

## SCHEDULES

### SCHEDULE 1

#### Amendment of Part 2 of the Act

##### *Chapter 7 (enforcement)*

- 56.**—(1) Section 220 (grounds for giving notice) is amended as follows.
- (2) In subsection (2), after “standard” insert “applicable to it”.
- (3) In subsection (7), for “the assets of the registered provider” substitute “the registered provider is a private registered provider and its assets”.
- (4) For subsection (9) substitute—
- “**(9)** Case 8 is where the registered provider has failed to pay—
- (a) in the case of a private registered provider, an annual fee under section 117(1)(b);
- (b) in the case of a local authority, an initial fee or an annual fee under section 117(1)(a) or (b).”
- 57.** For section 222 substitute—
- “222 Notifying HCA etc**
- If the regulator gives an enforcement notice it must send a copy—
- (a) to the HCA, and
- (b) in the case of an enforcement notice given to a local authority, to the Secretary of State.”
- 58.** In section 226 (overview), for “registered providers” substitute “private registered providers”.
- 59.**—(1) Section 227 (grounds for imposition) is amended as follows.
- (2) In subsection (1), for “registered provider” substitute “private registered provider”.
- (3) In subsection (6), for “117(2)” substitute “117(1)(b)”.
- 60.** In section 236 (overview), for “registered provider” substitute “private registered provider”.
- 61.** In section 237 (grounds for award), in subsection (1), for “registered provider” substitute “private registered provider”.
- 62.** In section 242 (warning), in subsection (1), for “registered provider” substitute “private registered provider”.
- 63.** In section 245 (appeal) for “registered provider” substitute “private registered provider”.
- 64.**—(1) Section 247 (management tender) is amended as follows.
- (2) In subsection (1)(a), after “standard” insert “applicable to it”.

*Status: This is the original version (as it was originally made).*

(3) In subsection (4)(b), after “practice” insert “(and consistent with any applicable procurement law)”.

**65.**—(1) Section 248 (section 247: supplemental) is amended as follows.

(2) In subsection (4)—

(a) omit “and” at the end of paragraph (a), and

(b) for paragraph (b) substitute—

“(b) the Secretary of State (if the notice is given to a local authority), and

(c) any other persons the regulator thinks appropriate.”

(3) In subsection (7)—

(a) omit “and” at the end of paragraph (c), and

(b) for paragraph (d) substitute—

“(d) the Secretary of State (if the registered provider is a local authority), and

(e) if the regulator thinks it appropriate, any relevant local housing authority.”

(4) For subsection (8) substitute—

“(8) If the regulator imposes a requirement it must send a copy—

(a) to the HCA, and

(b) in the case of a requirement imposed on a local authority, to the Secretary of State.”

**66.**—(1) Section 250 (section 249: supplemental) is amended as follows.

(2) In subsection (4)—

(a) omit “and” at the end of paragraph (a), and

(b) for paragraph (b) substitute—

“(b) in the case of a notice given to a local authority, the Secretary of State, and

(c) any other persons the regulator thinks appropriate (having regard, in particular, to any person who provided information as a result of which the notice is given).”

(3) In subsection (7)—

(a) omit “and” at the end of paragraph (c), and

(b) for paragraph (d) substitute—

“(d) if the requirement would be imposed on a local authority, the Secretary of State, and

(e) if the regulator thinks it appropriate, any relevant local housing authority.”

(4) For subsection (8) substitute—

“(8) If the regulator imposes a requirement it must send a copy—

(a) to the HCA, and

(b) in the case of a requirement imposed on a local authority, to the Secretary of State.”

**67.** After section 250 insert—

**“250A Sections 247 and 249: local authorities**

(1) This section makes further provision about the application of sections 247 and 249 in a case where the registered provider is a local authority.

(2) The regulator may act under those sections even if the local authority already has a management agreement in place.

(3) But while a section 247 or 249 arrangement is in force, the local authority may not give effect to a management agreement as respects functions of the authority which are the subject of the arrangement.

(4) Any duty the local authority may have to consult with respect to the exercise of its management functions (for example, a duty arising by virtue of section 27BA of the Housing Act 1985) does not apply so far as it is acting pursuant to a requirement imposed on it under section 247 or 249.

(5) A section 247 or 249 arrangement—

(a) is not to be considered a management agreement, but

(b) subsections (13) and (15) of section 27 of the Housing Act 1985 apply to it as they apply to a management agreement.

(6) In this section—

“management agreement” has the meaning given by section 27(2)(a) and 27B(4) of the Housing Act 1985;

“section 247 or 249 arrangement” means an arrangement which is entered into pursuant to a requirement imposed on a local authority under section 247 or 249 and by which functions of the authority are to be exercised by a manager on its behalf.”

**68.** In section 251 (appointment of manager)—

(a) in subsection (1)(a) and (b), for “registered provider” substitute “private registered provider”, and

(b) accordingly, in the heading, insert “of private registered provider” at the end.

**69.** In section 252 (section 251: supplemental), in subsection (9), for “registered provider” substitute “private registered provider”.

**70.** After section 252 insert—

**“252A Appointment of advisers to local authorities**

(1) This section applies to a registered provider which is a local authority.

(2) The power in subsection (3) is exercisable if the regulator thinks—

(a) that it is necessary to exercise it for the proper management of the authority’s affairs so far as they relate to the provision of social housing (its “social housing affairs”), or

(b) that it is desirable to exercise it in the interests of securing better services for the authority’s tenants.

(3) The regulator may—

(a) appoint one or more advisers to assist the authority in relation to its social housing affairs (or a particular aspect of those affairs), or

(b) require the authority to appoint one or more advisers for that purpose.

(4) Appointment shall be on terms and conditions (including as to remuneration) specified in, or determined in accordance with, the appointment or requirement.

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

(5) A requirement under subsection (3)(b) may specify a process which the authority is required to implement for selecting and appointing advisers.

(6) The authority must cooperate with any advisers appointed by virtue of this section.”

71. In section 253 (transfer of land)—

(a) in subsection (1)(a) and (b), for “registered provider” substitute “private registered provider”,

(b) in subsection (2)(b), for “registered provider” substitute “private registered provider”, and

(c) accordingly, in the heading, insert “by private registered provider” at the end.

72. In the italic heading above section 256, insert “by non-profit registered providers” at the end.

73. In the italic heading above section 259, insert “of non-profit registered providers” at the end.

74. After section 269 insert—

*“Censure of local authority employees*

**269A Local authorities: censure during or following inquiry**

(1) The regulator may give a censure notice to a local authority if—

(a) an inquiry under section 206 is in progress in respect of the authority, and

(b) either of the following cases applies.

(2) Case 1 applies if the regulator has reasonable grounds for believing—

(a) that the affairs of the authority have been mismanaged, and

(b) that the interests of tenants of the authority, or its assets, require protection.

(3) Case 2 applies if as a result of an inquirer’s interim report under section 207 the regulator is satisfied that the affairs of the authority have been mismanaged.

(4) The regulator may also give a censure notice to a local authority if, as a result of an inquiry under section 206, the regulator is satisfied that the affairs of the authority have been mismanaged.

(5) A censure notice is a notice identifying an employee or agent of the authority who the regulator thinks has contributed to the failure or mismanagement.

(6) The notice must include the regulator’s reasons.

(7) The regulator shall send a copy of the notice to the employee or agent concerned.

(8) No more than one employee or agent may be identified in a censure notice (but this does not prevent several notices being given in respect of the same failure or mismanagement).

(9) Members of local authorities may not be identified in censure notices.

**269B Response to censure notice**

(1) A local authority to whom a censure notice is given under section 269A must respond to the regulator in writing within 28 days of receipt of the notice.

(2) The response must—

(a) explain what action (if any) the authority has taken or proposes to take in relation to the employee or agent,

- (b) explain why the authority does not think the employee or agent has contributed to the failure or mismanagement, or
- (c) explain why the authority does not think its affairs have been mismanaged.”