

SCHEDULES

SCHEDULE 16

Section 178

TRANSFER OF FUNCTIONS FROM THE OFFICE FOR TENANTS AND SOCIAL LANDLORDS TO THE HOMES AND COMMUNITIES AGENCY

PART 1

AMENDMENTS TO THE HOUSING AND REGENERATION ACT 2008

- 1 The Housing and Regeneration Act 2008 is amended as follows.
- 2 In section 2 (the HCA: objects) after subsection (1) insert—
 - “(1A) It is also an object of the HCA to facilitate the exercise through its Regulation Committee of the functions conferred on the HCA—
 - (a) as the regulator by virtue of Part 2 (regulation of social housing), or
 - (b) as the Regulator of Social Housing by virtue of any other enactment or instrument.”
- 3 In section 4 (powers of the HCA: general) in subsection (6) for the “and” at the end of paragraph (a) substitute—
 - “(aa) subsections (2) to (5) do not apply to the powers conferred on the HCA—
 - (i) as the regulator by virtue of Part 2 (but see section 92I (exercise of functions)), or
 - (ii) as the Regulator of Social Housing by virtue of any other enactment or instrument, and”.
- 4 (1) Section 31 (duties in relation to social housing) is amended as follows.
 - (2) Omit subsections (9) and (10).
 - (3) In subsection (11) omit—
 - (a) “or low cost home ownership accommodation”, and
 - (b) “or (as the case may be) low cost home ownership accommodation”.
 - (4) In subsection (12) omit the definition of “low cost home ownership accommodation”.
- 5 In section 32 (recovery etc of social housing assistance) omit subsection (11).
- 6 In section 34(2) (determinations under sections 32 and 33)—
 - (a) omit paragraph (a), and
 - (b) in paragraph (b) omit “other”.
- 7 Omit section 37 (duty to co-operate with Regulator of Social Housing).
- 8 (1) Section 42 (agency arrangements with UDCs) is amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) In subsection (2)(a) after “Chapter 3” insert “or the functions to which subsection (2A) applies”.
- (3) After that subsection insert—
- “(2A) The functions to which this subsection applies are the functions conferred on the HCA—
- (a) as the regulator by virtue of Part 2, or
- (b) as the Regulator of Social Housing by virtue of any other enactment or instrument.”
- 9 In section 46 (guidance by the Secretary of State) after subsection (7) insert—
- “(8) This section does not apply to the functions conferred on the HCA—
- (a) as the regulator by virtue of Part 2, or
- (b) as the Regulator of Social Housing by virtue of any other enactment or instrument.”
- 10 In section 47 (directions by the Secretary of State) after subsection (6) insert—
- “(7) This section does not apply to the functions conferred on the HCA—
- (a) as the regulator by virtue of Part 2, or
- (b) as the Regulator of Social Housing by virtue of any other enactment or instrument.”
- 11 In the Table in section 58 (Part 1: index of defined expressions) in the entry for “Regulator of Social Housing” for “Section 81(2)(a)” substitute “Section 92A(2)”.
- 12 In the Table in section 60(4) (structural overview of Part 2) for the entry relating to Chapter 2 substitute—
- | | | | |
|----|------------|------------------------------|---|
| “2 | 92A to 109 | The Social Housing Regulator | (a) The regulator and the Regulation Committee
(b) Fundamental objectives
(c) Powers
(d) Money
(e) Information” |
|----|------------|------------------------------|---|
- 13 Omit section 78 (the Regulator of Social Housing).
- 14 Omit section 81 (the regulator: establishment).
- 15 Omit section 82 (the regulator: membership).
- 16 Omit section 83 (the regulator: tenure of office of members).
- 17 Omit section 84 (the regulator: chief executive).
- 18 Omit section 85 (the regulator: other staff).
- 19 Omit section 86 (the regulator: fundamental objectives).
- 20 Omit section 87 (the regulator: procedure).
- 21 Omit section 88 (the regulator: conflict of interest).
- 22 Omit section 89 (the regulator: committees).
- 23 Omit section 90 (the regulator: delegation).

- 24 Omit section 91 (the regulator: seal).
- 25 Omit section 92 (the regulator: annual report).
- 26 After that section insert—

“The regulator and the Regulation Committee

92A Regulation functions of the HCA

- (1) In this Part “the regulator” means the HCA.
- (2) In any other enactment or instrument “the Regulator of Social Housing” means the HCA.

92B The Regulation Committee

- (1) The HCA must establish a committee to be known as the Regulation Committee.
- (2) The functions conferred on the HCA as the regulator by virtue of this Part, or as the Regulator of Social Housing by virtue of any other enactment or instrument, are exercisable by the HCA acting through the Regulation Committee.
- (3) Those functions are not exercisable by the HCA in any other way.
- (4) Subsections (2) and (3) are subject to any express provision to the contrary in this Part or in the enactment or instrument in question.
- (5) References in this Part to the functions of the regulator are to the functions mentioned in subsection (2).
- (6) References in any enactment or instrument to the social housing functions of the HCA or the Regulator of Social Housing are to the functions mentioned in subsection (2).

92C Membership of the Regulation Committee

- (1) The Regulation Committee is to consist of—
 - (a) a person appointed by the Secretary of State to chair the Committee (“the chair”), and
 - (b) not less than four and not more than six other members appointed by the Secretary of State.
- (2) The chair of the Committee must not be a member of the HCA immediately prior to the chair’s appointment as such, but becomes a member of the HCA on appointment.
- (3) One other member of the Committee may be a member of the HCA.
- (4) The member within subsection (3) is referred to in this Part as the internal member.
- (5) The remaining members of the Committee must be neither a member nor a member of staff of the HCA.

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

- (6) A member within subsection (5) is referred to in this Part as an external member.
- (7) The Secretary of State must consult the chair before appointing the other members.
- (8) In appointing a person to be a member, the Secretary of State must have regard to the desirability of appointing a person who has experience of, and has shown some capacity in, a matter relevant to the exercise of the functions of the regulator.
- (9) In appointing a person to be a member, the Secretary of State must be satisfied that the person will have no financial or other interest likely to affect prejudicially the exercise of the person's functions as a member.
- (10) The Secretary of State may require any person whom the Secretary of State proposes to appoint as a member to provide such information as the Secretary of State considers necessary for the purposes of subsection (9).

92D Terms of appointment of members

- (1) A member of the Regulation Committee holds office in accordance with the member's terms of appointment.
- (2) A member may resign by serving notice on the Secretary of State.
- (3) A person ceases to be the chair if the person—
 - (a) resigns that office by serving notice on the Secretary of State, or
 - (b) ceases to be a member of the Committee.
- (4) If a person ceases to be the chair, the person—
 - (a) ceases to be a member of the Committee, and
 - (b) ceases to be a member of the HCA.
- (5) A person ceases to be the internal member if the person ceases to be a member of the HCA.
- (6) A person who ceases to be a member or the chair is eligible for reappointment (subject to section 92C).
- (7) The Secretary of State may remove a member who—
 - (a) has been absent from meetings of the Committee without its permission for more than six months,
 - (b) has become bankrupt or has made an arrangement with the member's creditors,
 - (c) the Secretary of State thinks has failed to comply with the member's terms of appointment, or
 - (d) the Secretary of State thinks is otherwise unable, unfit or unsuitable to exercise the functions of that member.

92E Remuneration etc of members

- (1) The Secretary of State may require the HCA to pay to the chair such additional remuneration and allowances as the Secretary of State may decide.

- (2) The Secretary of State may require the HCA to pay to the external members of the Regulation Committee such remuneration and allowances as the Secretary of State may decide.
- (3) The Secretary of State may require the HCA to—
 - (a) pay such pensions, allowances or gratuities as the Secretary of State may decide to or in respect of any external member or former external member;
 - (b) pay such sums as the Secretary of State may decide towards provision for the payment of pensions, allowances or gratuities to or in respect of any external member or former external member.
- (4) Subsection (5) applies if—
 - (a) a person ceases to be an external member, and
 - (b) the Secretary of State considers that there are special circumstances that make it appropriate for the person to receive compensation.
- (5) The Secretary of State may require the HCA to pay the person such amount as the Secretary of State may decide.

92F Sub-committees of the Regulation Committee

- (1) The Regulation Committee may establish one or more sub-committees.
- (2) A sub-committee may include persons who are not members of the Committee.
- (3) The Secretary of State may require the HCA to pay such remuneration and allowances as the Secretary of State may decide to any person who—
 - (a) is a member of a sub-committee, but
 - (b) is not a member of the Committee.
- (4) The HCA may dissolve a sub-committee.

92G Procedure of the Committee and its sub-committees

- (1) The Regulation Committee may decide—
 - (a) its own procedure, and
 - (b) the procedure of any of its sub-committees.
- (2) Subject to subsection (1), a sub-committee may decide its own procedure.
- (3) The validity of proceedings of the Committee or of any of its sub-committees is not affected by—
 - (a) any vacancy in its membership,
 - (b) any defect in the appointment of a member, or
 - (c) any contravention of section 92H (members' interests).
- (4) In this section “procedure” includes quorum.

92H Members' interests

- (1) A member of the Regulation Committee who is directly or indirectly interested in any matter arising at a meeting of the Committee must disclose the nature of that interest to the meeting.
- (2) A member of a sub-committee of the Committee who is directly or indirectly interested in any matter arising at a meeting of the sub-committee must disclose the nature of that interest to the meeting.
- (3) In a case within subsection (1) or (2)—
 - (a) the member must not take part in any deliberation or decision about the matter if it is a contract or agreement of any description, but
 - (b) may otherwise take part in any deliberation or decision about the matter unless at least one-third of the other members at the meeting decide that the interests disclosed might prejudicially affect the member's consideration of the matter.

92I Exercise of functions

- (1) The Regulation Committee may delegate any of the functions of the regulator to—
 - (a) any of its members,
 - (b) any of its sub-committees, or
 - (c) any member of staff of the HCA.
- (2) A sub-committee of the Committee may delegate any function conferred on it to any member of staff of the HCA.
- (3) A power of the HCA that is a function of the regulator—
 - (a) may be exercised separately or together with, or as part of, another such power;
 - (b) does not limit the scope of another such power.

92J Recommendations to HCA

- (1) The Regulation Committee may make recommendations to the HCA about the exercise of the HCA's functions.
- (2) The HCA must publish, in such manner as it thinks fit—
 - (a) a recommendation received from the Regulation Committee under this section, and
 - (b) the HCA's response to it.
- (3) In this section the reference to the HCA's functions does not include the functions of the regulator.

Fundamental objectives

92K Fundamental objectives

- (1) The regulator must perform its functions with a view to achieving (so far as is possible)—
 - (a) the economic regulation objective, and
 - (b) the consumer regulation objective.
- (2) The economic regulation objective is—
 - (a) to ensure that registered providers of social housing are financially viable and properly managed, and perform their functions efficiently and economically,
 - (b) to support the provision of social housing sufficient to meet reasonable demands (including by encouraging and promoting private investment in social housing),
 - (c) to ensure that value for money is obtained from public investment in social housing,
 - (d) to ensure that an unreasonable burden is not imposed (directly or indirectly) on public funds, and
 - (e) to guard against the misuse of public funds.
- (3) The consumer regulation objective is—
 - (a) to support the provision of social housing that is well-managed and of appropriate quality,
 - (b) to ensure that actual or potential tenants of social housing have an appropriate degree of choice and protection,
 - (c) to ensure that tenants of social housing have the opportunity to be involved in its management and to hold their landlords to account, and
 - (d) to encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas in which the housing is situated.
- (4) The objectives are referred to in this Part as the regulator’s fundamental objectives.
- (5) The regulator must exercise its functions in a way that—
 - (a) minimises interference, and
 - (b) (so far as is possible) is proportionate, consistent, transparent and accountable.”

27 In section 93(1) (the regulator: general functions) for “conferred on it by this Part or another enactment” substitute “of the regulator”.

28 Omit section 99 (the regulator: remuneration).

29 In section 100 (charging)—

- (a) at the beginning insert “(1)”, and
- (b) at the end of the subsection (1) so formed insert—

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

“(2) The functions of billing for and receiving the payment of charges under this section are exercisable by the HCA rather than by the HCA acting through its Regulation Committee.”

- 30 Omit section 101 (the regulator: assistance by Secretary of State).
- 31 Omit section 102 (the regulator: borrowing).
- 32 Omit section 103 (the regulator: accounts).
- 33 Omit section 104 (the regulator: financial year).
- 34 Omit section 105 (the regulator: co-operation with the HCA).
- 35 Omit section 106 (the regulator: direction to the HCA).
- 36 In section 112(4) (duty to consult before setting criteria for voluntary registration) omit paragraph (a).
- 37 (1) Section 117 (the regulator: fees) is amended as follows.
- (2) In subsection (5)(a) after “the performance of” insert “the regulator’s”.
- (3) In subsection (9) for “regulator’s” substitute “HCA’s”.
- (4) After that subsection insert—
- “(10) The functions of billing for and receiving the payment of fees under this section are exercisable by the HCA rather than by the HCA acting through its Regulation Committee.”
- 38 In section 145 (moratorium) omit subsection (4).
- 39 (1) Section 146 (duration of moratorium) is amended as follows.
- (2) In subsection (4)—
- (a) at the end of paragraph (a) insert “and”, and
- (b) omit paragraph (c).
- (3) Omit subsection (8).
- 40 In section 147(4) (further moratorium)—
- (a) at the end of paragraph (a) insert “and”, and
- (b) omit paragraph (c).
- 41 In section 174(5) (procedure for consent to disposal of social housing) omit paragraph (a).
- 42 In section 196(1) (consultation on standards and codes of practice) omit paragraph (f).
- 43 In section 197(4) (direction by Secretary of State) omit paragraph (b).
- 44 In section 202 (inspections: supplemental) after subsection (7) insert—
- “(8) The functions of billing for and receiving the payment of fees under this section are exercisable by the HCA rather than by the HCA acting through its Regulation Committee.”
- 45 In section 216 (consultation on use of intervention powers) omit paragraph (e).
- 46 In section 222 (notification of use of enforcement notice) omit paragraph (a).

- 47 In section 230(2) (pre-penalty warning) omit paragraph (a).
- 48 Omit section 232 (duty to notify HCA of penalty notice).
- 49 In section 242(3) (pre-compensation warning) omit paragraph (a).
- 50 (1) Section 248 (supplemental provisions about management tenders) is amended as follows.
- (2) In subsection (4) omit paragraph (a).
- (3) In subsection (7) omit paragraph (c).
- (4) In subsection (8) omit paragraph (a).
- 51 (1) Section 250 (supplemental provisions about management transfers) is amended as follows.
- (2) In subsection (4) omit paragraph (a).
- (3) In subsection (7) omit paragraph (c).
- (4) In subsection (8) omit paragraph (a).
- 52 (1) Section 252 (supplemental provisions about appointment of managers) is amended as follows.
- (2) In subsection (4) omit paragraph (a).
- (3) Omit subsection (7).
- 53 (1) The Table in section 276 (Part 2: index of defined terms) is amended as follows.
- (2) Omit the entry for “Appointed member”.
- (3) In the entry for “Fundamental objectives” for “Section 86” substitute “Section 92K”.
- (4) In the entry for “The regulator” for “Section 81” substitute “Section 92A”.
- (5) In the entry for “The Regulator of Social Housing” for “Section 81” substitute “Section 92A”.
- (6) Insert the following entries at the appropriate place—
- | | |
|----------------------|---------------|
| “The chair | Section 92C”; |
| “External member | Section 92C”; |
| “The internal member | Section 92C”. |
- 54 (1) Schedule 1 (constitution of the Homes and Communities Agency) is amended as follows.
- (2) In paragraph 1 (appointment of membership) after sub-paragraph (4) insert—
- “(5) A person who is an external member of the Regulation Committee (see section 92C) may not be appointed as a member of the HCA.”
- (3) After paragraph 17 insert—
- “18 The provisions in this Schedule about the HCA’s committees and their sub-committees do not apply in relation to the Regulation Committee or its sub-committees (as to which see in particular sections 92A to 92I).”

PART 2

AMENDMENTS CONSEQUENTIAL ON PART 1

Public Records Act 1958 (c. 51)

- 55 In Schedule 1 to the Public Records Act 1958 (definition of public records), in Part 2 of the Table at the end of paragraph 3 omit the entry for the Office for Tenants and Social Landlords.

Parliamentary Commissioner Act 1967 (c. 13)

- 56 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation) omit the entry for the Office for Tenants and Social Landlords.

House of Commons Disqualification Act 1975 (c. 24)

- 57 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) omit the entry for the Office for Tenants and Social Landlords.

Freedom of Information Act 2000 (c. 36)

- 58 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities) omit the entry for the Office for Tenants and Social Landlords.

Housing (Scotland) Act 2010 (asp 17)

- 59 The Housing (Scotland) Act 2010 is amended as follows.
- 60 In section 18(2) (co-operation with other regulators: definition of “relevant regulators”) in paragraph (a) for “the Office for Tenants and Social Landlords” substitute “the Regulator of Social Housing”.
- 61 In section 68(3) (determination of accounting requirements for registered social landlords: consultation with other bodies) in paragraph (c) for “the Office for Tenants and Social Landlords” substitute “the Regulator of Social Housing”.

Equality Act 2010 (c. 15)

- 62 In Schedule 19 to the Equality Act 2010 (public authorities) omit the entry for the Office for Tenants and Social Landlords.

PART 3

TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES

Transfer of property, rights and liabilities

- 63 (1) The property, rights and liabilities to which the Office is entitled or subject immediately before the commencement of this paragraph transfer to and vest in the HCA.

- (2) This paragraph has effect in spite of any provision (of whatever nature) that would otherwise prevent, penalise or restrict the transfer of the property, rights or liabilities.
- (3) In particular, it has effect regardless of a contravention, liability or interference with an interest or right that would otherwise exist by reason of such a provision having effect in relation to the terms on which the Office is entitled to the property or right, or subject to the liability, in question.
- (4) A certificate by the Secretary of State that anything specified in the certificate has vested in the HCA under this paragraph is conclusive evidence for all purposes of that fact.

Employment contracts: transfer of rights and liabilities

- 64
- (1) The rights and liabilities transferred by paragraph 63 include rights or liabilities under a contract of employment.
 - (2) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to the transfer by virtue of that paragraph of rights or liabilities under a contract of employment (whether or not it is a relevant transfer for the purposes of those regulations).

Continuity

- 65
- (1) The transfer of property, rights and liabilities by virtue of paragraph 63 does not affect the validity of anything done (or having effect as if done) by or in relation to the Office before the transfer takes effect.
 - (2) Anything that—
 - (a) is done (or has effect as if done) by or in relation to the Office for the purposes of, or otherwise in connection with, anything transferred by paragraph 63, and
 - (b) has effect immediately before the transfer date,
 is to be treated as done by or in relation to the HCA.
 - (3) There may be continued by or in relation to the HCA anything (including legal proceedings) that—
 - (a) relates to anything transferred under paragraph 63, and
 - (b) is in the process of being done by or in relation to the Office immediately before the transfer date.
 - (4) Sub-paragraph (5) applies to any document that—
 - (a) relates to anything transferred under paragraph 63, and
 - (b) is in effect immediately before the transfer date.
 - (5) Any references (however expressed) in the document to the Office are to be read, so far as is necessary for the purposes of the transfer, as references to the HCA.

Interpretation

- 66 In this Part of this Schedule—

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

“the Office” means the Office for Tenants and Social Landlords constituted by Chapter 2 of Part 2 of the Housing and Regeneration Act 2008 as originally enacted;

“the transfer date” means the date on which paragraph 63 comes into force.

PART 4

TRANSITIONAL AND SAVING PROVISIONS

Final annual report

- 67 (1) As soon as is reasonably practicable after the abolition date, the HCA must prepare a report on the performance of the functions of the Office—
- (a) in the last financial year to end before the abolition date, and
 - (b) in the period (if any) beginning immediately after the end of that financial year and ending immediately before the abolition date.
- (2) Sub-paragraph (1)(a) does not apply if the Office has already sent a report under section 92 of the Housing and Regeneration Act 2008 to the Secretary of State in respect of the financial year.
- (3) The report must, in particular—
- (a) specify any direction given to the Office by the Secretary of State in the period to which it relates under section 197 of the Housing and Regeneration Act 2008, and
 - (b) contain a general description of complaints made to the Office in that period about the performance of registered providers of social housing and of how those complaints have been dealt with.
- (4) The HCA must send a report under this paragraph to the Secretary of State as soon as is reasonably practicable after preparing it.
- (5) The Secretary of State must lay the report before Parliament.

Final accounts

- 68 (1) As soon as is reasonably practicable after the abolition date, the HCA must prepare—
- (a) a statement of the accounts of the Office for the last financial year to end before the abolition date, and
 - (b) a statement of the accounts of the Office for the period (if any) beginning immediately after the end of that financial year and ending immediately before the abolition date.
- (2) A statement under this paragraph must be prepared in accordance with the direction given by the Secretary of State to the Office dated 12 August 2009.
- (3) The HCA must, as soon as is reasonable practicable after preparing a statement under this section, send a copy of it to the Secretary of State and the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General must—
- (a) examine, certify and report on the statement, and

- (b) lay a copy of the report before Parliament.
- (5) Sub-paragraph (1)(a) does not apply if the Office has already sent a copy of its statement of accounts for the year to the Comptroller and Auditor General.
- (6) In such a case the repeal of section 103(5) of the Housing and Regeneration Act 2008 does not remove the obligation of the Comptroller and Auditor General to take the steps specified in that provision in relation to the statement of accounts if the Comptroller has not already done so.

General transitional and saving provisions

- 69 (1) Section 92A of the Housing and Regeneration Act 2008 does not apply to an enactment or instrument if and to the extent that it makes provision about a time before the commencement of the insertion of that section by paragraph 26.
- (2) In relation to such a time—
- (a) references in Part 2 of that Act to “the regulator” are to the Office, and
 - (b) references in any other enactment or instrument to “the Regulator of Social Housing” are to the Office.
- (3) The transfer of functions from the Office to the HCA by virtue of this Schedule does not affect the validity of anything done (or having effect as if done) by or in relation to the Office before the transfer takes effect.
- (4) Anything that—
- (a) is done (or has effect as if done) by or in relation to the Office for the purposes of, or otherwise in connection with, a function transferred by virtue of this Schedule, and
 - (b) has effect immediately before the date on which the function is transferred, is to be treated as done by or in relation to the HCA.
- (5) There may be continued by or in relation to the HCA anything (including legal proceedings) that—
- (a) relates to a function transferred by virtue of this Schedule, and
 - (b) is in the process of being done by or in relation to the Office immediately before the date on which the function is transferred.
- (6) Sub-paragraph (7) applies to any document that—
- (a) relates to a function transferred by virtue of this Schedule, and
 - (b) is in effect immediately before the date on which the function is transferred.
- (7) Any references (however expressed) in the document to the Office are to be read, so far as is necessary for the purposes of the transfer, as references to the HCA.

Interpretation

- 70 In this Part of this Schedule—
- “the abolition date” means the date on which the repeal of section 81 of the Housing and Regeneration Act 2008 by Part 1 of this Schedule comes into force;
 - “financial year” means the period of 12 months ending with 31 March in any year;

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

“the Office” means the Office for Tenants and Social Landlords constituted by Chapter 2 of Part 2 of the Housing and Regeneration Act 2008 as originally enacted.