

EXPLANATORY MEMORANDUM TO

THE HOUSING AND REGENERATION ACT 2008 (CONSEQUENTIAL PROVISIONS) (No. 2) ORDER 2010

2010 No. 671

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Parts 1 and 2 of the Housing and Regeneration Act 2008 (“the 2008 Act”) make provision for social housing assistance and a new regulatory regime for providers of social housing. This Order makes amendments to enactments in consequence of the bringing into force of the remainder of Parts 1 and 2 of the 2008 Act. In particular, it makes amendments and modifications to, and repeals of, certain provisions in secondary legislation that make reference to the Housing Corporation and registered social landlords (registration of social landlords is provided for in Part 1 of the Housing Act 1996). The amendments, modifications and repeals are subject to transitional and savings provisions. Amendments to primary legislation are found in the Housing and Regeneration (Consequential Provisions) Order 2010 which is currently before Parliament.

2.2 Subject to transitional and saving provisions, the Order also revokes the Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008 which was made under section 67 of the 2008 Act.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010 is made under sections 67, 320 and 321 of the 2008 Act.

4.2 The Order will come into force on the day section 111 of the 2008 Act (registration) comes into force. It is intended the remainder of Parts 1 and 2 of the 2008 Act, including section 111, will be brought into force by a separate Commencement Order on 1st April 2010.

4.3 The Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010, a draft of which was laid before Parliament on 20th January 2010, provides for the registration of local authority providers of social housing under Part 2 of the 2008 Act. That Order also makes consequential amendments to Part 2 of the 2008 Act and other enactments. One of the consequential amendments is that registered providers of social housing which are not local authorities are to be known as *private* registered providers of social housing.

5. Territorial Extent and Application

5.1 The consequential amendments and repeals in this Order have the same extent as the enactments to which they relate.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Following a housing and regeneration review in 2006 the Government decided to create a new national agency for the purpose of meeting the housing and regeneration needs of England and a new regulatory body for social housing in England (the Regulator of Social Housing (known as the Tenant Services Authority (“TSA”)).

7.2 In December 2006, the Government invited Professor Martin Cave to head an independent Review of Social Housing Regulation (“the Cave Review”). Professor Cave’s remit was to consider options for reform of the regulatory system including fundamental changes, and make recommendations to Government. His report, *Every Tenant Matters*, was published on 19 June 2007.

7.3 The Cave Review recommended the creation of a standalone, independent regulator with clear statutory objectives to put tenants at the heart of regulation and wider powers to set and enforce clear performance standards. The 2008 Act implemented the Cave Review’s recommendations, making provision for the establishment of the TSA and its new powers.

7.4 Prior to the establishment of the TSA, regulatory functions in relation to registered social landlords were exercised by the Housing Corporation. The 2008 Act (Schedules 8, 9 and 16) contained some but not all the consequential amendments needed to move from current regime operated by the Housing Corporation principally under the Housing Act 1996 to the new regime operated by the TSA principally under the 2008 Act.

7.5 A key change reflected in this Order is the introduction by the 2008 Act of the term ‘registered provider of social housing’. In general this term will replace – in England only – the term ‘registered social landlord’ (RSL) which currently describes bodies that are registered with the TSA. RSLs are required to be non-profit making bodies. The 2008 Act permits profit-making bodies to register with the TSA as well, hence the need to introduce the new term ‘registered provider of social housing.’ The 2008 Act obliges the TSA to designate registered providers as either ‘profit-making’ or ‘non-profit’ bodies.

7.6 As mentioned above, the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010, provides for the TSA to register local authority providers of social housing. That Order is designed to implement the Cave Review’s recommendation that there should be a single, ‘cross-domain’ regulator of social housing.

7.7 In making consequential amendments that includes references to RSLs, our approach has generally been to apply the same provisions to ‘private registered provider of social housing’ as are currently applied to RSLs. (It is worth noting that all bodies in England which are RSLs will automatically become private registered providers under section 278 of the 2008 Act.) The rationale for this approach is our overall aim to deliver, as far as possible, a level playing field for providers and similar levels of service and protection for tenants. However, in a limited number of cases, there are compelling policy or technical reasons to amend the existing provisions so as to apply them to *non-profit* registered providers only, and not to profit-making bodies.

Consultation

7.8 In June 2007 a consultation paper was issued which sought views on the roles and responsibilities of the two new investment and regulation bodies (*Delivering Housing and Regeneration: Communities England and the future of social housing regulation*). This consultation concluded in September 2007, and in January 2008 a summary of responses to this consultation exercise was published.

8. Consultation outcome

8.1 There were 187 responses to this consultation exercise. Respondents were generally supportive of the proposal to create a new housing and regeneration agency and a new social housing regulator. These two new bodies (known as the Homes and Communities Agency and the TSA) were created by the 2008 Act.

9. Guidance

9.1 We do not propose to issue any guidance for this instrument.

10. Impact

10.1 This Order arises directly from the passing of the 2008 Act. A final Impact Assessment for the 2008 Act was published in December 2008. This included a specific Impact Assessment for the creation of the new social housing regulator.

11. Regulating small business

11.1 As set out in the Impact Assessment, we do not expect a net impact on small business.

12. Monitoring & review

12.1 The TSA's overall performance against the achievement of its objectives will be reviewed twice a year, in addition to the formal annual report and submission of accounts required of a public body.

12.2 In addition the regulator's status will be formally reviewed every five years. The date of the next formal review is 2013.

13. Contact

13.1 Alec Taylor at the Department for Communities and Local Government
Tel: 0303 444 3779 or e-mail: alec.taylor@communities.gov.uk can answer any queries regarding the instrument.