

# HOUSING AND REGENERATION ACT 2008

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## EXPLANATORY NOTES

### STRUCTURE OF THE ACT

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

##### *Chapter 1 - Introduction*

##### **Preliminary**

##### *Section 59 – Purpose*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Social housing**

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

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

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

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

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

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

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

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

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

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

### **Section 72 – Regulations**

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

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

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

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

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

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

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

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

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

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

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



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

### **Other key concepts**

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

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

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

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

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

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

### ***Chapter 2 – The Social Housing Regulator***

#### **Constitution**

##### ***Section 81 - Establishment***

166. This section establishes the regulator, which is to be responsible for carrying out the functions of the social housing regulator as set out in this Act.

##### ***Section 82 – Membership***

167. This section provides for the membership of the regulator. The regulator is to consist of not fewer than four members and up to a maximum of 11 members (including the Chair who is appointed by the Secretary of State) and a Chief Executive (appointed under section 84). The Secretary of State must consult the Chair before appointing other

members. *Subsection (4)* makes clear that former members of the Housing Corporation can become members of the regulator.

### ***Section 83 – Tenure***

168. This section sets out the tenure of appointment of appointed members and the circumstances where the Secretary of State may dismiss a member (e.g. absence, bankruptcy or misbehaviour). Appointment terms cannot exceed 5 years although members may be reappointed for additional terms. Members can resign by written notice to the Secretary of State.

### ***Section 84 – Chief executive***

169. This section sets out the appointment process of a Chief Executive. The first Chief Executive will be directly appointed by the Secretary of State after consulting the Chair. Subsequent appointments will be made by the regulator subject to approval by the Secretary of State.

### ***Section 85 – Other staff***

170. This section provides the regulator with the power to appoint employees.

## **Proceedings**

### ***Section 86 Fundamental objectives***

171. *Section 86* sets out the fundamental objectives of the regulator. These objectives are separately identified in *subsections (2) to (11)*. The regulator must perform its functions with a view to achieving these objectives so far as possible.
172. *Subsection (2)* specifies the first objective: to encourage and support a supply of well-managed social housing of appropriate quality sufficient to meet reasonable demands. Social housing is defined in *Section 68(1)*.
173. *Subsection (3)* specifies the second objective: to ensure that actual or potential tenants of social housing have an appropriate degree of choice and protection.
174. *Subsection (4)* specifies the third objective: to ensure that tenants have the opportunity to be involved in the management of their social housing.
175. *Subsection (5)* specifies the fourth objective: to ensure the efficient, effective and economic performance of landlord functions by registered providers of social housing.
176. *Subsection (6)* specifies the fifth objective: to ensure that registered providers are financially viable and properly managed.
177. *Subsection (7)* specifies the sixth objective: to encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas in which their property is situated.
178. *Subsection (8)* specifies the seventh objective: to encourage investment in social housing, including by promoting the availability of financial services to registered providers of social housing.
179. *Subsection (9)* specifies the eighth objective: to avoid creating either as a direct or indirect consequence of its actions an unreasonable burden on public funds.
180. *Subsection (10)* specifies the ninth objective: to guard against the misuse of public funds.
181. *Subsection (11)* specifies the tenth objective: to regulate in such a way as to minimise administrative burdens, consistent with its ability to achieve its other objectives.



182. *Subsection (12)* provides that this will include compliance with the regulators' Compliance Code issued under the provisions of the Legislative and Regulatory Reform Act 2006.
183. *Subsection (13)* indicates that there is no significance to the order in which the objectives are listed in the section. It is for the regulator to balance these objectives in carrying out each of its functions as it deems appropriate.

### ***Sections 87 and 88 – Procedure and conflict of interest***

184. *Section 87* provides for the regulator to determine its own procedure and for the manner in which its procedure is made public. *Section 88* states that this procedure must include arrangements for dealing with conflicts of interest of members, employees or members of committees and sub-committees.

### ***Sections 89 and 90 – Committees and delegation***

185. *Sections 89* and *90* enable the regulator to authorise a committee, a sub-committee, a member or an employee to exercise a function on its behalf. All committees or sub-committees will need to include at least one member of the regulator (but may also include non-members).

### ***Section 91 – Seal***

186. This section provides that a document executed under the seal is to be regarded as valid unless the contrary is shown, and that the seal may be authenticated by any person authorised to so do or by a member.

### ***Section 92 - Annual report***

187. This section requires the regulator to prepare and publish an annual report, as soon as is reasonably practicable after the end of each financial year. The contents must be a report on the performance of its functions during the preceding financial year. In particular, it will include a statement of the regulator's accounts, and specify any direction that the regulator has been given by the Secretary of State during the preceding year under section 197. The regulator's annual report shall include a general description of complaints made to it during the year about the performance of registered providers and of how those complaints have been dealt with. Having prepared the report, the regulator will send a copy of the report to the Secretary of State, who will then lay a copy before Parliament.

## **Powers**

### ***Section 93 - General***

188. This section gives the regulator power to do anything it thinks necessary or expedient for the purpose of, or in connection with, the performance of a function conferred on it by this Part, or another enactment. In particular the regulator may do anything it thinks appropriate for advancing its fundamental objectives.

### ***Section 94 - Studies***

189. This section gives the regulator a power to commission studies or to carry them out itself with the objective of improving the economy, efficiency and effectiveness of registered providers. Where the regulator carries out or commissions such studies, it may publish a report.

### **Section 95 - Financial assistance**

- 190. This section gives the regulator a power to give financial assistance in certain circumstances.
- 191. *Subsection (1)* gives the regulator power to give financial assistance in connection with research, guidance, best practice and tenant involvement.
- 192. *Subsection (2)* sets out a range of means by which the regulator may give financial assistance, including grant, loan, or the defraying of expenditure on behalf of a person. *Subsection (2)(d)* notes that the regulator may also give financial assistance in any other way, with the specified exceptions of purchasing loan or share capital of a body corporate or the giving of a guarantee or indemnity.
- 193. *Subsection (3)* gives the regulator a separate power to give financial assistance to a registered provider by lending money or giving a guarantee or indemnity. Such assistance may only be given with the consent of the Secretary of State (*subsection (4)*) given with the approval of the Treasury.

### **Section 96 – Evidence**

- 194. This section provides that the regulator may, in considering whether to exercise a power, have regard to information from any source including, in particular, from tenants, bodies representing tenants, local housing authorities, or an ombudsman.

### **Section 97 – Information, advice &c.**

- 195. This section enables the regulator to publish ideas or information; to undertake research in relation to social housing; and to provide guidance, advice, education or training.
- 196. *Subsection (2)* enables the regulator to arrange for someone else to carry out all these activities on its behalf, and also joint working with other persons engaged in the work set out in *subsection (1)*.
- 197. *Subsection (3)* specifies that advice may be given to unregistered and prospective housing associations. This provision broadly replicates the effect of section 77 of the Housing Associations Act 1985.

### **Section 98 – Tenant involvement**

- 198. **Section 98** requires the regulator to promote awareness of its functions among tenants of social housing, where appropriate consult tenants about the exercise of its functions, and where appropriate involve them in the exercise of its functions. It also requires the regulator to publish from time to time a statement about how it will meet this duty, following consultation.

## **Money**

### **Section 99 – Remuneration**

- 199. This section provides for the regulator to make payments to appointed members and employees. *Subsection (1)* enables the regulator to pay remuneration, allowances, pensions and gratuities to its members although *subsection (2)* makes clear that rates and eligibility will be determined by the Secretary of State. *Subsection (3)* provides, if the Secretary of State considers there are special circumstances, for the regulator to make compensation payments to a person who ceases to be an appointed member.
- 200. *Subsection (4)* gives the regulator the power to pay its employees remuneration, allowances, pensions and gratuities.

### ***Section 100 – Charging***

201. This section allows the regulator to charge for giving advice, conducting research or providing other services. This broadly replicates the effect of section 77 of the Housing Associations Act 1985.

### ***Section 101 – Assistance by Secretary of State***

202. This section enables the Secretary of State to make payments to the regulator by way of grant or loan, and for those payments to be subject to conditions.

### ***Section 102 – Borrowing***

203. This section specifies that the regulator may borrow by way of an overdraft or otherwise, for the short-term management of its finances; or from the Secretary of State. It may not borrow otherwise.
204. This broadly replicates the effect of section 92 of the Housing Associations Act 1985. Those powers will not be needed by the regulator as it will not be investing in affordable housing.

### ***Sections 103 and 104 – Accounts and Financial year***

205. **Section 103** sets out provisions for ensuring that the regulator maintains and publishes its accounts, the form of which will be directed by the Secretary of State. These accounts are to be sent to the Secretary of State, and to the Comptroller and Auditor General. **Section 104** defines the regulator's financial year.

## **Relationship with other bodies**

### ***Section 105 - Co-operation with the HCA***

206. *Subsection (1)* requires the regulator to co-operate with the HCA.
207. *Subsection (2)* requires the regulator to consult the HCA on matters likely to interest it. This mirrors a parallel provision at section 37, requiring the HCA to co-operate with the regulator, and to consult the regulator on matters likely to interest it.

### ***Section 106 - Direction to the HCA***

208. This section gives the regulator a power to direct the HCA not to give financial assistance to a specified registered provider. The regulator's direction may only be made in respect of the HCA's power to give financial assistance under section 19 in connection with social housing.
209. The purpose of this power is to prevent financial assistance from being given to a registered provider where there are serious concerns about mismanagement or about the viability of the organisation. This power may be used in the most serious interventions by the regulator, as described in *subsection (2)*:
- the regulator has decided to hold an inquiry into affairs of the registered provider under section 206 (and the inquiry is not concluded),
  - the regulator has received notice in respect of the registered provider under section 145 (moratorium), or
  - the regulator has appointed an officer of the registered provider under section 269 (and the person appointed has not vacated office).
210. *Subsection (3)* states that a direction may prohibit the HCA from giving assistance of a specified kind (whether or not in pursuance of a decision already taken and communicated to the registered provider). This means that the regulator could prohibit

some forms of financial assistance while allowing others. It also means that the regulator could prohibit financial assistance even where, for example, a funding agreement is already in place.

- 211. *Subsection (4)* prevents the regulator from issuing a direction prohibiting grant to a registered provider where that grant is to be given in respect of discounts given by the provider on disposals of dwellings to tenants. This ensures that the regulator's powers do not interfere with the HCA's statutory duty to pay grants under section 35 (duty to give financial assistance in connection with certain disposals).
- 212. *Subsection (5)* states that a direction shall have effect until withdrawn.

## **Information**

### ***Section 107 - Collection***

- 213. *Section 107* gives the regulator, for purposes connected with its functions, the power to require documents or information from any person it believes may possess them, concerning the financial or other affairs of registered providers or the activities or proposed activities of a registered provider or a person who has applied to become a registered provider.
- 214. The regulator is likely to use this power to follow up concerns raised by tenants, local authorities or others by asking for specific information from the provider in addition to standard performance information obtained under section 204. The regulator may ask for the same types of information from profit-making registered providers as from non-profit providers.
- 215. *Subsection (2)* provides that a requirement may not be imposed on a person other than the body to which the document or information relates, unless the body has been required to provide the document or information but failed to do so; or the regulator thinks the body is unable to provide it.
- 216. *Subsection (3)* provides that the regulator may specify the form and manner in which it is to be provided and when and where it is to be provided.
- 217. *Subsection (4)* permits the regulator to copy or record the documents or information required by it under this section.
- 218. *Subsection (5)* specifies that it is an offence to fail to comply with a request without a reasonable excuse. *Subsection (3)* of section 108 provides that a person guilty of this offence is liable on summary conviction to a fine up to level 5 (currently £5000) on the standard scale.
- 219. *Subsection (6)* further specifies that it will also be an offence intentionally to alter, suppress or destroy information or documents to which a request for information relates. *Subsection (4)* of section 108 provides that a person guilty of this offence is liable either on summary conviction to a fine up to the statutory maximum (currently £5000), or on conviction on indictment to imprisonment for a term of no more than 2 years, or a fine, or both.
- 220. *Subsection (7)* provides that if a person who has been required to provide information by the regulator under this power fails to comply, then the regulator may apply to the High Court for an order to remedy that person's failure to provide the information required. *Subsection (6)* of section 108 provides that such an order may include a provision for costs.

### ***Section 108 – Section 107: supplemental***

- 221. *Subsection (1)* of section 108 limits the power to require information in section 107 such that the regulator cannot require a person to disclose anything that they would

be entitled to refuse to disclose in High Court proceedings on the grounds of legal professional privilege.

222. Similarly *subsection (2)* specifies that a requirement for information does not require a banker to breach a duty of confidentiality owed to a person who is not the registered provider to whose affairs or activities the documents or information relates or the subsidiary or associate of that registered provider.
223. *Subsection (5)* provides that prosecutions may only be brought by or with the consent of the regulator or the Director of Public Prosecutions.

### ***Section 109 - Disclosure***

224. *Subsection (1)* provides that a public authority may disclose information to the regulator provided that the authority thinks the disclosure is necessary for a purpose connected with the regulator's functions. *Subsection (8)* defines a "public authority" as a person with functions of a public nature, without restriction as to the location where those functions are carried out.
225. *Subsection (2)* provides for the regulator to disclose information to a public authority (as defined in *subsection (8)*) if the regulator thinks the disclosure is necessary for any purpose that is either connected with the regulator's own function, or with the functions of the public authority to which the information is disclosed.
226. *Subsection (3)* provides that the regulator may disclose information to a person acting on its behalf (but who is not a public authority) for a purpose connected with the regulator's functions, for example an appointed auditor.
227. *Subsections (4), (6) and (7)* provide that such disclosures may be subject to restrictions on further disclosure and that any disclosure in contravention of such a restriction is an offence. A person who is guilty of this offence will be liable on conviction to a fine not exceeding level 3 (currently £1000) on the standard scale.
228. *Subsection (5)* means that a public authority or the regulator will not be able to disclose information under this section if doing so would breach a statutory prohibition on disclosure imposed by other legislation.

### ***Chapter 3 - Registration***

#### **Introduction**

#### ***Section 110 - Overview***

229. This section describes the purpose of this Chapter which is to establish a register of providers of social housing.

#### ***Section 111 – The register***

230. *Subsection (1)* of section 111 requires the regulator to keep a register of persons providing social housing. Only those persons on the register will be subject to regulation by the social housing regulator. This broadly replicates the effect of section 1 of the 1996 Act.
231. *Subsection (2)* of section 111 requires the regulator to make the register publicly available. This broadly replicates the effect of the more restrictive provision in section 1(1) of the 1996 Act which requires that the register is made available at reasonable times at the Housing Corporation's head office.

## **Eligibility**

### ***Section 112 - Eligibility for registration***

232. *Subsection (1)* of section 112 indicates that an English body is eligible for registration if it satisfies the conditions of this section, and does not fall within the exceptions specified in section 113. “English body” is defined in section 79.
233. This section removes the restrictions that applied under section 2 of the 1996 Act on the constitutional form and objectives of RSLs in England, but which continue to apply in respect of Welsh bodies.
234. Registration is not compulsory for persons that provide social housing as defined by section 68. However, grant funding might, for example, be conditional on being registered.
235. *Subsection (2)* requires that a body must be a provider of social housing in England, or intend to become one as a condition of registration.
236. *Subsection (3)* requires that the body must satisfy any relevant criteria that have been set by the regulator in respect of:
- its financial situation
  - its constitution, and
  - other arrangements for its management.
237. *Subsection (4)* requires that before the regulator sets any criteria for eligibility for registration, the regulator must consult:
- the HCA
  - one or more bodies representative of the interests of registered providers, and
  - one or more bodies representative of the interests of tenants.

### ***Section 113 - Local authority non-registrable bodies***

238. This section sets out the exceptions to section 112(1).
239. *Subsection (2)* specifies that local housing authorities, as defined in section 1 of the Housing Act 1985, are not eligible for registration.
240. *Subsection (3)* specifies that county councils are not eligible for registration.
241. *Subsection (4)* specifies that a person controlled by an authority that is within subsections (2) or (3) is not eligible for registration.
242. *Subsection (5)* gives the Secretary of State the power to make regulations defining when a person is controlled by an authority for the purposes of subsection (4).
243. *Subsection (6)* provides that the definition of person controlled by a local authority may be expressed by reference to a document identified in regulations under section 21(2)(b) of the Local Government Act 2003.

### ***Section 114 – Registration of local authorities***

244. This section allows the Secretary of State to make an order, under the affirmative resolution procedure, to amend or modify as necessary or desirable Part 2 of the Act or other legislation so as to enable the regulator to regulate local authorities. It also allows such an order to require the regulator to register a specific local authority or specific class of local authority. The section requires that before making an order the Secretary



of State must consult an authority or person likely to be affected by it and such other persons as the Secretary of State thinks fit.

### ***Section 115 - Profit-making and non-profit organisations***

245. *Subsection (1)* of this section provides that the register kept under section 111 must designate each registered person as either a non-profit organisation or a profit-making organisation. The restriction in section 2(2) of the 1996 Act that requires RSLs to be non-profit making is not replicated.
246. *Subsections (2) to (6)* define a non-profit organisation.
247. *Subsection (2)* specifies a registered or non-registrable charity as a non-profit organisation.
248. *Subsection (3)* specifies that a body is also a non-profit organisation if it meets the conditions specified in subsections (4) to (6). These conditions are-
- that it does not trade for profit or that its constitution prohibits it from issuing capital with interest or dividend in excess of the specified rate (this condition replicates the definition of non-profit organisation in section 2(3) of the 1996 Act); and
  - a purpose of the body is the provision or management of housing; and
  - any other purposes of the body are connected with or incidental to the provision of housing.
249. *Subsection (7)* gives the Secretary of State the power to make regulations providing that a specified purpose is, or is not, connected with or incidental to the provision of housing.
250. *Subsection (8)* defines a profit-making organisation as any organisation which is not a non-profit organisation.
251. These definitions are the basis on which the regulator will make the designation in the register provided for in subsection (1).
252. *Subsection (9)* requires the regulator to change the designation in the register where a profit-making organisation becomes a non-profit organisation as defined in this section.

## **Procedure**

### ***Section 116 - Entry***

253. *Subsection (1)* of this section provides that the regulator shall register any person who is eligible for registration as defined in section 112 and who applies to the regulator to be registered.
254. *Subsection (2)* gives the regulator the power to specify how an application should be made, including the form it should take, what information it should contain, and how it should be submitted. The regulator can also specify what will happen if an applicant for registration fails to comply with the regulator's requirements under this subsection.
255. *Subsection (3)* specifies that this section is subject to section 117 (fees).
256. *Subsection (4)* provides that once a body has been registered, it will remain registered unless and until it is removed under the provisions of section 118 or 119.
257. *Subsection (5)* specifies that a person entered in the register is to be presumed for all purposes to be eligible for registration while they remain on the register, regardless of whether or not they are later removed from the register, and the reason for that removal.

### **Section 117 - Fees**

258. The regulator may make the initial registration under section 116 conditional on payment of a fee, and may make continued registration conditional upon payment of an annual fee.
259. *Subsection (3)* gives the regulator the power to set the amount of the fee to be charged under this section, and to make provisions for the arrangements for annual fees, both when they are paid, and in respect of which period.
260. *Subsection (4)* gives the regulator the power to set fees on a differential basis according to different cases or circumstances. For example, the regulator may, if it chooses, set a variable fee scale according to the number of homes owned, or relate it to the amount of income a provider receives in an annual period.
261. *Subsection (5)* provides that fees will be set in accordance with principles which aim to ensure that so far as is reasonably practicable:
- a) aggregate fee income the regulator receives matches the amount of expenditure it incurs in performing its functions,
  - b) each fee is reasonable and proportionate to the costs to which it relates, and
  - c) actual or potential registered providers can see the relationship between the amount of a fee and the costs to which it relates.
262. *Subsection (6)* specifies that the principles under *subsection (5)* for setting fees:
- a) shall provide for section 95(3) (the regulator's power to give financial assistance to a registered provider by lending money or giving a guarantee or indemnity with the consent of the Secretary of State) to be disregarded for the purpose of subsection (5)(a),
  - b) may provide for specified or potential expenditure under the remainder of section 95 (financial assistance) to be disregarded.
263. *Subsection (7)* specifies that the principles do not have effect until they are approved by the Secretary of State.
264. *Subsection (8)* requires that in preparing or revising principles, the regulator shall consult persons appearing to it to represent the interest of fee payers.
265. *Subsection (9)* specifies that the regulator's accounts shall show both fees received and fees outstanding.

### **Section 118 - De-registration: compulsory**

266. *Subsection (1)* gives the regulator the power to remove a body from the register, if it thinks that the body-
- is no longer eligible (as provided for in sections 112 and 113)
  - has ceased to carry out activities, or
  - has ceased to exist.
267. *Subsection (2)* requires the regulator in the cases of subsection (1)(a) or (b) to take all reasonable steps to give the body it proposes to de-register 14 days' notice of its action, and to consider any representations that the body may make during that period.
268. *Subsection (3)* requires the regulator to take all reasonable steps to inform a body that it has been deregistered on the grounds that it is no longer eligible for registration or has ceased to carry out activities. This will ensure that the body knows it no longer has

to comply with regulation, though will still be required by section 172 to seek disposal consent (see section 186).

### **Section 119 - De-registration: voluntary**

269. *Subsection (1)* allows registered providers to ask the regulator to remove them from the register.
270. *Subsection (2)* gives the regulator the power to comply with a request under subsection (1) where one or more of the specified conditions applies as follows:
- the registered provider no longer is, or does not intend to continue to be, a provider of social housing in England
  - the registered provider is subject to regulation by another authority whose control the regulator believes to be sufficient, or
  - in accordance with such other criteria as the regulator has published in respect of de-registration, in accordance with *subsection (7)*.
271. *Subsection (3)* requires the regulator to consult relevant local authorities (as defined in the Housing Associations Act 1985) in whose area the registered provider carries out its activities as it considers appropriate, before deciding whether or not to comply with a request under subsection (1).
272. *Subsection (4)* provides that the regulator may not consent to a de-registration application from a non-profit registered provider if it considers it is sought with a view to enabling the body to distribute assets to its members.
273. *Subsection (5)* requires the regulator, when considering whether to grant a request to de-register by a registered provider (profit-making or non-profit), to have particular regard to any conditions the regulator has placed on disposals of land (for example relating to the use of disposal proceeds) and any conditions of grant.
274. *Subsection (6)* provides that the regulator must notify the registered provider, and any local authority consulted, of its decision.
275. *Subsection (7)* provides that the regulator must publish criteria on the additional grounds that a registered provider may de-register.

### **Section 120 - Notice**

276. This section requires the regulator to take certain actions as soon as reasonably possible after it has registered or deregistered a body. These actions are to notify other registrars who have related duties or powers depending on the constitutional form of the body that the regulator has registered or de-registered. Therefore, the regulator notifies:
- the Charity Commission, if the registered provider is a registered charity,
  - the Financial Services Authority, if the registered provider is an industrial and provident society,
  - the registrar of companies for England and Wales, if the registered provider is a registered company.
277. *Subsection (2)* provides that in notifying these bodies, the regulator will advise whether the body has been registered with a profit-making or non-profit designation under section 115(1).
278. *Subsection (3)* provides that if the regulator changes the designation under section 115(9), the regulator will also advise the relevant bodies.

279. *Subsection (4)* provides that a person to whom notice is given by the regulator under this section must keep a record of that notice.

### ***Section 121 - Appeal***

280. *Subsection (1)* gives a body the right of appeal to the High Court against a decision of the regulator:
- to refuse to register that body
  - to deregister that body
  - to refuse to deregister that body.
281. *Subsection (2)* prohibits the regulator from de-registering a body while an appeal to the High Court is pending.
282. *Subsection (3)* permits the Secretary of State to provide by order for any appeals to be heard by the First-tier tribunal instead of the High Court. This covers appeals against a decision by the regulator to refuse to register a body, to de-register a body, or to refuse to de-register a body.

## ***Chapter 4 – Registered providers***

### **General provisions**

### ***Section 122 - Payments to members etc.***

283. This section derives from paragraph 1 of Part 1 of Schedule 1 to the 1996 Act.
284. *Subsection (1)* restricts the making of gifts and the payment of dividends and bonuses by a non-profit registered provider to –
- a member or former member of the registered provider,
  - a member of the family of a member or former member,
  - a company which has as a director such a person.
285. *Subsection (2)* states that gifts may only be made, or dividends or bonuses paid if they fall within the three classes defined in *subsections (3) to (5)*.
286. *Subsections (3) to (5)* broadly replicate the effects of paragraphs 1(2)(a) to (c) of the Part mentioned above.
287. *Subsection (6)* states that if a registered company or industrial and provident society contravenes this section –
- it may recover the wrongful gift or payment as a debt from the recipient; and
  - the regulator may require it to take action to recover the gift or payment.

### ***Section 123 - Disposal of property***

288. This section cross-refers to the provisions in Chapter 5 (disposal of property).

### ***Section 124 – Complaints***

289. *Section 124* amends section 51 of, and Schedule 2 to, the Housing Act 1996 (schemes for investigation of complaints by housing ombudsman). This ensures that the former registered providers of social housing, and bodies formerly registered with the Housing Corporation, are only required to remain members of a housing ombudsman scheme while they continue to own publicly-funded dwellings.

### **Section 125 - Voluntary undertaking**

290. This section sets out the nature of voluntary undertakings made to the regulator by registered providers.
291. *Subsection (1)* provides that a registered provider may give an undertaking in respect of any matter concerning social housing.
292. *Subsection (2)* provides that the regulator may prescribe a procedure to be followed in giving an undertaking.
293. *Subsections (3) and (4)* provide that the regulator must have regard to any undertaking made in this way by a registered provider when exercising a power under Chapters 6 or 7 of this Part of the Act. The regulator may also take into account the extent to which undertakings having been made in this way by a registered provider, have been honoured by the provider, when deciding whether to exercise powers under Chapters 6 or 7.
294. One of the purposes of this provision is to enable registered providers to formally notify the regulator of actions that they propose to take, and believe are necessary to ensure that their affairs are managed in accordance with the standards set by the regulator under sections 193 and 194. It provides a mechanism by which such commitments can be brought to the attention of the regulator, and require the regulator to take account of those undertakings when determining whether to investigate the performance of providers, and to take enforcement action where providers have not complied with regulatory requirements.

### **Section 126 – Sustainable community strategies**

295. This section specifies that a registered provider must co-operate with a local authority if invited to participate in the preparation or modification of a sustainable community strategy under section 4 of the Local Government Act 2000.

### **Accounts**

296. **Sections 127 to 143** broadly replicate the effect of Part 3 of Schedule 1 to the 1996 Act.

### **Section 127 - Directions**

297. *Subsections (1), (2) and (3)* give the regulator the power to give directions to registered providers about the preparation of accounts for the purpose of ensuring that accounts are prepared in a proper form and that they present a true and fair view of a registered provider's state of affairs as far as it concerns social housing, including its present and past social housing assets and funds. This broadly replicates the effect of paragraph 16(1) of Schedule 1 to the 1996 Act. A direction may be given to a profit-making registered provider only in so far as its accounts relate to social housing activities.
298. *Subsection (4)* provides that a direction may provide specifically for how registered providers that are charities should distinguish in their accounts between social housing activities and other matters. This broadly replicates the effect of paragraph 16(2) of Schedule 1 to the 1996 Act.
299. *Subsection (5)* provides that directions under this power may make general provision, or provision specific to particular cases, and that provision may vary according to different cases or types of provider.
300. *Subsection (6)* provides that where directions relate to more than one provider, those directions must first be consulted on by the regulator with bodies appearing to represent the interests of registered providers.
301. *Subsection (7)* requires the regulator to make arrangements to ensure that providers to whom directions apply are made aware of their requirements.

***Section 128 - Submission to regulator***

302. This section broadly replicates the effect of paragraphs 16(5) to 16(8) of Schedule 1 to the 1996 Act. It requires all registered providers to send a copy of their accounts to the regulator within six months of the end of the year to which they relate. These accounts must be accompanied by an auditor's report, or, if an enactment requires a report other than an auditor's report, that other report. The report must specify whether the accounts comply with any relevant directions under section 127.

***Section 129 - Companies exempt from audit***

303. This section applies in relation to a registered provider which is a registered company, other than a registered charity, which is exempt from the audit requirements of the Companies Act 2006 by virtue of section 477 of that Act, because it is a small company. Registered providers in this category must cause an accountant's report to be prepared, in accordance with section 130 and made to the company's members in respect of the company's individual accounts for any financial year in which the company takes advantage of its exemption from audit. 'Individual accounts' has the same meaning as in section 396 of the Companies Act 2006.

***Section 130 - Exempt companies: accountant's report***

304. *Subsection (1)* of this section specifies that the report required by section 129 must be prepared by a reporting accountant eligible under section 131.
305. *Subsection (2)* requires the report to state whether the individual accounts are in accordance with the company's accounting records kept under section 386 of the Companies Act 2006.
306. *Subsection (3)* requires that on the basis of information contained in the accounting records the report must also state whether the accounts comply with Part 15 of the Companies Act 2006, and whether the company is entitled to exemption from audit under section 477 of that Act (small companies' exemption) for the year in question.
307. *Subsection (4)* requires that the report must give the name of the reporting accountant and be signed and dated.
308. *Subsection (5)* requires that the report is signed by the reporting accountant (where it is an individual) or an authorised person (where the reporting accountant is a firm).
309. *Subsection (6)* defines the meaning of 'firm'.

***Section 131 - Exempt companies: reporting accountant***

310. This section specifies who is eligible to act as a reporting accountant for a company. Under *subsections (1) to (3)*, a person is eligible if the person is not prohibited from acting as an auditor and is:
- a) a member of one of the professional accountancy bodies listed in *subsection (4)* and under its rules entitled to engage in public practice and not ineligible for appointment as a reporting accountant, or
  - b) subject to the rules of one of the professional accountancy bodies listed in *subsection (4)* in seeking appointment or acting as a statutory auditor under Part 42 of the Companies Act 2006, and under those rules is eligible for appointment as a statutory auditor.
311. *Subsection (4)* lists the professional accountancy bodies mentioned in *subsections (1) to (3)*. *Subsection (5)* allows the Secretary of State to amend the list by order.



312. *Subsection (6)* defines the rules of those bodies, which are rules which the body has power to enforce and which are relevant for the purposes of Part 42 of the Companies Act 2006 (statutory auditors) or this section.
313. *Subsection (7)* specifies that an individual or a firm may be appointed as a reporting accountant; and that section 1216 of the Companies Act 2006 applies to the appointment of a partnership constituted under the law of England and Wales, Northern Ireland, or any other country or territory in which a partnership is not a legal person.

### ***Section 132 - Application of Companies Act***

314. This section specifies the provisions of the Companies Act 2006 which apply to the reporting accountant and to the report as they apply to an auditor of the company and an auditor's report on the company's accounts (with any necessary modifications). The provisions, listed in *subsection (2)* are.
- (a) sections 423 to 425 (duty to circulate copies of annual accounts),
  - (b) sections 431 and 432 (right of member or debenture holder to demand copies of accounts),
  - (c) sections 434 to 436 (requirements in connection with publication of accounts),
  - (d) sections 441 to 444A (duty to file accounts with registrar of companies),
  - (e) section 454(4)(b) and regulations made under that provision (functions of auditor in relation to revised accounts),
  - (f) sections 499 to 502 (auditor's right to information), and
  - (g) sections 505 and 506 (name of auditor to be stated in published copies of report).
315. *Subsection (3)* specifies that in sections 505 and 506 of the Companies Act 2006 as they apply by virtue of this section in a case where the reporting accountant is a firm, any reference to the senior statutory auditor shall be read as a reference to the person who signed the report on behalf of the firm.

### ***Section 133 - Exempt companies: extraordinary audit***

316. This section applies where, in accordance with section 129 a company appoints a reporting accountant to prepare a report in respect of its accounts for any year. The regulator may require the company to cause a qualified auditor to audit its accounts and balance sheet for that year, and to send a copy of the report to the regulator by a specified date. A requirement may not be imposed before the end of the financial year to which it relates. *Subsection (4)* of the section also defines 'qualified auditor' in relation to a company.

### ***Section 134 - Non-audited industrial and provident society***

317. This section broadly replicates the effect of paragraph 17 of Schedule 1 to the 1996 Act. *Subsection (1)* provides that this section applies only to industrial and provident societies. *Subsection (2)* provides that an accountant's report is required even where the society's turnover does not exceed a sum specified in the Friendly and Industrial and Provident Societies Act 1968, that would otherwise allow the society to disapply the requirement for an accountant's report.
318. *Subsections (3)* and *(4)* give the regulator a power to require the society to appoint a qualified auditor to audit their accounts, and to send to the regulator a copy of the auditor's report, when the society has disapplied the requirement to appoint a qualified auditor under section 4A of the Friendly and Industrial and Provident Societies Act 1968. The regulator may only use this power in the year following the year to which the accounts relate.

319. *Subsection (5)* defines “qualified auditor” and “year of account” for the purposes of this section.

### ***Section 135 - Charity***

320. This section broadly replicates the effect of part of paragraph 18 of Schedule 1 to the 1996 Act.
321. *Subsection (1)* specifies that this section relates to non-profit registered providers that are registered charities. *Subsection (2)* requires such providers to keep accounting records and maintain systems of control in relation to housing activities.
322. *Subsection (3)* requires such providers to prepare a revenue account giving a true and fair view of its housing activities and a balance sheet giving a true and fair view of its activities as a whole for each accounting period. *Subsection (4)* requires that the reports specified in subsection (3) must be signed by at least two of the provider’s directors or trustees.
323. *Subsection (5)* defines “period of account” for the purposes of this section.
324. *Subsection (6)* specifies that this section does not override other provisions relating to charity accounts in the Charities Act 1993.

### ***Section 136 - Charity: audit***

325. This section broadly replicates the effect of part of paragraph 18 of Schedule 1 to the 1996 Act.
326. The purpose of this section is to define whether a charity must appoint an auditor to produce a report under section 137 or a reporting accountant to produce a report under section 138 on the accounts required under subsection (3) of section 135.
327. *Subsection (2)* specifies that if either of the conditions specified in subsection (4) or subsection (5) are met, then the requirements for an auditor’s report under section 137 apply. Otherwise, the requirements for an accountant’s report under section 138 apply.
328. *Subsection (4)* is the first condition which is that the charity’s gross income in relation to housing activities for a period exceeds the amount specified in section 43(1)(a) of the Charities Act 1993.
329. *Subsection (5)* is the second condition which is that the charity’s gross income in relation to housing activities for a period is greater than the amount specified in section 43(1) of the Charities Act 1993, and that, at the end of that period, the aggregate value of assets (before deduction of liabilities) that relate to housing is greater than the sum specified in section 43(1)(b) of the Charities Act 1993.
330. *Subsections (6) and (7)* define “gross income” and “qualified person” for the purposes of this section.

### ***Section 137 - Charity: auditor’s report***

331. This section broadly replicates the effect of part of paragraph 18 of Schedule 1 to the 1996 Act.
332. Where an auditor has been appointed under either section 136 or 139, the auditor’s report on the charity’s accounts must meet the requirements of this section.
333. *Subsection (2)* requires that the report must state whether the revenue account gives a true and fair view of the charity’s income and expenditure in relation to its housing activities, and whether the balance sheet also gives a true and fair view of the charity’s state of affairs at the end of the period to which it relates.
334. *Subsection (3)* requires the report to give the auditor’s name and for it to be signed.

335. *Subsection (4)* specifies that the auditor will carry out such investigations as are necessary to reach an opinion on whether the charity has complied with section 135 (2), and whether the accounts are consistent with the accounting records that the charity is required to keep.
336. *Subsection (5)* requires the auditor to state in the auditor's report if the opinion arising from investigations under *subsection (4)* is that the requirements specified there have not been complied with.
337. *Subsection (6)* requires that where the auditor has not obtained all of the information or explanations that the auditor thinks necessary for the purposes of the audit, this must be stated in the auditor's report.

### **Section 138 - Charity: accountant's report**

338. This section broadly replicates the effect of paragraph 18A of Schedule 1 to the 1996 Act.
339. The section specifies the requirements for an accountant's report on the charity's accounts as required by section 136(3).
340. *Subsection (2)* specifies that the report must say whether the accounts are consistent with the accounting records of the charity.
341. *Subsection (3)* specifies that the report must say whether, on the basis of the accounting records, the accounts comply with the requirements of the Charities Act 1993 and that the basis on which an accountant's report rather than an auditor's report is permitted, as set out in section 136, has been correctly established.
342. *Subsection (4)* requires the report to give the reporting accountant's name and for it to be signed.
343. *Subsection (5)* requires that where the reporting accountant has not obtained all of the information or explanations that the reporting accountant thinks necessary for the purposes of the report, this must be stated in the report.

### **Section 139 - Charity: extraordinary audit**

344. Where under section 136(3) the charity is required to appoint a reporting accountant, this section provides that the regulator has the power to require the charity also to appoint a qualified auditor to audit the accounts, and to send to the regulator a copy of the auditor's report. The regulator may only use this power in the year following the year to which the accounts relate.
345. *Subsection (4)* defines "qualified person" and "period of account" for the purposes of this section.

### **Section 140 - Charity: auditor's powers**

346. This section requires that a charity must give a person appointed to prepare a report on the charity's accounts under section 136 or 139, whether they are an auditor or a reporting accountant, access to documents that relate to the charity's social housing activities, and must provide to that person such information or explanation as they require

### **Section 141 – Offences**

347. This section broadly replicates the effect of aspects of paragraph 19 of Schedule 1 to the 1996 Act.
348. *Subsection (1)* specifies certain offences in relation to the accounting requirements.

349. *Subsection (4)* specifies that where one of the offences in subsection (1) is committed by a registered provider, then every officer of the registered provider is guilty of an offence. *Subsection (5)* specifies that it is a defence for an officer to show that he or she has done everything that could be reasonably expected to ensure compliance by the registered provider.
350. *Subsection (6)* provides that a person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 (currently £5000) on the standard scale.
351. *Subsection (7)* provides that proceedings for the offences under this section may only be brought by, or with the consent of, either the regulator or the Director of Public Prosecutions.

### ***Section 142 - High Court***

352. This section broadly replicates the effect of sub-paragraph (5) of paragraph 19 of Schedule 1 to the 1996 Act.
353. Where a registered provider has failed to do one of the things listed in section 141(1), the regulator may apply to the High Court for an order for the purpose of remedying the failure. A High Court order for this purpose may make provision for costs.

### ***Section 143 - Disclosure***

354. This section broadly replicates the effect of paragraph 19A of Schedule 1 to the 1996 Act, concerning the disclosure of information by auditors and reporting accountants.
355. *Subsection (1)* specifies that this section applies to information that a person has received while acting either as an auditor or a reporting accountant of a registered provider.
356. *Subsection (2)* permits persons in receipt of information as described in *subsection (1)* to disclose that information to the regulator for a purpose connected with the regulator's functions even if there is otherwise a duty of confidentiality on those persons, and regardless of whether or not the regulator has requested the information.
357. *Subsection (3)* clarifies that disclosure of information in this way includes expression of an opinion on that information.
358. *Subsection (4)* defines "reporting accountant" for the purposes of this section.

### ***Insolvency etc.***

359. These sections broadly replicate the effects of sections 39 to 45 of the 1996 Act.

### ***Section 144 - Preparatory steps: notice***

360. This section provides that specified steps are effective only if the person specified in respect of those steps has given the regulator notice. The steps and the persons who must give notice in respect of those steps are set out in the table in this section. This section broadly replicates the effect of sections 40(1) to 40(5) of the 1996 Act.
361. The steps and the relevant persons who must give notice are as follows.
362. Any step to enforce security over land held by a registered provider must be notified by the person taking that step. The step must be of a description prescribed for the purpose by the Secretary of State by order - this broadly replicates the effect of section 39(3) of the 1996 Act.

- 363. The presenting of a petition for the winding up of a registered provider that is either a registered company or an industrial and provident society must be notified by the petitioner.
- 364. The passing of a resolution for the winding up of a registered provider that is a registered company or an industrial and provident society must be notified by the registered provider. The exception to this is the passing of a resolution for winding up that requires the regulator's consent under section 162 or 164. This exception broadly replicates the effect of section 40(5) of the 1996 Act.
- 365. An application for an administration order in respect of a registered provider that is a registered company under paragraph 12 of Schedule B1 to the Insolvency Act 1986 must be notified by the applicant for the administration order.
- 366. The appointment of an administrator in respect of a registered provider that is a registered company, under paragraph 14 (i.e. the holder of a qualifying floating charge) or paragraph 22 (i.e. the company itself or its directors) of Schedule B1 to the Insolvency Act 1986 must be notified by the person making the appointment.
- 367. The filing with the court of a copy of a notice of intention to appoint an administrator in respect of a registered provider that is a registered company under paragraph 14 or paragraph 22 of Schedule B1 to the Insolvency Act 1986 must be notified by the person filing the notice.
- 368. This section ensures that if the regulator presents a petition for the winding up of a registered provider under section 165 this does not trigger a moratorium on the disposal of the provider's land.

### **Section 145 - Moratorium**

- 369. *Subsection (1)* of this section and section 146 provide that a moratorium on the disposal of land by a registered provider begins when one of the specified steps is taken in respect of that registered provider. This broadly replicates the effect of section 42(1) of the 1996 Act.
- 370. The steps and the person taking them are set out in a table in this section. This table broadly replicates the effect of section 42(2) to 42(4) of the 1996 Act.
- 371. *Subsection (2)* requires that where a step specified in the table in this section is taken in respect of a registered provider, the person specified in the table for that kind of step must give the regulator notice that they have taken that step as soon as reasonably practicable. This broadly replicates the effect of section 41(1) of the 1996 Act.
- 372. *Subsection (3)* provides that the step taken is not itself invalidated if the notice required in subsection (2) is not given to the regulator but that the end of the moratorium period specified in section 146(2) depends upon the notice being given to the regulator. This subsection broadly replicates the effect of section 41(5) of the 1996 Act.
- 373. *Subsection (4)* requires the regulator to give the HCA a copy of any notice received under section 145.
- 374. The steps and the relevant persons who must give notice are as follows.
- 375. Any step to enforce security over land held by a registered provider must be notified by the person taking that step if the step is of a description by the Secretary of State by order - this broadly replicates the effect of section 39(3) of the 1996 Act.
- 376. The presenting of a petition for the winding up of a registered provider that is a registered company or an industrial and provident society (but not by the directors or other governing body of the provider) must be notified by the petitioner.

- 377. The passing of a resolution for the winding up of a registered provider that is a registered company or an industrial and provident society must be notified by the registered provider.
- 378. This section provides that if the regulator presents a petition for the winding up of a registered provider under section 165 this does not trigger a moratorium on the disposal of the provider's land.
- 379. A decision by the directors or other governing body of a registered provider to move a resolution for the winding up of the registered provider (where it is a registered company or an industrial and provident society) must be notified by the registered provider.
- 380. The making of an administration order in respect of a registered provider that is a registered company in accordance with paragraph 13 of Schedule B1 to the Insolvency Act 1986 must be notified by the person who applied for the administration order.
- 381. The appointment of an administrator in respect of a registered provider that is a registered company, under paragraph 14 (i.e. the holder of a qualifying floating charge) or paragraph 22 (i.e. the company itself or its directors) of Schedule B1 to the Insolvency Act 1986 must be notified by the person making the appointment.

### ***Section 146 - Duration of moratorium***

- 382. This section broadly replicates the effect of sections 43(1) to 43(6) of the 1996 Act.
- 383. *Subsection (1)* specifies that the moratorium begins when one of the steps specified in section 145 is taken.
- 384. *Subsection (2)* specifies that the moratorium ends 28 working days after the regulator has received notice under section 145(2) unless the moratorium is extended as provided for in subsection (3) of this section or cancelled as provided for in subsection (5) of this section. "Working day" is defined by section 275.
- 385. *Subsection (3)* allows the regulator to extend the moratorium for a specified period provided that the registered provider's secured creditors, who the regulator is able to locate following reasonable enquiries, have consented to the extension. There is no limit to the number of extensions that may occur provided the secured creditors consent to those extensions.
- 386. *Subsection (4)* requires that, when the moratorium is extended, the regulator must notify the registered provider, and any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land, and the HCA.
- 387. *Subsection (5)* allows the regulator to cancel the moratorium if it is satisfied that it is unnecessary to make proposals under section 152.
- 388. *Subsection (6)* requires the regulator to consult the person who took the step specified in section 145 that triggered the moratorium before cancelling the moratorium as provided for in subsection (5).
- 389. *Subsection (7)* requires the regulator to give notice to the registered provider and those of its secured creditors the regulator is able to locate after making reasonable enquiries when the moratorium ends and to provide an explanation of the effects of section 147. The latter requirement does not apply where the regulator has cancelled the moratorium under subsection (5).
- 390. *Subsection (8)* sets out that the regulator must notify the HCA when a moratorium ends.
- 391. *Subsection (9)* specifies that any further steps taken during a moratorium do not have the effect of either starting a new moratorium or of altering the existing moratorium's duration as defined in this section.



### ***Section 147 - Further moratorium***

392. This section broadly replicates the effect of sections 43(7) and (8) of the 1996 Act.
393. *Subsection (1)* of the section defines when the provisions of this section apply. It applies if a moratorium ends other than by cancellation by the regulator under section 146(5), and a further step specified in section 145 is taken in relation to the same registered provider within 3 years from the end of that moratorium.
394. *Subsection (2)* provides that a further step of this kind does not automatically trigger a further moratorium.
395. *Subsection (3)* allows the regulator to impose a further moratorium for a specified period but only if all of the registered provider's secured creditors whom the regulator is able to locate after making reasonable enquiries consent to that further moratorium.
396. *Subsection (4)* requires the regulator to notify the registered provider, and any liquidator, administrator, administrative receiver, receiver appointed in respect of the registered provider or its land, and the HCA if it imposes a further moratorium under subsection (3).
397. *Subsection (5)* provides that the provisions in sections 144 to 159 apply to a further moratorium imposed by the regulator under this section as they would to a first moratorium, except for section 146(2).

### ***Section 148 - Effect of moratorium***

398. This section together with section 149 broadly replicates the effect of section 42(2) to 42(6) of the 1996 Act. Section 148 provides that during a moratorium certain disposals of land by a registered provider require the regulator's prior consent.
399. *Subsection (1)* provides that the HCA may not give the registered provider a direction under section 32(4) (to repay or reapply grant) and may not take steps to enforce such a direction against the registered provider, during a moratorium.
400. *Subsection (2)* provides that the registered provider's land may not be disposed of without the regulator's prior written consent during a moratorium.
401. *Subsection (3)* provides that section 149 sets out the exceptions to subsection (1), and are therefore disposals which do not require the regulator's prior written consent during a moratorium.
402. *Subsection (4)* provides that the regulator's consent may be given before the moratorium begins and may be subject to conditions.
403. *Subsection (5)* provides that the requirement for the regulator's prior written consent under this section does not prevent a liquidator from disclaiming land as onerous property during a moratorium.
404. *Subsection (6)* includes within the definition of "land" in this section any present or future interest in rent or other receipts arising from land.

### ***Section 149 - Exempted disposals***

405. *Subsection (1)* provides that the list of exceptions set out in this section do not require the regulator's prior written consent under section 148. This broadly replicates the effect of section 42(3) of the 1996 Act.
406. *Subsections (2) to (8)* set out the following exceptions:
- a letting under an assured tenancy or an assured agricultural occupancy

- a letting under what would be an assured tenancy or an assured agricultural occupancy but for the provisions of paragraphs 4 to 8, 12(1)(h) and 12ZA to 12B of Schedule 1 to the Housing Act 1988 (this schedule sets out tenancies which cannot be assured tenancies)
- a letting under a secure tenancy
- a letting under what would be a secure tenancy but for any of paragraphs 2-12 of Schedule 1 to the Housing Act 1985 (this schedule sets out tenancies which are not secure tenancies)
- a disposal to which section 81 or 133 of the Housing Act 1988 or section 173 of the Local Government and Housing Act 1989 applies (as consent is already required for disposal by those Acts)
- a disposal under the right to buy
- a disposal under a tenant's right to acquire.

This list of exceptions broadly replicates the effect of section 42(3) of the 1996 Act.

### ***Section 150 - Disposals without consent***

407. **Section 150** clarifies that a disposal without consent under section 148 is void. A disposal is not void if it is of a single dwelling and the registered provider reasonably believes at the time of the disposal that the buyer intends to use the dwelling as the buyer's principal residence.

### ***Section 151 – interim manager***

408. This section gives the regulator power to appoint an interim manager during a moratorium. The appointment of an interim manager comes to an end at the end of the moratorium, on a date specified in the appointment, or on the agreement of proposals under section 152. Proposals themselves may provide for the appointment of a manager under section 155.
409. *Subsection (5)* provides that an interim manager shall have any power specified in the appointment, and any other power in relation to the registered provider's affairs required by the manager for the purposes specified in the appointment. However, *subsection (6)* provides that an interim manager's powers are more limited than those of a manager appointed under section 155; an interim manager may not dispose of land or grant security over land.

### ***Section 152 - Proposals***

410. *Subsection (1)* gives the regulator the power to make proposals about the future ownership and management of the registered provider's property during a moratorium with the objective of ensuring that the property will be properly managed by a registered provider. This broadly replicates the effect of section 44(1) of the 1996 Act.
411. *Subsection (2)* specifies that, when making proposals, the regulator must:
- have regard to the interests of all of the registered providers' creditors (broadly replicates the effect of section 44(2)(b) of the 1996 Act),
  - as far as reasonably possible, avoid making the position of unsecured creditors worse (broadly replicates the effect of section 44(5) of the 1996 Act).
412. *Subsection (3)* allows the proposals to include the appointment of a manager as described in section 155 to implement some or all of the regulator's proposals.

413. *Subsection (4)* specifies things that the regulator's proposals must not include. This broadly replicates the effect of section 44(4) of the 1996 Act. The things that may not be included in proposals are:
- a preferential debt being paid other than in priority to a non-preferential debt,
  - any preferential creditor being paid a lesser proportion of their preferential debt than any other preferential creditor.
414. *Subsection (5)* provides that where the registered provider is a charity, the regulator's proposals may not require the charity to act outside the terms of its trusts, and that the proposals may provide for the disposal of the registered provider's accommodation only to another charity whose objects are similar to those of the registered provider. This subsection broadly replicates the effect of section 44(6) of the 1996 Act.

### ***Section 153 - Proposals: procedure***

415. *Subsection (1)* requires the regulator to consult the following before making proposals:
- the registered provider (broadly replicates the effect of section 44(2)(a) of the 1996 Act),
  - its tenants as far as it is reasonably practicable (broadly replicates the effect of section 44(2)(a) of the 1996 Act),
  - the Financial Services Authority, if the registered provider is an industrial and provident society (broadly replicates the effect of section 44(3)(a) of the 1996 Act),
  - the Charity Commission, if the registered provider is a registered charity (broadly replicates the effect of section 44(3)(b) of the 1996 Act).
416. *Subsection (2)* requires the regulator to send a copy of its proposals to-
- the registered provider and its officers,
  - such of its secured creditors as the regulator is able to locate after making reasonable enquires, and
  - any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land.
417. *Subsection (3)* requires the regulator to make arrangements for the proposals to be brought to the attention of –
- the members and officers of the registered provider,
  - its tenants, and
  - its unsecured creditors.
418. *Subsections (2) and (3)* broadly replicate the effect of the provisions of section 44(7) of the 1996 Act.
419. *Subsection (4)* specifies that the regulator's proposals have effect if all of the registered provider's secured creditors to whom proposals were sent agree to those proposals by giving written notice to that effect to the regulator.
420. *Subsection (5)* provides that further modifications to the proposals may be made and that these shall also have effect if all of the registered provider's secured creditors to whom the proposals were sent agree to those modifications by giving written notice to that effect to the regulator, and the regulator consents.
421. *Subsections (4) and (5)* broadly replicate the effect of section 45(1) of the 1996 Act.

422. *Subsection (6)* requires the regulator to send a copy of the proposals agreed under *subsections (4) or (5)* to the following:
- the registered provider and its officers,
  - its secured creditors to whom the original proposals were sent,
  - any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land,
  - the Financial Services Authority, if the registered provider is an industrial and provident society,
  - the Charity Commission, if the registered provider is a registered charity.
423. *Subsection (7)* requires the regulator to make arrangements for bringing the agreed proposals to the attention of the following:
- the members of the registered provider,
  - its tenants, and
  - its unsecured creditors.
424. Subsections (6) and (7) replace the provisions of section 45(4) of the 1996 Act.
425. *Subsection (8)* allows for the proposals to be amended by agreement between the regulator and the secured creditors to whom the original proposals were sent. Where such amendments are made and agreed, the provisions of sections 151 and 152 apply to the amended proposals as they did to the original proposals. This broadly replicates the effect of section 45(5) of the 1996 Act.

### ***Section 154 - Proposals: effect***

426. *Subsection (1)* lists those who are obliged to implement agreed proposals. This broadly replicates the effect of section 45(2) of the 1996 Act. The list is as follows:
- the regulator,
  - the registered provider,
  - its creditors,
  - any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land.
427. *Subsection (2)* lists those who are obliged to co-operate with the implementation of the agreed proposals. They are the members of the governing body of the registered providers as follows:
- for a registered charity, its trustees,
  - for an industrial and provident society, its committee members, and
  - for a registered company, its directors.
428. *Subsection (3)* provides that subsection (2) does not oblige or permit those who are expected to co-operate to breach a fiduciary duty to the registered provider or other duty.
429. *Subsections (2) and (3)* broadly replicate the effect of sections 45(2) and 45(3) of the 1996 Act.

### ***Section 155 - Manager: appointment***

430. This section broadly replicates the effect of section 46 of the 1996 Act.

431. *Subsection (1)* provides that this section applies where agreed proposals provide for the appointment of a manager.
432. *Subsection (2)* specifies that the proposals must provide for the manager to be paid reasonable remuneration and expenses.
433. *Subsection (3)* provides that the regulator will appoint the manager.
434. *Subsection (4)* provides that the regulator may give directions to the manager which may be general or specific in nature, or both.
435. *Subsection (5)* provides that the manager may apply to the High Court for directions, and that the directions of the regulator under subsection (4) are subject to directions of the High Court.
436. *Subsection (6)* provides that the regulator must notify the Charity Commission that a manager has been appointed, if the registered provider is a charity.
437. *Subsection (7)* provides that the regulator may appoint a new manager in place of a person who ceases to be a manager under this section for whatever reason, and that the new manager's terms of appointment will be as specified in the proposals, or as determined by the regulator.

***Section 156 - Manager: powers***

438. This section broadly replicates the effect of section 47 of the 1996 Act.
439. *Subsection (1)* expresses the manager's general powers as follows:
- the manager may do anything necessary for the purpose of the appointment,
  - the manager acts as the registered provider's agent, and is not personally liable on a contract, and
  - the manager has ostensible authority to act for the registered provider with the effect that a person dealing with the manager in good faith and for value does not need to further inquire into the manager's powers.
440. *Subsection (2)* sets out a list of the specific powers that the terms of a manager's appointment may confer as follows:
- a) to sell or otherwise dispose of land by public auction or private contract;
  - b) to raise or borrow money;
  - c) to grant security over land;
  - d) to grant or accept surrender of a lease;
  - e) to take a lease;
  - f) to take possession of property;
  - g) to appoint a solicitor, accountant or other professional to assist the manager;
  - h) to appoint agents and staff (and to dismiss them);
  - i) to make payments;
  - j) to bring or defend legal proceedings;
  - k) to refer a question to arbitration;
  - l) to make any arrangement or compromise;
  - m) to carry on the business of the registered provider;

- n) to carry out works and do other things in connection with the management or transfer of land;
  - o) to take out insurance;
  - p) to use the registered body's seal
  - q) to execute in the name and on behalf of the registered provider any deed, receipt, or other document;
  - r) to do anything incidental to a power in paragraphs (a) to (q).
441. *Subsection (3)* requires the manager to consult and inform the registered provider's tenants as far as it is reasonably practicable to do so about any exercise of power that is likely to affect them.

***Section 157 - Manager of industrial and provident society: extra powers***

442. This section broadly replicates the effect of section 48 of the 1996 Act.
443. *Subsection (1)* specifies that this section applies to a manager appointed under section 155 to implement proposals where the registered provider is an industrial and provident society.
444. *Subsection (2)* specifies that the appointment of the manager may include the power to make and execute on behalf of the registered provider an instrument that has the effect of transferring its engagements, or providing for its amalgamation with another industrial and provident society.
445. *Subsection (3)* provides that an instrument for amalgamation has the same effect as a resolution under section 50 of the Industrial and Provident Societies Act 1965.
446. *Subsection (4)* provides that an instrument for transferring engagements has the same effect as a transfer of engagements under sections 51 and 52 of the Industrial and Provident Societies Act 1965.
447. *Subsection (5)* requires a copy of the instrument to be sent to and registered by the Financial Services Authority.
448. *Subsection (6)* specifies that the instrument does not take effect until the copy is registered.
449. *Subsection (7)* specifies that the copy must be sent to the Financial Services Authority for registration within 14 days of the execution of the instrument, but that the copy registered is not invalid if it is registered after that time.

***Section 158 - Assistance by regulator***

450. This section broadly replicates the effect of section 49 of the 1996 Act.
451. *Subsection (1)* gives the regulator the power to give financial or other assistance to a registered provider for the purpose of maintaining its position while the regulator develops proposals under section 152.
452. *Subsection (2)* gives the regulator the power to give financial or other assistance either to a registered provider or to a manager appointed under section 155 to assist or facilitate the implementation of proposals agreed in accordance with section 152.
453. *Subsection (3)* specifies that such assistance under subsections (1) and (2) may include the regulator lending staff or arranging the payment of a manager's remuneration and expenses.



454. *Subsection (4)* specifies a list of things that the regulator may do by way of giving assistance that require the consent of the Secretary of State. Those things are:
- making grants,
  - making loans,
  - indemnifying a manager,
  - making payments in connection with secured loans, and
  - guaranteeing payments in connection with secured loans.

### ***Section 159 - Applications to court***

455. This section broadly replicates the effect of section 50 of the 1996 Act.
456. *Subsection (1)* gives the registered provider the right to apply to the High Court where it thinks that an action taken by a manager appointed under section 159 is not in accordance with agreed proposals.
457. *Subsection (2)* gives a similar right to a creditor of a registered provider.
458. *Subsection (3)* provides that where an application is made to the High Court under subsection (1) or (2), the High Court can:
- confirm, annul, or modify an act of the manager
  - give the manager directions,
  - make any other order.
459. *Subsection (4)* gives a person who is bound by agreed proposals the right to apply to the High Court if that person thinks that another person who is obliged to implement or co-operate with agreed proposals under section 154 has breached the requirements of that section.
460. *Subsection (5)* provides that where an application is made to the High Court under subsection (4), the High Court can:
- confirm the action, modify the action or annul it,
  - grant relief by way of injunction, damages or otherwise.

## **Restructuring and dissolution**

### ***Sections 160 to 166***

461. These sections re-enact the powers of the Housing Corporation in paragraphs 12 to 14 of Schedule 1 to the 1996 Act as powers of the regulator. These powers relate to the restructuring and dissolution of non-profit registered providers of social housing.

### ***Section 160 - Company: arrangements and reconstructions***

462. *Subsection (1)* specifies that the effect of this section is restricted to non-profit registered providers that are registered companies.
463. The effect of *subsections (2) to (4)* is to render the arrangements under various statutory provisions ineffective without the consent of the regulator.
464. The arrangements in this section for which the regulator's consent is required are:
- voluntary arrangements made by the directors of a company with its creditors under Part 1 of the Insolvency Act 1986. (This broadly replicates the effect of section 13(5) of Schedule 1 to the 1996 Act).

- an agreement or compromise with creditors that has been sanctioned by a court order in accordance with section 899 of the Companies Act 2006 (this broadly replicates the effect of paragraph 13(2) of Schedule 1 to the 1996 Act which relates to the such arrangements made under section 425 of the Companies Act 1985). *Subsection (3)(b)* also requires that a copy of the consent should be delivered to the registrar of companies before the court order is effective.
  - an agreement under section 900 of the Companies Act 2006 where the application to the court for an order sanctioning an agreement under section 899 of the Companies Act 2006 is in respect of an agreement to reconstruct a company or amalgamate two or more companies and it provides for the transfer of the whole or part of the undertaking or property of one or more of the companies involved in the scheme (this broadly replicates the effect of the first sentence of paragraph 13(3) of Schedule 1 to the 1996 Act which related to the arrangements made under section 427 of the Companies Act 1985).
465. *Subsection (5)* provides that a court order for the arrangements in subsection (4), and which section 900(6) of the Companies Act 2006 requires to be sent to the registrar of companies, must also be accompanied by a copy of the regulator's consent (this broadly replicates the effect of the second sentence of paragraph 13(3) of Schedule 1 to the 1996 Act which related to the such arrangements made under section 427 of the Companies Act 1985).

#### ***Section 161 - Company: conversion into industrial and provident society***

466. *Subsection (1)* specifies that the effect of this section is restricted to non-profit registered providers that are registered companies.
467. *Subsection (2)* specifies that where there is a resolution to convert a company into an industrial and provident society under section 53 of the Industrial and Provident Societies Act 1965, the registrar of companies may only register that resolution if the regulator has consented in writing to the resolution and a copy of that consent accompanies the resolution sent to the registrar of companies. This broadly replicates the effect of paragraph 13(4) of Schedule 1 to the 1996 Act.
468. *Subsection (3)* requires that where an industrial and provident society is created by such a resolution, the regulator must register the body created and designate it as a non-profit organisation on the register.
469. *Subsection (4)* further provides that the effects of subsection (3) will be immediate for the purposes of the regulator's functions and powers, pending the completion of the registration process by the regulator. This broadly replicates the effect of paragraph 13(8) of Schedule 1 to the 1996 Act.

#### ***Section 162 - Company: winding up***

470. *Subsection (1)* specifies that the effect of this section is restricted to non-profit registered providers that are companies.
471. *Subsection (2)* provides that the regulator must first consent in writing before a special resolution for the voluntary winding up of a company under the Insolvency Act 1986 is effective. This broadly replicates the effect of paragraph 13(6)(a) of Schedule 1 to the 1996 Act.
472. *Subsection (3)* provides that the requirement to send a copy of the special resolution to the registrar of companies under section 30 of the Companies Act 2006 is satisfied only if a copy of the regulator's consent accompanies the special resolution. Failure to comply with section 30 of the Companies Act 2006 is an offence. Subsection (3) broadly replicates the effect of paragraph 13(6)(b) of Schedule 1 to the 1996 Act which referred to the earlier equivalent provision in section 380 of the Companies Act 1985.

***Section 163 - Industrial and provident society: restructuring***

473. *Subsection (1)* specifies that the effect of this section is restricted to non-profit registered providers that are industrial and provident societies.
474. *Subsections (2) and (3)* re-enact paragraph 12(2) of Schedule 1 to the 1996 Act.
475. *Subsection (2)* provides that the Financial Services Authority, which is the registrar for industrial and provident societies, may register resolutions passed by an industrial provident society for the purposes of the restructuring provisions identified in subsection (3), only if the regulator has consented in writing to the resolution, and a copy of that consent accompanies the resolution sent to the Financial Services Authority.
476. *Subsection (3)* identifies the restructuring provisions for industrial and provident societies for the purposes of this section as the following sections of the Industrial and Provident Societies Act 1965:
- section 50 which is for the amalgamation of two or more societies,
  - section 51 which is for the transfer of engagements from one society to another,
  - section 52 which is for the conversion into, amalgamation with or transfer of engagements to, a company by an industrial and provident society.
477. *Subsection (4)* broadly replicates the effect of paragraph 12(3) of Schedule 1 to the 1996 Act. It provides that where a resolution is registered by the Financial Services Authority, any body that is created by the resolution, or to which there is a transfer of engagements as a result of the resolution, will be:
- registered by the regulator as a registered provider, and be designated as a non-profit provider in accordance with section 115, and that
  - for the purposes of the regulator's functions and powers, pending the completion of the registration process by the regulator of the new body, the new body will be treated as if it were registered already as a non-profit organisation.

***Section 164 - Industrial and provident society: winding up***

478. *Subsection (1)* specifies that the effect of this section is restricted to non-profit registered providers that are industrial and provident societies.
479. *Subsections (2) and (3)* re-enact paragraph 12(4) of Schedule 1 to the 1996 Act.
480. *Subsection (2)* provides that the regulator must first consent before a resolution for the voluntary winding up of a society under the Insolvency Act 1986 is effective.
481. *Subsection (3)* refers to the requirement to send a copy of a winding up resolution to the Financial Services Authority under section 30 of the Companies Act 2006. It specifies that this requirement is only satisfied if the resolution is accompanied by a copy of the regulator's consent. This requirement of the Companies Act 2006 is applied to industrial and provident societies by section 55 of the Industrial and Provident Societies Act 1965, and section 84(3) of the Insolvency Act 1986. Failure to comply with section 30 of the Companies Act 2006 is an offence.

***Section 165 - Industrial and provident society: dissolution***

482. This section broadly replicates the effect of paragraph 12(5) of Part II of Schedule 1 to the 1996 Act.
483. *Subsection (1)* specifies that the effect of this section is restricted to non-profit registered providers that are both industrial and provident societies and are to be dissolved by an instrument of dissolution as defined in section 58 of the Industrial and Provident Societies Act 1965.

484. *Subsection (2)* provides that the instrument of dissolution may only be registered by the Financial Services Authority under section 58(5) of the Industrial and Provident Societies Act 1965 or be advertised by the authority as it is required to do under section 58(6) of the same Act if the regulator has first consented in writing to the dissolution and a copy of the consent has accompanied the instrument of dissolution sent to the Financial Services Authority.

### ***Section 166 - Winding up petition by the regulator***

485. This section broadly replicates the effect of paragraph 14 of Schedule 1 to the 1996 Act.
486. *Subsection (1)* specifies that the effect of this section is restricted to non-profit registered providers that are either registered companies, or industrial and provident societies.
487. *Subsection (2)* provides that the regulator may present a petition for the registered provider to be wound up under the Insolvency Act 1986 on one of the grounds specified in subsections (3) to (5) which are that:
- the registered provider is not carrying out the objects specified in its constitution, or
  - the registered provider is unable to pay its debts as that inability is defined in section 123 of the Insolvency Act 1986, or
  - the regulator has directed the registered provider to transfer its land to another person under the power conferred on it by section 253.

### ***Section 167 - Transfer of property***

488. *Subsection (1)* specifies that the provisions of this section apply where a non-profit registered provider-
- which is an industrial and provident society is dissolved in accordance with sections 55(a) or 55(b) of the Industrial and Provident Societies Act 1965, or
  - which is a registered company is wound up under the Insolvency Act 1986.
489. *Subsection (2)* provides that in either of the two cases in subsection (1), any surplus property remaining after the registered provider's liabilities have been satisfied will either be transferred to the regulator, or, if the regulator directs, to another registered provider that it specifies.
490. *Subsection (3)* provides that that if the registered provider that has been dissolved or wound up under subsection (1) must sell any of its lands in order to satisfy its liabilities, the regulator may discharge those liabilities instead so as to ensure that the land that would otherwise have to be sold is instead transferred as provided for in subsection (2).
491. *Subsection (4)* provides that if the registered provider dissolved or wound up under subsection (1) is a charity, the registered provider that the regulator may specify as the recipient of surplus assets after its liabilities have been satisfied must also be a charity whose objects the regulator is satisfied are similar to those of the charity being dissolved or wound up.
492. *Subsection (5)* specifies that the provisions of this section override any provisions in the following legislation:
- Industrial and Provident Societies Act 1965,
  - Insolvency Act 1986,
  - Companies Act 2006.
493. It also specifies that the section overrides any provisions in the constitution of the registered provider that is being dissolved or wound up.

***Section 168 - Section 167: supplemental***

- 494. *Subsection (1)* specifies that this section applies to property transferred to the regulator in accordance with section 167(2)(a).
- 495. *Subsection (2)* specifies that the regulator may only dispose of property transferred to it under section 167(2)(a) to another registered provider.
- 496. *Subsection (3)* applies if the registered provider dissolved or wound up under section 167(1) is a charity. It specifies that any property transferred to the regulator under section 167(2)(a) from a charity may only be disposed of to a registered provider that is both a charity and has objects that are similar to those of the charity from which the property was transferred to the regulator.
- 497. *Subsection (4)* provides that if the property transferred to the regulator from the charity wound up or dissolved under section 167(1) is subject to a mortgage or charge, the regulator may either dispose of that land subject to that mortgage or charge, or subject to a new mortgage or charge in favour of the regulator.

***Section 169 - Extension of sections 167 and 168***

- 498. This section confers a power on the Secretary of State to provide by regulations for sections 167 and 168 to apply in relation to a registered provider which is a charity but not a registered company, both in specified circumstances and with specified modifications.

***Chapter 5 - Disposal of property***

**Introductory**

***Section 170 - Overview***

- 499. This section provides an overview of the Chapter.

***Section 171 - Power to dispose***

- 500. This section states that a registered provider may dispose of land, subject to the following provisions of this Chapter. This section broadly replicates the effect of section 8 of the 1996 Act which gives RSLs power to dispose of land subject to section 9 of that Act.
- 501. This section specifies that a non-profit registered provider may dispose of the landlord's interest under a secure tenancy only to another non-profit registered provider, not to a profit-making registered provider or an unregistered person.

**Regulator's consent**

***Section 172 - Requirement of consent***

- 502. *Subsection (1)* states that any disposal of a dwelling by a registered provider requires the regulator's consent, but only if that dwelling is social housing.
- 503. *Subsection (2)* prohibits the regulator from consenting to a disposal by a non-profit registered provider which it believes is being made with a view to enabling the provider to distribute assets to members.
- 504. *Subsection (3)* states that the regulator's consent is not needed to a disposal of social housing by a registered provider if the disposal falls within an exception listed in section 173. This broadly replicates the effect of section 9(1) of the 1996 Act.

### **Section 173 - Exceptions**

505. This section lists exceptions to the requirement for consent in section 172.
506. *Subsection (2)* states that consent is not required for disposal by way of:
- (a) an assured tenancy,
  - (b) an assured agricultural occupancy,
  - (c) an agreement that would be an assured tenancy of an assured agricultural occupancy but for any of paragraphs 4 to 8, paragraphs 12(1)(h) and 12ZA to 12B of Schedule 1 to the Housing Act 1988 (exclusions),
  - (d) a secure tenancy, or
  - (e) an arrangement that would be a secure tenancy but for any of paragraphs 2 to 12 of Schedule 1 to the Housing Act 1985 (exclusions).
507. This makes clear that consent is not required for residential tenancies. It broadly replicates the effect of section 10(1) of the 1996 Act. It also ensures that the profit-making registered providers (as well as non-profit registered providers) are exempt from the requirement to obtain consent from the regulator before granting a residential tenancy of a type listed in section 173(2).
508. *Subsection (3)* states that consent is not required for a disposal to which section 81 or 133 of the Housing Act 1988 or section 173 of the Local Government and Housing Act 1985 applies, as consent is already required under those provisions. This broadly replicates the effect of section 10(2) of the 1996 Act.
509. *Subsection (4)* states that consent is not required for a disposal under Part V of the Housing Act 1985 (right to buy).
510. *Subsection (5)* states that consent is not required for a disposal in pursuance of a tenant's right to acquire under section 16 of the 1996 Act, or section 180.
511. *Subsections (4) and (5)* together broadly replicate the effect of section 10(3) of the 1996 Act.

### **Section 174 - Procedure**

512. This section sets out the procedure for the regulator giving consent to disposals.
513. *Subsection (1)* states that consent may be either general or specific. Together with *subsection (4)* (which states that consent may be conditional), this broadly replicates the effect of section 9(2) of the 1996 Act. This allows the regulator to give consent either for a broad class of disposals, or for individual properties, or properties belonging to an individual landlord.
514. *Subsection (2)* states that consent may be retrospective.
515. *Subsection (3)* states that consent may be expressed by reference to a policy for disposal submitted by a registered provider.
516. *Subsection (5)* requires the regulator, before giving a consent, to consult:
- a) the HCA,
  - b) one or more bodies appearing to it to represent the interests of registered providers, and
  - c) one or more bodies appearing to it to represent the interests of tenants.
517. *Subsection (6)* states that *subsection (5)* does not apply to specific consent relating only to one or more particular registered providers or properties. The regulator would



therefore have to consult the bodies listed before giving a general consent which covered a wide range of properties, or properties owned by a large number of bodies, but not when giving a specific consent.

### ***Section 175 - Disposal without consent***

518. This section states that a disposal by a registered provider is void if it required the regulator's consent and the regulator had not given consent.
519. There is one exception: where a non-profit registered provider disposes of a single dwelling to one or more individuals, and the registered provider reasonably believes at the time of the disposal that the buyer intends to use the property as their principal residence. This broadly replicates the effect of section 9(4) of the 1996 Act and aims to protect individual purchasers if they unwittingly purchased a home from a registered provider who did not have consent to dispose of the property..

### ***Section 176 – Notification where disposal consent not required***

520. This section requires a non-profit registered provider which disposes of land other than social housing to notify the regulator of the disposal. There is power for the regulator to give a direction dispensing with this requirement. This direction is subject to the provisions in section 174(1) and (3) to (6).

## **Proceeds**

### ***Section 177 - Separate accounting***

521. This section requires that the accounts of a registered provider must show its net disposal proceeds as a separate "disposal proceeds fund". It sets out what constitutes "net disposal proceeds", including the proceeds of specified forms of sale, grant received under specified powers, repayments of specified discounts, and other proceeds of sale and grants specified by the regulator.
522. This section also requires the regulator to determine amounts to be deducted in determining the proceeds of sale, to make a direction governing the method of constituting the fund, and to make a determination governing how interest is added to the fund. It specifies that section 127 (5) to (7) and sections 141 and 142 apply in relation to a direction under this section as they apply to a direction under section 127.
523. It also specifies that where this section applies in relation to the proceeds of sale arising on disposal, section 32 of this Act, section 27 of the 1996 Act and section 52 of the Housing Act 1988 do not apply. This ensures that net disposal proceeds in the disposal proceeds fund may not be recovered by the Homes and Communities Agency under its grant recovery powers.

### ***Section 178 – Use of proceeds***

524. This section broadly replicates the effect of section 25 of the 1996 Act. It enables the regulator to specify the purposes to which funds in the disposal proceeds fund may be applied, and ensures that proceeds from sales under right to acquire and other disposals programmes are reinvested in new social housing. It also requires the regulator to obtain the Secretary of State's approval for a direction on how sums in the disposals proceeds fund may be used or allocated.

## **Tenants' rights and duties**

### ***Section 179 - Application of Housing Act 1996***

525. This section provides that sections 11 to 15 of the 1996 Act apply in relation to disposals by registered providers with the modifications set out in subsection (3).

***Section 180 – Right to Acquire***

526. This section reproduces the effect of section 16(1) of the 1996 Act in relation land in England. It provides that an assured or secure tenant of a registered provider has the right to acquire if the provision of the dwelling was publicly funded and has remained in the social rented sector since that provision, and if the tenant satisfies certain qualifying conditions.
527. These qualifying conditions are equivalent to those for Right to Buy and are defined with reference to the Right to Buy legislation – Part V of the Housing Act 1985. “Publicly funded” and “remained in the social rented sector” are defined at section 181 and 182 respectively.
528. *Subsection (3)(b)* refers to a person who provided the dwelling by means of grant by the Housing Corporation under section 27A of the 1996 Act. This broadly replicates the effect of section 16A of the 1996 Act, which gives the right to acquire to tenants whose homes were provided under the Housing Corporations power to give grants to non-RSLs.

***Section 181 – Interpretation: “publicly funded”***

529. This section defines when a dwelling is “publicly funded”. This broadly replicates the effect of section 16(2) of the 1996 Act, and refers to grants under sections 18 or 27A of the 1996 Act, to homes funded through the disposals proceeds fund, or acquired since 1 April 1997 by a registered provider from a public sector landlord. In addition it refers to dwellings provided in fulfilment of a condition imposed by HCA.

***Section 182 – Interpretation: “remained in the social rented sector”***

530. This section defines when a dwelling has “remained in the social rented sector”. This broadly replicates the effect of sections 16(3) and 16A(4) of the 1996 Act. It provides that a dwelling has remained within the public sector if the freeholder has been, continuously, a registered provider, a registered social landlord or a public sector landlord and if each leaseholder was either a registered provider, a registered social landlord, public sector landlord or an individual holding otherwise than under a long tenancy. In addition, a dwelling provided under section 27A of the 1996 Act shall be treated as having remained in the social rented sector if it has been used exclusively for purposes permitted under the original grant or any other purposes agreed to by the Housing Corporation or the HCA.

***Section 183 - Interpretation: other expressions***

531. This section provides a number of definitions in relation to this group of sections. ‘Infrastructure’ in this section has the same meaning as in Part 1.

***Section 184 – Right to acquire: supplemental***

532. This section provides that section 17 of the 1996 Act applies in relation to a right to acquire under section 180 with certain modifications. Section 17 of the 1996 Act gives the Secretary of State power, by order, to specify the amount or rate of discount given on the exercise of the right to acquire, and to designate rural areas in which the right to acquire does not arise. It also applies the provisions of Part V of the Housing Act 1985 (Right to Buy) in relation to the right to acquire, subject to any exceptions or modifications made by regulations by the Secretary of State.

***Section 185 – Right to acquire: consequential amendments***

533. This section makes consequential amendments to sections 16, 16A, 20 and 21 of the 1996 Act, to restrict their application to properties in Wales.

## **Miscellaneous**

### ***Section 186 - Former registered providers***

534. This section ensures that sections 171 to 175 (provisions on disposals) continue to apply in respect of any property owned by a person at the time it was registered. This is equivalent to section 9(6) of the 1996 Act.

### ***Section 187 – Change of use, etc.***

535. This section provides that the disposal consent provisions continue to apply in relation to the disposal of land where it ceases to be a dwelling, or where exception 2 or 3 in section 173 applies, a change of use of that land.

### ***Section 188 – Trustees***

536. This section broadly replicates the effect of the first sentence of section 8(2) of the 1996 Act.

### ***Section 189 – Charities***

537. This section makes it clear that nothing in this Chapter authorises a charity to effect a disposal which it would otherwise not have power to effect. This broadly replicates the effect of the second sentence of section 8(2) of the 1996 Act.

## **Consents under other legislation**

### ***Section 190 – Consent to disposals under other legislation***

538. Under section 171D of the Housing Act 1985, sections 81 and 133 of the Housing Act 1988 and section 173 of the Local Government and Housing Act 1989 a registered provider must obtain the consent of the Secretary of State before disposing of dwellings in relation to which a tenant has a preserved right to buy (section 171D of the Housing Act 1985) or on the first onward disposal of dwellings acquired through transfer from a housing action trust, a local authority or a new town corporation. This section provides that the functions of the Secretary of State in considering such consents are transferred to the Regulator.

### ***Section 191 – Section 190: consequential amendments***

539. This section makes amendments to the Housing Act 1985, the Housing Act 1988 and Local Government and Housing Act 1989 which are consequential on section 188.
540. *Subsection (1)* amends section 171D of the Housing Act 1985 to replace references to “Secretary of State” with “appropriate authority”, which in relation to a disposal in England by a registered provider means the Regulator of Social Housing, in relation to any other disposal in England means the Secretary of State, and in relation to any such disposal in Wales means the Welsh Ministers.
541. *Subsections (2), (3) and (4)* make similar amendments to section 81 of the Housing Act 1988, section 133 of the Housing Act 1988 and section 173 of the Local Government and Housing Act 1989 respectively.

## ***Chapter 6 – Regulatory powers***

### ***Section 192 - Overview***

542. *Section 192* describes the contents of Chapter 6.

## **Standards**

### ***Section 193 – Provision of social housing***

543. *Subsection (1)* of section 193 gives the regulator the power to set standards for registered providers in respect of the social housing that they own. These standards may be in relation to the nature, extent and quality of accommodation, facilities and services provided by them in connection with social housing.
544. *Subsection (2)* of this section further provides that the standards that the regulator sets under subsection (1) may incorporate rules in relation to the matters set out in paragraphs (a) to (j) of subsection (2) as follows:
- a) criteria for allocating accommodation,
  - b) terms of tenancies,
  - c) levels of rent (and the rules may, in particular, include provision for minimum or maximum levels of rent or of increase or decrease of rent),
  - d) maintenance and repair,
  - e) procedures for addressing complaints by tenants against landlords,
  - f) methods for consulting and informing tenants,
  - g) methods of enabling tenants to influence or control the management of their accommodation and environment,
  - h) policies and procedures required by section 218A of the 1996 Act in connection with anti-social behaviour,
  - i) landlords' contribution to the environmental, social and economic well-being of the areas in which their property is situated, and
  - j) estate management.
545. *Subsection (3)* provides that in setting standards, the regulator must have regard to the desirability of registered providers being free to choose how to provide services and conduct business.

### ***Section 194 - Management***

546. This section gives the regulator the power to set standards that relate to the financial viability and management of the organisation, and other affairs. *Subsection (2)* provides that these powers also extend to profit-making providers, although only in relation to their provision of social housing. *Subsection (3)* provides that in setting standards, the regulator must have regard to the desirability of registered providers being free to choose how to provide services and conduct business.

### ***Section 195 - Code of Practice***

547. *Subsection (1)* of this section gives the regulator a power to issue a code of practice which relates to, clarifies or amplifies standards issued under sections 193 and 194.
548. *Subsection (2)* of this section gives the regulator the power to have regard to codes of practice issued under subsection (1) when considering whether registered providers have met the requirements of standards issued under sections 193 and 194.
549. *Subsection (3)* of this section gives the regulator the power to revise or withdraw a code of practice issued under subsection (1).
550. *Subsection (4)* of this section requires the regulator to bring a code of practice issued under subsection (1) to the attention of registered providers.

### **Section 196 - Consultation**

551. *Subsection (1)* provides that the regulator, before it sets standards, or issues, revises or withdraws a code of practice, must consult bodies representative of registered providers, and the tenants of registered providers, and the secured creditors of registered provider, the Audit Commission; and one or more bodies appearing to the regulator to represent the interests of local housing authorities, the HCA and the Secretary of State, or ensure that they have been consulted.
552. *Subsection (2)* requires that before setting a standard which would apply, or before issuing, revising or withdrawing a code of practice which applies or would apply to charities, the regulator must consult the Charity Commission.

### **Section 197 - Direction by Secretary of State**

553. *Subsection (1)* gives the Secretary of State power to direct the regulator to set a standard under section 193 or about the content of a standard under that section, or for the regulator to have regard to specified objectives when setting a standard under sections 193 or 194.
554. *Subsection (2)* gives the Secretary of State the power to give a direction under *subsection (1)(a)* or *(b)* only if it relates in the Secretary of State's opinion to one of three issues: the quality of accommodation, rent, or involvement by tenants in the management by registered providers of accommodation.
555. *Subsection (3)* requires the Secretary of State to have particular regard to the regulator's objectives in deciding whether to give a direction.
556. *Subsection (4)* requires the Secretary of State to consult the regulator, the HCA, the Audit Commission; and one or more bodies appearing to the Secretary of State to represent the interests of local housing authorities and bodies appearing to the Secretary of State to represent the interests of tenants and of registered providers before giving a direction.
557. *Subsection (5)* requires that before giving a direction about a standard which would apply to charities, the regulator must consult the Charity Commission.
558. *Subsection (6)* allows a direction to disapply the requirement for the regulator to consult under section 196 in relation to specified matters.
559. *Subsection (7)* provides that the regulator must comply with any direction given and *subsection (8)* requires that the Secretary of State publish each proposed direction for consultation; each response to a consultation; and each direction.

### **Section 198 – Supplemental**

560. *Subsection (1)* specifies that failure to meet standards set under sections 193 or 194 will be grounds for exercising the powers of the regulator to intervene and enforce compliance as set out in Chapter 7.
561. *Subsection (2)* of this section specifies that the regulator, having set standards, must make arrangements to bring them to the attention of those registered providers to whom the standards apply.
562. *Subsection (3)* of this section gives the regulator the power to revise or withdraw standards that have been previously set under powers in sections 193 and 194. If this power is exercised by the regulator, the same requirements for consultation that are set out in section 196 will apply as when standards are originally set.
563. *Subsection (4)* makes clear that standards may be expressed by reference to documents prepared by others. This recognises that other bodies, or stakeholders acting as a group,

may propose and consult on documents, which the regulator may then approve and issue.

564. *Subsection (5)* of this section provides that standards set by the regulator under sections 193 and 194 may apply generally or may be limited in their application, and that the standards may be different for different cases, circumstances or areas.

## **Monitoring**

### ***Section 199 - Survey***

565. *Subsection (1)* specifies that this section applies where the regulator suspects that a registered provider is failing to maintain the premises to be surveyed, in accordance with standards, as specified under sections 193 or 194 of this Part.
566. *Subsection (2)* gives the regulator the power to arrange for the survey of the condition of identified homes by a person authorised by it.
567. *Subsection (3)* defines “authorised person” for the purposes of subsection (2) as a member of the regulator’s staff or any other person who has been authorised in writing by the regulator for the purposes of carrying out a survey under this power.
568. *Subsection (4)* provides that the authorised person may enter the premises at any reasonable time to carry out the survey.
569. *Subsection (5)* specifies that the authorised person must give the registered provider a minimum of 28 days’ notice of the survey.
570. *Subsection (6)* requires that the registered provider who has received the notice required under subsection (5) must then give each occupier of the premises to be surveyed a minimum of 7 days’ notice of the survey.
571. *Subsection (7)* requires the authorised person to provide a written report of their survey.
572. *Subsection (8)* requires the regulator to provide the registered provider of the premises surveyed with a copy of the report produced under subsection (7).

### ***Section 200 - Survey: supplemental***

573. *Subsection (1)* provides that the authorised person carrying out the survey, or seeking entry to the premises to carry out the survey must, when requested by the occupier, provide to that person a copy of the authorisation to carry out the survey.
574. *Subsection (2)* provides that the regulator may require the registered provider to pay some or all of the costs of the survey and the report.
575. *Subsection (3)* specifies that a registered provider who fails without a reasonable excuse to comply with the requirement to give occupiers due notice of a survey under section 199 subsection (6) commits an offence. Similarly, a registered provider or an officer of a registered provider who obstructs an authorised person exercising the power to survey premises under section 199 also commits an offence.
576. *Subsection (5)* specifies that a person guilty of offences under subsections (3) or (4) is liable on summary conviction to a fine not exceeding level 3 (currently £1000) on the standard scale.
577. *Subsection (6)* provides that proceedings for an offence under this section may only be brought by or with the consent of either the regulator or the Director of Public Prosecutions.



### **Section 201 - Inspection**

578. *Subsection (1)* allows the regulator to arrange for a person to inspect a registered provider's performance in relation to provision of social housing or its financial and other affairs.
579. *Subsection (2)* prohibits the person appointed from being a member of the regulator's staff.
580. *Subsection (3)* requires that where the purpose of an inspection is to assess a registered provider's performance by reference to standards under section 193 (that is, in relation to management of social housing), the regulator must invite the Audit Commission to carry out the inspection. The regulator may appoint any person it wishes if the Audit Commission declines, or for inspections whose purpose is not as set out in *subsection (3)*.
581. *Subsection (4)* specifies that the regulator may direct the person carrying out an inspection to discontinue it.
582. *Subsection (5)* provides that an inspection may either be general or specific.
583. *Subsection (6)* requires that the regulator reimburse costs incurred by the Audit Commission in carrying out an inspection.
584. *Subsection (7)* specifies that if a person other than the Audit Commission carries out an inspection, the arrangements may include provision for payments.

### **Section 202 – Inspections – supplemental**

585. *Subsection (1)* requires that the person carrying out the inspection produce a written report.
586. *Subsection (2)* requires the regulator to provide the registered provider with a copy of the written report and provides that the regulator may publish the inspection report and any related information.
587. *Subsection (3)* makes it clear that a person who carries out an inspection may publish the inspection report and any related information (whether or not the regulator has done so)
588. *Subsection (4)* provides that the Secretary of State may by order authorise the regulator to charge fees for inspections.
589. *Subsection (5)* provides that the registered provider must pay any fees charged.
590. *Subsection (6)* provides before making an order the Secretary of State shall consult the regulator, one or more bodies representative of registered providers, the Audit Commission and any other persons considered appropriate.
591. *Subsection (7)* requires the regulator to prescribe a scale of fees for inspections. Before doing so, it must have consulted the Secretary of State, one or more bodies representative of registered providers, and the Audit Commission.

### **Section 203 - Inspector's powers**

592. This section specifies the powers conferred on an inspector, as defined in subsection (12). In particular these include powers to require provision of documents or information, and enter premises and inspect, copy or take away documents.
593. *Subsections (1) to (3)* provide that an inspector may by notice require a person to provide specified documents or information. The inspector may require documents and information of a kind in respect of which the regulator can impose a requirement under section 107(1), which specifies that the regulator must have reason to believe that it may be in the person's possession, and relates to the financial or other affairs of a registered

provider or activities which are or may be carried out by a person who is or has applied to become a registered provider. A requirement under subsection (1) is subject to the provisions in section 107(3) to (7) and section 108 with any necessary modifications.

594. *Subsections (4) to (6)* provide that an inspector may at any reasonable time enter premises occupied by the registered provider being inspected, and inspect, copy or take away any documents found there. They also specify that ‘documents’ includes documents stored on computers or electronic storage devices on the premises or accessible by computers on the premises, and that the inspector may inspect any computer or electronic storage device on which such documents have been created or stored.
595. *Subsections (7) and (8)* provide that the inspector may require any person on the premises to provide facilities or assistance as the inspector reasonably requests. This includes requiring assistance from any person in charge of a computer as the inspector reasonably requests for the purposes of *subsections (5) and (6)*.
596. *Subsections (9) to (11)* specify that it is an offence for a person without reasonable excuse to obstruct an inspector carrying out an inspection. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 (currently £1000) on the standard scale. Proceedings for an offence under this section may only be brought by or with the consent of either the regulator or the Director of Public Prosecutions.
597. *Subsection (12)* provides that an ‘inspector’ means a person who is authorised in writing by the Audit Commission to exercise powers under this section for the purposes of an inspection carried out under section 201 or a person who is authorised in writing by the regulator to exercise powers under this section for the purpose of carrying out any inspections under section 201.

#### ***Section 204 - Performance information***

598. Subsection (1) gives the regulator a power to require a registered provider to prepare an annual report containing an assessment of its performance in relation to any standards the regulator has set under sections 193 and 194, and to send that report to the regulator within a specified period.
599. Subsection (2) provides that the regulator can specify in detail what the reports prepared by registered providers must cover.
600. *Subsection (3)* specifies that it is an offence not to comply with a requirement made by the regulator under this section without a reasonable excuse.
601. *Subsection (4)* provides that the penalty for any person found guilty of that offence on summary conviction will be a fine of up to level 5 (currently £5000) on the standard scale.
602. *Subsection (5)* provides that proceedings for an offence under this section may only be brought by or with the consent of either the regulator or the Director of Public Prosecutions.

#### ***Section 205 - Publication of performance information***

603. This section requires the regulator to publish at least once a year information about the performance of registered providers. This must include information likely to be useful to tenants, potential tenants and local authorities.

#### ***Section 206 - Inquiry***

604. This section gives the regulator the power to hold an inquiry where it believes that the affairs of a registered provider may have been mismanaged.

605. *Subsections (2) to (5)* specify who the regulator may appoint to manage the inquiry. The regulator must appoint one or more individuals, all of whom must be independent of the regulator. Individuals are independent of the regulator if they and members of their family are not currently members or employees of the regulator and have not been within the previous five years. Consultants, defined as individuals providing services to the regulator other than by employment or appointment under this section, are also not considered independent where they are currently providing services.

***Section 207 - Inquiry: supplemental***

606. *Subsection (1)* provides that individuals appointed by the regulator to conduct the inquiry will determine the procedure for the inquiry.
607. *Subsection (2)* provides that they may consider the affairs of a profit-making registered provider only so far as related to social housing.
608. *Subsection (3)* provides that they may consider the affairs of any body that, at the time with which the regulator is concerned, was a subsidiary or associate of a registered provider. The meanings of “subsidiary” and “associate” are defined in section 271.
609. *Subsections (4) to (6)* provide that the inquirers may make interim reports. They must make a final report on the matters to which they have been directed by the regulator. The regulator may arrange for the publication of all or part of either interim reports or the final report produced by the inquirers.
610. *Subsection (7)* also provides that local authorities may contribute to the costs of an inquiry held by the regulator under these sections.

***Section 208 - Inquiry: evidence***

611. *Subsection (1)* gives the inquirer the power, by giving a notice, to require persons to provide specified documents and information.
612. *Subsection (2)* explains that the notice may require evidence to be given on oath (and the inquirer may administer oaths for that purpose).
613. *Subsection (3)* limits the power in subsection (1) so that it can only be exercised over documents or information that the regulator would have a power over under section 107.
614. *Subsection (4)* specifies that the provisions of section 107 (3) to (7), and section 108 apply to this section modified as necessary to the specific purpose of the section.

***Section 209 – Inquiry: charities***

615. This section provides that an inquiry can only be held in relation to a registered charity if it has received ‘public assistance’, may only relate to its housing activities, and that the Charity Commission must be notified of the inquiry.

***Section 210 – Extraordinary audit***

616. This section broadly replicates the effect of paragraph 22 of Schedule 1 to the 1996 Act.
617. *Subsection (1)* specifies that where the regulator has decided to hold an inquiry under section 206, the regulator may require the registered provider to allow its accounts and balance sheet to be audited by a qualified auditor appointed by the regulator.
618. *Subsection (2)* defines “qualified auditor” for the purposes of this section.
- Subsection (3)* requires the auditor appointed under subsection (1) to report to the regulator on the matters and in the form determined by the regulator, once the audit has been completed

619. *Subsection (4)* limits the use of inquiries in respect of registered providers which are also registered charities. This is equivalent to paragraph 28 of Schedule 1 to the 1996 Act. This ensures the independence of charities while respecting the Charity Commission's own role as regulator of charities in their non-housing activities.
620. *Subsection (5)* specifies that the cost of the audit, including the auditor's remuneration, will be met by the registered provider.

## **Management and constitution**

### ***Sections 211 - 214***

621. These sections re-enact the powers of the Housing Corporation in paragraphs 9 to 11 of Schedule 1 to the 1996 Act as powers of the regulator. These powers relate to changes to the constitutions of non-profit registered providers of social housing.

### ***Section 211 - Non-profit providers only***

622. This section restricts the application of sections 211 to 214 to non-profit registered providers as provided for by the regulator's designation on the register under section 115.

### ***Section 212 - Industrial and provident society: change of rules***

623. This section applies only to industrial and provident societies. *Subsection (2)* provides that an amendment of the society's rules requires consent if it alters the society's objects, provides about the distribution of assets to members, or enables the society to become, or cease to be, a subsidiary or associate of another body.
624. *Subsection (3)* provides that an amendment which requires consent is effective only if the regulator has first given consent in writing. *Subsection (4)* provides that the regulator may not consent to an amendment which it thinks would turn the society into a profit making organisation. *Subsection (5)* provides that a society must notify the regulator of any amendment which does not require consent.
625. *Subsection (6)* provides that, in relation to an amendment which requires consent, the requirement to send copies of amendments of rules to the Financial Services Authority under section 10(1) of the Industrial and Provident Societies Act 1965 is only satisfied if it is accompanied by a copy of the regulator's consent under subsection (3).
626. *Subsection (7)* provides that this section shall also be treated as if it were part of the Industrial and Provident Societies Act.
627. *Subsection (8)* gives the Secretary of State power, by order, to amend the list in subsection (2).

### ***Section 213 - Charity: change of objects***

628. This section broadly replicates the effect of paragraph 10 of Schedule 1 to the 1996 Act and applies only to registered charities that are not registered companies.
629. *Subsection (2)* provides that the Charity Commission must first consent in writing to any amendment of the charity's objects if such a change is to be effective.
630. *Subsection (3)* provides that the Charity Commission must consult the regulator before giving consent under subsection (2).

### ***Section 214 - Companies: change of articles***

631. This section broadly replicates the effect of paragraph 11 of Schedule 1 to the 1996 Act. It applies only to registered companies.

632. *Subsection (2)* provides that an amendment of the company's articles of association requires consent if it alters the company's objects, provides about the distribution of assets to members, or enables the company to become or cease to be a subsidiary or associate of another body.
633. *Subsection (3)* provides that an amendment of the articles of association which requires consent is effective only if the regulator has first given consent in writing.
634. *Subsection (4)* prohibits the regulator from permitting any changes to the constitution of a registered provider which is a company which the regulator believes would turn it into a profit-making organisation.
635. *Subsection (5)* provides that the company must notify the regulator of an amendment of the articles of association which does not require consent, or a change to its name or registered office.
636. *Subsection (6)* provides that, in relation to an amendment which requires consent, the requirement to send copies of resolutions to the registrar of companies under section 30 of the Companies Act 2006 is only satisfied if it is accompanied by a copy of the regulator's consent under subsection (3). Failure to comply with the requirement to send copies of resolutions under section 30 of the Companies Act 2006 is an offence.
637. *Subsection (7)* gives the Secretary of State power, by order, to amend the list in subsection (2).

## **Guidance**

### ***Section 215 - Use of intervention powers***

638. *Subsection (1)* requires that the regulator must publish guidance on complaints to the regulator about the performance of registered providers, and guidance on how it uses and intends to use powers under Chapters 6 and 7.
639. *Subsection (2)* requires that guidance on complaints to the regulator about the performance of registered providers must in particular specify the procedure to be followed where a person makes a complaint, the criteria to be used by the regulator in deciding whether to investigate a complaint, and periods in which the regulator aims to inform complainants of the result of complaints.
640. *Subsection (3)* requires that the regulator must have regard to guidance under this section.

### ***Section 216 - Consultation***

641. Before giving guidance under section 215, the regulator must consult one or more bodies representative of registered providers, one or more bodies representative of the interests of the tenants of social housing, one or more bodies representative of the interests of local housing authorities, the Audit Commission, and the Homes and Communities Agency.

## **Managers of social housing**

### ***Section 217 - Accreditation***

642. This section allows the regulator to operate a scheme for the purpose of accrediting persons who provide services in connection with the management of social housing.
643. *Subsection (2)* provides that the regulator may approve a scheme operated by someone else – a trade body for example. *Subsection (3)* provides that approval may be withdrawn.
644. *Subsection (6)* provides that standards set under section 193 may refer to accreditation.

## **Chapter 7 – Enforcement powers**

### **Section 218: exercise of enforcement powers**

645. This section applies where the regulator is deciding whether to exercise a power under Chapter 7, which contains the regulator's enforcement powers, which power under Chapter 7 to exercise, or how to exercise a power under Chapter 7. It provides that in all these circumstances, the regulator shall consider:
- (a) the desirability of registered providers being free to choose how to provide services and conduct business;
  - (b) whether the failure or other problem concerned is serious or trivial;
  - (c) whether the failure or other problem is a recurrent or isolated incident;
  - (d) the speed with which the failure or other problem needs to be addressed.

### **Section 219 - Overview**

646. This section describes what an enforcement notice is. It is to require a registered provider to do (or not do, or to stop doing) certain things in order to resolve specified failures or other problems.

### **Section 220 - Grounds for giving notice**

647. This section specifies the grounds on which the regulator may give an enforcement notice. *Subsection (1)* specifies that the regulator must be satisfied that one of the grounds for issuing an enforcement notice applies and that an enforcement notice is the appropriate intervention power to use, whether alone or as a potential precursor to further action. As the regulator must be satisfied that there are grounds to use an enforcement notice, it will have to have established the facts to a degree that justifies it directing a registered provider to act in a specified way.
648. *Subsections (2) to (11)* specify the cases where an enforcement notice is applicable as required by subsection (1)(a) as follows:
- that a registered provider has failed to meet a standard established by the regulator under sections 193 or 194
  - that the affairs of a registered provider have been mismanaged
  - that the registered provider has failed to comply with an earlier enforcement notice
  - that the registered provider has failed to publish information in accordance with a requirement under section 228(3) or 240(3)
  - that it is required to protect the interests of tenants,
  - that it is necessary to protect the assets of a registered provider,
  - that a registered provider has failed to comply with an undertaking that it has given to the regulator as provided for in section 125,
  - that the registered provider has failed to pay an annual fee under section 117(2),
  - that an offence under this Part has been committed by a registered provider
  - that a registered provider has failed to comply with an order made by an ombudsman appointed by virtue of section 124.
649. *Subsection (12)* provides that where the regulator is satisfied that an offence has been committed in respect of a registered provider by an individual (e.g. a member of staff), the regulator may serve an enforcement notice on the individual rather than the provider



and, in such cases, references in this Part of the Act to registered provider can be read as references to that person.

### ***Section 221 - Content***

650. This section sets out what an enforcement notice must include. It must specify which of the cases in section 220 are the grounds for the enforcement notice, the specific action which the registered provider must take which is the substance of the notice, the date by when the specified action must be taken, and the effect of sections 223 to 225.
651. *Subsection (2)* permits the regulator to specify in an enforcement notice that the notice must be published in a specified manner

### ***Section 222 – Notifying HCA***

652. This section requires that, if the regulator gives an enforcement notice, it should send a copy to the HCA.

### ***Section 223 - Appeal***

653. This section provides that a registered provider who has been served with an enforcement notice may appeal against it to the High Court.

### ***Section 224 - Withdrawal***

654. This section gives the regulator the power to withdraw an enforcement notice at any time by giving written notice to the registered provider on whom the enforcement notice has been served.

### ***Section 225 - Sanction***

655. *Subsection (1)* gives the regulator the power to consider the use of its other intervention powers if the registered provider has not complied with the contents of an enforcement notice that the regulator has issued.
656. *Subsection (2)* provides that where the enforcement notice has been served on a person under section 220(12), the regulator may only either use the powers to require the payment of a fine as set out in sections 226 to 235, or take steps to instigate a prosecution in relation to the offence which provided grounds for service of the enforcement notice.
657. *Subsection (3)* provides that a person who has been served with an enforcement notice under Case 9 of section 220 may be prosecuted for the offence which gave grounds for the enforcement notice only if they have not complied with that enforcement notice.

## **Penalty**

### ***Section 226 - Overview***

658. This section describes the power to impose fines to penalise failures by registered providers.

### ***Section 227 - Grounds for imposition***

659. This section specifies the grounds on which the regulator may decide to require registered providers to pay fines. As well as being satisfied that one of the grounds specified in this section applies, the regulator must also be satisfied that a fine is the appropriate penalty for the identified problem.
660. *Subsections (2) to (7)* of this section specify the cases where the regulator may issue a fine. These cases are where:

- the registered provider has failed to meet a standard established under sections 193 or 194
  - the affairs of the registered provider have been mismanaged
  - the registered provider has failed to comply with an enforcement notice
  - the registered provider has failed to comply with an undertaking that it has given to the regulator
  - the registered provider has failed to pay an annual fee under section 117(2), and
  - where offences under this Part of the Act have been committed by the registered provider.
661. *Subsection (8)* provides that where the regulator is satisfied that an offence has been committed in respect of a registered provider by an individual, the grounds for imposing a penalty are as in subsection (7), and the regulator may require the individual rather than the provider to pay the fine. This subsection also provides that, in such cases, references in this Part of the Act to a registered provider can be read as references to that person.
662. *Subsection (9)* requires that the regulator must be satisfied beyond reasonable doubt in respect of the grounds at subsection (7).

### **Section 228 - Imposition**

663. This section provides that a penalty is imposed by a written notice being served on a registered provider. *Subsection (2)* requires the notice to specify which of the cases listed in subsections (2) to (7) of section 227 is the basis for the notice, the amount of the penalty that must be paid, how the penalty must be paid, the deadline for the payment of that fine, and any interest or additional penalty payable in the event of late payment.
664. *Subsections (3) and (4)* require that the penalty notice explain the effect of sections 234(1), (3) and (6) and section 235. These state that a penalty is treated as a debt to the regulator; that interest is treated as penalty; that, if an offence is punished with a penalty, it may not also be punished through prosecution; and that the provider can appeal to the High Court.
665. *Subsection (5)* provides for the Secretary of State to make further regulations about the period for payment of fines, the content of the penalty notice and the way in which a penalty notice may be served.

### **Section 229 - Amount**

666. This section provides that the amount of the fine for Case 6 of section 227, where an offence has been committed by a registered provider, may not exceed the maximum amount that the court could impose in those cases. In all other cases the maximum amount of penalty that the regulator may impose is £5,000. The Secretary of State may amend this maximum penalty of £5,000 by affirmative resolution order.

### **Section 230 - Warning**

667. This section sets out a warning procedure which must be followed before a penalty notice can be imposed. The regulator must give a registered provider a notice, called a “pre-penalty warning”, which must specify the grounds on which a penalty could be imposed, warn the provider that the regulator is considering imposing a penalty, include any indication the regulator can give of the likely amount, and explain the effect of sections 231, 234(1), (3) and (6) and 235.

668. *Subsection (2)* requires the regulator to give the HCA, and any other person that it thinks appropriate, a copy of the pre-penalty warning. In doing so, *subsection (3)* sets out that it should particularly take into account, when considering to whom it would be appropriate to send a copy, any person who has provided information as a result of which the regulator is considering making an award of compensation.
669. *Subsection (5)* requires the regulator to refer to section 125 (which permits registered providers to offer, and the regulator to prescribe a procedure for, the use of voluntary undertakings) and indicate in its pre-penalty warning whether the regulator would accept a voluntary undertaking under section 125 instead of or in mitigation of a penalty.
670. *Subsection (6)* provides that the regulator may combine the pre-penalty warning with warnings about the use of its other enforcement powers.

### **Section 231 - Representations**

671. This section allows registered providers issued with a pre-penalty warning to make representations to the regulator.
672. *Subsection (2)* specifies that the minimum period for representations must be at least 28 days, beginning on the date on which the registered provider receives the pre-penalty warning.
673. The representations may pertain to any matter connected with the contents of the warning, but in particular with whether a penalty should be imposed, or the likely amount of any penalty.
674. *Subsection (4)* provides that at the end of the period for representations the regulator must consider any representations that have been made, and decide whether to impose a penalty.

### **Section 232 – Notifying HCA**

675. This section requires that, if the regulator imposes a penalty, it must send a copy of the penalty notice to the HCA.

### **Section 233 - Destination**

676. This section specifies what the regulator must do with money that it receives from fines it has imposed on registered providers. *Subsection (2)* provides for the regulator to deduct from that money the direct costs of administering the penalty procedure, and a share of its overall expenditure that is proportionate to the effort and resource required for administration of the penalty procedure. *Subsection (3)* provides that any balance remaining will be paid to the HCA to be used, at the HCA's discretion, for investment in social housing.

### **Section 234 - Enforcement**

677. This section specifies how fines will be enforced, and provides for late payment or non-payment of fines. Fines are treated as a debt to the regulator once a penalty notice is issued under section 228.
678. *Subsection (2)* gives the Treasury a power to make regulations permitting the regulator to charge interest on fines that are not paid by the date specified in the penalty notice and to impose additional fines where the original fine is not paid by the specified deadline. In such cases, *subsection (3)* provides that the additional sums are also treated as fines, and that these additional amounts may have the effect of increasing the penalty above the limit set by section 229.
679. *Subsection (4)* provides for how interest rates may be set for interest charges on late payment of penalties as provided for in subsection (2).

680. *Subsection (5)* gives a discretionary power to the regulator to offer an early payment discount if the provider pays the fine in advance of the date specified in the penalty notice.
681. *Subsection (6)* specifies that if the penalty notice is served on a person under section 227 Case (6), he or she may not be prosecuted for the offence which is the ground for requiring the payment of a fine.

### ***Section 235 - Appeal***

682. This section gives a provider who has been served with a penalty notice the right to appeal to the High Court against the regulator's imposition of the penalty, or its amount, or both.

### **Compensation**

683. *Sections 236 to 245* describe the arrangements for the regulator to exercise a power to require a registered provider to pay compensation to certain classes of people.

### ***Section 236 - Overview***

684. This section describes the nature of the power to require a registered provider to pay compensation.

### ***Section 237 - Grounds for award***

685. This section specifies the grounds on which the regulator may require a registered provider to pay compensation. The regulator must be satisfied either that the registered provider has failed to meet a standard of social housing established by the regulator under sections 193 or 194 of this Part, or that the registered provider has failed to comply with an undertaking under section 125 that it has given to the regulator.
686. The regulator must also be satisfied that requiring a registered provider to pay compensation is appropriate, whether alone or in combination with the use of one or more of the regulator's other enforcement powers.

### ***Section 238 - Nature***

687. This section indicates those circumstances under which compensation may be awarded. *Subsection (1)* provides that it should be awarded to a person or persons who have suffered as a result of the failure that forms the basis for awarding compensation as defined by section 237.
688. *Subsection (2)* restricts the person or persons eligible for compensation to those who are tenants of social housing, but provides that compensation can be made to individual tenants of a registered provider, or to groups of them, or to all of a provider's tenants.

### ***Section 239 - Housing ombudsman compensation***

689. This section provides for the regulator's power to require a provider to pay compensation to be co-ordinated with the arrangements for approved ombudsman schemes. All registered providers must be a member of an approved ombudsman scheme under section 124 and those schemes may provide for the ombudsman to determine that one of its members should pay compensation in respect of a case brought by an individual against that member.
690. *Subsection (1)* provides that where this is the case, the regulator may not direct a registered provider to pay compensation to the same person for the same reason.

691. *Subsection (2)* however permits the regulator to direct the provider to pay compensation in such cases where the ombudsman has awarded compensation, but the provider has not paid it.

### **Section 240 - Award**

692. This section specifies the process and content for imposing a direction to a provider to pay compensation. Compensation is awarded by the regulator giving written notice (a “compensation notice”) to the registered provider and the person or persons to be compensated.
693. *Subsection (2)* provides that compensation notices must set out:
- the grounds on which compensation is awarded, which must be one or more of the grounds specified in section 237,
  - the amount of the compensation award,
  - the person or persons who are to be compensated,
  - any interest or additional compensation payable in the event of late payment, and
  - the period within which that compensation must be paid.
694. *Subsection (4)* requires that the notice explain the effect of sections 244(1) and (3), and section 245.
695. *Subsection (5)* requires the Secretary of State to make regulations about the period within which compensation must be paid, and gives the Secretary of State the power to make regulations about the form and content of compensation notices and the manner in which a compensation notice may be given

### **Section 241 – Impact**

696. This section requires the regulator to take account of any information available to it about the financial situation of the registered provider when considering awarding compensation and when considering the amount. In particular it must consider the likely impact on the provider’s ability to provide services and avoid jeopardising its financial viability, existing financial commitments, and ability to remedy the problem.

### **Section 242 - Warning**

697. This section sets out a procedure which must be followed before compensation can be awarded. The regulator must give a registered provider a notice, called a “pre-compensation warning”, which must specify the grounds on which compensation could be awarded, warn the provider that the regulator is considering awarding compensation, include any indication the regulator can give of the likely amount, and explain the effect of sections 243, 244(1) and (3), and 245.
698. *Subsection (2)* requires that the regulator consult the ombudsman for the scheme to which the registered provider belongs before issuing a pre-compensation warning.
699. *Subsection (3)* requires the regulator to give the HCA, and any other person that it thinks appropriate, a copy of the pre-compensation warning. In doing so, *subsection (4)* sets out that it should particularly take into account, when considering to whom it would be appropriate to send a copy, any person who has provided information as a result of which the regulator is considering making an award of compensation.
700. *Subsection (5)* requires the regulator to refer to section 125 (which permits registered providers to offer, and the regulator to prescribe a procedure for, the use of voluntary undertakings) and indicate in its pre-compensation warning whether the regulator

would accept a voluntary undertaking under section 125 instead of or in mitigation of compensation.

701. *Subsection (6)* provides that the regulator may combine the pre-compensation warning with warnings about the use of its other enforcement powers.

### ***Section 243 - Representations***

702. This section makes arrangements for providers issued with a warning to make representations to the regulator about its proposed action. The warning issued under section 242 must provide for a minimum period for the provider to make representations to the regulator.
703. *Subsection (2)* specifies that the minimum period must be at least 28 days beginning with the date on which the registered provider receives the pre-compensation warning.
704. The representations may pertain to any matter connected with the contents of the warning, but in particular with whether compensation should be awarded, and the likely amount of the compensation.
705. *Subsection (4)* provides that at the end of the period for representations the regulation must consider any representations that have been made, and then decide whether to direct the registered provider to pay compensation.

### ***Section 244 - Enforcement***

706. This section specifies how compensation notices will be enforced, and makes provisions for late payment or non-payment of compensation. Compensation is treated as a debt to the person or persons to whom it has been awarded.
707. *Subsection (2)* gives the Treasury a power to make regulations permitting the regulator to charge interest on compensation that is not paid by the date specified in the compensation notice and to award additional compensation where the original compensation award is not paid by the specified deadline. *Subsection (3)* provides that in such cases, the additional sums are also treated as compensation.
708. *Subsection (4)* provides for how interest rates may be set for interest charges on late payment of penalties as provided for in subsection (2).

### ***Section 245 - Appeal***

709. This section gives a provider who has been served with a compensation notice the right to appeal to the High Court against the regulator's award of compensation, or the amount of compensation awarded, or both.

## **Management etc.**

### ***Section 246 - Overview***

710. This section introduces sections 247 to 255, which give the regulator powers in relation to the management and constitution of registered providers.

### ***Section 247 - Management tender***

711. *Subsection (1)* specifies that the regulator may use this power where it is satisfied that a registered provider has failed to meet standards set under either section 193 or 194, or that its affairs in relation to social housing have been mismanaged, as defined in section 275.
712. If the regulator is satisfied that one of the conditions in subsection (1) is met, *subsections (2) and (3)* gives it the power to require the registered provider to put out to tender the management of its social housing, in whole or in part. The regulator will specify the



process that the provider is to follow in putting the services out to tender and making an appointment as a result of that process.

713. The extent of the services to be tendered out may be restricted either by reference to the type of services concerned, or in relation to a specific part or parts of the social housing stock owned by the registered provider.
714. The regulator must specify certain matters when it exercises this power, as follows:
- the constitution of the panel which has the responsibility for selection, which must include provision for ensuring tenants' interests will be represented on that panel,
  - provision for ensuring that the procurement process follows best practice, and
  - the terms and conditions on which the manager is to be appointed, that will include the setting of the required standards, how those standards will be monitored and enforced, and resources.

### ***Section 248 - Section 247: Supplemental***

715. *Subsection (1)* requires that before the regulator requires a registered provider to implement the process under section 247(2), it must give that provider a notice which specifies the grounds on which action may be taken, warns the provider that it is considering action under this section, and explains the effect of the section.
716. *Subsections (2) and (3)* provide that the notice must specify a period during which the registered provider may make representations to the regulator, and that the period must be at least 28 days and begin on the date the provider receives the notice.
717. *Subsection (4)* provides that the notice must be copied to the HCA, and to any other person that the regulator thinks appropriate, having regard to any person who has provided information as a result of which the notice is given.
718. *Subsection (5)* provides that the notice served under section 247(1) must advise the registered provider on whom it is served about the provisions for the provider to make voluntary undertakings to the regulator under section 125, and the extent to which it would accept an undertaking instead of using this power under 247(2).
719. *Subsection (6)* allows the regulator to issue the notice in conjunction with warning notices for other enforcement powers under Chapter 7.
720. *Subsection (7)* provides that in deciding whether to use this power, the regulator must have regard to the views of relevant tenants, the registered provider, the HCA and, if appropriate, any relevant local housing authority.
721. *Subsection (8)* requires the regulator to send the HCA notice of its final decision to impose a requirement.
722. *Subsection (9)* states that a registered provider served with a notice by the regulator under this section has a right of appeal to the High Court.

### ***Section 249 - Management transfer***

723. The powers set out in these sections are exercisable following an inquiry as provided for under section 206, or an audit under section 210.
724. *Subsections (2) and (3)* provide that the regulator may require a registered provider to transfer the management of some or all of its management functions to another specified person. Transfer of management functions may only be imposed with the Secretary of State's consent (both as to the transfer and the terms).
725. The regulator may use this power where it is satisfied that one of the conditions specified in *subsection (1)* is met, which are that-

- the affairs of the registered provider have been mismanaged, in respect of social housing,
  - some or all of a registered provider's management of its social housing is likely to be improved by the transfer of those management functions.
726. *Subsection (4)* set out the nature of the requirement that will be specified by the regulator and provides that the regulator may determine the scope of the requirement to transfer management.
727. *Subsection (5)* provides that the requirement will specify the terms and conditions of the appointment, including the remuneration of the person to whom the management is to be transferred, and that these will be determined in accordance with the scope of the management functions to be transferred.
728. *Subsection (6)* gives the person to whom the management functions are to be transferred the powers necessary to carry out the activities specified in the requirement. The powers may be specified by the regulator in the requirement. In addition the person to whom management is transferred by the requirement will have any other powers in relation to the registered provider's business that are necessary to give effect to the requirement.

### ***Section 250 - Section 249: supplemental***

729. This section specifies the process by which the power in section 249 is exercised. Following a statutory inquiry, and having decided that it should direct the transfer of management, *subsection (1)* requires the regulator to serve the registered provider with a notice specifying-
- which of the grounds set out in section 249(1) applies,
  - that it is considering directing the transfer of the registered provider's management functions as a consequence, and
  - setting out the effects of this section.
730. *Subsections (2)* and *(3)* provide that the notice must specify a period during which the registered provider may make representations to the regulator. The period must be at least 28 days and begin on the date the provider receives the notice.
731. *Subsection (4)* provides that the regulator must send a copy of that notice to the HCA and to any other person that it thinks appropriate, with particular consideration to any person who has been involved in identifying to the regulator the matters that form the basis for the regulator's use of this power
732. *Subsection (5)* provides that the notice must draw to the registered provider's attention the provisions of section 125 which provide for a registered provider to make a voluntary undertaking to the regulator at any time on any matter, and the notice must also indicate the extent to which the provision of a voluntary undertaking under that provision would be accepted instead of, or in mitigation of, the direction to transfer management which the regulator is considering.
733. *Subsection (6)* provides that the notice may be combined with notices about the use of other enforcement powers available under Chapter 7.
734. *Subsection (7)* provides that the regulator should have regard to the views of (a) relevant tenants, (b) the registered provider, (c) the HCA, and (d) if the regulator thinks it appropriate, any relevant local housing authority, in deciding whether to direct a registered provider, following an inquiry, to transfer management to a specified person.
735. *Subsection (8)* requires the regulator to notify the HCA of any requirement to transfer management functions to a specified person.

736. *Subsection (9)* gives the registered provider subjected to a requirement under section 249(2) the right of appeal to the High Court.

### ***Section 251 - Appointment of manager***

737. This section gives the regulator the power either to appoint an individual as manager of the registered provider, or to require the registered provider to appoint an individual as manager as set out in *subsection (2)*.
738. The regulator may do this if it is satisfied that a registered provider has failed to meet a standard set out in either section 193 or 194, or that its affairs have been mismanaged in relation to social housing.
739. *Subsections (3) to (5)* set out the nature of the requirement or the appointment that will be specified by the regulator.
740. *Subsection (3)* provides that the regulator may determine the matters in respect of which the manager is to be appointed.
741. *Subsection (4)* provides that the appointment of a manager, or the requirement to appoint a manager, will specify the terms and conditions of appointment, including the remuneration of the manager, and that these will be determined in accordance with the scope of the appointment of the manager, or the requirement to appoint a manager under subsection (3).
742. *Subsection (5)* gives the appointed manager any powers specified in the requirement or appointment, and any other powers in relation to the registered provider's business that it requires for the purposes specified in the requirement or appointment. These specifically include the power to enter into agreements and take other action on behalf of the registered provider.

### ***Section 252 - Section 251 supplemental***

743. Before it imposes a requirement under subsection (2) of section 251 the regulator must serve a notice on the registered provider specifying which of the grounds listed in subsection (1) of that section apply, warning that it is considering the use of the power set out in section 251, and explaining the provisions of section 252.
744. The effect of *subsections (2) and (3)* are that the notice must specify a period during which the registered provider may make representations to the regulator. The period must be at least 28 days and begin on the date the provider receives the notice.
745. *Subsection (4)* provides that the regulator must send a copy of that notice to the HCA and to any other person that it thinks appropriate, with particular consideration to any person who has been involved in identifying to the regulator the matters that form the basis for the regulator's use of this power.
746. *Subsection (5)* provides that the notice must draw to the registered provider's attention the provisions of section 125 which provide for a registered provider to make a voluntary undertaking to the regulator at any time on any matter, and the notice must also indicate the extent to which the provision of a voluntary undertaking under that provision would be accepted instead of, or in mitigation of, the appointment of a manager or the direction to appoint a manager which the regulator is considering.
747. *Subsection (6)* provides that the notice may be combined with notices about the use of other enforcement powers available under Chapter 7.
748. *Subsection (7)* requires the regulator to notify the HCA if it appoints a manager or imposes a requirement on a registered provider to appoint a manager.
749. *Subsection (8)* gives the regulator the power to require the appointed manager to report to it in relation to matters specified in the manager's appointment.

750. *Subsection (9)* gives the registered provider the right of appeal to the High Court.

### **Section 253 - Transfer of land**

751. *Sections 253* and *254* permit the regulator to transfer the land of a registered provider and broadly replicate paragraph 27 and 29 of Schedule 1 to the 1996 Act.
752. *Subsection (1)* provides that this section applies if as a result of an inquiry under section 206 or an audit under section 210, the regulator is satisfied that the affairs of a provider have been mismanaged in relation to social housing, or that transfer of the land of a provider would be likely to improve the management of that land.
753. *Subsection (2)* gives the regulator power to require that the registered provider should transfer its land either to the regulator or to another specified registered provider.
754. *Subsections (3)* and *(4)* provide that a requirement may be imposed on a profit-making registered provider only in relation to its social housing and associated land, and that land is considered to be associated if the regulator thinks that it is used in connection with social housing or its management.
755. *Subsection (5)* provides that a requirement must not be imposed on non-profit registered providers to transfer land to profit-making registered providers.
756. *Subsections (6)* and *(7)* concern charities. They specify that this power may not be imposed on a charity registered with the Charity Commission, and although it may be imposed on an unregistered charity, that charity's land may only be transferred to another charity whose objects the regulator thinks are similar to those of the transferring charity.

### **Section 254 - Section 253: supplemental**

757. *Subsection (1)* provides that a transfer under section 253 shall be on terms specified in or determined in accordance with the regulator's requirement.
758. *Subsection (2)* specifies that the price attached to the transfer shall be at least the amount certified by the district valuer as the amount that the property to be transferred would fetch if sold by a willing seller to another registered provider.
759. *Subsection (3)* provides that the terms of the transfer will include provision for the payment of debts or liabilities in respect of the land to be transferred, whether or not they are secured by a charge on the land.
760. *Subsection (4)* requires that the Secretary of State must consent to a requirement for a transfer of land under section 253, both in respect of the transfer itself, and the terms of that transfer.
761. *Subsection (5)* provides that where land is transferred under 253 (2)(a) to the regulator it may either dispose it to a registered provider or if the land is transferred from a non-profit registered provider then it may only dispose it to a non-profit registered provider.

### **Section 255 – Amalgamation**

762. *Subsection (1)* sets out the cases where this section applies, which are that the affairs of a registered provider which is an industrial and provident society have been mismanaged in relation to social housing, or the amalgamation of an industrial and provident society with another industrial and provident society would be likely to improve the management of its social housing.
763. *Subsection (2)* gives the regulator power to bring about the amalgamation of the society with another industrial and provident society, and *Subsection (3)* provides that the regulator can only do so with the consent of the Secretary of State.

764. *Subsection (4)* specifies that an instrument providing for an amalgamation has the same effect as a resolution by that society under section 50 of the Industrial and Provident Societies Act 1965. *Subsections (5) to (7)* require that a copy of the instrument be sent to and registered by the Financial Services Authority, at which point the instrument takes effect, and require that the copy is sent for registration within 14 days of the date of execution.
765. *Subsection (8)* provides that any body created by virtue of an amalgamation must be registered by the regulator and designated as a non-profit organisation, and must also be treated as one pending registration.

## **Restrictions on dealings**

### ***Section 256 – Restrictions on dealings during inquiry***

766. This section allows the regulator to make an order to restrict the transactions which a non-profit registered provider may enter into or the payments it makes, and may order anyone holding money or securities on behalf of the provider not to part with them.
767. This section applies where an inquiry under section 206 is in progress and that one of two Cases applies. Case 1 is that the regulator has reasonable grounds for believing that the provider's affairs have been mismanaged and that the interests of tenants or its assets require protection. Case 2 is that as a result of an interim report from an inquiry, the regulator is satisfied that its affairs have been mismanaged.
768. The restrictions in the order are automatically lifted 6 months after the final report from the inquiry under section 207 is issued. The regulator also has the power to lift the restrictions before that, and the power by order to extend them for a specified period of up to 6 months. This power may only be used in relation to a registered charity if the charity has received public assistance (defined in section 274).

### ***Section 257 – Restrictions on dealings following inquiry***

769. This section gives the regulator similar powers to those in section 256, but following rather than during an inquiry. An order under this section has effect until revoked by the regulator.

### ***Section 258 – Restrictions on dealings: supplemental***

770. This section is supplemental on sections 256 and 257. It requires the regulator to take all reasonable steps to give at least 14 days' notice to the provider and the person holding money or securities on its behalf. Contravention of an order is an offence punishable by fine.

## **Suspension and removal of officers**

### ***Section 259 – Suspension during inquiry***

771. This section applies where an inquiry under section 206 is in progress in respect of a non-profit registered provider, and one of two Cases applies. Case 1 is that the regulator has reasonable grounds for believing that the affairs of a registered provider have been mismanaged and that the interests of tenants or its assets require protection. Case 2 is that as a result of an interim report from an inquiry, the regulator is satisfied that the provider's affairs have been mismanaged.
772. The regulator may suspend an officer, employee or agent of the registered provider who it considers contributed to that failure or mismanagement. The suspension comes to an end 6 months after the final report is made, or the regulator can end it sooner. The regulator may only suspend an officer of a registered charity if it has received public assistance and must notify the Charity Commission.



***Section 260 – Removal or suspension following inquiry***

773. This section gives the regulator similar powers to those under section 259, but permits permanent removal following (rather than during) an inquiry, and suspension pending a decision on permanent removal. The regulator must take all reasonable steps to give at least 14 days' notice to the person and the provider.

***Section 261 – Suspension under section 259 or 260: supplemental***

774. This section is supplemental to sections 259 and 260. It allows the regulator to give directions to the registered provider about the performance of the suspended or removed person's functions or any other matter arising from the suspension, and allows the regulator to appoint a person to perform the suspended person's functions.

***Section 262 – Disqualification of removed person***

775. This section disqualifies anyone from acting as an officer of a registered provider if they have been removed (not suspended) under section 260, or under parts of previous Acts which now only apply to Wales. The regulator may waive a disqualification if the person applies for a waiver. If they do act as an officer while disqualified, their acts are not invalid by reason only of the disqualification – if their acts were automatically void, this could cause problems for the provider.

***Section 263 – Register of disqualified persons***

776. This section requires the regulator to keep a register of disqualified persons and waivers which is publicly available.

***Section 264 – Acting while disqualified: offence***

777. This section makes it an offence for a person to act as an officer while disqualified, which can make them liable to imprisonment or a fine.

***Section 265 – Acting while disqualified: other consequences***

778. This section permits the regulator to require repayment of part or all of any benefits received by a person acting as an officer while disqualified.

***Section 266 – Removal of officers***

779. The section gives the regulator the power to remove an officer of a non-profit registered regulator in seven specified Cases. These are:
- the officer has been adjudged to be bankrupt,
  - the officer has made an arrangement with creditors,
  - the officer has been subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 (or the equivalent statutory provision for Northern Ireland),
  - the officer has been subject to an order under section 429(2) of the Insolvency Act 1986 (which occurs where a person fails to make a payment under a county court administration order under the County Courts Act 1984),
  - the officer is disqualified under section 72 of the Charities Act 1993 from being a charity trustee (whether this is in relation to their position as an officer of the registered provider that is a charity or as an officer of a different charity),
  - the officer is incapable of acting by reason of mental disorder,



- the officer is impeding the proper management of the registered provider by reason of absence or failure to act.

### ***Section 267 – Section 266: supplemental***

780. *Section 267* is supplemental on section 266. It provides that before making an order under section 266 the regulator must give both the officer concerned and the registered provider at least 14 days' notice. It also specifies that an order under section 266 may only be made in respect of a registered charity if that charity has received public assistance as defined in section 274.

### ***Section 268 – Appeal against removal or suspension***

781. This section gives anyone removed or suspended under sections 259, 260 or 266 a right of appeal to the High Court.

### ***Section 269 – Appointment of new officers***

782. This section gives the regulator the power to appoint a person as an officer of a non-profit registered provider. *Subsection (1)* specifies that the regulator may do this where:
- a. it is to replace an officer removed under section 266;
  - b. the registered provider has no officers; or
  - c. the regulator thinks that the additional officer is necessary for the proper management of the registered provider's affairs.
783. *Subsection (2)* specifies that the regulator may appoint more than a minority of the officers of a registered provider only if the provider has fewer officers than required by its constitution.
784. *Subsection (3)* says that the regulator's power in subsection (1) overrides any restrictions in the registered provider's constitution on the eligibility requirements for officers, or the number of officers that the registered provider may have.
785. *Subsection (4)* requires that an order made by the regulator under subsection (1) must specify the period for which, and the terms on which, the person is appointed as an officer. It also provides that the regulator may renew the appointment when the period specified in the order under subsection (1) expires, and that the new officer appointed by the regulator may resign or retire as allowed in the registered provider's constitution.
786. *Subsection (5)* provides that an officer appointed by the regulator under subsection (1) has the same standing, in terms of rights, powers and responsibilities, as if he or she had been appointed as an officer under the constitution of the provider.
787. *Subsection (6)* provides that the regulator may only make an appointment in relation to a registered charity if one of the conditions in section 274 is fulfilled (which are the conditions that the registered charity has received either homes or financial assistance that are relevant to the functions of the regulator under the specified statutory provisions), and the regulator has consulted the Charity Commission before making the order under subsection (1).

## ***Chapter 8 – General***

### **Interpretation**

#### ***Section 270 - Officer***

788. This section defines "officer" in relation to registered providers.

***Section 271 - Subsidiary and associate***

789. This section defines the terms “subsidiary” and “associate” for the purposes of this Part.

***Section 272 - Family***

790. This section clarifies when a person is considered to be a member of the family of another person, for the purposes of this Part.

***Section 273 - Disposal***

791. This section defines what is a disposal of a property for the purposes of this Part.
792. *Subsection (2)* makes it clear that granting an option to require a disposal at some point in the future will be treated as making a disposal

***Section 274 – Charities that have “received public assistance”***

793. This section defines ‘public assistance’ for the purposes of Part 2. Public assistance includes grant given by the HCA under section 22; assistance for privately let accommodation under section 24 of the Local Government Act 1988; assistance in relation to housing transfers under section 34 of the Housing Act 1985 or section 135 of the Leasehold Reform, Housing and Urban Development Act 1993; and various other housing grants including social housing grant under section 18 of the 1996 Act.

***Section 275 - General***

794. This section defines a number of terms, either directly or by reference to other Acts.

***Section 276 - Index of defined terms: Part 2***

795. This section sets out a table listing expressions defined within this Part.

**Miscellaneous**

***Section 277 - Consequential amendments***

796. This section gives effect to Schedule 9.

***Section 278 – Transitional***

797. This section provides that registered social landlords which, at the date section 61 comes into force, were in a register maintained by the Housing Corporation under section 1 of the 1996 Act are to be entered in the register maintained by the regulator under section 111 as non-profit registered providers.