing stock under Housing Act 1996***

158. This section ensures that properties owned by an RSL immediately before the coming into force of section 68 are defined as social housing under this Act.
159. *Subsection (2)* clarifies that such properties are social housing even if they do not satisfy the definitions of low cost rental or low cost home ownership accommodation in sections 69 and 70. As with other social housing, it remains social housing until an event specified in sections 73 to 76 (sales to tenants, expiry of lease, disposal with regulator’s consent, etc) occurs.
160. *Subsections (3) to (8)* provide that the following types of property where they are in existence on the date section 61 comes into force, are only to be treated as social housing if they were purchased, constructed or renovated by means of specified grants:
- (a) market-let accommodation;
  - (b) student accommodation;
  - (c) care homes providing nursing care;
  - (d) asylum seeker Home Office contracted accommodation; and
  - (e) other property specified in regulations by the Secretary of State.



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

### **Other key concepts**

#### ***Section 78 – Regulator of Social Housing***

162. **Section 78** specifies that in Part 2 the Office for Tenants and Social Landlords (established under section 81) is referred to as "the regulator".

#### ***Section 79 - English bodies***

163. This section provides a definition of "English body". An English body is either:
- a charity registered with the Charity Commission whose registered address is in England, or
  - an industrial and provident society whose registered office is in England, or
  - a company whose registered office is in England, or
  - a community land trust which owns land in England, or
  - any other person, whether or not a corporate body under the law of the United Kingdom, that is not a Welsh body, and that makes available, or intends to make available, accommodation in England. (The definition of "Welsh body", inserted by section 61(4), applies here.)
  - Community Land Trusts are defined for the purpose of including them in section 79 as English bodies. The definition specifies some key attributes of Community Land Trusts which are English bodies.
  - A local community is an area where individuals wish to work and live in a specified area or already live and work there.

#### ***Section 80 - Provider of social housing***

164. This section refers to the fact that Chapter 3 that establishes the register of providers of social housing.
165. It specifies that persons listed on the register under the provisions of Chapter 3 are referred to in this Part as "registered providers", and in other primary or secondary legislation as "registered providers of social housing".