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

HOUSING ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6

Section 179: Extending the Period Of Introductory Tenancies

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

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

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

Section 180: Extension of qualifying period for right to buy

407. At present, the Right to Buy does not arise unless the tenant has occupied accommodation under a public sector tenancy (i.e. armed forces accommodation or as a tenant of one of the classes of public sector landlord specified in Schedule 4 to the 1985 Act) for a period of at least two years. This section will extend the qualifying period from 2 years to 5 years. In all other ways, qualification will remain subject to the requirements of Schedule 4. However, although tenants will in future have to wait 5 years instead of 2 years to qualify for the Right to Buy, the amount of discount for which they will qualify under section 129 of the 1985 Act will be equal to their current discount entitlement after 5 years. Hence, after 5 years, they will qualify for discount as follows:

    - for a house, 35 per cent – under the current rules, tenants are entitled to 32 per cent after two years plus one per cent for each of the additional three qualifying years.
    - for a flat, 50 per cent – under the current rules, tenants are entitled to 44 per cent after two years plus two per cent for each of the additional three qualifying years.

408. The total amount of discount for which any tenant is eligible will however remain subject to the limits set by the Secretary of State under section 131 of the 1985 Act.

409. This section will only apply to wholly new tenancies that begin on or after the day on which it comes into effect. Therefore, it does not apply to:

    - secure tenancies that begin or were agreed to before that day, or

- individuals who were public sector tenants on that day and remain so up to the day on which they serve a notice under section 122 of the Housing Act 1985 applying for the Right to Buy - for example, secure tenants or tenants whose landlords are Registered Social Landlords who begin a new secure tenancy after the day on which this section comes into effect. This could happen because a secure tenant moves to a different property, or because a tenant of a Registered Social Landlord begins a new tenancy with a local authority landlord.

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

410. This section transfers jurisdiction for the determination of tenants' appeals against being denied the Right to Buy by their landlord, on the basis that the property falls within the exception for dwelling-houses suitable for elderly persons, from the Secretary of State to a residential property tribunal. The transfer only applies to appeals regarding properties in England.

411. Paragraph 11 of Schedule 5 provides that the RTB does not arise if the dwelling:

- is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons; and
- it was let to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more.

412. The section amends paragraph 11 so that appeals will be determined by a residential property tribunal in respect of England, and by the Secretary of State in respect of Wales. Devolution has resulted in the functions of the Secretary of State in this regard being transferred to the National Assembly for Wales.

413. The National Assembly for Wales will have power under section 229 of the Act to transfer jurisdiction for determining appeals from the Secretary of State to a residential property tribunal in respect of Wales under paragraph 11 in future, if it considers that this is appropriate.

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

414. Schedule 5 to the Housing Act 1985 sets out the exceptions to the Right to Buy. This section adds to Schedule 5 properties which are to be demolished during the next 24 months, where the landlord has served a final demolition notice and has followed the prescribed notification process. The Right to Buy would then not arise in respect of such properties. Landlords will be required to notify tenants affected by the decision to demolish, giving reasons and the intended timetable for demolition, to inform tenants of the right to compensation under new section 138C (see the notes for section 183 below), and also to publicise decisions by placing a notice in a newspaper local to the area in which the property is situated, in any newspaper published by the landlord, and on their website (if they have one).

415. A final demolition notice cannot be served until the arrangements for acquisition of any premises to be demolished alongside the properties as part of a demolition scheme are finalised. This means that compulsory purchase issues must have been resolved before a final demolition notice can be served.

416. The landlord can make an application to the Secretary of State during the 24-month period for that period to be extended, but if he does not make such an application, he will be unable to serve any further demolition notice in respect of these properties for five years without the Secretary of State's consent. On receipt of an application, the Secretary of State can direct that the period be extended, but he may specify further notification requirements that the landlord must comply with in order for the exception to the Right to Buy to continue.

417. If the landlord subsequently decides not to demolish the property, he must serve a revocation notice upon affected tenants as soon as is reasonably practicable. If it appears to the Secretary of State that a landlord has no intention of demolishing properties subject to a final demolition notice, he may serve a revocation notice on affected tenants.

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

418. Section 183 of the Housing Act 1985 requires a landlord to complete a Right to Buy sale as soon as all matters relating to the sale have been agreed or determined. Section 183, by the insertion of new section 138A into the Housing Act 1985, suspends that obligation in cases where an initial demolition notice has been served, following the prescribed notification process.

419. The content, period of validity, and the provisions concerning the termination and revocation of initial demolition notices are contained in Schedule 9. Such notices may be served in respect of properties that the landlord intends to demolish within five years. This period may not be extended. Schedule 9 requires landlords to notify tenants of their decision to demolish, giving reasons and the intended timetable for demolition. It also requires them to state (i) the effect of the initial demolition notice (ie, that while it is in force, the landlord's obligation to complete the Right to Buy sale is suspended), (ii) that it does not prevent new Right to Buy applications being made, and (iii) that where a valid Right to Buy claim has been made, the tenant may claim compensation in respect of expenditure reasonably incurred, before the notice was served, on the conveyancing process (see note for new section 138C below).

420. If the landlord subsequently decides not to demolish the property, he must serve a revocation notice upon affected tenants as soon as is reasonably practicable. If it appears to the Secretary of State that a landlord has no intention of demolishing properties subject to an initial demolition notice, he may serve a revocation notice on affected tenants.

421. If a initial demolition notice expires and demolition has not taken place, no further initial demolition notice can be served on that property for a period of five years.

422. Section 183 inserts new section 138A into the Housing Act 1984, which provides that an initial demolition notice suspends the landlord’s obligation to complete the Right to Buy, while new section 138B provides that a final demolition notice terminates an outstanding Right to Buy claim.

423. New section 138C provides that a landlord who serves either an initial or a final demolition notice upon a tenant who has established a valid Right to Buy claim is liable to compensate him for any reasonable costs that he has incurred in respect of the conveyancing process - for example, the costs of legal advice and survey and search fees. Whether costs are reasonable or not can be decided by the county court in the event of disagreement between the tenant and the landlord (see section 181 of the Housing Act 1985). The tenant will have to claim the compensation within three months from the date on which the notice comes into force, and to provide receipts or other documents showing that the expenditure has been incurred.

Section 184: Landlord’s notice to complete

424. Under section 140 of the Housing Act 1985, a landlord may serve a 'first notice to complete' no earlier than 12 months after serving a notice under section 125 of the Housing Act 1985 (notice of purchase price etc). This requires the tenant to complete the Right to Buy sale within a period stated in the notice, which must be at least 56 days, and must be reasonable in the circumstances. However, if any relevant matters are still outstanding, the tenant may serve on the landlord within the specified period a written notice specifying those matters, and he does not then have to complete the sale within the specified period.

425. If the tenant does not comply with a notice under section 140, the landlord may serve on him a further written notice requiring him to complete the transaction within a further period stated in the notice, which must be at least 56 days, and must be reasonable in the circumstances. The landlord has discretion to extend this period. If the tenant does not comply with a notice under section 141 within the period specified by the landlord, his Right to Buy application is deemed to be withdrawn.

426. Section 184 shortens the period before which a landlord may serve a first notice to complete under section 140 from 12 months to three months. The new total time limit is comparable to the time taken by private sellers and buyers to complete sales. As at present, it is for the landlord to decide whether and when to serve a notice, and whether to extend the period.

Section 185: Repayment of discount: periods and amounts applicable

427. At present, if a person who has exercised their Right to Buy wishes to resell the property within three years of acquiring it, he or she is required to repay to the former landlord all or some of the Right to Buy discount which they received. This section extends this period from three years to five years, in respect of both the Right to Buy and the Rent to Mortgage schemes (sections 143-151 of the 1985 Act).

428. Section 185 also makes three other separate changes. Firstly, it makes clear that former landlords have discretion as to whether or not to demand repayment of discount on early resale within the specified period in relation to purchases under both the Right to Buy and Rent to Mortgage schemes. This discretion is also available in relation to people who bought their properties before the coming into force of this section, and who are subject to a three-year discount repayment period that has not yet ended. Secondly, it changes the calculation of the amount of discount to be repaid from a flat-rate basis to a percentage basis, in relation to the Right to Buy only. Thirdly, it changes the repayment taper (i.e., the amount by which the level of discount which has to be repaid is reduced after each complete year since purchase) from one third per year to one fifth per year, in respect of both the Right to Buy and the Rent to Mortgage schemes.

Discretion to waive repayment of discount

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

Section 155A

430. This provision applies to Right to Buy sales only, and recoups for the public purse a proportion of any appreciation in the value of a property originally sold with the benefit of discount, which is resold during the period within which the former landlord may demand repayment of some or all of that discount. However, it will also benefit Right to Buy purchasers whose property has fallen in value, as the amount they will have to repay will be reduced.

431. Section 155A provides that the maximum amount that the former landlord may demand (subject to the repayment taper) is that percentage of the resale price which is equal to the discount to which the tenant was entitled at the time of the original sale, where that discount is expressed as a percentage of the value of the property at that time. For example, if a tenant received discount equivalent to 10 per cent of the Right to Buy sale price, the landlord may demand repayment of 10 per cent of the property's resale value. However, this is also subject to the provisions of Section 155C (see note for section 186 below) regarding the value of improvements to the property made by the owner after

purchasing it under the Right to Buy. The repayment taper is changed from one third per year to one fifth per year.

Section 155B

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

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

433. This section is designed to ensure that an owner who resells during the five-year period during which discount may be recovered retains the value of improvements he or she has made to a property after acquiring it, either under the Right to Buy or as a successor in title to the original purchaser.

434. The new section 155A inserted by Section 185 provides that the amount of discount to be repaid shall be a percentage of the resale value of the property. Section 186 inserts new section 155C, under which the resale value will be treated as net of the value of any improvements made by the current owner after acquiring the property and before disposing of it.

435. If the value of such improvements is disputed, it shall be determined by the District Valuer, so long as (a) it is reasonably practicable for him to do so and (b) the reasonable costs of his doing so are paid by the person making the disposal. If there is no agreement between the parties as to the value of improvements, and the District Valuer does not make a determination, there will be no disregard for the value of improvements.

Section 187: Deferred resale agreements

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

Section 188: Right of first refusal for landlord etc.

437. Section 188 requires that a covenant be inserted into all conveyances or grants to tenants requiring that, during the period of 10 years from the date of the conveyance or grant, the tenant purchaser (or any successor in title) must make an offer of first refusal to his former landlord, or such other person as the Secretary of State prescribes, before he can make a relevant disposal of the property (other than an exempted disposal) - this generally means a resale. The Secretary of State’s functions in respect of Wales have been transferred to the National Assembly for Wales.

438. Such a covenant will be a local land charge and must be entered into the property's register of title by the Chief Land Registrar. This means that the covenant cannot be overlooked when resale is under consideration.

439. The Secretary of State has the power to prescribe by regulations such conditions as he considers appropriate for and in connection with the right of first refusal. He can:

- make provision to ensure that offers are made to a prescribed person. This is because the former landlord may not always be the most appropriate body to receive an offer

of first refusal, as it may have transferred its remaining interest in that property, or in related properties (e.g. the other properties on an estate of which the property forms a part), to another body;

- make provision which will allow other persons, such as other social landlords in the area, to be nominated to receive an offer of first refusal in place of the former landlord. This is so that if the former landlord does not wish to accept the offer, an alternative social housing provider will have the opportunity to purchase the property, thus maximising the chances that the property will be brought back into social housing; and
- provide for time limits within which offers must be accepted, and for the circumstances in which the right of first refusal will lapse, so as to protect the interests of tenant purchasers wishing to sell their properties.

440. Section 188 does not remove the current option under section 157 of the Housing Act 1985, in respect of properties in National Parks, areas designated under section 82 of the Countryside and Rights of Way Act 2000 as being of outstanding natural beauty, and areas designated as rural under section 157 itself, for landlords to require tenant purchasers to resell only to persons who have lived or worked locally for at least three years, as an alternative to imposing a right of first refusal covenant.

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

441. Previously, landlords had a duty under section 104 of the Housing Act 1985 to provide general information about the express terms of their secure tenancies, the Right to Buy, and the landlord's repairing obligations. This section places an additional, more specific, duty on landlords to supply information to tenants about such matters as the Secretary of State specifies by Order, to help tenants decide whether to exercise the Right to Buy. The Secretary of State’s functions in respect of Wales have been transferred to the National Assembly for Wales.

442. It is intended that the matters will mainly concern the responsibilities and consequences of being a homeowner, such as meeting the costs involved in buying and maintaining a property – for example, stamp duty, fees, and insurance - and then the costs of repairs and maintenance (including service charges levied on leaseholders who have bought flats).

443. Landlords will have to keep the information up to date, so far as is reasonably practicable, and must make the information available in accordance with the requirements of new section 121B of the Housing Act 1985, i.e. at the landlord’s principal offices and such other places as it considers appropriate. The landlord must also publish the information and supply copies of it directly to tenants at such times as are prescribed by the Secretary of State.

Section 190: Termination of rent to mortgage scheme

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

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

445. Mutual exchanges occur when two tenants of social landlords swap homes by legally assigning their tenancies to each other. The permission of the landlord of both tenants is required. The landlord of a secure tenant can not refuse permission unless the grounds set out in Schedule 3 to the Housing Act 1985 are met.

446. Section 191 introduces a new Ground 2A into Schedule 3 of the Housing Act 1985. The landlord of a secure tenant may refuse an application if a specified type of injunction, an anti-social behaviour order or a possession order granted on the grounds of nuisance is in force or if court action to obtain such an order or a demolition order is pending against the tenant, the proposed assignee or a person who resides with either of them.

447. A demotion order is an order obtained under provisions inserted in the Housing Act 1985 and the Housing Act 1988 by the Anti-Social Behaviour Act 2003, which ends a secure or an assured tenancy and replaces it with a demoted tenancy, which is essentially a probationary tenancy.

448. An anti-social behaviour order is an order obtained under the Crime and Disorder Act 1998, which places specified limitations on the conduct of the individual against whom it is made.

Section 192: Right to Buy: suspension by court order

449. Section 192 will enable landlords of secure tenants to seek an order suspending the right to buy for a specified period in respect of the tenancy on the grounds of anti-social behaviour. The court may only grant such an order if it is satisfied that the tenant or a person residing in or visiting the property has engaged or threatened to engage in anti-social behaviour (which includes using the premises for unlawful purposes), and that it is reasonable to make the order.

450. When deciding if it is reasonable to make the order, the court will consider, in particular, whether it is desirable for the property to be managed by the landlord during the suspension period, and to the effect the behaviour has had, or would have if repeated, on other people.

451. A suspension order will end any existing applications to exercise the RTB and prevent any new applications being made during the period specified by the court. The suspension of the RTB does not have any impact on the accumulation of discount or qualifying period.

452. The landlord may request, on one or more occasions, an extension to the suspension period, however the court may not extend the suspension period unless, since the making of the suspension order (or since the last extension) the tenant, or a person residing in or visiting the property, has engaged or threatened to engage in anti-social behaviour, and that it is reasonable to make the further order.

453. Section 192 allows regulations to be made that will continue the effect of a suspension order where the secure tenant becomes an assured tenant, as he would otherwise be able to exercise the Preserved Right to Buy (sections 171A-171H Housing Act 1985), or the Right to Acquire (section 16-17 Housing Act 1996), instead of the Right to Buy.

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

454. Section 193 prevents a tenant from being able to compel completion of a Right to Buy sale if an application is pending for a demotion order, a suspension order, or a possession order sought on the basis of Ground 2 of Schedule 2 of the Housing Act 1985 (anti-social behaviour), until those proceedings have ended, and none of those orders have been made. If a demotion order or outright possession order is made, the tenant will lose their secure tenancy and thus also lose the right to buy. If a suspension order is made, it will end any existing applications to exercise the RTB and prevent any new applications being made during the period specified by the court.

455. A demotion order is an order obtained under the Anti-Social Behaviour Act 2003 which ends a secure tenancy and replaces it with a less secure form of tenancy, which is essentially a probationary tenancy. After the demotion period, normally one year, a tenant may become a secure tenant again and regain the right to buy.

456. A suspension order is an order suspending the right to buy for a specified period in respect of the tenancy on the grounds of anti-social behaviour obtained under section 192 of this Act.

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

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

Sections 195-198: Disposals by local authorities

458. These sections carry over the changes made in respect of the Right to Buy in sections 185-188 to voluntary disposals by local authorities of properties at a discount under section 32 of the Housing Act 1985.

459. Voluntary disposals by local authorities can be made under section 32 of the Housing Act 1985, but require the Secretary of State's consent. A General Consent has been issued permitting sales at a discount, but only on terms that mirror the Right to Buy scheme. Specific consent can be granted to sell properties on more generous terms, however, if necessary or desirable in particular circumstances.

460. With respect to section 197, and the landlord’s right of first refusal, the Government wishes to preserve the existing position for local authorities in rural areas. Local authorities can choose between a right of first refusal, and a restriction requiring sales to be made only to local people. The General Consent will allow this freedom of choice to continue.

Sections 199 -201: Disposals by Registered Social Landlords

461. These sections carry over the changes made in respect of the Right to Buy in sections 185 -188 to voluntary disposals by Registered Social Landlords of properties at a discount under section 9 of the Housing Act 1996.

462. The voluntary disposal of properties by Registered Social Landlords (e.g. housing associations) under section 9 of the Housing Act 1996 requires the consent of the Housing Corporation. General consent has been given for properties to be disposed of at a discount, on terms no more generous than the statutory Right to Buy or Right to Acquire scheme, where the Registered Social Landlord has a voluntary sales policy in place. Registered Social Landlords that do not have a voluntary sales policy in place require specific consent from the Corporation in respect of any disposals. Specific consent can be sought from the Housing Corporation if a Registered Social Landlord wishes to dispose of properties on more generous terms, if necessary or desirable in particular circumstances.

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

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

464. This section preserves the Right to Acquire for assured tenants of Registered Social Landlords (RSLs) in cases where long leaseholders living in the same block of flats as non-qualifying assured tenants enfranchise (i.e. purchase the freehold compulsorily).

465. Under the Leasehold Reform, Housing and Urban Development Act 1993, qualifying tenants of flats (i.e. long leaseholders) were given rights to collective enfranchisement. By Schedule 9, paragraph 3, where flats are let out to non-qualifying tenants (i.e. those who are not long leaseholders) by a housing association freeholder, and enfranchisement occurs, there is a mandatory leaseback by the new freeholder to the housing association of those flats, so that the housing association remains as the immediate landlord of the tenants. (Housing association includes RSLs in this context).

466. The Right to Acquire (RTA) is a statutory scheme under which some tenants of RSLs are given the right to purchase their rented home at a discount by section 16 of the Housing Act 1996. Previously, in order for the Right to Acquire to apply, section 16(3)(a) required that the freehold interest in the dwelling must at all times have been held by an RSL or a public sector landlord.

467. Therefore, when a group of RSL leaseholders enfranchise, the other RSL assured tenants in the same block who are not long leaseholders lose their statutory Right to Acquire their rented home. This was an unintended consequence of leasehold legislation.

468. Section 202 extends the definition of freehold interest in the dwelling (in section 16(3) of the Housing Act 1996) so that it still applies even where a mandatory leaseback has taken place. The section thereby preserves the Right to Acquire for RSL assured tenants in cases where a group of leaseholders in the same block buy the freehold. The Right to Acquire is conferred also upon those from whom it has already inadvertently been removed.

Sections 203 –205: Disposals by housing action trusts

469. These sections carry over the changes made in respect of the Right to Buy in sections 185-188 to voluntary disposals by Housing Action Trusts of properties at a discount under section 79 of the Housing Act 1988.

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

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

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

472. Section 206 substitutes section 1 and amends section 2 of the Mobile Homes Act 1983, which concern agreements made between a site owner and an occupier wishing to station a mobile home on a site, their terms, and the enforceability of the terms of that agreement.

473. Site owners are now required to provide a prospective occupier with a written statement of the terms of the occupation agreement 28 days before any agreement for the sale of the mobile home to the occupier is made. A shorter period can be agreed in writing between the parties if they so choose.

474. If a site owner has not provided the written statement in advance as required, he may not enforce any of the express terms of the agreement, unless he applies to court within six months of either the making of the agreement or of providing the statement (whichever is the later), for an order that the express terms should have full or partial effect. Where an express term is for the benefit of other occupiers of the site, it is considered more likely that a court will agree that it should be enforceable against the occupier. However the court will have to balance those considerations against how fair it is to the occupier to be bound by a term of which he had no, or insufficient, notice.

475. An occupier can rely upon express terms which are in their favour, even if the statement is not provided in time by the site owner, and can enforce such a term any time after the agreement has been made in the normal way by issuing court proceedings.

476. The existing power for either party to apply to court for an order to change or delete an express term - as opposed to enforcing a term - is preserved. However, the time limit has been changed so that applications must now be made within six months of the making of the agreement, or six months of receiving the written statement (whichever is later).

477. If a site owner fails to produce a written statement at all, the occupier can apply to the court any time after the making of an agreement for an order requiring the site owner to produce the written statement.

478. The provisions, which set out the requirements with which a statement must comply, and which give a power to the Secretary of State to prescribe further requirements, are also preserved.

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

479. Section 207 amends paragraphs 6, 8 and 9 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 and adds Part 3 to that Schedule.

480. Section 207(2) amends paragraph 6, the grounds upon which a site owner may apply to court to end an agreement with an occupier, is to remove the “age” of the home as a relevant factor for termination of agreement. A site owner may continue to apply to court to end an agreement on the basis that the “condition” of a home is having a detrimental effect upon the amenity of the site, or is likely to have such an effect in the next five years. Section 207(2) also gives discretion to the court to adjourn termination proceedings to give the occupier time to effect particular repairs, if this would be reasonably practicable, and if the occupier has indicated that he is willing to carry out those repairs.

481. Section 207(3) amends paragraph 8, and applies where an occupier wishes to sell their home. Occupiers are only permitted to assign their occupation agreements to a person approved of by the owner, although this approval cannot be unreasonably withheld. A time limit of 28 days has been introduced, by the end of which the site owner must approve the potential purchaser, unless it is reasonable for him not to do so, and also must give or withhold approval in writing. If the approval is given subject to conditions, the conditions must be specified. If approval is withheld, then reasons must be given. If at the end of the 28 day period, the occupier has not received a decision in writing, they can apply to the court for an order declaring that the person is approved. The duty to give approval is a contractual duty. Breach of this duty means that the occupier could seek an award of damages for breach of contract.

482. Section 207(4) makes similar provision where an occupier wishes to gift their home, and carries across the changes of paragraph 8 to paragraph 9.

483. By 207(5), a new duty is imposed on a recipient of an occupier’s request for approval, where the recipient is not an owner, but does have an estate or interest in the site. The recipient will be under a duty to pass the request on to the owner.

484. The duty to pass on a request for approval is a statutory duty, breach of which entitles the occupier to seek an award of damages from a court.

485. These changes will generally apply to existing agreements, as well as to those made on or after the day on which this Act comes into force. However, they will not affect any application to terminate an agreement which has been made before the day that the section comes into force, nor will they affect any requests for approval made before that day.

Section 208: Power to amend terms implied in site agreements

486. Section 208 inserts a new power in the Mobile Homes Act 1983 for the appropriate national authority to make an order to prescribe new implied terms for site agreements and to amend or delete existing terms.

487. The first time this power is exercised, the order can affect the implied terms in existing agreements between site owners and occupiers, that is, agreements which were made before the day on which this order comes into force, so exercise of the power can have retrospective effect. However, future exercises of the power cannot be retrospective.

488. The appropriate national authority must consult organisations which are representative of interests which would be affected by such an order, such as those representing occupiers, and also those representing site owners. Both Houses of Parliament must approve any order made under the power.

Section 209: Protected sites to include sites for Gypsies

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

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

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

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

491. Section 210(2) amends the existing offence in section 3(1) (offence where a person, with the specified intent, does acts calculated to interfere with the peace or comfort of the occupier etc.), so that “likely to interfere” is substituted for “calculated to interfere” with the peace or comfort. This should make it easier for local authorities to prosecute site owners who harass occupiers with the intention of making them leave their home, or to refrain from exercising any right or pursuing any remedy.

492. Section 210(3) makes it an offence for a site owner or his agent to do acts likely to interfere with an occupier’s peace and comfort or to persistently withhold services if he knows or has reasonable cause to believe this will cause the occupier to leave his home, or to refrain from exercising any right or pursuing any remedy. It enables local authorities to prosecute for harassment without needing to prove an actual intention on the part of the site owner (or agent) to harass.

493. Section 210(4) makes the offences in the Caravan Sites Act 1968 either-way offences instead of summary only. It also increases the maximum sentence available on summary

conviction from 6 to 12 months' imprisonment. The maximum sentence for conviction on indictment is 2 years.

Section 211: Suspension of eviction orders

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

Section 212 : Tenancy deposit schemes

495. Section 212(1) places a duty on the appropriate national authority to make arrangements to ensure that one or more tenancy deposit schemes (TDSs) are established to safeguard deposit monies paid in connection with assured shorthold tenancies.

496. Section 212(2) provides that TDS schemes will have two main purposes. They must aim to safeguard tenancy deposits paid in connection with an assured shorthold tenancy and to facilitate the resolution of disputes arising in connection with such deposits. All authorised tenancy deposit schemes must comply with the requirements of Schedule 10.

497. The appropriate national authority will be able to make arrangements with a body or person, known as the scheme administrator, to set up and manage a TDS on their behalf. The intention is for these to be contractual arrangements with private organisations. However, the sections do not limit these arrangements to just private organisations; the appropriate national authority is free to make arrangements with either private or public organisations.

498. Schemes are expected to be self-financing, but section 212(4) allows the appropriate national authority to give financial assistance, for example by way of a grant or to make payments to procure one or more schemes if necessary. The authority will also be able, if it wishes, to provide a financial guarantee for schemes, for example should the scheme be at risk from becoming insolvent. However, the appropriate national authority is under no obligation or duty to cover all, or any, of a scheme's financial obligations.

499. Section 212 (7) allows the appropriate national authority to make regulations giving additional powers to or conferring duties upon scheme administrators in connection with the arrangements made between the administrators and the appropriate national authority.

500. Section 212(8) defines a tenancy deposit as money, in the form of cash or otherwise, intended to be held as security against an assured shorthold tenants' performance of his obligations or the discharge of his liabilities in connection with the tenancy.

Section 213: Requirements relating to tenancy deposits

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

Section 214: Proceedings relating to tenancy deposits

502. The tenant, or the person, who paid the deposit, will be able to apply to the court for an order requiring the person holding the deposit to repay the deposit or to pay it into a custodial scheme in two circumstances. Firstly, where a landlord has not safeguarded a deposit in accordance with the initial requirements of a scheme or given the tenant the required information within 14 days. Secondly, where the landlord has informed the tenant that a particular scheme is safeguarding the deposit and the scheme has not been able to confirm this.

503. If at the court hearing the court is satisfied that the landlord has not complied with the initial requirements of a scheme or provided the information required by section 213 (6) (a) or that the deposit is not being safeguarded by an authorised scheme the court must either order the person holding the deposit to repay the deposit to the applicant or pay it into an authorised custodial scheme within 14 days of the order being made. The court must also order the landlord or his agent to pay the applicant an amount equivalent to three times the deposit.

504. Where a landlord or his agent has taken a deposit which could not be lawfully required, i.e. one which does not consist of money, the person who gave it to the landlord or his agent is entitled to recover it through the courts.

Section 215: Sanctions for non-compliance

505. The landlord may not serve a notice under section 21 of the Housing Act 1988 at any time where a deposit is not being safeguarded in accordance with an authorised scheme or where either the initial requirements of the scheme have not been met or the prescribed information regarding the safeguarding the deposit has not been given. Under section 21 of the Housing Act 1988 a landlord can obtain an order for possession of an assured shorthold tenancy at any point after the first 6 months of the tenancy providing that any fixed term has expired and that they have given the tenant at least 2 months notice. This is sometimes referred to as the ‘notice only’ ground for possession as there is no need to prove fault on behalf of the tenant.

506. A landlord also cannot use this ‘notice only ground’ for possession while they are holding a deposit which could not be lawfully required, i.e. one which consists of something other than money.

Section 216: Overcrowding

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

508. By virtue of subsection (1)(b) and (c), an order may modify the operation of sections 139 to 144 of this Act, which enable LHAs to serve overcrowding notices limiting the number of persons occupying or likely to be occupying a HMO (other than a HMO which is subject to licensing under Part 2 and in respect of which a management order is in force under Part 4). An order under section 216 may remove the discretion of LHAs to serve notices under sections 139 to 144, so that overcrowding is regulated only by provisions of Part 10.

509. Subsection (2) provides that an order under section 216 may regulate the making by LHAs of determinations as to whether premises are overcrowded. It may prescribe the factors that LHAs must take into account in making such determinations, and the procedure to be followed. An order under subsection (1) may, virtue of subsection (3) modify or repeal any of the provisions of Part 10.

510. Subsection (4) provides that any reference to Part 10 of the Housing Act 1985 includes a reference to that Part as amended, and that an order under section 216 may modify either an Act or an earlier order.

Section 217: Energy efficiency of residential accommodation: England

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

Section 218: Amendments relating to registered social landlords

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

Section 219: Disclosure of information to registered social landlords for the purposes of section 1 of the Crime and Disorder Act 1988

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

Section 220: Additional power to give grants for social housing

514. Section 220 inserts a new section 27A into the Housing Act 1996 thereby extending the powers of the relevant authority (the Housing Corporation in respect of England, and the National Assembly for Wales in respect of Wales) to allow it to give grants to persons that are not registered social landlords (RSL). The Interpretation Act 1978 defines "persons" as including a body of persons corporate or unincorporate.

515. Grants may be given under this new power for the purposes set out in subsection (2), which are essentially the same social housing purposes for which social housing grant is currently provided to RSLs.

516. Subsection (3) provides the Secretary of State with an order-making power to make any provisions in connection with the making of grants considered necessary, in particular such an order may define any equity percentage arrangements, specify or define the bodies from whom prospective purchasers may obtain mortgages, and to establish the priority of such mortgages. An order under subsection (3) will be subject to negative resolution.

517. The grant under the new section 27A may be given subject to conditions and, in relation to any grant given by the Housing Corporation, subsections (3) and (5) allow the Secretary of State to prescribe, by order, conditions which must be imposed or matters about which the Housing Corporation must impose conditions, and any effects such conditions must achieve.

518. Where such conditions are prescribed by the Secretary of State, the Housing Corporation is under a duty impose those conditions on any grant it makes, (see subsection (7)(a)) and is prevented from imposing conditions itself which conflict with such prescribed conditions, (see subsection (7)(b)).

519. Subsection (6) places a duty on the relevant authority to specify the procedure to be followed for applications for grants; the circumstances in which grants will be payable;

the method for calculating grant and any limitations on its amount; and, the manner in which grants will be paid.

520. The relevant authority will have the power under subsection (9) to impose conditions requiring a sum it has determined to be paid to it by the grant recipient in specified circumstances, with or without interest.

521. Section 220 also inserts a new section 27B, which deals with what happens where a property built using grant provided under section 27A is transferred either to another non-RSL, or is transferred to an RSL.

522. This new section provides that, whenever a property for which grant is payable under section 27A is transferred to another non-RSL, the grant is treated as if it were payable to that other non-RSL. In the event of such a transfer the new section ensures that any conditions applied to the grant are transferred to the transferee where either the whole or part of the grant has been paid.

523. This new section also provides that, where a non-RSL transfers grant-funded property to an RSL, the grant is treated as if it had been given to the RSL under section 18 of the Housing Act 1996. This means that it will attract the grant conditions which would usually be imposed if the grant had been given under section 18.

524. For the purpose of new section 27B a property is transferred when it vests in or is leased for a term of years to, or reverts to, the transferee.

Section 221: Extension of the Right to Acquire

525. Section 221 inserts a new section 16A into the Housing Act 1996. This new section gives tenants of properties funded through section 27A grant a right to acquire their home equivalent to the right enjoyed by tenants of RSLs under section 16 of the Housing Act 1996.

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

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

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

528. Shared ownership is a part buy/part rent scheme, intended to help those on a low income into home ownership. Applicants buy a share of a property (typically between 25% to 75%) and pay rent to a housing association on the remaining share. The purchaser is granted a long lease and becomes the sole legal owner of the property, but the landlord retains a share of the equity equal to the percentage of the purchase price that was unpaid (e.g. 50%, if the purchaser bought a 50% share). The scheme provides a means of buying a home in stages at a lower initial cost than purchasing a property outright. Shared owners may, if they wish, purchase further shares in the property (a process known as "staircasing") when they can afford to do so and eventually own their home outright.

529. Enabling the landlord to buy back the property, where the tenant wishes to dispose of it, would prevent the loss of affordable housing stock to the open market, particularly

in rural areas where replacement is difficult, and would allow the housing association to re-sell the unit in more affordable tranches.

530. Section 5 of the Housing Act 1988 would previously have operated so as to make a right of first refusal unenforceable. Shared ownership leases are generally assured tenancies, as because of the rental element they are not long leases at low rent.

531. Section 222, by excluding rights of first refusal from section 5 of the Housing Act 1988, will allow landlords to insert and enforce rights of first refusal in shared ownership leases to assist with the retention of affordable housing units. If included in the lease, a right of first refusal will simply require the shared owner to offer the property back to the original landlord. There will be no obligation on the landlord to accept.

Section 223: Allocation of housing accommodation by local authorities

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

533. Section 223 amends section 167(2)(d) of the Housing Act 1996 to make clear that "medical and welfare grounds" includes people who need to move on grounds relating to a disability.

Section 224: Disabled facilities grant: caravans

534. Section 224 extends eligibility for Disabled Facilities Grant (DFG) to all those occupying caravans. DFG is a mandatory grant administered by local authorities under Part 1 of the Housing Grants, Construction and Regeneration Act 1996. It is available for adaptations that enable disabled occupants to live more independently in their homes.

535. The Regulatory Reform (Housing Assistance)(England and Wales) Order 2002 made DFG available to disabled occupants of "qualifying park homes". However, the definition of qualifying park home excluded some groups of caravan occupants from eligibility, including the majority of Gypsies and Travellers. Section 224 rectifies this situation by replacing the term "qualifying park home" with the term "caravan", and the term "pitch" with the term "land", in each place they appear in the 1996 Act. It also inserts a definition of "caravan" in the 1996 Act. A caravan is defined by reference to the Caravan Sites and Control of Development Act 1960, which contains the standard definition of "caravan" used in various statutes dealing with caravans and caravan sites. The definition is that a caravan is a structure designed or adapted for human habitation that is capable of being moved. The section requires a local authority to be satisfied that the caravan was stationed on land in its area at the time the application was made.

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

Sections 225 & 226: Housing needs assessment

537. Section 225 requires local housing authorities to review the accommodation needs of 'gypsies and travellers' in their district when carrying out reviews of housing needs under s.8 of the Housing Act 1985.

538. Section 225(1) states that the gypsies and travellers who reside in an area (i.e. who currently live there), or who resort to an area (i.e. who pass through from time to time) will have their needs assessed.

539. The development of local authority housing strategies is covered by s.87 of the Local Government Act 2003. Under that section, the Secretary of State or the National Assembly for Wales may require an LHA to prepare and supply them with a strategy in respect of some housing matter. It is anticipated that the Secretary of State and the National Assembly for Wales will require LHAs to prepare and supply a strategy under that section in respect of the meeting of the accommodation needs of gypsies and travellers in their district.

540. Section 225(3) requires local authorities to take any such strategy into account when exercising their other functions. This can include functions relating to planning, education, social care etc as well as housing.

541. Section 225(4) states that local authorities must take into account any guidance issued when carrying out needs assessments and preparing strategies.

542. Section 225(5) also allows for regulations to be issued which define gypsies and travellers.

543. Section 226 allows for the Secretary of State or the National Assembly for Wales to issue guidance on the carrying out of housing needs assessments and the preparation of strategies to meet those needs. It sets out the process by which guidance covering England must be laid before Parliament.

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

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

Section 228: Social Housing Ombudsman for Wales (SHOW)

545. Section 228 inserts a new subsection (7) after section 51(6) of the Housing Act 1996 to disapply section 51 of the Housing Act 1996 (schemes for the investigation of housing complaints) in relation to social landlords in Wales and then inserts new sections 51A, 51B and 51C. These sections, together with Schedule 12 (which inserts a new Schedule 2A into the Housing Act 1996), contain new provisions in respect of the office of the Social Housing Ombudsman for Wales (“the SHOW”).

546. New section 51A sets up the office of the Social Housing Ombudsman for Wales to investigate complaints made against social landlords in Wales. The person who is the Local Commissioner for Wales shall be the SHOW. Provision is made for designation of the office, where there is more than one Local Commissioner. If the person who is the SHOW ceases to be the Local Commissioner, he shall also cease to be the SHOW. The power to remove a Local Commissioner for Wales from office under the Local Government Act 1974 is extended to allow for his removal on the grounds of incapacity or misbehaviour in the office of SHOW. The SHOW, rather than the National Assembly for Wales (“the Assembly”), is to investigate complaints made against social landlords in Wales. Schedule 2A contains further provisions about the SHOW.

547. New section 51B allows the Assembly to make provision by regulations about the investigation by the SHOW of complaints made about social landlords in Wales, in particular in respect of those matters outlined under section 51B(2)(a)-(h).

548. New section 51C defines the meaning of ‘social landlord in Wales’ and gives the Assembly the power to add to or amend the descriptions of landlords who are to be treated as social landlords (subject to consultation with such persons as the Assembly considers appropriate), and defines a “publicly-funded” dwelling.

549. Subsection 3 inserts further provision about the SHOW in Schedule 12 to this Act into the Housing Act 1996 - as a new Schedule 2A.