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

HOUSING ACT 2004

EXPLANATORY NOTES

SCHEDULES

Schedule 1: Procedure and appeals relating to improvement notices

596. Schedule 1 sets out the procedures for serving, revoking and varying improvement notices, and the procedures and time limits for appeals against such notices.

Schedule 2: Procedure and appeals relating to prohibition orders

597. Schedule 2 sets out the procedures for making, revoking and varying prohibition orders, and the procedures and time limits for appeals against such orders.

Schedule 3: Improvement notices: enforcement action by local housing authorities

598. Schedule 3 enables enforcement action in respect of an improvement notice to be taken by LHAs either with or without agreement. It also enables authorities to recover the expenses they incur in taking such action without agreement, and provides a right of appeal by persons from whom they have sought recovery of expenses.

Schedule 4: Licences under Parts 2 or 3: mandatory conditions

599. Schedule 4 sets out mandatory conditions to be attached to licences granted under Parts 2 or 3. Paragraph 1 sets out the conditions that LHA's are required to include in all Part 2 and 3 licences. Paragraph 2 sets out a condition that only applies to Part 3 licences. Paragraph 3 enables the appropriate national authority by regulations to amend paragraphs 1 or 2 by adding or removing conditions.

Schedule 5: Licences under Parts 2 and 3: procedures and appeals

Schedule 6: Management orders: procedure and appeals

600. Schedule 5 sets out the procedures and appeal mechanisms in relation to licences under Parts 2 and 3. Schedule 6 does so for management orders under Part 4. In each Schedule, Part 1 sets out the procedure the LHA must adopt in granting or refusing a licence, or in the case of Schedule 6, the making of orders. Part 2 of the Schedules are concerned with procedures relating to variation or refusal to vary and revocation and refusal to revoke licences and management orders. Part 3 of both Schedules sets out the rights to appeal against decisions and the mechanisms, which apply.

Schedule 7: Further Provisions regarding empty dwelling management orders

Paragraph 1 - Operation of interim EDMOs

601. An interim EDMO comes into force as soon as it is made and can normally last for a maximum period of 12 months.

602. Paragraph 2 - General effect of interim EDMOs

603. When an interim EDMO is in force, the LHA takes over most of the rights and responsibilities of the relevant proprietor including (subject to the rights of existing occupiers) the right to possession of the dwelling. It does not, however, become the legal owner of the dwelling. With the consent of the relevant proprietor, the LHA may grant occupation rights. Where the relevant proprietor is a leaseholder, any grant must be for a term that is less than the relevant proprietor's lease.

604. A LHA (or an agent appointed by the authority) is not liable to any person with an estate or interest in the dwelling for any act or omission done in the performance of its duties under an interim EDMO, unless it is due to negligence.

605. An interim EDMO is a local land charge and the LHA may apply to have a restriction entered on the Land Register. This is to prevent any unauthorised dealings and to ensure the Land Register accurately reflects the status of the property.

606. Paragraph 3 - General effect of interim EDMOs: leases and licences granted by authority

607. A tenancy or licence granted by a LHA is to be treated as if it were a legal lease or a licence granted by a legal owner.

608. Paragraph 4 - General effect of interim EDMOs: relevant proprietor, mortgagees etc

609. A relevant proprietor is not entitled to receive any rent or other payments from persons occupying the dwelling and may not exercise any rights to manage the dwelling whilst an interim EDMO is in force. However, the relevant proprietor retains their rights to dispose of their interest in the dwelling (e.g. by selling it).

610. The validity of any mortgage or superior lease of the dwelling and any rights or remedies available to the mortgagor or lessor are unaffected, save where they would prevent the LHA exercising its power to grant a right of occupation.

Paragraph 5 - Financial arrangements while order is in force

611. Rent collected by a LHA from persons occupying the dwelling may be used to meet the costs incurred in performing duties in respect of the dwelling or to pay compensation payable to a third party or a dispossessed landlord or tenant. The authority must pay any remaining balance, plus interest (where appropriate), to the relevant proprietor.

612. The LHA must keep full accounts of income and expenditure and allow the relevant proprietor opportunity to inspect the accounts. The relevant proprietor may apply to a RPT to make an order declaring expenditure to be unreasonable and to require appropriate adjustment of the accounts.

613. Paragraphs 6, 7 and 8 - Variation or revocation of interim EDMOs

614. A relevant proprietor or someone else with an interest in the dwelling is entitled to ask the LHA to vary or revoke an interim EDMO at any time.

615. The terms of an interim EDMO may be varied if the LHA considers it appropriate to do so.

616. A LHA may revoke an interim EDMO if:

- it concludes that there are no steps it can take to secure occupation of the dwelling;
- it is satisfied that the dwelling will become or continue to be occupied following revocation;
- it is satisfied that the dwelling is to be sold;
- a final EDMO has been made to replace the order;

- it concludes that it should revoke the order so it does not interfere with the rights of a third party; in any other circumstance it considers it appropriate to do so.

617. However, if the dwelling is occupied at the time the revocation is proposed, the LHA may only revoke with the consent of the relevant proprietor (unless the revocation is necessary so that a final EDMO may be made). This restriction is provided so that the relevant proprietor can not be required to manage tenancies he did not enter into. Therefore, if the LHA decides to revoke the order and hand back responsibility for the dwelling to the relevant proprietor, the relevant proprietor may request the LHA to bring to an end any occupation, before the relevant proprietor is willing to consent to the order being revoked..

618. The LHA may make revocation subject to payment of any expenditure incurred by it that has not already been recouped from rental income. It is entitled to refuse to revoke the order on the grounds that the property would be likely to be left unoccupied.

619. Paragraph 9 - Operation of final EDMOs

620. A final EDMO comes into force when the time for appealing against it expires or, if an appeal is made, only when the RPT upholds it. The effect of this is that the relevant proprietor has the opportunity to prevent any final EDMO coming into force until either he accepts all the terms, or they have been considered by a RPT.

621. A final EDMO ceases to have effect after 7 years, unless:

- the order provides for it to cease to have effect earlier; or
- the order provides for it to cease to have effect later and the relevant proprietor consents;

622. Paragraphs 10, 11 and 12 - General effect of final EDMOs

623. The general effect of a final EDMO is largely the same as for an interim EDMO. The principal difference being that a LHA does not require the consent of the relevant proprietor to grant occupation rights. Any occupation rights granted cannot be for a fixed term expiring after the order is due to expire or terminable by notice of more than 4 weeks, without the consent of the relevant proprietor. But consent to create a tenancy equivalent to an assured shorthold tenancy is not needed, provided it is created more than 6 months before the expiry of the order.

624. Paragraphs 13 and 14 - Management scheme and accounts

625. A final EDMO must contain a management scheme setting out how the LHA intends to carry out its duties and how it will account for monies expended and collected whilst it is operative. The LHA must keep full accounts of income and expenditure and provide anyone with a relevant interest in the dwelling reasonable access to inspect them.

626. The management scheme must include details of the following:

- Work the LHA intends to carry out to the dwelling and an estimate of expenditure;
- The rent the dwelling might be expected to fetch on the open market and the rent the LHA will seek to obtain;
- Any compensation payable to third parties;
- Where the amount of rent payable is less than the open market rent, the management scheme must account for the difference. For example, the LHA is permitted to charge a sub market rent, but it must make up any shortfall out of its own resources.

627. The management scheme must also include details of how the LHA intends to pay the relevant proprietor any surplus remaining after deduction of its relevant expenditure and any compensation payable. The management scheme may also state if the LHA intends

to carry over any surplus to a subsequent final EDMO or, where there is a deficit, how it intends to recover the deficit under a subsequent final EDMO.

628. A person affected by a management scheme who considers the LHA is not managing the dwelling in accordance with the management scheme may apply to a RPT for an order requiring the LHA to do so.

629. Paragraphs 15, 16 and 17: Variation or revocation of final EDMOs

630. The rules on variation and revocation of final EDMOs are similar to those for interim EDMOs (see explanatory note on paragraphs 6, 7 and 8).

631. Paragraph 18: Effect of EDMOs: persons occupying or having a right to occupy the dwelling.

632. Paragraph 18 provides that a person who, prior to the making of an EDMO, had the right to occupy the dwelling retains the same legal status once the order is made.

633. Paragraph 19: Effect of EDMOs: agreements and legal proceedings.

634. Paragraph 19 provides for agreements relating to the management of the dwelling or the provision of services or facilities to it, in force at the time the EDMO is made and to which the relevant proprietor was a party, transfer to the LHA if it serves notice to that effect. The LHA can also take over certain legal proceedings commenced against the relevant proprietor on the service of notice to that effect.

635. Paragraphs 20: Effect of EDMOs: furniture

636. Paragraph 20 provides that any right to possession of furniture in the dwelling vests in the LHA whilst the EDMO is in force.

637. Paragraph 21: EDMOs: power to supply furniture

638. A LHA may supply furniture to a dwelling subject to an EDMO and can recover the cost of it as relevant expenditure.

639.

Paragraph 22: Power of a residential property tribunal to determine certain leases and licences

640. A RPT may, on application from a LHA, make an order determining a lease or licence in respect of a dwelling if it is satisfied that the dwelling is not being occupied and the local authority requires possession to secure occupation of it. In making an order determining a lease or licence, a RPT may require the LHA to pay compensation.

641. Paragraph 23: Termination of EDMOs: financial arrangements

642. On termination of an interim EDMO, the LHA must pay to the relevant proprietor any balance of rent left after deduction of its relevant expenditure and any compensation payable to a third party or a dispossessed landlord or tenant. However, it is not required to pay any balance to the relevant proprietor where the order is followed by a final EDMO and the final EDMO provides for this.

643. On termination of a final EDMO, the LHA must pay any balance owed to the relevant proprietor, a third party or a dispossessed landlord or tenant in accordance with the management scheme.

644. If, on termination of an EDMO, there is a deficit after deduction of relevant expenditure, the LHA may be required to meet the deficit out of its own resources (unless it subsequently recovers the deficit under a final EDMO). The LHA may only recover the deficit from the relevant proprietor if:

- the relevant proprietor has agreed to pay it;

- it relates to a service charge paid by the local authority;
- in the case of an interim EDMO, if the relevant proprietor unreasonably refused to consent to the grant of occupation rights;

645. Any sum recoverable is, until recovered, a charge on the dwelling.

646. Paragraph 24; Termination of EDMOs: leases, agreements and proceedings

647. When an EDMO ceases to have effect the LHA ceases to be a party to a lease or licence to which it became a party under the order. The relevant proprietor takes over the LHA rights and obligations. The LHA may cease to have rights and liabilities under any other agreement or legal proceeding by serving a notice on the other party.

648. Paragraph 25: EDMOs: power of entry to carry out work

649. A LHA has the right to enter a dwelling subject to an EDMO to survey its condition or to carry out works. Any occupier who prevents an officer, employee, agent or contractor of a LHA from carrying out their duties may be ordered to stop by a magistrate's court. Failure to comply with an order of the court is an offence. A LHA may apply to a court for a warrant to authorise entry to a dwelling subject to an EDMO.

650. Paragraphs 26 to 37; Appeals

651. A person who is affected by an EDMO may appeal to a RPT against:

- a decision of a LHA to make a final EDMO;
- the terms of a final EDMO (including the terms of a management scheme);
- the terms of an interim EDMO on the grounds that they do not make provision regarding the interest or on the intervals at which surplus monies received by the LHA under the order are to be paid to the relevant proprietor;
- a decision of the LHA to vary or revoke an interim or final EDMO or its refusal to vary or revoke an interim or final EDMO.
- a decision of the LHA as to whether compensation should be paid to a third party in respect of interference with his rights in consequence of a final EDMO.

Schedule 8: Penalty charge notices under section 168

652. Section 168 gives enforcement officers a power to serve penalty charge notices on someone who they believe has failed to comply with the home information pack duties in Part 5 of the Act. Schedule 8 sets out the details of the penalty charge regime.

653. A penalty charge notice may be given where it is believed that a person is committing, or has committed, a breach of duty under sections 155 to 159, 167(4) and 172(1). The penalty charge notice must specify a number of things, including a description of the alleged breach; the amount of the penalty; the name and address of the person to whom the penalty should be paid (and to whom any representations may be made); the method or methods of payment; the period for paying the penalty and the consequences of not paying the penalty within the period (paragraph 1).

654. A penalty charge notice may be served on a person if it is left at his address or delivered by post to that address. Paragraph 10 makes further provision on the service of notices to bodies corporate and partnerships.

655. The amount of the penalty charge will be prescribed in regulations made by the Secretary of State and must not be more than £500. The period for paying the penalty cannot be less than 28 days and may be extended by the enforcement authority if it wishes to do so (paragraphs 2 and 3).

656. If the recipient of a penalty charge notice requests a review within the period specified in the notice (or any extended period), the enforcement authority must consider the recipient's representations, decide whether to confirm or withdraw the notice and notify the person of their decision.

657. If the enforcement authority decides to confirm the penalty charge, they must inform the recipient of his rights to appeal at the same time that they notify him of this decision. The recipient then has 28 days to appeal to the county court against the penalty charge although the courts have power to extend this period (paragraphs 5(2) and 6(1) and (2)).

658. The enforcement authority has the discretion to withdraw a penalty charge notice at any time, but must withdraw the notice if they believe:

- That there was no breach of the duty specified in the notice;
- The procedural requirements relating to the notice were not properly observed; or
- That it would be appropriate to do so given the circumstances of the case (paragraphs 4 and 5(1)).

659. If a penalty charge notice is withdrawn, the enforcement authority must refund any charge already paid (paragraph 7).

660. If a penalty charge has been confirmed, an appeal can be made on one or more of the following grounds:

- The recipient did not commit the breach of duty specified in the penalty charge notice;
- The notice was not given within the period specified, or did not comply with some other requirement of the Schedule; or
- It was inappropriate for the notice to be given in the circumstances of the recipient's case (for example if there was a purely technical breach of duty and it was inappropriate to do anything more than give advice or a warning) (paragraph 6(3)).

661. Where an appeal is considered by the County Court, the court may either uphold the penalty charge or quash it. Where it is quashed, the enforcement authority must refund any charge already paid (paragraph 7).

662. A penalty charge that is not paid, withdrawn or quashed is recoverable as a debt by the enforcement authority. The initial penalty charge notice and any notice confirming a charge must state this fact (paragraph 1, 5(2), and 8). Paragraph 8 prescribes when an enforcement authority can seek to recover any penalty charge debt, and paragraph 9 makes provision on the evidence to be used by an authority in recovery proceedings.

663. The Secretary of State may by regulations make further supplementary or incidental provision on penalty charge notices. These regulations may also prescribe the circumstances in which fixed penalty notices may not be served, the form of the notice and methods of payment (paragraph 11).

Schedule 9: New Schedule 5A to the Housing Act 1985: initial Demolition Notices

664. Schedule 9 is related to section 183. See the notes for that section for details about initial demolition notices.

Schedule 10: Provisions relating to tenancy deposit schemes

665. All tenancy deposit schemes must comply with the provisions of Schedule 10.

666. The Schedule specifies the two types of TDS that can be secured, custodial and insurance-based and describes the specific provisions relating to each type.

667. Under custodial schemes, a tenant pays the deposit to a landlord or his agent, who is then required to pay the whole of this amount into a designated scheme account. The scheme administrator will then hold it until it is paid to the tenant or the landlord, in accordance with their agreement or following a court order, after the tenancy has ended.

668. Monies representing deposits must be held in a designated scheme account. The account must not contain any other monies except deposits and interest which has been accrued on those deposit amounts. When the scheme administrator returns a deposit to either the tenant or landlord they may return this amount with interest added, at a rate specified by the appropriate national authority. Any interest retained by the scheme administrator may be used to fund the administration of the scheme.

669. If at the end of a tenancy both the tenant and the landlord notify the scheme administrator that they have agreed that either the whole deposit is to be returned to one party or part of the deposit returned to both parties and the scheme administrator is satisfied that such an agreement has been reached, the scheme must pay out the deposit monies due to each party in accordance with the agreement within 10 days of receiving notification.

670. Where there has been a dispute over a deposit and either the tenant or landlord notify the scheme administrator that a court has reached a final decision on how the deposit is to be returned to the parties, (and the scheme administrator is satisfied that such a decision has been reached) the scheme must pay out the deposit monies due to each party in accordance with the decision within 10 days of receiving notification.

671. Under insurance-based schemes, the landlord retains the deposit and repays it to the tenant following agreement between them. Where there is a dispute the landlord must transfer the disputed amount of the deposit to a designated account held by the scheme administrator.

672. Where a tenant notifies the scheme administrator that they have requested the landlord pay them all or part of the deposit and this has not been paid to him within 10 days of this request being made, the scheme administrator must direct the landlord to pay the outstanding amount into a designated account within 10 days of being so directed.

673. Where either a court decision is made as to how much should be returned to either of the parties or the landlord and tenant has reached a decision (perhaps through alternative dispute resolution), the scheme administrator must pay this amount to the relevant party or parties. This payment should be made within 10 days of receiving notification that a decision has been made.

674. This payment should be made out of the amount held by the scheme administrator, which has been transferred by the landlord as directed. Where the amount to be paid out is less than the amount held, the scheme administrator must return the balance to the landlord. Where the amount to be paid out is more than the amount held, the scheme administrator must direct the landlord to pay him the difference within 10 days. However, the scheme administrator must still make the payment within 10 days of receiving notification that a decision has been made, to prevent the tenant from being disadvantaged by the landlord's failure to transfer the outstanding amount to the scheme administrator.

675. Schemes must ensure that the scheme administrator establishes and maintains adequate insurance coverage to allow for the scheme to make such payments where a landlord fails to reimburse the scheme. A scheme may require participating landlords to pay contributions towards this or charge any other administrative fees.

676. Where participating landlords are also members of the scheme, the landlord's membership may be terminated by the scheme administrator for a landlord's failure to reimburse the scheme as directed.

677. In line with the arrangements for custodial schemes set out in this Schedule, the designated account must not contain any amounts other than those paid into it by landlords as directed by the scheme administrator and the interest accruing on these amounts.

678. When the scheme administrator returns a deposit to either the tenant or landlord they may return this amount with interest added, at a rate specified by the appropriate national authority. Any interest retained by the scheme administrator may be used to fund the administration of the scheme. Nothing in the designated account apart from the interest generated can be used to fund the scheme.

679. A scheme must ensure that the tenant does not wrongly recover sums in respect of the deposit twice, that is, from the administrator and from the landlord. A scheme can require that it is reimbursed by the tenant where there has been double recovery by the tenant.

680. Where a tenant makes a request to a scheme administrator (whether the scheme is custodial or insurance-based) for confirmation that it is safeguarding their deposit, the scheme administrator must respond to the tenant as soon as possible. A timescale for this response is not specified, however it is likely that any contractual arrangements made between the appropriate national authority and the scheme administrator will set out an appropriate timeframe in more detail.

681. All schemes should offer some form of alternative dispute resolution (ADR) as a cheaper, quicker alternative to the courts. However, the use of such ADR facilities must not be compulsory; both parties have the option of taking the matter to court if they wish.

Schedule 11: Registered social landlords

682. Schedule 11 makes amendments to the Housing Associations Act 1985, and the Housing Acts 1988 and 1996.

683. The relevant authority's (the Housing Corporation in relation England and the National Assembly for Wales in relation to Wales) powers to make or recover grants were previously restricted to matters that it had previously "determined" i.e. included in a formal statement (known as a "determination") published after consultation with bodies representative of registered social landlords (RSLs), and subject to the approval of the Secretary of State. Revised determinations were previously required not only to introduce new grant programmes but also for minor changes to detailed procedural arrangements related to grant payment and recovery of existing grant.

684. Paragraph 1 removes the requirement on the relevant authority to make formal determinations concerning procedural (but not policy) matters relating to the giving or recovery of grant under section 87 of the Housing Associations Act 1985.

685. Paragraphs 3 and 4 remove the requirement on the relevant authority to make formal determinations (as described in the note for paragraph 1 above) concerning procedural (but not policy) matters relating to the giving or recovery of grant under sections 50(2) and 52(2) of the Housing Act 1988 respectively.

686. Paragraphs 5 and 6 remove the relevant authority's requirement that RSLs account separately for surplus rental income gained from properties funded by grant before 1988 (the Rent Surplus Fund).

687. Paragraphs 8 to 10 remove the requirement on the relevant authority to make formal determinations (as described in the note for paragraph 1 above) concerning procedural (but not policy) matters relating to the giving or recovery of grant under sections 18(2), 20(3) and 21(3) of the Housing Act 1996 respectively.

688. Paragraph 11 amends the side note to section 28 of the Housing Act 1996, and to section 28(6) of that Act, to reflect the removal of the requirement on RSLs to account separately for Rent Surplus Fund income (see note in respect of paragraphs 5 and 6 above).

689. Paragraph 12 increases the penalties previously specified in section 31(2)(b) of the Housing Act 1996 which apply where a person commits the offence of altering, suppressing or destroying a document required by the relevant authority in connection with the conduct of its regulatory powers under section 30 of that Act. Subparagraph (1) extends the range of maximum penalty appropriate on conviction on indictment from a fine not exceeding the statutory maximum, to imprisonment for a term not exceeding two years or a fine, or both. Subparagraph (2) provides that the revised range of penalty does not apply in relation to any offence committed before subparagraph (1) comes into force.

690. Paragraph 13 extends the scope of statutory guidance issued by the relevant authority as currently listed in section 36(2) of the Housing Act 1996. In particular subparagraph (3) introduces a new subsection (2A) to section 36 of that Act adding governance, effective management and financial viability as matters about which the relevant authority can give statutory guidance and therefore have regard to when considering whether action needs to be taken in accordance with section 36(7). Subparagraph (4) extends section 36(7) to permit the relevant authority to consider whether action needs to be taken where there has been misconduct in the affairs of an RSL.

691. Paragraph 14 amends paragraph 1(2) of Schedule 1 to the Housing Act 1996, to clarify that an RSL, which is a member of a Group Structure, may transfer funds to another RSL which is either a subsidiary or associate within that Group.

692. Paragraph 15 amends paragraph 15 of Schedule 1 to the Housing Act 1996, in respect of the arrangements concerning the transfer of an RSL's net assets on dissolution or winding up. Subparagraph (2) extends the scope of paragraph 15(1)(b) of Schedule 1 to the Housing Act 1996 to include a company which is also a registered charity. Subparagraph (3) removes an anomaly which could otherwise have the potential to result in the assets of a charitable RSL, in the event of its dissolution or winding up, being passed to a non-charitable RSL.

693. Paragraph 16 introduces a new paragraph 15A to Schedule 1 of the Housing Act 1996 which allows the Secretary of State to extend the provisions in paragraph 15 to apply to charitable RSLs which do not fall within the scope of paragraph 15(1), as amended, that is, charitable housing associations.

694. As such RSLs operate under a variety of constitutions, there are different ways in which such an RSL may be dissolved, wound up, or simply ceases to exist. As it would be too cumbersome to specify all the circumstances in which paragraph 15 is to apply to the RSL on the face of the Act, the Secretary of State may make regulations which will set out the circumstances in which the extension will apply and any modifications to paragraph 15 which may be considered necessary for that particular extension. Subparagraph (3) of new paragraph 15A specifies that regulations under this paragraph requiring the transfer of property of the charity will have effect notwithstanding anything in the terms of the RSL's trusts, nor any resolution, order or other thing done in connection with the termination of the charity.

695. Paragraphs 17 to 21 make new provision allowing smaller RSLs to provide the relevant authority with accountant's reports rather than full audited accounts. Subparagraph (3) substitutes new subparagraphs (5) to (8) to paragraph 16 of Schedule 1 to the Housing Act 1996.

696. New subparagraphs (5) and (6) retain the current position for those RSLs where they are required to provide audited accounts under any other enactment's, and requires a

copy of the accounts for all RSLs to be furnished to the relevant authority within six months of the end of the period to which they relate.

697. New subparagraph (7) introduces new rules where by virtue of any enactment the RSLs accounts are not required to be audited, for example these rules would apply to RSLs registered as a company under the Companies Act 1985 who, by virtue of section 249A are not required to provide fully audited accounts, but instead must provide an accountant's report.

698. New subparagraph (8)(a) of paragraph 16 to Schedule 1 of the Housing Act 1996 requires that RSLs to whom new subparagraph (7) applies, must provide the relevant authority with a copy of the reporting accountant's report within six months of the end of the period to which they relate. New subparagraph (8)(b) requires that such a report contain a statement from the reporting accountant giving their opinion on whether the RSL's accounts comply with the requirements laid down under paragraph 16 of Schedule 1 of the Housing Act 1996 (general requirements as to accounts and audit).

699. Paragraph 18 introduces new paragraph 16A of Schedule 1 to the Housing Act 1996 specifying the criteria under which an RSL is permitted to provide the relevant authority with a reporting accountant's report in place of full audited accounts where the RSL is a company registered under the Companies Act 1985. Similarly paragraph 19 replaces paragraph 17 of Schedule 1 to the Housing Act 1996 specifying criteria in respect of RSLs which are industrial and provident societies, and paragraphs 20 and 21 amend and supplement paragraph 18 of Schedule 1 to the Housing Act 1996 in respect of RSLs which are charities.

700. In each case the relevant authority will retain the power to direct an RSL to appoint a qualified auditor to audit its accounts and balance sheet for that year, and forward to the relevant authority a copy of the auditor's report, irrespective of the new criteria.

701. Paragraph 22 amends paragraph 19 of Schedule 1 to the Housing Act 1996 regarding compliance with accounting requirements. Subparagraph 22(2)(a) and (b) amend paragraph 19 to reflect the new arrangements exempting small RSLs from the need to produce fully audited accounts. Subparagraph 22(2)(c) amends subparagraph 19(2) by increasing the maximum fine from level 3 to level 5 where a responsible person, as defined in paragraph 19(1), fails to comply with the accounting requirements as defined in paragraph 19(2). Subparagraph 22(3) provides that the increased maximum penalty does not apply in relation to any offence committed before subparagraph 22(2) comes into force.

702. Subparagraph 22(4) introduces a new provision permitting the High Court, on the application of the relevant authority, to make an order that default arising from an offence under paragraph 19 of Schedule 1 to the Housing Act 1996 be made good, and that all incidental costs and expenses are borne by the RSL or by any of its officers who are responsible for the default.

703. Paragraph 23 introduces a new provision in paragraph 19 of Schedule 1 to the Housing Act 1996. It exempts auditors or reporting accountants from their duty of confidentiality, where giving to the relevant authority, in good faith, information or an opinion on a matter which has become apparent in respect of an RSL while acting in the capacity of auditor or reporting accountant of that RSL. Subparagraph 23(2) specifies this exemption as applying whether or not the auditor or reporting accountant is responding to a request from the relevant authority.

704. Paragraphs 24 and 25 introduce additional powers for a person conducting a statutory inquiry into the affairs of an RSL under Part 4 of Schedule 1 to the Housing Act 1996. Subparagraph 4A of paragraph 20 of Schedule 1 introduces a provision permitting the person or persons conducting an inquiry to determine the procedures which are to be followed in connection with it. Subparagraph 20 (7) of Schedule 1 to the Housing Act 1996 is amended to permit an interim or final report under that paragraph to be published

in such manner as the relevant authority considers appropriate. A new subparagraph 8 is introduced to paragraph 20 of Schedule 1 to the Housing Act 1996, permitting a local authority, if it thinks fit, to contribute to the expenses of the relevant authority in connection with a statutory inquiry conducted under paragraph 20.

705. Paragraph 25 inserts a new paragraph 20A in Schedule 1 to the Housing Act 1996. New subparagraph 20A(1) enables the person or persons conducting the statutory inquiry to serve a notice to direct another person to attend at a specified time and place, and to give evidence and/or produce specified documents relating to any matter relevant to the inquiry. New subparagraph 20A(2) permits the person or persons conducting the inquiry to take evidence on oath or otherwise require the person examined to make and subscribe a declaration of truth. New subparagraph 20A(5) ensures that a notice given by the person or persons conducting an inquiry will be subject to the same enforcement arrangements as set out in section 31 of the Housing Act 1996, in respect of a notice given by the relevant authority under section 30 of that Act, except that increased penalties for a person guilty of an offence will apply as set out in subparagraph 20A(6).

706. New subparagraph 20A(7) introduces a new measure which will make a person liable to the penalties in subparagraph 20A(6), where, in purported compliance with a notice given under new paragraph 20A, that person knowingly or recklessly provides any information which is false or misleading in a material particular. New subparagraph 20A(8) requires that proceedings for an offence under subparagraph 20A(7) may be brought only by or with the consent of the relevant authority or the Director of Public Prosecutions.

707. Paragraph 26 adds new subparagraphs 4, 5 and 6 to paragraph 21 of Schedule 1 to the Housing Act 1996, to introduce new offences in relation to the powers of a person appointed by the relevant authority to conduct a statutory inquiry into the affairs of an RSL. In particular new subparagraph 21(4) increases the level of penalty maximum for offences under subparagraph 21(3). New subparagraph 21(5) will make a person liable to the penalties in new subparagraph 21(4), where, in purported compliance with a notice given under new paragraph 21 of Schedule 1 to the Housing Act 1996, that person knowingly or recklessly provides any information which is false or misleading in a material particular. New subparagraph 21(6) requires that proceedings for an offence under subparagraph 21(5) may be brought only by or with the consent of the relevant authority or the Director of Public Prosecutions.

Schedule 12: New Schedule 2A to the Housing Act 1996

708. Schedule 12 inserts a new Schedule 2A into the Housing Act 1996 which makes further provision about the SHOW, in particular his status, remuneration, staff and advisers, delegation of functions, the provision and publication of reports and determinations, expenses, absolute privilege for communication, disclosure of information, accounts and audit, accounting officer and examinations into the use of resources.

Schedule 13: Residential property tribunals: procedure

709. Schedule 13 sets out the scope of procedural regulations relating to the jurisdiction of the RPT.

Schedule 14: Buildings which are not HMOs for the purposes of this Act (excluding Part 1)

710. Schedule 14 describes buildings that are not HMOs for the purposes of the Act (other than Part 1). These include buildings managed or controlled by Registered Social Landlords and other public sector bodies; buildings that are regulated by other legislation and prescribed as exempt; certain buildings occupied by religious communities; buildings occupied by freeholders and long leaseholders (with less than a prescribed number of lodgers or tenants) (which are not converted blocks within the meaning of section 257) and buildings occupied by no more than two people. Buildings

that are managed by universities principally for the occupation of students are also exempt if the university is specified in a regulation to that effect.