



**OFFICE OF THE  
DEPUTY PRIME MINISTER**

# **Housing Bill – Consultation on draft legislation**





# Housing Bill – Consultation on draft legislation

Presented to Parliament by  
the Deputy Prime Minister and First Secretary of State  
By Command of Her Majesty  
March 2003

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# Ministerial Foreword

Four-fifths of households in England and Wales live in the private sector, whether renting or owning their own homes. Responsibility for these homes must rest first and foremost with the homeowner or the landlord, but Government recognises it has to ensure that those in the private sector, as much as those in social housing, have the opportunity of a decent home. This means taking action against unacceptably low housing standards across the board, ensuring sufficient supply of affordable homes, and ensuring access to home ownership in sustainable communities.

We have made manifesto commitments to bring in mandatory licensing of houses in multiple occupation and to improve the process of home buying and selling. We have also this year set out our action programme for sustainable communities in England, and primary legislation is needed to complete the framework for delivering it.

The publication of this draft Housing Bill therefore constitutes a crucial step in fulfilling our commitments. It sets out specific legislation in five main areas:

- replacing the existing housing fitness standard with the evidence-based Housing Health and Safety Rating System (HHSRS) as a more effective basis for enforcement against unacceptable housing conditions;
- improving the controls on Houses in Multiple Occupation (HMOs), including a mandatory national licensing scheme, to tackle poor physical and management standards;
- giving local authorities powers to license all landlords in areas of low housing demand or similar areas where the growth and poor management of the private rented sector frustrates efforts to create sustainable communities;
- requiring anyone marketing a home to assemble a home information pack, so that the information needed by buyers and sellers is available when the property is marketed, and uncertainty and abortive costs are reduced;
- modernising the Right to Buy scheme by tackling profiteering and emphasising purchasers' responsibilities so that it contributes more effectively to the supply of affordable housing.

There are additionally clauses introducing a new office of Social Housing Ombudsman for Wales to investigate complaints against registered social landlords in Wales. The office will be held by a Local Commissioner for Administration in Wales.

We will also introduce a proposal to give local authority landlords the flexibility to continue introductory tenancies by up to six months, adding to the armoury of measures to tackle anti-social behaviour by tenants.

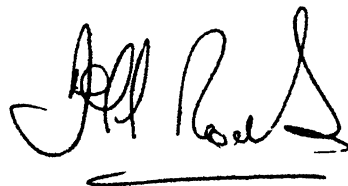
The draft Bill is accompanied by explanatory notes and draft Regulatory Impact Assessments of each main element. Our approach to legislation is informed by extensive research and earlier consultation exercises: on the home information pack (described then as the seller's pack) in 1998; on HMO licensing in 1999, and on the HHSRS and selective licensing of landlords in 2001. The draft Bill sets out in detail how the Government now intends to proceed on each of these, and in the case of Right to Buy, where the need to tackle abuses is pressing, provides the opportunity for Government to consult on its preferred approach in advance of legislation being introduced in Parliament.

Alongside the draft Bill we have put forward some alternative approaches to particular issues on home information packs, and on the licensing and HHSRS regimes, on which comments are sought.

We are publishing at the same time as this draft Bill two further consultation papers on the home information pack, covering its contents and its applicability in areas of lowest housing demand.

There will also be separate consultations on possible changes to the powers of the Housing Corporation and National Assembly for Wales to regulate registered social landlords and on proposals for Housing Benefit sanctions for anti-social tenants.

This package as a whole ensures that we fully test out our proposals before we bring a Bill before Parliament. The deadline for responding is 9 June 2003. Please take this opportunity to help shape the legislation needed to ensure our shared objectives across housing are realised.



**JEFF ROOKER**  
Minister of State, Office of the  
Deputy Prime Minister



**EDWINA HART**  
Minister for Finance, Local Government  
and Communities, National Assembly  
for Wales



# SECTION 1: CONSULTATION PAPER

## Introduction

1. The purpose of this consultation exercise is to seek opinions on the draft Housing Bill, and on a number of specific issues set out in this section.
2. We have already consulted on four of the major elements of this draft bill: the replacement of the housing fitness standard with a system for calculating the seriousness of hazards (the 'Housing Health and Safety Rating System'); the licensing of Houses in Multiple Occupation and further selective licensing of landlords; and home information packs. The Right to Buy changes flow from responses to the consultation on the Housing Green Paper and from representations and suggestions from housing stakeholders, although there has been no separate consultation on these specific changes.
3. We are keen to continue consulting and working with stakeholders to ensure that the reform to the legislative framework for housing facilitates the successful delivery of sustainable communities.
4. We have included draft Regulatory Impact Assessments for each of the main elements of the draft Bill. These will be updated during the consultation, and will take account of responses.
5. Government will be carrying out separate consultation in parallel on:
  - the contents of the home information pack and its application to low-value homes in areas of housing low demand;
  - some relatively minor amendments to the powers of the Housing Corporation and National Assembly for Wales to regulate registered social landlords; and
  - proposals for Housing Benefit sanctions for anti-social tenants.
6. The ODPM Select Committee will carry out Parliamentary scrutiny in parallel with this public consultation.

## Territorial extent

7. With one exception (the creation of the Social Housing Ombudsman in Wales) the draft Bill applies to both England and Wales. Policy on these matters has been developed in close consultation with the National Assembly for Wales.

## European Convention on Human Rights

8. The Secretary of State expects to be able to sign a statement of compatibility with the ECHR.

## How to respond

9. The Government invites responses to the specific questions set out in this section. You may also comment on any other issue raised in the draft Bill or the Regulatory Impact Assessments. Where relevant, responses should also be copied to the Welsh Assembly Government. It would be useful if you could indicate in your response if you are replying as an individual or representing an organisation.
10. A list of the organisations that have been consulted is attached at Annex C. This list is not exhaustive and comments from other individuals or bodies are welcomed.
11. This consultation document can be found at [www.housing.odpm.gov.uk](http://www.housing.odpm.gov.uk). Further hard copies can be obtained, free of charge, from:
12. If you have any questions about this publication, please contact 020 7944 3149 or e-mail [draft.HousingBill@odpm.gsi.gov.uk](mailto:draft.HousingBill@odpm.gsi.gov.uk) or on Welsh issues 029 2082 5323 or [housinginternet@wales.gsi.gov.uk](mailto:housinginternet@wales.gsi.gov.uk).
13. Please comment by **Monday 9 June 2003**. Unless confidentiality is requested, we will assume that responses can be made available to others, including the ODPM Select Committee. Corporate confidentiality clauses automatically attached to outgoing e-mails will not be taken into account.
14. We welcome responses submitted electronically. Please send responses by e-mail to [draft.HousingBill@odpm.gsi.gov.uk](mailto:draft.HousingBill@odpm.gsi.gov.uk) and, where appropriate, to [housinginternet@wales.gsi.gov.uk](mailto:housinginternet@wales.gsi.gov.uk).
15. If you are not able to respond by e-mail, please send your response to:

Housing Bill Management Team  
2/H9 Eland House  
Bressenden Place  
London SW1E 5DU

Or by fax to: 020 7944 3408

Housing Directorate  
Government Buildings  
Cathays Park  
Cardiff  
CF10 3 NQ  
or by fax to: 029 2082 6989

The consultation paper follows the criteria laid down in the Cabinet office's *Code of Practice on written consultations* which is included at Annex B.

Any comments or complaints about the consultation process should be addressed to Siobhan Benita, Office of the Deputy Prime Minister (ODPM), Corporate Business and Delivery Division, 3/17, 26 Whitehall, London, SW1A 2WH. [Siobhan.Benita@odpm-dft.gsi.gov.uk](mailto:Siobhan.Benita@odpm-dft.gsi.gov.uk).

# Summary

What is being consulted on and why are these changes needed?	<i>These proposals relate to:</i>	Relevant location
	Replacing the Housing Fitness Standard with the evidence-based Housing Health and Safety Rating system (HHSRS) as a more effective basis for enforcement against unacceptable housing conditions.	<b>Part 1</b>
	Improving the controls on Houses in Multiple Occupation (HMOs), including a national mandatory licensing scheme to tackle poor physical and management conditions.	<b>Parts 2 and 4</b>
	Giving local authorities the power to licence private landlords in areas of low demand housing or other areas where there is a significant impact on the wider community arising from the poor management of properties in the private rented sector.	<b>Parts 3 and 4</b>
	Making home buying and selling more transparent by requiring anyone selling a home to assemble a home information pack. This will increase certainty, speed up the process and cut down on waste.	<b>Part 5</b>
	Changes to the Right to Buy scheme to tackle its impact on the availability of affordable housing and to tackle profiteering.	<b>Part 6</b>
	Creation of a Social Housing Ombudsman for Wales to investigate complaints against registered social landlords in Wales. This will provide an independent, impartial system for dealing with complaints.	<b>Part 6</b>
Whom will these proposals affect?	The move from the fitness standard to HHSRS will affect owners and tenants who own or occupy poor quality housing.	<b>Part 1</b>
	Licensing of private landlords will affect owners, managers and tenants of HMOs subject to the licensing regime. All local authorities will license larger, higher risk properties. There will also be a discretionary power to license smaller classes or property where they pose a particular problem in their area.	<b>Parts 2 and 4</b>
	Selective licensing of private landlords will affect owners, managers and tenants of properties where the scheme applies.	<b>Parts 3 and 4</b>

	<p>A statutory duty to provide a home information pack would affect most of the professional groups involved in the home buying and selling process. The new legal duty (and associated enforcement regime) will affect estate agents, solicitors acting as estate agents, house builders and any other person or company marketing the sale or transfer of residential property in England and Wales. There will be a consequential affect on the surveying profession, conveyancers, mortgage lenders, local authorities and companies providing property-related information.</p>	<b>Part 5</b>
	<p>The changes to the Right to Buy scheme will affect people who buy their home under this scheme and then wish to resell it quickly, and companies that encourage them to do so for their own financial advantage.</p>	<b>Part 6</b>
	<p>The creation of a Social Housing Ombudsman for Wales will affect tenants and other individuals who wish to make a complaint against registered social landlords in Wales.</p>	<b>Part 6</b>
<b>What will be the financial impact of the changes?</b>	<p>Regulatory Impact Assessments for each of the main parts of the draft Bill are included in Section 4. These will be updated during the consultation process.</p> <p>An RIA is not required for the Social Housing Ombudsman for Wales.</p>	<b>Section 4</b>
<b>How will these proposals be taken forward, and when will they be implemented?</b>	<p>Proposals will be taken forward through the Housing Bill when legislative time allows.</p>	<b>Section 4</b>
<b>Consultation</b>	<p>The consultation period will be for 10 weeks rather than the normal 12 weeks (see Annex B). This is because we have already consulted on four of the main elements of the draft Bill. The Right to Buy changes flow from responses to the consultation on the Housing Green Paper and from many subsequent representations and suggestions from housing stakeholders (especially landlords), although there has been no consultation on these specific changes.</p>	<b>Section 1</b>

# Housing Conditions

## (Part 1 of the draft Bill)

### Background

1. There are a number of specific points in Part 1 of the draft Bill where alternative approaches could be taken. This section sets out specific questions on which responses are welcome.
2. Part 1 of the draft Bill replaces the housing fitness standard on which intervention to improve housing conditions in England and Wales is based and amends the enforcement provisions set out in the Housing Act 1985. It provides the relevant Minister (the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales) with a power to prescribe by order a method for calculating the seriousness of hazards. That method, the Housing Health and Safety Rating System (HHSRS), enables a hazard to be judged according to the risk of harm or potential harm it may cause to potential or actual occupants of the building. In addition, hazards will be prescribed as either category 1 or category 2 hazards depending on the seriousness of the hazard as calculated under the prescribed method.
3. These reforms are intended to tailor intervention by the Local Housing Authority (LHA) to the severity of the health and safety hazards in the home. This will replace the current list of standards in the 1985 Act against which fitness is judged since these may, in practice, bear no clear relationship to the hazards in a property.
4. The Government first consulted on the replacement of the current housing fitness standard in February 1998<sup>1</sup>. This exercise produced a generally favourable response to the key proposal that work be carried out to develop a rating approach. Two reports on the development of HHSRS and accompanying technical guidance (The Guidance ‘Version 1’) were published in July 2000<sup>2</sup>. Finally, in March 2001 the Government published a further consultation paper, *Housing Health and Safety – Replacement of the Housing Fitness Standard by the Housing Health and Safety Rating System*, which set out the legal framework appropriate to a rating system. ‘Version 2’ of the HHSRS technical guidance is expected by the end of 2003.

1 Housing Fitness Standard: Consultation Paper, DETR February 1998

2 Development of the Housing Health and Safety Rating System DETR July 2000 ISBN 1 85112 404 7, price £10. Housing Health and Safety Rating System The Guidance (Version 1), DETR July 2000 ISBN 1 85112 405 5, price £18

# Proposals

## **SPECIAL CIRCUMSTANCES IN WHICH A DUTY TO TAKE ACTION SHOULD BE DISAPPLIED OR REPLACED (CLAUSE 3)**

5. Clause 3 identifies the ‘mandatory courses of action’ open to an LHA where it is under a duty to act as the result of the presence of a category 1 hazard in a dwelling-house or house in multiple occupation. An LHA is required to take the course of action that it considers the best in relation to the hazard concerned.
6. The draft Bill provides delegated powers whereby the relevant Minister can, by order,
  - (i) specify circumstances where there will be no duty or power to act in respect of a category 1 hazard; and
  - (ii) specify circumstances where the duty to act will not apply and instead the LHA will have discretion not to act where it decides not to do so in the light of statutory guidance. The relevant powers are set out in the following clauses:
    - Clause 5(2) and (3) in relation to the duty to serve an improvement notice;
    - Clause 30(3) and (4) in relation to the duty to make a prohibition order;
    - Clause 53(2) and (3) in relation to the duty to serve a mandatory warning notice; and
    - A new section 265(1B) and (1C) of the 1985 Act, substituted by clause 55, in relation to the duty to make a demolition order.
7. There are no corresponding provisions in respect of clearance areas because, by virtue of section 289 of the 1985 Act as amended by clause 56, the presence of a category 1 hazard need not be the sole reason for declaring a clearance area.
8. The Government believes there may be circumstances where it would not be appropriate for the LHA to have any discretion or power to act in relation to a category 1 hazard. Such circumstances are likely to be rare, but we are of the view that there may be cases where this will arise.

**Consultees are invited to give examples of the circumstances in respect of which such a power might be exercised.**

9. In addition, the Government is of the view that there may be a need to provide the LHA with a discretion (as opposed to a duty) to act in certain circumstances. We expect these circumstances to be very limited, since clause 3 already allows LHAs to consider that a mandatory warning notice under clause 53 is the best response to a category 1 hazard.

**Consultees are invited to comment on the need for these order-making powers, and examples of the circumstances which it would be appropriate for the relevant Minister to specify.**

## **RESTRICTIONS ON THE USE OF DEMOLITION ORDERS AND CLEARANCE AREAS IN RESPONSE TO HAZARDS**

10. As described above, the draft Bill prescribes the courses of action open to LHAs needing to deal with category 1 hazards. In addition, clauses 6 and 31 enable LHAs to serve improvement notices and make prohibition orders to deal with category 2 hazards. However, the Government believes that progressively stiffer tests are necessary before demolition or clearance, which are more serious steps, can be required.

### **Demolition orders**

11. The Government recognises that the presence of a category 2 hazard will rarely justify a demolition order, and clause 55 therefore limits the use of demolition orders to premises containing category 1 hazards. However, section 265 (1E) and (1F) of the 1985 Act, substituted by clause 55, enable the relevant Minister to make an order specifying the circumstances in which an authority may make a demolition order to deal with premises containing one or more category 2 hazards. This recognises that in certain cases, to be prescribed by secondary legislation, an LHA might come to the view that the best response to such premises is demolition, rather than a series of actions targeting the individual hazards.

**Consultees are invited to consider this approach, and the circumstances in which authorities might be given the discretion to make a demolition order in response to category 2 hazards.**

### **Clearance areas**

12. The draft Bill maintains the overall structure of the clearance area provisions in Part 9 of the 1985 Act, which require that the residential properties in the area, unless badly arranged or in badly arranged streets, are unfit before a declaration can be made. The Government believes that the presence of category 2 hazards is an insufficient test for this purpose, and clause 56 of the draft Bill therefore requires the presence of category 1 hazards in place of the previous test of unfitness.

**Consultees are invited to give their views on this approach.**

## **REPEAL OF THE OBSTRUCTIVE BUILDINGS PROVISIONS**

13. Sections 283-288 of the 1985 Act contain self-contained provisions for the demolition of buildings which, by virtue only of their contact with or proximity to other buildings, are dangerous or injurious to health. The Government is inclined to the view that these provisions can be repealed, on the grounds that the provisions in the draft Bill, and the powers in Part 3 of the Environmental Protection Act 1990, provide adequate powers for local LHAs.

**Consultees are invited to make representations, supported by evidence of their recent use, that the powers in sections 283-288 need to be retained.**



## **REPORTS BY LOCAL HOUSING AUTHORITY (LHA) OFFICERS**

14. Section 606 of the 1985 Act requires LHA officers to report unfit properties and potential clearance areas to the LHA in writing. It also requires officers to carry out an inspection in response to a complaint from a justice of the peace, or a parish or community council, that a property is unfit or that an area should be dealt with as a clearance area, and to report the outcome of the inspection.
15. The draft Bill repeals s606, which places no duty on an authority to act upon a complaint and seems to add very little to the ability of LHAs to tackle housing conditions. Repeal would remove some power from justices of the peace and parish councils, putting them on the same footing as any other complainant. But modern administrative law requires authorities to deal reasonably with all complaints, and it seems therefore that the current section 606 is not necessary.

**The Government invites views on the proposed repeal.**

# Licensing of Houses in Multiple Occupation

## (Parts 2 and 4 of the draft Bill)

### Background

1. Parts 2 and 4 of the draft Bill set out provisions for a mandatory licensing scheme for high-risk HMOs for example three storey houses occupied by five persons. It also provides discretionary powers to license other categories of HMOs and privately rented two-storey houses and additional powers to deal with individual problematic HMOs outside licensing.
2. In March 1999 the Government published a consultation paper *Licensing of Houses in Multiple Occupation – England*. A parallel paper was issued in Wales. These consultation papers proposed the introduction of a compulsory licensing scheme.
3. Its aim was that HMOs should provide a safe and acceptable, if basic, form of affordable accommodation for their mainly young or socially or economically disadvantaged occupants. It was considered that operators of HMOs would also benefit from a simpler, more consistent, risk-based control regime.
4. The paper noted that although LHAs had a wide range of powers they could choose to use to control standards in HMOs, these powers had not always been used fully or effectively. Also the existing legislation, devised over a number of years, needed updating. Some of its provisions were inflexible in their detailed prescriptive requirements. Other provisions were ambiguous – the definition of HMO had been the subject of much litigation (e.g. whether it extended to houses shared by students). The existing control regime used by the LHAs, since it was largely discretionary, had resulted in diverse enforcement levels and standards.

### Proposals

#### **ENFORCEMENT POWERS IN RESPECT OF LICENSABLE HMOs THAT ARE NOT SUBJECT TO THE LICENSING REGIME IN PART 2 OF THE BILL**

5. Clause 96(6) allows an LHA to apply to a county court for authority to make an Interim Management Order (IMO) for a problematic individual HMO that is not subject to the licensing regime in Part 2 of the draft Bill. For example, a two-storey HMO with 5 or more people in an area where no additional licensing scheme exists. The court needs to be satisfied that it is necessary to make the order to protect the health, safety and welfare

of the residents in the HMO or persons occupying or owning property in the vicinity, before it can authorise the making of the IMO.

6. The effect of an IMO is to transfer the management of the HMO to the LHA for a maximum period of twelve months to enable it to tackle the problems that led to the making of the order. When the IMO ends, the LHA must either return the property to the management of the landlord or make a Final Management Order.
7. The Government believes that such a power should only be used, in respect of an HMO which is not subject to licensing under Part 2, where there has been a serious or continuous fault in the management arrangements that impacts upon the residents (or others) and that cannot be resolved satisfactorily by other means. For example, through the management regulations or the approved code of practice for HMO management.

**The Government invites views on whether:**

- **A power should be available in the Bill to deal with badly managed HMOs, outside the licensing regime, through the making of IMOs;**
- **The scope of the power is appropriate;**
- **The local authority should be required to apply to a county court in order to exercise the power in respect of individual problematic HMOs not required to be licensed under Part 2;**
- **The Secretary of State in England and the National Assembly for Wales in Wales should issue statutory guidance about the circumstances in which this power can be used.**

### **THE COUNTY COURT'S POWERS TO DETERMINE LONG LEASES WHERE THE LEASEHOLDER OWNS AN HMO THAT IS SUBJECT TO ENFORCEMENT ACTION**

8. Section 391 of the Housing Act 1985 allows a lessor or lessee to apply to a court to determine a lease where the HMO is subject to a control order under section 382.
9. This means that where an HMO subject to the control order is held on a long lease, the court can be asked to revoke the lease and by doing so transfer the management of the HMO to the freeholder. The leaseholder's interest in the property ceases. This request can be made by the freeholder, another person with a superior interest, or the leaseholder himself. The court must be satisfied that the freeholder is willing to remedy the conditions which gave rise to the making of the order and the LHA intends to revoke the control scheme if the lease is terminated.
10. In the draft Bill a similar provision has not been introduced in connection with the making of Interim or Final Management Orders in Part 4. The Government is not convinced this power has been used extensively in connection with control orders and to that extent considers the section is obsolete.

11. The Government considers there is no need to provide a similar power to that contained in section 391 of the Housing Act 1985, under Part 4 of the Bill. Nevertheless consultees may be aware of circumstances in which this power has been regularly and usefully used.

**The Government invites views on this.**

### **LOCAL AUTHORITY POWER OF ENTRY**

12. Clause 162(3) of the draft Bill is derived from section 395 of the Housing Act 1985. It enables a person authorised by the LHA, without prior notice, to enter a premises to ascertain whether an offence under clause 66 (main HMO licensing offences), clause 87 (main selective licensing offences) or clause 122 (3) (management regulations offences) has been committed.
13. The clause does not require the authorised person to be accompanied by a police officer. An LHA is likely to call for the assistance of the police, if it considers the assistance might be required.

**The Government seeks your view on whether the authorised person should be required to be accompanied at all times by a police officer when exercising the power in this clause.**

# Selective licensing of other residential accommodation

## (Parts 3 and 4 of the draft Bill)

1. Selective licensing will be primarily focused on areas of low housing demand or areas that are likely to fall within that category in England. However, where a compelling case is made, it is proposed that licensing could be applied in other limited areas. In Wales the criteria for selective licensing will be determined by the National Assembly for Wales.
2. Consultation papers issued in England and Wales in October 2001 proposed measures for the selective licensing of private landlords in certain areas.
3. The proposed discretionary powers would allow LHAs to introduce a licensing scheme for private landlords in all or part of their area. Landlords would be required to obtain a licence based on their personal fitness and management standards, including safety checks. This would help LHAs to stop bad, or even criminal, landlords and anti-social tenants from undermining other measures they had in hand to stabilise neighbourhoods that were in decline and subject to rising levels of crime. Better management of rented properties and recognition for responsible landlords would benefit good tenants, responsible landlords and the community as a whole.
4. The paper noted that areas of low housing demand suffered from the linked problems of falling prices and rents, empty properties and, above all, crime and anti-social behaviour. As owner-occupiers fled unpopular and hard to sell properties, the private rented sector could grow by default and exploitative landlords might then seek to operate on a large scale, forcing out responsible tenants and owner-occupiers with the help of anti-social tenants, and contributing to the spiral of decline.
5. The paper looked to licensing complementing a range of tools available to LHAs. The aim would be to ensure that landlords played their part in a comprehensive local strategy to tackle low demand. This additional regulation is justified by the pervasive and acute problems of low demand areas. To keep the focus on better management and exclusion of criminal landlords, unsatisfactory housing would be tackled separately, through the future housing condition regime.

# Appeals on housing conditions and licensing

## (Parts 1-4 of the draft Bill)

1. The draft Bill provides for appeals against actions by LHAs in respect of housing conditions and licensing to be determined by the county court. This reflects the current procedure in the Housing Act 1985.
2. The county courts have a wealth of experience in hearing and determining appeals under the Housing Act 1985.
3. However, there are alternatives to using the county court. In responses to our consultations on licensing, many respondents preferred appeals to be heard by a dedicated tribunal rather than the county court. Some respondents felt that tribunals would offer more certainty, speedier disposition of appeals, more informal proceedings and would be less expensive.
4. The Government believes that one body should be responsible for handling all appeals under Parts 1, 2, 3 and 4. Although possible to have separate regimes, it would be impractical, inefficient and confusing.

**The Government invites views on whether appeals should be determined by: the county court; or by a dedicated tribunal, for example, the Residential Property Tribunal Service in England or the Rent Assessment Panel in Wales. These bodies currently deal with appeals against decisions of the rent officer on fair rent determinations and disputes on leasehold valuation and service charges.**

# Home information packs

## (Part 5 of the draft Bill)

### Background

1. Details of proposals for seller's packs were published for consultation in '*The Key to Easier Home Buying and Selling*' (December 1998) and in chapter four of the Housing Green Paper '*Quality and Choice: A decent home for all*' (April 2000). This policy was confirmed in chapter two of the Housing Policy Statement '*The way forward for housing*' (December 2000). A pilot study in Bristol has examined the practicality of bringing forward essential information about the legal status and condition of the property in a pack at the start of the transaction process. Other research studies have considered the likely impact of such a pack in low value, low demand areas, and on small businesses. A further research project has monitored industry initiatives aimed at improving the home buying and selling process by making more information available at the start of the process.
2. Two complementary consultation papers on home information packs will accompany the draft Bill. The first consultation paper invites views on the documents and information to be included in the home information pack. The second consultation paper seeks views on options for addressing any problems that the proposals for home information packs might cause for sellers of low-value homes in areas of low demand. Responses to these consultation papers will help inform the preparation of regulations on the detailed application of home information packs. These regulations will be laid before Parliament after the Bill has been enacted.

### Proposals

#### **ENFORCEMENT OF THE HOME INFORMATION PACK DUTIES**

3. Clauses 146 and 147 and schedule 7 to the Bill provide for the home information pack obligations to be enforced by means of civil penalties and remedies.
4. Local weights and measures authorities would have primary responsibility for enforcing the home information pack obligations. Trading standards officers would have a wide discretion in determining appropriate action depending on the circumstances of each case. For example, trading standards officers could provide information and assistance to help a person comply with the home information pack obligations rather than taking formal enforcement action. Similarly, they could give a warning. They would also have the power to issue a civil penalty notice. This would be a fixed penalty, the amount of which would be

prescribed by the Secretary of State. Initially, it is envisaged that the amount would be in the region of £150 to £200.

5. Trading standards officers would be able to notify the Office of Fair Trading of any breach by a person acting as estate agent, and would have a duty to do so in cases where a penalty notice was served. This could trigger action by the Office of Fair Trading under the Estate Agents Act 1979 which, ultimately, could result in the person being required to cease trading. The Government is consulting the Law Society about ways of applying these or equivalent enforcement arrangements to solicitors who market homes for sale.
6. In addition, a person who breached the home information pack obligations would be liable to be sued by prospective buyers for recovery of the costs of obtaining documents which should have been provided in the pack but which were not.
7. These civil sanctions replace the criminal sanctions that were originally proposed for enforcement of the pack duties in the former Homes Bill.

**The Government invites views on these civil remedies and penalties as an effective and proportionate means of enforcing the home information pack duties.**

#### **PRE-MARKETING ACTIVITY BY ESTATE AGENTS**

8. Clauses 137 and 139 would place an obligation on a person acting as estate agent to have available a copy of the home information pack before taking any action, with a view to marketing the property, to communicate to any person that the property is, or may become, available for sale. The intention here is to ensure that before any marketing activity and negotiations commence the information provided in the pack should be available.
9. Some concern has been expressed that this could prevent agents from responding to enquiries about whether a property is likely to be coming onto the market. This is not the intention of clauses 137 and 139. We believe that clauses 137 and 139 would not prevent an agent advising an enquirer that instructions had been received to market the property but that marketing, for example providing details of the property and arranging viewings, could not commence until the pack was ready. Such a response by an agent would not, we believe, constitute action ‘with a view to marketing the property’.

**The Government invites views on any circumstances where the requirements of clauses 137 and 139 would risk preventing preliminary non-marketing activity by estate agents.**



# Right to Buy

## (Part 6 of the draft Bill)

1. Under Part V of the Housing Act 1985, secure tenants may buy the homes they rent from their local authority or housing association landlords. They may do so at a discount but, if they resell the property within three years of buying it, they must repay some or all of the discount they received. Rapidly-rising property values in some parts of the country are encouraging early resales, sometimes to companies, putting pressure on the availability of affordable housing in these areas.
2. To address this, the Government has decided to make changes to the Right to Buy scheme (including preserved Right to Buy for Housing Association tenants). It has already lowered by Order the maximum amount of Right to Buy discount for which an individual tenant may qualify in 41 local authority areas. Clauses 153-156 of the Bill continue the process by:
  - extending the qualification period for the Right to Buy from two years to five years
  - extending the period after sale during which landlords may require owners to repay some or all of their discount on early resale, from three years to five years
  - making it clear that landlords have discretion to waive repayment
  - changing repayment to a percentage basis rather than the current flat rate basis.

It is intended that parallel changes will be made to the Right to Acquire scheme.

3. The new Home Ownership Task Force is now examining the range of existing programmes that help people into home ownership, including the Right to Buy.

# Social Housing Ombudsman

## **CREATION OF A SOCIAL HOUSING OMBUDSMAN FOR WALES TO INVESTIGATE COMPLAINTS AGAINST REGISTERED SOCIAL LANDLORDS (RSLs) IN WALES (PART 6 OF THE DRAFT BILL)**

1. The proposal is to make provision for the Commissioner for Local Administration in Wales (CLAW) to also act as the Social Housing Ombudsman for Wales for the purpose of investigating complaints against social landlords in Wales.
2. At present, investigation of complaints against RSLs in Wales is undertaken by the National Assembly for Wales which also regulates RSLs in Wales under the Housing Act 1996. The creation of a Social Housing Ombudsman would provide an independent means of investigating complaints against RSLs.
3. During the consultation process, further consideration will be given to audit and accounts, expenses, consultation with other ombudsmen, disqualification and accounting officer issues relating to the creation of the Social Housing Ombudsman.

# Annex A

## Responses to the consultations on HMO and selective licensing

### Consultation on HMO licensing

1. In March 1999 the Government published a consultation paper *Licensing of Houses in Multiple Occupation – England*. A parallel paper was issued in Wales. These consultation papers proposed the introduction of a compulsory licensing scheme.
2. The paper invited views on the following:
  - Who should be responsible for obtaining an HMO licence?
  - Which premises should be licensed – should a definition of HMO be based on family relationships?
  - What duration licences should be granted for?
  - What physical and management standards should be achieved?
  - What measures should be available where standards are not met?
3. The Department received 579 responses to the consultation paper, and only 7% disagreed with the principle of licensing. Over 200 responses were from LHAs, a quarter were from landlords or organisations representing landlords, and many responses were also received from HMO tenants, fire authorities, professional interest groups and charitable organisations.

Key Issues	Response
Who should be licensed ?	Almost half of respondents (46%) supported the Government proposal that this should be the person managing or the person having control of an HMO.
Which premises should be licensed ?	Strong support (47%) for the Government proposal for a broad definition of HMO with specific exemptions from licensing (landlords split 50:50). Almost half of respondents supported a 'family' based definition with broad support (37%) for exempting tourist accommodation but not B&B accommodation (33%).
Duration of licences?	Generally favoured 5 years renewable for 5 years with scope for provisional or conditional licences to allow works to be carried out.
What standards should be achieved?	Strong agreement on the licensing criteria: physical condition, management competency and that the licensee is 'fit and proper'. Following consultation HHSRS is seen as providing basis for physical conditions. The consultation points to need for new Management Regulations and Approved Code of Management Practice.
Failure to meet standards?	A third of respondents supported stronger penalties and new lesser offences, although landlords were worried about the implications of further powers for local authorities.

### CONSULTATION ON SELECTIVE LICENSING

4. In October 2001, the Government published a consultation paper *Selective Licensing of Private Landlords – England*. A parallel paper was issued in Wales. These proposed measures for the selective licensing of private landlords in certain areas.
5. The paper invited views on the following:
  - Is there is a problem in Low Housing Demand Areas?
  - Is licensing for such areas appropriate to deal with it?
  - Do you agree with the Government’s aims (of landlords meeting minimum management standards and dealing with anti-social tenants)?
  - Are the existing powers adequate?
  - Should the powers proposed focus on landlords not property?
  - Should these powers normally be available only in areas of low demand but with the discretion to license elsewhere to help address serious problems?
  - Should private landlords meet minimum tenancy management standards?
  - Should landlords have to be ‘fit and proper’ persons?

- Should landlords have to deal with tenants' anti-social behaviour?
  - Do you agree with the need for landlord training?
6. The Department received 134 responses to the consultation paper. Of these 24 were from private landlords, agents, landlord associations and property interest groups (18%). Local authorities and their associations accounted for 60 (45%) of the responses, of which 70% (42) were received from those in the North of England and the Midlands. Housing organisations (including registered social landlords) provided 14 responses (10.5%). Tenants, residents and their representatives provided 13 responses (9.5%). Community development projects and groups formed 8 of the respondents (6%). Other professional bodies with an interest in this area e.g. fire authorities, the Institute of Environmental Health Officers, the National Federation of Police Officers etc accounted for 15 responses (11%).
7. Overall 102 (76%) respondents thought that licensing, in some form or another was acceptable. 23 (17%) respondents disagreed with the principle. 9 expressed no opinion.

Key Issues	Response
Is there is a problem in Low Housing Demand Areas?	98% said yes. Landlords said low demand needed to be clearly defined.
Is licensing for such areas appropriate to deal with it?	80% said yes. Some respondents felt voluntary accreditation schemes were preferable.
Do you agree with the Government's aims (of landlords meeting minimum management standards and dealing with anti-social tenants)?	94% said yes. Some respondents felt licensing was not the best way of achieving them.
Are the existing powers adequate?	71% said no. Some local authorities agreed with landlords that they were.
Should the powers proposed focus on landlords not property?	51% said yes. Landlords disagreed and many local authorities favoured some property conditions.
Should these powers normally be available only in areas of low demand, but with the discretion to license elsewhere to help address serious problems?	82% said yes. There was substantial support for flexibility to allow licensing beyond low demand areas where there was a compelling case to do so.
Should private landlords meet minimum tenancy management standards?	96% said yes.
Should landlords have to be 'fit and proper' persons?	90% said yes. There were some concerns about human rights issues and implications for data protection legislation.
Should landlords have to deal with tenants' anti-social behaviour?	81% said yes. Many considered a liability on landlords might be hard to enforce.
Do you agree with the need for landlord training?	94% said yes.

8. The draft Bill provides for a definition of low demand that can be refined by secondary legislation. As for voluntary accreditation schemes the government is strongly supporting their development but accepts that in some areas compulsory measures may be required. The government is, in advance of the Bill, piloting projects in key areas to make better use of existing powers.
9. Although there will be no fitness condition directly attached to selective licensing the Government has developed the proposed Housing Health and Safety Rating System (HHSRS) that is applicable to all housing. Consequently through selective licensing LHAs can expect to become aware of privately rented properties in their area and so may more easily target their enforcement efforts in relation to property condition.
10. The consultation also sought views on the withdrawal of housing benefit from claimants whose landlords were not licensed. 53% of respondents thought this was a good idea, but 47% raised a wide range of concerns, not least if claimants' liability to continue to pay rent was unaffected. The Bill has introduced a provision whereby no rent will be payable if the landlord is unlicensed and consequently there would be no entitlement or need to receive housing benefit.

# Annex B

## Cabinet Office consultation criteria from the Cabinet Office's *Code of Practice on Written Consultations*, November 2000

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

# Annex C

## List of Consultees

All Fire Authorities in England and Wales  
All Local Authorities in England and Wales  
Accreditation Network UK  
Advice, Information and Mediation Services  
Advisory Committee on Consumer Products and the Environment  
Age Concern  
All Wales Chief Officers Panel  
Anchor Trust  
Apex Group  
Association for the Conservation of Energy  
Association of British Insurers  
Association of Building Engineers  
Association of Chief Police Officers  
Association of Consultant Approved Inspectors  
Association of Housing Advisory Services  
Association of London Government  
Association of Residential Letting Agents  
Association of Residential Managing Agents  
Association of Student Residential Accommodation  
British Bankers Association  
British Chamber of Commerce  
British Institute of Architectural Technologists  
British Property Federation  
Building Societies Association  
Carbon Monoxide and Gas Safety Society  
Care and Repair  
Chartered Institute of Building  
Chartered Institute of Environmental Health  
Chartered Institute of Housing  
Chartered Institute of Housing in Wales



Chartered Institution of Building Services Engineers  
Chief and Assistant Chief Fire Officers  
Commission for Local Administration  
Community Practitioners and Health Visitors Association  
Confederation of British Industry  
Construction Industry Council  
Construction Industry Training Board  
Consumers' Association  
Council for Licensed Conveyancers  
Council for Registered Gas Installers  
Council of Mortgage Lenders  
Country Land and Business Association  
District Surveyors Association  
Ecclesiastical Law Association  
Empty Homes Agency  
Energy Saving Trust  
English Tourist Council  
Federation of Authorised Energy Rating Organisations  
Federation of Private Residents Association  
Federation of Small Businesses  
Financial Services Authority  
Fire Brigades Union  
Fire Officers' Association  
Foundations  
General Council of the Bar  
Greater London Authority  
Health and Housing Group  
Help the Aged  
House Builders Federation  
Housing Forum  
Housing Law Practitioners Association  
Improvement and Development Agency  
Independent Surveyors Association  
Institute for Environment and Health  
Institute of Building Control  
Institute of Home Safety

Institute of Legal Executives  
Institute of Maintenance and Building Management  
Institute of Structural Engineers  
Joseph Rowntree Foundation  
Law Centres Federation  
Law Society (of England and Wales)  
Legal Services Commission  
Local Government Association  
Local Government Valuers Association  
National Approved Letting Scheme  
National Association of Citizens Advice Bureaux  
National Association of Empty Property Practitioners  
National Association of Estate Agents  
National Association of Probation Officers  
National Consumer Council  
National Energy Foundation  
National Federation of Residential Landlords  
National HMO Network  
National Home Improvement Council  
National House Building Council  
National Housing and Town Planning Council  
National Housing Federation  
National Union of Students  
NHS Confederation  
Notaries Society  
Ombudsman for Estate Agents  
Orbit Housing Association  
Pathfinder Project Teams  
Peabody Trust  
Police Federation  
Property Litigation Association  
Property Managers Association  
Property Services National Training Organisation  
Registered Social Landlords (Top 200)  
Residential Landlords Association  
Royal Association for Disability and Rehabilitation

Royal Institute of British Architects  
Royal Institution of Chartered Surveyors  
Royal Town Planning Institute  
Scottish Executive  
Shelter  
Small Landlords Association  
Society of Directors of Public Protection (Wales)  
Society of Licensed Conveyancers  
Sovereign Housing Association Limited  
Tenants and Residents Organisations of England  
Tenant Participation Advisory Service  
The Independent Housing Ombudsman  
The Leasehold Enfranchisement Association  
Trades Union Congress  
Traditional Housing Bureau  
UK Association of Letting Agents  
UK Public Health Association  
Universities UK  
Welsh Federation of Housing Associations  
Welsh Local Government Association  
Welsh Tenants Federation

***This is not a definitive list of the organisations and individuals consulted. If there are any organisations or individuals that ought to see a copy of the paper, but are not on the list, please provide us with details. Government Departments and Agencies are also being consulted.***

# SECTION 2: THE DRAFT HOUSING BILL

## Housing Bill

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A  
**B I L L**

TO

Make provision about housing conditions; to regulate houses in multiple occupation and certain other residential accommodation; to make provision for home information packs in connection with the sale of residential properties; to make provision about the right to buy; to make other provision about housing; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

**PART 1**

HOUSING CONDITIONS

**CHAPTER 1**

INTRODUCTORY

*Standards for condition of residential accommodation*

5

**1 Repeal of fitness for human habitation test**

Section 604 of the Housing Act 1985 (c. 68) (test of fitness for human habitation) is omitted.

**2 New standards for condition of residential accommodation**

(1) In this Part –

10

“category 1 hazard” means a hazard of a prescribed description which achieves a numerical score of or above a prescribed amount under a prescribed method for calculating the seriousness of hazards of that description;

“category 2 hazard” means a hazard of a prescribed description which achieves, under a prescribed method for calculating the seriousness of

15

- 
- hazards of that description, a numerical score below the minimum amount prescribed for a category 1 hazard of that description; and
- “hazard” means any risk of harm to the health or safety of an actual or potential occupier of a dwelling-house or house in multiple occupation which arises from a deficiency in the house concerned or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair or otherwise). 5
- (2) The relevant Minister may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur. 10
- (3) In this Act “the relevant Minister” means –
- (a) in relation to England, the Secretary of State; and
  - (b) in relation to Wales, the National Assembly for Wales.
- (4) In this Part – 15
- “dwelling-house” includes any yard, garden, outhouses and appurtenances belonging to the dwelling-house or usually enjoyed with it; and
- “house in multiple occupation” has the meaning given by sections 164 to 170 for the purposes of this Part but also includes any yard, garden, outhouses and appurtenances belonging to the house in multiple occupation or usually enjoyed with it. 20
- (5) In this section –
- “building” includes part of a building;
- “harm” includes temporary harm; 25
- “health” includes mental health; and
- “prescribed” means prescribed by regulations made by the relevant Minister under this section.

*Enforcement of standards: general*

- 3 Category 1 hazards: general duty to take action** 30
- (1) Subsections (2) and (3) apply where a local housing authority is under a duty or has the power to take one or more of the following courses of action (“the mandatory courses of action”) wholly or partly as the result of a category 1 hazard –
- (a) serving an improvement notice under section 5; 35
  - (b) making a prohibition order under section 30;
  - (c) serving a notice under section 53;
  - (d) making a demolition order under subsection (1) or (1A) of section 265 of the Housing Act 1985 (c. 68); and
  - (e) declaring the area in which the premises concerned are situated to be a clearance area in accordance with section 289 of that Act. 40
- (2) Where there is only one mandatory course of action available to the local housing authority in relation to the hazard, the authority shall take that course of action.

- 
- (3) Where more than one mandatory course of action is available to the local housing authority in relation to the hazard, the authority shall take the course of action which it considers to be the best of the mandatory courses of action available to it.
- (4) Where the local housing authority declares the area in which the premises concerned are situated to be a clearance area in accordance with section 289 of the Housing Act 1985 (c. 68) but the premises are excluded by virtue of subsection (2F)(b) of that section of that Act, the authority shall take whichever it considers to be the best of the remaining mandatory courses of action in relation to the hazard concerned. 5  
10
- (5) The taking of one mandatory course of action by a local housing authority does not prejudice its ability or duty to take another mandatory course of action in relation to the same hazard if it considers that the first course of action has not proved satisfactory.
- 4 Guidance about enforcement action 15**
- (1) The relevant Minister may give guidance to local housing authorities about—  
 (a) improvement notices under Chapter 2 of this Part;  
 (b) prohibition orders under Chapter 3 of this Part;  
 (c) notices under section 53 or 54; and  
 (d) Part 9 of the Housing Act 1985 (c. 68) (demolition orders and slum clearance). 20
- (2) Such guidance may, in particular, include guidance as to which course of action to take in the circumstances mentioned in section 3(3).
- (3) A local housing authority shall have regard to such guidance as may from time to time be given under this section. 25
- (4) The relevant Minister may give different guidance for different cases or descriptions of case or different purposes (including different guidance to different descriptions of authority or to authorities in different areas).
- (5) The Secretary of State shall, before giving guidance under this section or revising guidance already given, lay a draft of the proposed guidance or alterations before each House of Parliament. 30
- (6) The Secretary of State shall not give or revise the guidance before the end of the period of 40 days beginning with the day on which the draft is laid before each House of Parliament (or, if copies are laid before each House of Parliament on different days, the later of those days). 35
- (7) The Secretary of State shall not proceed with the proposed guidance or alterations if, within the period of 40 days mentioned in subsection (6), either House resolves that the guidance or alterations be withdrawn.
- (8) Subsection (7) is without prejudice to the possibility of laying a further draft of the guidance or alterations before each House of Parliament. 40
- (9) In calculating the period of 40 days mentioned in subsection (6), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

## CHAPTER 2

### IMPROVEMENT NOTICES

#### *Improvement notices*

- 5 Duty to serve improvement notices in relation to category 1 hazards**
- (1) The local housing authority shall, subject to subsections (2) and (3) and section 3, serve an improvement notice if it is satisfied – 5
- (a) that a category 1 hazard exists on relevant residential premises; and
- (b) that there are no special circumstances in the light of which it is appropriate not to serve a notice.
- (2) Subsection (1) does not apply in such circumstances (if any) as are specified or described in an order made by the relevant Minister. 10
- (3) Subsection (1) does not apply if –
- (a) the circumstances are circumstances which are specified or described in an order made by the relevant Minister as circumstances in which the local housing authority should have a discretion not to serve a notice under this section; and 15
- (b) the local housing authority decides, in the light of any guidance given under section 4, not to serve a notice under this section.
- (4) An improvement notice under this section shall require the person on whom the notice is served to take such remedial action as is specified in the notice in relation to the hazard. 20
- (5) The remedial action –
- (a) shall, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but
- (b) may extend beyond such action. 25
- (6) The same improvement notice under this section may relate to more than one category 1 hazard on the same premises.
- (7) This section is subject to section 11.
- (8) In this Chapter –
- “common parts”, in relation to a building or part of a building which contains flats, means – 30
- (a) the structure and exterior of that building or part;
- (b) any internal parts of it which are common facilities; and
- (c) any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it which are common facilities; 35
- “flat” means –
- (a) a dwelling-house which is not a house; or
- (b) a part of a building which is a house in multiple occupation;
- “relevant residential premises” means a dwelling-house, a house in multiple occupation or the common parts of a building or part of a building which contains flats; and 40

“remedial action” means action (whether in the form of the carrying out of works or otherwise) which, in the opinion of the local housing authority, will remedy or mitigate a hazard;  
 and section 183 of the Housing Act 1985 (c. 68) shall have effect to determine whether a dwelling-house is a house.

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## 6 Power to serve improvement notices in relation to category 2 hazards

- (1) The local housing authority may serve an improvement notice if it is satisfied that a category 2 hazard exists on relevant residential premises.
- (2) An improvement notice under this section shall require the person on whom the notice is served to take such remedial action as is specified in the notice in relation to the hazard. 10
- (3) The same improvement notice under this section may relate to more than one category 2 hazard on the same premises.
- (4) A notice under section 5 and this section in relation to the same premises may be combined in the same notice. 15
- (5) This section is subject to section 11.

## 7 Contents of improvement notices

- (1) An improvement notice shall, in relation to a hazard, specify –
  - (a) whether the notice is served under section 5 or 6;
  - (b) the hazard concerned; 20
  - (c) whether the purpose of the notice is to remove or mitigate the hazard;
  - (d) the remedial action to be undertaken in relation to the hazard;
  - (e) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed; and
  - (f) the main details of the right of the person on whom the notice is served to appeal. 25
- (2) An improvement notice may, in relation to a hazard, specify the date by which the remedial action is to be completed or the dates by which each part of it is to be completed.
- (3) No improvement notice shall require any remedial action to be started earlier than the twenty-eighth day after the notice is served. 30

### *Service of improvement notices*

## 8 Service of improvement notices: dwelling-houses

- (1) An improvement notice shall, in the case of a dwelling-house, be served as follows. 35
- (2) The local housing authority shall, in the case of a dwelling-house which is licensed under Part 3, serve the improvement notice on the holder of the licence.
- (3) The local housing authority shall, in the case of a dwelling-house which is not licensed under Part 3 and is not a flat, serve the improvement notice on the person having control of the dwelling-house. 40



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- (4) The local housing authority shall, in the case of a dwelling-house which is not licensed under Part 3 and is a flat, serve the improvement notice on the relevant person.
- (5) In subsection (4) “the relevant person”, in relation to a dwelling-house which is a flat, means a person who is an owner of the flat and who, in the opinion of the local housing authority, ought to take the action specified in the improvement notice. 5
- (6) The local housing authority shall, in addition to serving an improvement notice as mentioned in subsection (2), (3) or (4), serve a copy of the notice on any other person who is, to its knowledge, a person having a relevant interest in the dwelling-house concerned. 10
- (7) In subsection (6) “a relevant interest” means an interest as freeholder, mortgagee or lessee.

## 9 Service of improvement notices: houses in multiple occupation

- (1) An improvement notice shall, in the case of a house in multiple occupation, be served as follows. 15
- (2) The local housing authority shall, in the case of a house in multiple occupation which is licensed under Part 2 or 3, serve the improvement notice on the holder of the licence.
- (3) The local housing authority shall, in the case of a house in multiple occupation which is not licensed under Part 2 or 3 and is not a flat, serve the improvement notice on the person having control of the house. 20
- (4) The local housing authority shall, in the case of a house in multiple occupation which is not licensed under Part 2 or 3 and is a flat, serve the improvement notice on the relevant person. 25
- (5) In subsection (4) “the relevant person”, in relation to a house in multiple occupation which is a flat, means a person who is an owner of the flat and who, in the opinion of the local housing authority, ought to take the action specified in the improvement notice.
- (6) The local housing authority may, in the case of a house in multiple occupation which is not licensed under Part 2 or 3, serve the improvement notice on the person managing the premises concerned instead of as required by subsection (3) or (4). 30
- (7) The local housing authority shall, in addition to serving an improvement notice in accordance with subsections (2) to (6), serve a copy of the notice on any other person who, to its knowledge, is a person having a relevant interest in the house in multiple occupation concerned. 35
- (8) In subsection (7) “a relevant interest” means an interest as freeholder, mortgagee or lessee.

## 10 Service of improvement notices: common parts 40

- (1) An improvement notice shall, in the case of any common parts of a building or part of a building which contains flats, be served as follows.

- (2) The local housing authority shall serve the improvement notice on the relevant person.
- (3) In subsection (2) “the relevant person” means a person who –
- (a) is an owner of the common parts concerned; and
  - (b) in the opinion of the local housing authority, ought to take the action specified in the improvement notice. 5
- (4) The local housing authority shall, in addition to serving an improvement notice as mentioned in subsection (2), serve a copy of the notice on any other person who, to its knowledge, is a person having a relevant interest in the common parts concerned. 10
- (5) In this section “a relevant interest” means an interest as freeholder, mortgagee or lessee.
- (6) For the purposes of this section a person is an owner of any common parts of a building or part of a building which contains flats (“a block of flats”) or has a relevant interest in such common parts if he is an owner of, or has a relevant interest in, the block of flats or the particular part of the block of flats which comprises the common parts concerned. 15

#### *Operation of improvement notices*

### **11 Suspension of improvement notices**

- (1) The operation of an improvement notice may be suspended until such time, or the occurrence of such event, as may be specified in the notice. 20
- (2) The event may, in particular, be a relevant release by the local housing authority of an undertaking entered into between that authority and the person on whom the notice is served.
- (3) In subsection (2) a “relevant release” means a release which takes place in accordance with the terms of the undertaking and as a result of an act or omission by the person on whom the notice is served which the local housing authority considers to be a breach of the undertaking. 25

### **12 Operation of certain improvement notices**

- (1) An improvement notice whose operation is not suspended becomes operative, if no appeal is brought, at the end of the period of 21 days beginning with the date of service of the notice. 30
- (2) An improvement notice whose operation is suspended becomes operative, if no appeal is brought, when both the period of 21 days beginning with the date of service of the notice has ended and the suspension has ceased to have effect. 35
- (3) Subsection (4) applies where no appeal is brought against an improvement notice within the period of 21 days beginning with the date of service of the notice.
- (4) The notice is final and conclusive as to matters which could have been raised on an appeal. 40

### 13 Variation and revocation of improvement notices

- (1) The local housing authority may vary an improvement notice which is suspended so as to alter the time or events by reference to which the suspension is to come to an end.
- (2) The local housing authority shall revoke an improvement notice served under section 5 in relation to a category 1 hazard if it is satisfied – 5
- (a) that the hazard does not exist on the relevant residential premises concerned;
  - (b) that there are special circumstances in the light of which it is appropriate to revoke the notice; 10
  - (c) that serving a notice under section 5 in relation to the hazard is neither the only mandatory course of action available to it nor the best of the mandatory courses of action available to it (as provided for by section 3); or
  - (d) that – 15
    - (i) at the time of serving the improvement notice, the circumstances were circumstances specified or described in an order made by the relevant Minister as circumstances in which the local housing authority should have a discretion not to serve a notice under section 5; and 20
    - (ii) in the light of any guidance given under section 4, it is appropriate to revoke the notice.
- (3) The local housing authority shall revoke an improvement notice served under section 6 in relation to a category 2 hazard if it is satisfied that the hazard does not exist on the relevant residential premises concerned. 25
- (4) The local housing authority may at any time revoke an improvement notice served under section 6 in relation to a category 2 hazard if it considers that it is appropriate to do so.
- (5) Where an improvement notice relates to a combination of category 1 and category 2 hazards or more than one category 1 or category 2 hazard, the duty under subsection (2) or (3), and the power under subsection (4), to revoke the notice is a duty or (as the case may be) power – 30
- (a) to revoke the notice so far as it relates to any hazard in relation to which any condition mentioned in that subsection is satisfied; and
  - (b) so far as necessary, to vary the rest of the notice accordingly. 35
- (6) A variation or revocation under this section shall come into force when made if it is agreed by the person on whom the notice under subsection (1) of section 14 is to be served and any person on whom a copy of the notice is to be served under subsection (5) of that section.
- (7) Subject to that, a variation or revocation under this section shall not come into force until – 40
- (a) if no appeal is made against it, the period of 21 days beginning with the date of service of the notice under section 14; and
  - (b) if an appeal is made against it within that period – 45
    - (i) a decision on the appeal confirming the variation or revocation (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought; or

- (ii) if a further appeal to the Court of Appeal is brought, a final decision is given confirming the variation or revocation (with or without variation).
- (8) For the purposes of subsection (7)(b) the withdrawal of an appeal has the same effect as a decision confirming the variation or revocation appealed against. 5

**14 Procedural requirements in relation to variations and revocations**

- (1) The local housing authority shall serve notice of any variation or revocation under section 13.
- (2) The notice must inform the person on whom it is served of –
  - (a) the variation or revocation; 10
  - (b) the reasons for it; and
  - (c) the main details of the rights of appeal.
- (3) The notice shall, subject to subsections (4) and (5), be treated as if it were an improvement notice for the purposes of determining the persons on whom it or a copy of it is to be served. 15
- (4) Subsection (5) applies where the local housing authority has decided to serve the notice on a different person from the person on whom the original improvement notice was served.
- (5) The local housing authority shall also serve a copy of the notice on the person on whom the original notice was served if he is still a person on whom an improvement notice could be served in relation to the premises. 20

*Appeals and reviews*

**15 Appeals against improvement notices etc.**

- (1) A person aggrieved by an improvement notice may, within the period of 21 days beginning with the date of service of the notice, appeal to the county court. 25
- (2) On an appeal the court may by order confirm, quash or vary the notice.
- (3) If an appeal is brought an improvement notice which is not suspended does not become operative until –
  - (a) a decision on the appeal confirming the notice (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought; or 30
  - (b) if a further appeal to the Court of Appeal is brought, a final decision is given confirming the notice (with or without variation). 35
- (4) If an appeal is brought an improvement notice which is suspended does not become operative until –
  - (a) paragraph (a) or (b) of subsection (3) applies; and
  - (b) the suspension ceases to have effect.
- (5) For the purposes of subsections (3) and (4) the withdrawal of an appeal has the same effect as a decision confirming the notice appealed against. 40

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*Housing Bill*  
*Part 1 – Housing conditions*  
*Chapter 2 – Improvement notices*

- (6) Schedule 1 (which makes provision about certain grounds of appeal under this section) shall have effect.

## 16 Appeals against variations or revocations of improvement notices

- (1) A person aggrieved by the variation or revocation of an improvement notice under section 13 may appeal to the county court. 5
- (2) An appeal must be made within the period of 21 days beginning with the date of service of the notice under section 14.
- (3) On an appeal the court may by order confirm, quash or vary the variation or revocation.

## 17 Review of improvement notices

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- (1) The local housing authority may at any time review an improvement notice whose operation is suspended.
- (2) The local housing authority shall review an improvement notice whose operation is suspended not later than one year after the date of service of the notice and at subsequent intervals of not more than one year. 15
- (3) A review under this section may, in particular, consider whether an improvement notice should be varied or revoked.

### *Main offences*

## 18 Offence of failing to comply with improvement notice

- (1) A person on whom an improvement notice has been served commits an offence if, without reasonable excuse, he fails to comply with the notice. 20
- (2) For the purposes of this Chapter compliance with an improvement notice whose operation is not suspended means, in relation to each hazard, beginning and completing the action specified in the notice—
- (a) if no appeal is brought against the notice, not later than such date or within such period as is specified in the notice; 25
- (b) if an appeal is brought against the notice and is not withdrawn, not later than such date and within such period as may be fixed by the court determining the appeal; and
- (c) if an appeal brought against the notice is withdrawn, not later than the twenty-first day after the date on which the notice becomes operative and within such period (beginning on that twenty-first day) as is specified in the notice. 30
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 35
- (4) The obligation to take the action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.
- (5) This section is without prejudice to the exercise by the local housing authority of the powers conferred by Schedule 2. 40

## 19 Offence of obstruction: Chapter 2

- (1) A person who, without reasonable excuse, obstructs or delays a relevant person in the performance of anything which that person is required or authorised to do by virtue of this Chapter commits an offence.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 5
- (3) In this section “relevant person” means –
  - (a) an officer of a local housing authority or of the relevant Minister; or
  - (b) any person authorised to enter premises by virtue of this Chapter.

### *Powers of enforcement*

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## 20 Enforcement by local housing authorities

Schedule 2 (which enables enforcement action to be taken by local housing authorities with and without agreement and which provides for the recovery of certain expenses) shall have effect.

## 21 Power of entry: Chapter 2

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- (1) Subsection (2) applies where –
  - (a) the local housing authority considers that survey or examination of any premises is necessary in order to determine whether any powers under this Chapter should be exercised in relation to the premises; or
  - (b) an improvement notice has been served under this Chapter in relation to the premises. 20
- (2) A person authorised by the local housing authority or the relevant Minister may at any reasonable time, on giving 7 days notice of his intention to the occupier and to the owner (if known), enter the premises for the purpose of survey and examination. 25
- (3) An authorisation for the purposes of this section –
  - (a) must be in writing; and
  - (b) must state the particular purpose or purposes for which the entry is authorised.
- (4) An authorisation for the purposes of this section shall, if so required, be produced for inspection by the occupier or anyone acting on his behalf. 30

## 22 Powers of court to prevent obstruction

- (1) Subsection (2) applies where –
  - (a) the occupier of any premises has received a notice of the intended action; but
  - (b) is preventing a relevant person from carrying into effect in relation to the premises any of the provisions of this Chapter. 35
- (2) A magistrates’ court may order the occupier to permit to be done on the premises anything which the court considers is necessary or expedient for the purpose of carrying into effect the provision concerned. 40

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- (3) In subsection (1) “relevant person” means—
- (a) an owner or person having control of or managing the premises;
  - (b) the holder of any licence under Part 2 or 3 in relation to the premises;
  - (c) any officer, servant or agent of any person falling within paragraph (a) or (b); or
  - (d) any officer, servant or agent of the local housing authority.
- (4) Subsection (5) applies where—
- (a) an owner or person having control of or managing premises, or the holder of any licence under Part 2 or 3 in relation to premises, has received a notice of the intended action; but
  - (b) is preventing an officer, servant or agent of the local housing authority from carrying into effect in relation to the premises any of the provisions of this Chapter.
- (5) A magistrates’ court may order the person concerned to permit to be done on the premises anything which the court considers is necessary or expedient for the purpose of carrying into effect the provision concerned.
- (6) A person who fails to comply with an order of the court under this section commits an offence.
- (7) A person who commits an offence under subsection (6) is liable on summary conviction to a fine not exceeding £20 in respect of each day or part of a day during which the failure continues.

### **23 Power of court to authorise action on behalf of another**

- (1) An owner of premises in relation to which an improvement notice has been served may apply to a magistrates’ court for an order under subsection (2).
- (2) A magistrates’ court may, on an application under subsection (1), make an order enabling the applicant immediately—
- (a) to enter on the premises; and
  - (b) to take, within a period fixed by the order, the action which is required to be taken by the improvement notice.
- (3) No order shall be made under subsection (2) unless the court is satisfied that the interests of the applicant will be prejudiced as a result of a failure by another person to take action required to be taken by him in pursuance of the improvement notice.
- (4) No order shall be made under subsection (2) unless notice of the application is given to the local housing authority.
- (5) The court may make, in favour of any other owner of the premises, an order similar to an order which it is making in relation to the premises under subsection (2) if it considers that it is appropriate to do so.

#### *Supplementary provisions*

### **24 Additional notice requirements for owners**

- (1) Subsection (2) applies where an owner of premises gives notice to the local housing authority of his interest in the premises.

- (2) The local housing authority shall give him notice of any proceedings taken by it under this Chapter.

## 25 Local land charge: improvement notices

- (1) Subsection (2) applies where –
- (a) an improvement notice becomes operative; 5
  - (b) the period of 21 days beginning with the date of service of an improvement notice whose operation is suspended ends and no appeal has been brought against the notice; or
  - (c) an appeal is so brought against an improvement notice whose operation is suspended but section 15(4)(a) is satisfied in relation to it. 10
- (2) The improvement notice is a local land charge.

## 26 Savings for rights arising from breach of covenant etc.

- (1) Nothing in this Chapter prejudices or interferes with the rights or remedies of an owner for breach of any covenant or contract entered into by a lessee in reference to premises in relation to which an improvement notice is served. 15
- (2) If an owner is obliged to take possession of premises in order to comply with an improvement notice, the taking of possession does not affect his right to take advantage of any such breach which occurred before he took possession.
- (3) No action taken under this Chapter prejudices or affects any remedy available to the tenant of any premises against his landlord (whether at common law or otherwise). 20

## 27 Effect of Part 4 enforcement action and redevelopment proposals

- (1) No action shall be taken under this Chapter in relation to premises if an interim or final management order under Part 4 is in force in relation to the premises.
- (2) An improvement notice which has been served in relation to premises shall cease to have effect if an interim or final management order under Part 4 comes into force in relation to the premises. 25
- (3) Subsection (4) applies where the local housing authority has under section 308 of the Housing Act 1985 (c. 68) (owner’s re-development proposals) approved proposals for the re-development of land. 30
- (4) No action shall be taken under this Chapter in relation to the land if, and so long as, the re-development is being proceeded with (subject to any variation or extension approved by the authority) –
- (a) in accordance with the proposals; and
  - (b) within the time limits specified by the local housing authority. 35

## 28 Interpretation: Chapter 2

In this Chapter –

“occupying tenant”, in relation to a dwelling-house, means a person (other than an owner-occupier) who –

- (a) occupies or is entitled to occupy the dwelling-house as a lessee; 40
- (b) is a statutory tenant of the dwelling-house;



- (c) occupies the dwelling-house under a restricted contract;  
 (d) is a protected occupier within the meaning of the Rent (Agriculture) Act 1976 (c. 80); or  
 (e) is a licensee under an assured agricultural occupancy; and  
 “owner-occupier”, in relation to a dwelling-house, means the person who, as owner or lessee under a long tenancy (within the meaning of Part 1 of the Leasehold Reform Act 1967 (c. 88)), occupies or is entitled to occupy the dwelling-house.

## 29 Index of defined expressions: Chapter 2

In this Chapter, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions inserted in the right-hand column.

<i>Expression</i>	<i>Provision of this Act</i>	
Category 1 hazard	Section 2(1)	15
Category 2 hazard	Section 2(1)	
Common parts	Section 5(8)	
Compliance with improvement notice	Section 18(2)	
Dwelling-house	Section 2(4)	
Flat	Section 5(8)	20
Hazard	Section 2(1)	
House	Section 5(8)	
House in multiple occupation	Section 2(4)	
Lease, lessee etc.	Section 172(1) to (4)	
Local housing authority	Section 171	25
Occupier (and related expressions)	Section 172(5)	
Occupying tenant	Section 28	
Owner	Section 172(6)	
Owner-occupier	Section 28	
Person having control	Section 173(1) and (2)	30
Person managing	Section 173(3) and (4)	
The relevant Minister	Section 2(3)	
Relevant residential premises	Section 5(8)	
Remedial action	Section 5(8)	
Tenancy, tenant etc.	Section 172(1) to (4)	35

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**CHAPTER 3**

PROHIBITION ORDERS

*Prohibition orders*

**30 Duty to make prohibition order in relation to category 1 hazards**

- |   |    |
|---|----|
| (1) The local housing authority shall, subject to subsections (3) to (6) and section 3, make a prohibition order in relation to a dwelling-house or a house in multiple occupation if it is satisfied –   | 5  |
| (a) that a category 1 hazard exists in the dwelling-house or house in multiple occupation; and  |    |
| (b) that there are no special circumstances in the light of which it is appropriate not to make an order.   | 10 |
| (2) The local housing authority shall, subject to subsections (3), (4) and (6) and section 3, make a prohibition order in relation to a block of flats if it is satisfied –   |    |
| (a) that a category 1 hazard exists in one or more of the flats; and  | 15 |
| (b) that there are no special circumstances in the light of which it is appropriate not to make an order.   |    |
| (3) Subsection (1) or (2) does not apply in such circumstances (if any) as are specified or described in an order made by the relevant Minister.  |    |
| (4) Subsection (1) or (2) does not apply if –   | 20 |
| (a) the circumstances are circumstances which are specified or described in an order made by the relevant Minister as circumstances in which the local housing authority should have a discretion not to make an order under that subsection; and |    |
| (b) the local housing authority decides, in the light of any guidance given under section 4, not to make an order under that subsection.  | 25 |
| (5) Subsection (1) does not apply if the local housing authority is under a duty to make an order under subsection (2) in relation to a block of flats which contains the dwelling-house or house in multiple occupation concerned.               |    |
| (6) This section is subject to section 300(1A) of the Housing Act 1985 (c. 68) (power to purchase, for temporary housing use, houses liable to be closed etc.).   | 30 |
| (7) The same order under this section may relate to more than one category 1 hazard on the same premises.   |    |

**31 Power to make prohibition order in relation to category 2 hazards**

- |  |    |
|--|----|
| (1) The local housing authority may make a prohibition order in relation to a dwelling-house or house in multiple occupation if it is satisfied that a category 2 hazard exists in the dwelling-house or house in multiple occupation. | 35 |
| (2) The local housing authority may make a prohibition order in relation to a block of flats if it is satisfied that a category 2 hazard exists in one or more of the flats.   |    |
| (3) The same order under this section may relate to more than one category 2 hazard on the same premises.  | 40 |

- (4) An order under section 30 and this section in relation to the same premises may be combined in the same order.

### **32 Contents of prohibition orders**

- (1) A prohibition order may, for the purpose of dealing with each hazard concerned, prohibit— 5
- (a) use of the premises to which the order relates, or of any part of those premises, for all purposes unless a purpose is approved by the local housing authority;
- (b) use of the premises to which the order relates, or of any part of those premises, for any particular purpose unless the purpose is approved by the local housing authority. 10
- (2) A prohibition order made by virtue of subsection (1)(b) may, in particular, prohibit, unless approved by the local housing authority –
- (a) occupation of the premises to which it relates, or of any part of those premises, by more than a particular number of households or persons; 15
- (b) occupation of the premises to which it relates, or any part of those premises, by particular descriptions of persons.
- (3) The approval of the local housing authority as mentioned in subsections (1)(a) or (b) and (2) must not be unreasonably withheld.
- (4) A person aggrieved by the withholding of such an approval by the local housing authority may, within 21 days of the refusal, appeal to the county court. 20

#### *Service and operation of prohibition orders*

### **33 Service of prohibition orders**

- (1) The local housing authority shall serve a prohibition order made by it by serving a copy of the order on— 25
- (a) every owner or occupier of the premises to which the order relates;
- (b) every person who, to its knowledge, is entitled or authorised to permit persons to occupy the premises; and
- (c) every person who, to its knowledge, is a mortgagee of the premises. 30
- (2) For the purposes of subsection (1)(a) a copy of a prohibition order shall be taken to have been served on every occupier of the premises if it is affixed on the premises in a position where it is accessible to the occupiers of the premises.
- (3) Any reference in this section to “the premises”, in the case of an order which relates to a block of flats, includes a reference to the flats in the building or part of a building concerned. 35

### **34 Suspension of prohibition orders**

- (1) The operation of a prohibition order may be suspended until such time, or the occurrence of such event, as may be specified in the order.
- (2) The event may, in particular, be a relevant release by the local housing authority of an undertaking entered into between that authority and any person on whom the order is served. 40

- (3) In subsection (2) a “relevant release” means a release which takes place in accordance with the terms of the undertaking and as a result of an act or omission by the person on whom the order is served which the local housing authority considers to be a breach of the undertaking.

**35 Operation of certain prohibition orders**

5

- (1) A prohibition order whose operation is not suspended becomes operative, if no appeal is brought, at the end of the period of 21 days beginning with the date of service of the order.
- (2) A prohibition order whose operation is suspended becomes operative, if no appeal is brought, when both the period of 21 days beginning with the date of service of the order has ended and the suspension has ceased to have effect. 10
- (3) Subsection (4) applies where no appeal is brought against a prohibition order within the period of 21 days beginning with the date of service of the order.
- (4) The order is final and conclusive as to matters which could have been raised on an appeal. 15

**36 Variation or revocation of prohibition orders**

- (1) The local housing authority may vary a prohibition order which is suspended so as to alter the time or events by reference to which the suspension is to come to an end.
- (2) The local housing authority shall revoke a prohibition order made under section 30 in relation to a category 1 hazard if it is satisfied – 20
- (a) that the hazard does not exist in the dwelling-house, house in multiple occupation or block of flats concerned;
  - (b) that there are special circumstances in the light of which it is appropriate to revoke the notice; 25
  - (c) that making an order under section 30 in relation to the hazard is neither the only mandatory course of action available to it nor the best of the mandatory courses of action available to it (as provided for by section 3); or
  - (d) that – 30
    - (i) at the time of making the prohibition order, the circumstances were circumstances specified or described in an order made by the relevant Minister as circumstances in which the local housing authority should have a discretion not to make an order under section 30; and 35
    - (ii) in the light of any guidance given under section 4, it is appropriate to revoke the notice.
- (3) The local housing authority shall revoke a prohibition order made under section 31 in relation to a category 2 hazard if it is satisfied that the hazard does not exist in the dwelling-house, house in multiple occupation or block of flats concerned. 40
- (4) The local housing authority may at any time revoke a prohibition order made under section 31 in relation to a category 2 hazard if it considers that it is appropriate to do so.

- 
- (5) Where a prohibition order relates to a combination of category 1 and category 2 hazards or more than one category 1 or category 2 hazard, the duty under subsection (2) or (3), and the power under subsection (4), to revoke the order is a duty or (as the case may be) power –
- (a) to revoke the order so far as it relates to any hazard in relation to which any condition mentioned in that subsection is satisfied; and
  - (b) so far as necessary, to vary the rest of the order accordingly. 5
- (6) A variation or revocation under this section shall come into force when made if it is agreed by each owner on whom a copy of a notice under section 37 must be served. 10
- (7) Subject to that, a variation or revocation under this section shall not come into force until –
- (a) if no appeal is made against it, the period of 21 days beginning with the date of service of the notice under section 37; and
  - (b) if an appeal is made against it within that period – 15
    - (i) a decision on the appeal confirming the variation or revocation (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought; or
    - (ii) if a further appeal to the Court of Appeal is brought, a final decision is given confirming the variation or revocation (with or without variation). 20
- (8) For the purposes of subsection (7)(b) the withdrawal of an appeal has the same effect as a decision confirming the variation or revocation appealed against.
- 37 Procedural requirements in relation to variations and revocations 25**
- (1) The local housing authority shall give notice of any variation or revocation under section 36.
- (2) The notice shall, for the purposes of determining the persons on whom copies of it are to be served, be treated as if it were a prohibition order.
- (3) The notice must inform the persons on whom copies of it are to be served of – 30
- (a) the variation or revocation;
  - (b) the reasons for it; and
  - (c) the main details of the rights of appeal.

*Appeals and reviews*

- 38 Appeals against prohibition orders 35**
- (1) A person aggrieved by a prohibition order may, within the period of 21 days beginning with the date of service of the order, appeal to the county court.
- (2) No appeal is possible by a person who is in occupation of the premises concerned, or a relevant part of the premises concerned, under a lease or agreement with an unexpired term of three years or less. 40
- (3) On an appeal the court may by order confirm, quash or vary the prohibition order.

- 
- (4) If an appeal is brought a prohibition order which is not suspended does not become operative until –
- (a) a decision on the appeal confirming the order (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought; or
  - (b) if a further appeal to the Court of Appeal is brought, a final decision is given confirming the order (with or without variation).
- (5) If an appeal is brought a prohibition order which is suspended does not become operative until –
- (a) paragraph (a) or (b) of subsection (4) applies; and
  - (b) the suspension ceases to have effect.
- (6) For the purposes of subsections (4) and (5) the withdrawal of an appeal has the same effect as a decision confirming the prohibition order appealed against.
- 39 Appeals suggesting certain other courses of action**
- (1) One ground of appeal under section 38 in relation to a prohibition order made under section 30 in relation to a category 1 hazard is that one of the courses of action mentioned in subsection (2) is the best course of action in relation to that hazard.
- (2) The courses of action are –
- (a) serving an improvement notice under section 5 of this Act;
  - (b) serving a notice under section 53 of this Act;
  - (c) making a demolition order under section 265(1) or (1A) of the Housing Act 1985 (c. 68); and
  - (d) declaring the area in which the premises concerned are situated to be a clearance area in accordance with section 289 of the Act of 1985.
- (3) Subsection (4) applies where –
- (a) the court is hearing an appeal under section 38 in relation to a prohibition order made under section 30 in relation to a category 1 hazard; and
  - (b) the grounds on which the appeal is brought are or include the ground that one of the courses of action mentioned in subsection (2) is the best course of action in relation to that hazard.
- (4) The court shall have regard to any guidance given to the local housing authority under section 4.
- (5) Subsection (6) applies where –
- (a) an appeal under section 38 is allowed against a prohibition order made under section 30 in relation to a category 1 hazard; and
  - (b) the reason or one of the reasons for allowing the appeal is that one of the courses of action mentioned in subsection (2) is the best course of action in relation to that hazard.
- (6) The judge shall, if requested to do so by the appellant or the local housing authority, include in his judgement a finding to that effect and identifying the course of action concerned.
- (7) Subsection (1) of this section is without prejudice to the generality of section 38.

#### **40 Appeals against variations or revocations of prohibition orders**

- (1) A person aggrieved by the variation or revocation of a prohibition order under section 36 may appeal to the county court.
- (2) An appeal must be made within the period of 21 days beginning with the date of service of the notice under section 37. 5
- (3) On an appeal the court may by order confirm, quash or vary the variation or revocation.
- (4) No appeal is possible by a person who is in occupation of the premises concerned, or a relevant part of the premises concerned, under a lease or agreement with an unexpired term of three years or less. 10

#### **41 Review of prohibition orders**

- (1) The local housing authority may at any time review a prohibition order (whether or not its operation is suspended).
- (2) The local housing authority shall review a prohibition order whose operation is suspended not later than one year after the date of service of the order and at subsequent intervals of not more than one year. 15
- (3) A review under this section may, in particular, consider whether a prohibition order should be varied or revoked.

#### *Main offences*

#### **42 Offence of failing to comply with prohibition order etc.** 20

- (1) A person commits an offence if, knowing that a prohibition order has become operative and applies in relation to any premises, he –
  - (a) uses the premises in contravention of the order; or
  - (b) permits the premises to be so used.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction –
  - (a) to a fine not exceeding level 5 on the standard scale; and
  - (b) to a further fine not exceeding £20 for every day or part of a day on which he so uses the premises or permits them to be so used after conviction. 2530

#### **43 Offence of obstruction: Chapter 3**

- (1) A person who, without reasonable excuse, obstructs or delays a relevant person in the performance of anything which that person is required or authorised to do by virtue of this Chapter commits an offence.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 35
- (3) In this section “relevant person” means –
  - (a) an officer of the local housing authority or of the relevant Minister; or
  - (b) any person authorised to enter premises by virtue of this Chapter.

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*Other enforcement provisions*

**44 Powers of court to prevent obstruction: Chapter 3**

- (1) Subsection (2) applies where –
- (a) the occupier of any premises has received a notice of the intended action; but 5
  - (b) is preventing a relevant person from carrying into effect in relation to the premises any of the provisions of this Chapter.
- (2) A magistrates’ court may order the occupier to permit to be done on the premises anything which the court considers is necessary or expedient for the purpose of carrying into effect the provision concerned. 10
- (3) In subsection (1) “relevant person” means –
- (a) an owner or person having control of the premises;
  - (b) the holder of any licence under Part 2 or 3 in relation to the premises;
  - (c) any officer, servant or agent of any person falling within paragraph (a) or (b); or 15
  - (d) any officer, servant or agent of the local housing authority.
- (4) Subsection (5) applies where –
- (a) an owner or person having control of premises, or the holder of any licence under Part 2 or 3 in relation to the premises, has received a notice of the intended action; but 20
  - (b) is preventing an officer, servant or agent of the local housing authority from carrying into effect in relation to the premises any of the provisions of this Chapter.
- (5) A magistrates’ court may order the person concerned to permit to be done on the premises anything which the court considers is necessary or expedient for the purpose of carrying into effect the provision concerned. 25
- (6) A person who fails to comply with an order of the court under this section commits an offence.
- (7) A person who commits an offence under subsection (6) is liable on summary conviction to a fine not exceeding £20 in respect of each day or part of a day during which the failure continues. 30

**45 Power of court to determine lease**

- (1) Subsection (2) applies where premises in relation to which a prohibition order has become operative form the subject-matter of a lease.
- (2) The lessor or the lessee may apply to the county court for an order determining or varying the lease. 35
- (3) The court may, on an application under this section, make an order determining or varying the lease if it considers it appropriate to do so.
- (4) Before making such an order, the court shall give any sub-lessee an opportunity of being heard. 40
- (5) An order under this section may be unconditional or subject to such terms and conditions as the court considers appropriate.



- (6) The conditions may, in particular, include conditions about the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise.
- (7) In deciding what is appropriate for the purposes of this section, the court shall have regard to the respective rights, obligations and liabilities of the parties under the lease and to all the other circumstances of the case. 5
- (8) In this section “lessor” and “lessee” include a person deriving title under a lessor or lessee.

#### **46 Power of entry: Chapter 3**

- (1) Subsection (2) applies where— 10
- (a) the local housing authority considers that survey or examination of any premises is necessary in order to determine whether any powers under this Chapter should be exercised in relation to the premises; or
  - (b) a prohibition order has been made in relation to the premises.
- (2) A person authorised by the local housing authority or the relevant Minister may at any reasonable time, on giving 7 days notice of his intention to the occupier and to the owner (if known), enter the premises for the purpose of survey and examination. 15
- (3) An authorisation for the purposes of this section—
- (a) must be in writing; and 20
  - (b) must state the particular purpose or purposes for which the entry is authorised.
- (4) An authorisation for the purposes of this section shall, if so required, be produced for inspection by the occupier or anyone acting on his behalf.

#### **47 Recovery of possession of premises** 25

Nothing in the Rent Acts or Part 1 of the Housing Act 1988 (c. 50) prevents possession being obtained by the owner of premises in relation to which a prohibition order is in force if possession of the premises is necessary for the purposes of complying with the order.

*Supplementary provisions* 30

#### **48 Local land charge: prohibition orders**

- (1) Subsection (2) applies where—
- (a) a prohibition order becomes operative;
  - (b) the period of 21 days beginning with the date of service of a prohibition order whose operation is suspended ends and no appeal has been brought against the order; or 35
  - (c) an appeal is so brought against a prohibition order whose operation is suspended but section 38(5)(a) is satisfied in relation to it.
- (2) The prohibition order is a local land charge.

**49 Saving for rights arising from breach of covenant etc: Chapter 3**

- (1) Nothing in this Chapter prejudices or interferes with the rights or remedies of an owner for breach of any covenant or contract entered into by a lessee in reference to premises in relation to which a prohibition order is made.
- (2) If an owner is obliged to take possession of premises in order to comply with a prohibition order, the taking of possession does not affect his right to take advantage of any such breach which occurred before he took possession. 5

**50 Effect of Part 4 enforcement action**

- (1) No action shall be taken under this Chapter in relation to premises if an interim or final management order under Part 4 is in force in relation to the premises. 10
- (2) A prohibition order which has been made in relation to premises shall cease to have effect if an interim or final management order under Part 4 comes into force in relation to the premises.

**51 Interpretation: Chapter 3**

- (1) In this Chapter – 15
  - “block of flats” means the whole or part of a building which contains one or more flats;
  - “the building”, in relation to a flat, means the building containing the flat;
  - “flat” means – 20
    - (a) a dwelling-house which is not a house; or
    - (b) a part of a building which is a house in multiple occupation; and
  - “premises”, in relation to a prohibition order, means the dwelling-house, house in multiple occupation or block of flats in relation to which the prohibition order is made.
- (2) For the purposes of this Chapter section 183 of the Housing Act 1985 (c. 68) shall have effect to determine whether a dwelling-house is a house. 25

**52 Index of defined expressions: Chapter 3**

In this Chapter, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions inserted in the right-hand column. 30

<i>Expression</i>	<i>Provision of this Act</i>	
Block of flats	Section 51(1)	
Building	Section 51(1)	
Category 1 hazard	Section 2(1)	35
Category 2 hazard	Section 2(1)	
Dwelling-house	Section 2(4)	
Flat	Section 51(1)	

<i>Expression</i>	<i>Provision of this Act</i>	
Hazard	Section 2(1)	
House	Section 51(2)	
House in multiple occupation	Section 2(4)	
Lease, lessee etc.	Section 172(1) to (4)	5
Local housing authority	Section 171	
Occupier (and related expressions)	Section 172(5)	
Owner	Section 172(6)	
Premises	Section 51(1)	
The relevant Minister	Section 2(3)	10

## CHAPTER 4

### OTHER ENFORCEMENT ACTION

#### *Warning notices about housing conditions*

#### 53 **Mandatory warning notices**

- |   |    |
|---|----|
| (1) The local housing authority shall, subject to subsections (2) and (3) and section 3, serve a notice under this section if it is satisfied that a category 1 hazard exists on relevant residential premises.                                 | 15 |
| (2) Subsection (1) does not apply in such circumstances (if any) as are specified or described in an order made by the relevant Minister.   |    |
| (3) Subsection (1) does not apply if –  | 20 |
| (a) the circumstances are circumstances which are specified or described in an order made by the relevant Minister as circumstances in which the local housing authority should have a discretion not to serve a notice under this section; and |    |
| (b) the local housing authority decides, in the light of any guidance given under section 4, not to serve a notice under this section.  | 25 |
| (4) A notice under this section shall specify –   |    |
| (a) the hazard;   |    |
| (b) the remedial action (if any) which, in the opinion of the authority, is appropriate in relation to the hazard; and  | 30 |
| (c) the other courses of action which are available to the authority in relation to the hazard.   |    |
| (5) The same notice under this section may relate to more than one category 1 hazard on the same premises.  |    |
| (6) A notice under this section shall, for the purpose of determining the person on whom it should be served and the persons on whom copies of it should be served, be treated as if it were an improvement notice.                             | 35 |

(7) This section shall be construed as if it were contained in Chapter 2 of this Part.

**54 Voluntary warning notices**

- (1) The local housing authority may serve a notice under this section if it is satisfied that a category 2 hazard exists on relevant residential premises.
- (2) A notice under this section shall specify – 5
  - (a) the hazard;
  - (b) the remedial action (if any) which, in the opinion of the authority, is appropriate in relation to the hazard; and
  - (c) the other courses of action which are available to the authority in relation to the hazard. 10
- (3) The same notice under this section may relate to more than one category 2 hazard on the same premises.
- (4) A notice under section 53 and this section in relation to the same premises may be combined in the same notice.
- (5) A notice under this section shall, for the purpose of determining the person on whom it should be served and the persons on whom copies of it should be served, be treated as if it were an improvement notice. 15
- (6) The fact that a notice has been served under this section in relation to a hazard does not prevent the local housing authority from taking any other course of action in relation to the hazard. 20
- (7) This section shall be construed as if it were contained in Chapter 2 of this Part.

*Demolition orders*

**55 Demolition orders**

In section 265 of the Housing Act 1985 (c. 68) (power to make demolition order) for subsections (1) and (2) there is substituted – 25

- “(1) The local housing authority shall, subject to subsections (1B) to (1D) and (3) and to section 3 of the Housing Act 2003, make a demolition order in relation to a dwelling-house or a house in multiple occupation if they are satisfied – 30
  - (a) that one or more category 1 hazards exist in the dwelling-house or house in multiple occupation; and
  - (b) that there are no special circumstances in the light of which it is appropriate not to make an order.
- (1A) The local housing authority shall, subject to subsections (1B) and (1C) and (3) and to section 3 of the Housing Act 2003, make a demolition order in relation to a block of flats if they are satisfied – 35
  - (a) that one or more category 1 hazards exist in one or more of the flats; and
  - (b) that there are no special circumstances in the light of which it is appropriate not to make an order. 40
- (1B) Subsection (1) or (1A) does not apply in such circumstances (if any) as are specified or described in an order made by the relevant Minister.

- (1C) Subsection (1) or (1A) does not apply if –
- (a) the circumstances are circumstances which are specified or described in an order made by the relevant Minister as circumstances in which the local housing authority should have a discretion not to make an order under that subsection; and 5
  - (b) the local housing authority decide, in the light of any guidance given under section 4 of the Housing Act 2003, not to make an order under that subsection.
- (1D) Subsection (1) does not apply if the local housing authority are under a duty to make a demolition order under subsection (1A) in relation to a block of flats which contains the dwelling-house or house in multiple occupation concerned. 10
- (1E) The local housing authority may, in such circumstances as may be specified or described in an order made by the relevant Minister, make a demolition order in relation to a dwelling-house or house in multiple occupation if they are satisfied that one or more category 2 hazards exist in a dwelling-house or house in multiple occupation. 15
- (1F) The local housing authority may, in such circumstances as may be specified or described in an order made by the relevant Minister, make a demolition order in relation to a block of flats if they are satisfied that one or more category 2 hazards exist in one or more of the flats. 20
- (1G) In this Part “the relevant Minister” means –
- (a) in relation to England, the Secretary of State; and
  - (b) in relation to Wales, the National Assembly for Wales.
- (1H) An order under this section – 25
- (a) may make different provision for different cases or descriptions of case (including different provision for different areas);
  - (b) may contain such incidental, supplementary, consequential, transitory, transitional or saving provision as the relevant Minister considers appropriate; and 30
  - (c) shall be made by statutory instrument which, in the case of an order made by the Secretary of State, shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- Clearance areas* 35

## 56 Clearance areas

In section 289 of the Housing Act 1985 (c. 68) (declaration of clearance area) for subsections (2) and (2A) there is substituted –

- “(2) The local housing authority may declare an area to be a clearance area if they are satisfied that – 40
- (a) either –
  - (i) each of the residential buildings in the area contains one or more category 1 hazard; or
  - (ii) the residential buildings in the area are dangerous or harmful to the health or safety of the inhabitants of the 45

	area as a result of their bad arrangement or the narrowness or bad arrangement of the streets; and	
	(b) the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.	
(2ZA)	In this section “residential buildings” means buildings which are dwelling-houses or houses in multiple occupation or contain one or more flats.	5
(2ZB)	A residential building containing one or more flats shall be treated for the purposes of this section as containing one or more category 1 hazard if two or more of the flats within it contain such a hazard.	10
(2ZC)	The power contained in subsection (2) is, in relation to category 1 hazards, a duty to the extent provided for by section 3 of the Housing Act 2003.	
(2ZD)	Subsection (2) is subject to subsections (2B) to (4) and (5B).”	
	<i>Other enforcement action</i>	15

**57 Repeal of deferred action notice regime**

Sections 81 to 85 of the Housing Grants, Construction and Regeneration Act 1996 (c. 53) (deferred action notices) are omitted.

**58 Repeal of power to improve existing enforcement procedures**

Section 86 of the Housing Grants, Construction and Regeneration Act 1996 (c. 53) (power to improve existing enforcement procedures in relation to unfitness for human habitation etc.) is omitted. 20

**CHAPTER 5**

ADDITIONAL PROVISION ABOUT HOUSING CONDITIONS

	<i>Power to charge for certain enforcement action</i>	25
<b>59 Power to charge for certain enforcement action</b>		
(1)	A local housing authority may make such reasonable charge as it considers appropriate as a means of recovering certain administrative and other expenses incurred by it in—	
	(a) serving an improvement notice under section 5 or 6 of this Act;	30
	(b) making a prohibition order under section 30 or 31 of this Act; or	
	(c) making a demolition order under section 265 of the Housing Act 1985 (c. 68).	
(2)	The expenses are, in the case of the service of an improvement notice under section 5 or 6 of this Act, the expenses incurred in—	35
	(a) determining whether to serve the notice;	
	(b) identifying any action to be specified in the notice; and	
	(c) serving the notice.	

- 
- (3) The expenses are, in the case of a prohibition order under section 30 or 31 of this Act or a demolition order under section 265 of the Housing Act 1985 (c. 68), the expenses incurred in—
- (a) determining whether to make the order; and
  - (b) serving the order. 5
- (4) The amount of the charge shall not exceed such amount as is specified by order of the relevant Minister.
- (5) Where a court allows an appeal against the underlying notice or order mentioned in subsection (1), it may make such order as it considers appropriate reducing, quashing or requiring the repayment of any charge under this section made in respect of the notice or order. 10

## **60 Recovery of charge for certain enforcement action**

- (1) The following provisions have effect with respect to the recovery of a charge under section 59.
- (2) The charge may be recovered by the local housing authority concerned from— 15
- (a) in the case of an improvement notice under section 5 or 6 of this Act, any person on whom the notice is served; and
  - (b) in the case of a prohibition order under section 30 or 31 of this Act or a demolition order under section 265 of the Housing Act 1985 (c. 68), any person on whom the order is served as an owner of the premises. 20
- (3) A demand for payment of the charge shall be served on the person from whom the authority seeks to recover it.
- (4) The demand becomes operative, if no appeal is brought against the underlying notice or order, on the expiry of the period of 21 days beginning with the service of the demand. 25
- (5) The sum recoverable by the local housing authority is, until recovered, a charge on the premises concerned.
- (6) The charge takes effect when the demand becomes operative.
- (7) The local housing authority have for the purpose of enforcing the charge the same powers and remedies under the Law of Property Act 1925 (c. 20) and otherwise as if they were mortgagees by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver. 30
- (8) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect. 35
- (9) The relevant Minister may by regulations prescribe the form of, and the particulars to be contained in, a demand for payment of any charge under section 59.

**PART 2**

## LICENSING OF HOUSES IN MULTIPLE OCCUPATION

*Introductory***61 Houses in multiple occupation to which this Part applies**

- |     |  |    |
|-----|--|----|
| (1) | This Part applies to houses in multiple occupation which fall within any prescribed description of houses in multiple occupation.  | 5  |
| (2) | The relevant Minister may by order prescribe descriptions of houses in multiple occupation for the purposes of subsection (1).   |    |
| (3) | Where an area is designated as subject to additional licensing and the designation is in force, this Part applies to—  | 10 |
|     | (a) houses in multiple occupation in that area to which this Part applies by virtue of subsection (1); and   |    |
|     | (b) houses in multiple occupation in that area which fall within any description of houses in multiple occupation specified in the designation.  | 15 |
| (4) | The powers exercisable by virtue of subsection (2) or (3)(b) may be exercised so as to ensure that this Part applies to all houses in multiple occupation or (as the case may be) all houses in multiple occupation in the area concerned. |    |

*Designation of additional licensing areas***62 Designation of additional licensing areas**

- |     |   |          |
|-----|---|----------|
| (1) | The local housing authority may designate the area of its district or an area in its district as subject to additional licensing if it considers that doing so is the best method of dealing with the problems which the designation is intended to address (whether because other methods have been unsuccessful or are likely to be unsuccessful or for other reasons). | 20<br>25 |
| (2) | Before deciding to designate an area as subject to additional licensing the local housing authority shall—  |          |
|     | (a) consult such persons as it considers are likely to be affected by the designation; and  |          |
|     | (b) consider any representations made in accordance with the consultation and not withdrawn.  | 30       |

**63 Confirmation of designations**

- |     |   |    |
|-----|---|----|
| (1) | In this Part “the confirming authority” means—  |    |
|     | (a) in relation to a designation of an area in England, the Secretary of State; and     | 35 |
|     | (b) in relation to a designation of an area in Wales, the National Assembly for Wales.  |    |
| (2) | The designation of an area as subject to additional licensing comes into force only if— |    |
|     | (a) it is confirmed by the confirming authority; or                                     | 40 |



- (b) it falls within a description of designations in relation to which the confirming authority has given a general approval.
- (3) The confirming authority may refuse to confirm a designation if it considers it appropriate to do so.
- (4) If the confirming authority confirms a designation, the designation comes into force on a date to be specified by the confirming authority. 5
- (5) The date specified under subsection (4) must be no earlier than three months after the date on which the designation is confirmed.
- (6) The confirming authority may by order make provision for dispensing with any requirements of this section about confirming a designation. 10
- (7) Where, by virtue of a general approval or an order under subsection (6), there is no requirement for a designation to be confirmed before it comes into force, the designation shall come into force on the date specified for this purpose in the designation.
- (8) The date specified by virtue of subsection (7) must be no earlier than three months after the date on which the designation is made. 15

#### **64 Duration, review and revocation of designations**

- (1) A designation must include the date on which it is to cease to have effect.
- (2) The date specified under subsection (1) must be no later than five years after the designation comes into force. 20
- (3) The local housing authority shall from time to time review the operation of a designation.
- (4) The local housing authority may revoke a designation.

#### *Licences*

- 65 Requirement for houses in multiple occupation to be licensed** 25
- (1) Every house in multiple occupation –
- (a) to which this Part applies; and
- (b) in relation to which no interim management order under section 96 and no final management order under section 104 is in force;
- must have a licence authorising occupation up to a maximum number of households or persons. 30
- (2) A licence may include such provisions as the local housing authority considers appropriate.
- (3) The provisions of a licence may, in particular –
- (a) impose conditions relating to the management of the house or the behaviour of its occupants or persons visiting it; 35
- (b) impose conditions relating to the condition of the house or its contents or the amenities available to its occupants or persons visiting it;
- (c) require the carrying out of particular works, or the taking of other action, in connection with the house within such period or periods as may be specified in, or determined by or under, the licence; 40

- 
- (d) impose limits on the number of households or persons permitted to occupy parts of the house;
- (e) prevent parts of the house being occupied by persons or households or for particular purposes connected with such occupation.
- (4) No provision shall be made by virtue of subsection (3)(b) which requires a person to remedy or mitigate a category 1 or category 2 hazard (within the meanings given by section 2(1)) in connection with the house in multiple occupation concerned. 5
- (5) A licence must not impose restrictions or obligations on any person other than the licence holder unless the person concerned consents to the imposition of the restrictions or obligations. 10
- (6) Such provisions of a licence as the local housing authority considers appropriate may be expressed as conditions.
- (7) References in this Part, unless the context otherwise requires –
- (a) to a licence are to a licence under this Part; 15
- (b) to a licence holder are to be read accordingly; and
- (c) to a condition of a licence are to a provision of a licence which is expressed as a condition.
- 66 Main offences in relation to licensing of houses in multiple occupation**
- (1) A person commits an offence if he is the person having control of or managing a house in multiple occupation which ought to be licensed under this Part but is not so licensed. 20
- (2) It is a defence to an offence under subsection (1) for a person to prove that –
- (a) he is taking all reasonable steps to try to ensure that the house is licensed; or 25
- (b) he is taking all reasonable steps to try to ensure that the house ceases to be a house in multiple occupation to which this Part applies.
- (3) A person commits an offence if –
- (a) he is the person having control of or managing a house in multiple occupation which is licensed; 30
- (b) he permits another person to occupy the house or part of the house; and
- (c) the other person’s occupation results in the house or part of the house being occupied by more households or persons than is permitted by the licence.
- (4) A person commits an offence if – 35
- (a) he fails, without reasonable excuse, to comply with any condition of a licence; and
- (b) his failure is intentional or the result of his negligence.
- (5) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding £20,000. 40
- (6) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) The only person who may bring proceedings in respect of an offence under this section is the local housing authority.

**67 Further provisions in relation to unlicensed houses in multiple occupation**

- (1) Subsection (2) has effect in relation to a house in multiple occupation which ought to be licensed under this Part but is not licensed.
- (2) For the period during which the house in multiple occupation is not licensed –
- (a) no rent or licence fee is payable by a person who occupies the house under a tenancy or licence; and 5
  - (b) no other compensation is payable for use or occupation of the house.
- (3) The local housing authority shall take such steps as it considers appropriate to try to ensure that applications for licences are made to it as soon as practicable in relation to houses in multiple occupation to which this Part applies which are not licensed. 10

**68 Licences: general**

- (1) A licence is not valid unless it is in writing.
- (2) A licence may not be transferred to another person.
- (3) A licence may not relate to more than one house in multiple occupation. 15
- (4) A licence may be granted in anticipation of being required but, subject to subsection (5), such a licence shall not come into force until it is required.
- (5) A licence granted for a house in multiple occupation –
- (a) to which this Part applies; and
  - (b) in relation to which an interim management order under section 96 or a final management order under section 104 is in force; 20
- shall come into force at such time as may be specified in or determined by or under the licence.
- (6) A licence, unless it previously ceases to have effect in accordance with its provisions, continues in force for the period specified in it or determined by or under it. 25
- (7) Subsection (6) is subject to any regulations made under subsection (8) and to subsection (9).
- (8) The relevant Minister may, subject to subsection (9), make provision by regulations about the period for which licences are to be in force. 30
- (9) No licence shall be in force for more than 5 years.
- (10) The provisions of a licence, or regulations under subsection (8), may, in particular, require or permit the local housing authority to revoke a licence if –
- (a) a person (whether or not the licence holder concerned) fails to comply with a condition of the licence; or 35
  - (b) the premises concerned cease to be a house in multiple occupation to which this Part applies.
- (11) This section is subject to section 74 and paragraph 3 of Schedule 4.

*Grant or refusal of licences***69 Applications for licences**

- (1) An application for a licence must be made to the local housing authority.
- (2) The application must be made in accordance with such requirements as the authority may specify. 5
- (3) The authority may, in particular, require the application to be accompanied by such fee as it may determine.
- (4) The power of the authority to specify requirements is subject to any regulations made under subsection (5).
- (5) The relevant Minister may by regulations make provision about the making of applications under this section. 10
- (6) Such regulations may, in particular –
  - (a) specify the manner and form in which applications are to be made;
  - (b) require the applicant to give copies of the application, or information about it, to particular persons; 15
  - (c) specify the information which is to be supplied in connection with applications;
  - (d) specify the maximum fees which are to be charged (whether by specifying amounts or methods for calculating amounts);
  - (e) specify cases in which no fees are to be charged or fees are to be refunded. 20
- (7) Subject to subsections (4) to (6), the local housing authority may, in determining the amounts of fees under this section, take into account all costs incurred by it in carrying out its functions under this Part.

**70 Power to grant licences**

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- (1) The local housing authority may grant a licence if –
  - (a) an application is made to the authority under section 69 and not withdrawn; and
  - (b) the authority is satisfied as to the matters mentioned in subsection (2).
- (2) The matters are – 30
  - (a) that the house is reasonably suitable for occupation by more than one household;
  - (b) the maximum number of households or persons for whom the house is reasonably suitable for occupation;
  - (c) that the proposed licence holder is a fit and proper person to be the licence holder and, of the choices reasonably available, is the most appropriate person to be the licence holder; 35
  - (d) that the proposed manager of the house is a relevant person;
  - (e) that the proposed manager of the house is a fit and proper person to be the manager of the house; and 40
  - (f) that the proposed management arrangements for the house are otherwise satisfactory.

- (3) The condition mentioned in subsection (2)(e) applies whether or not the proposed manager of the house is also the proposed licence holder.
- (4) In this section “relevant person” means—
- (a) the person having control of the house in multiple occupation concerned; or 5
  - (b) a person who is an agent or employee of the person having control of the house but who is not an occupant of the house.

## **71 Tests as to suitability for, and extent of, occupation**

- (1) The local housing authority cannot be satisfied for the purposes of section 70(2)(a) that a house in multiple occupation is reasonably suitable for occupation by more than one household if it considers that the house fails to meet prescribed standards for occupation by more than one household. 10
- (2) The local housing authority cannot be satisfied for the purposes of section 70(2)(b) that a house in multiple occupation is reasonably suitable for occupation by a particular maximum number of households or persons if it considers that the house fails to meet prescribed standards for occupation by that number of households or persons. 15
- (3) The standards that may be prescribed in regulations under this section include—
- (a) standards as to the number, type and quality of bathrooms, toilets, washbasins, showers, areas for food storage, preparation and cooking, and laundry facilities which should be available in particular circumstances; 20
  - (b) standards as to the number, type and quality of other amenities which should be available in particular circumstances; and 25
  - (c) health and safety standards.
- (4) The relevant Minister may by regulations prescribe what matters are to be, or may be, taken into account in deciding whether a standard of a prescribed description has been met.
- (5) The local housing authority may decide for the purposes of section 70(2)(a) that a house in multiple occupation is not reasonably suitable for occupation by more than one household even if it meets the standards prescribed under this section for occupation by more than one household. 30
- (6) The local housing authority may decide for the purposes of section 70(2)(b) that a house in multiple occupation is not reasonably suitable for occupation by a particular maximum number of households or persons even if it meets the standards prescribed under this section for occupation by that number of households or persons. 35
- (7) In this section “prescribed standards” means such standards as may be prescribed by regulations made by the relevant Minister. 40

## **72 Tests for fitness etc. and satisfactory management arrangements**

- (1) The local housing authority shall (among other things) have regard to any evidence of the kind mentioned in subsection (2) in deciding for the purposes of section 70(2)(c) or (e) whether a person is a fit and proper person to be a licence holder or (as the case may be) a manager. 45

- (2) The evidence is evidence tending to show that the person concerned, or any person associated or formerly associated with him (whether on a personal, work or other basis), has –
  - (a) committed any offence involving fraud or other dishonesty, or violence or drugs; 5
  - (b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business; or
  - (c) contravened any provision of the law relating to housing or of landlord and tenant law. 10
- (3) For the purposes of section 70(2)(c) the local housing authority shall assume, unless shown otherwise, that a person having control of the house concerned is a more appropriate person to be the licence holder than a person who is not a person having control of the house concerned.
- (4) The local housing authority shall (among other things) have regard to the considerations mentioned in subsection (5) in deciding for the purposes of section 70(2)(f) whether the proposed management arrangements for a house in multiple occupation are otherwise satisfactory. 15
- (5) The considerations are –
  - (a) whether any person proposed to be involved in the management of the house is of a sufficient level of competence to be so involved; 20
  - (b) whether any person proposed to be involved in the management of the house (other than the manager) is a fit and proper person to be so involved;
  - (c) whether those persons proposed to be involved in the management of the house will be able to protect the health and safety of those occupying the house; and 25
  - (d) whether any proposed management structures and funding arrangements are suitable.

*Variation, revocation and appeals* 30

**73 Variation of licences**

- (1) The local housing authority may vary a licence –
  - (a) with the agreement of the licence holder; or
  - (b) if it considers that there has been a change of circumstances since the time when the licence was granted. 35
- (2) Subsection (3) applies where the local housing authority –
  - (a) is considering whether to vary a licence under subsection (1)(b); and
  - (b) is considering –
    - (i) what number of households or persons is appropriate as the maximum number to be permitted to occupy the house in multiple occupation concerned; or 40
    - (ii) the standards applicable to occupation by a particular number of households or persons.
- (3) The local housing authority shall, subject to subsection (4), apply the same standards in relation to the circumstances existing at the time of the decision as were applicable on the grant of the licence. 45

- (4) Where the standards prescribed under section 71 and applicable on the grant of the licence have been revised or superseded by regulations made under that section, the local housing authority may apply the new standards.
- (5) A variation of a licence made by virtue of subsection (1)(b) shall not come into force until – 5
- (a) the period of 21 days mentioned in section 76(2) has expired without an appeal being made under section 75(3); or
- (b) if an appeal is made under section 75(3) within that period – 10
- (i) a decision on the appeal confirming the variation (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought; or
- (ii) if a further appeal to the Court of Appeal is brought, a final decision is given confirming the variation (with or without variation). 15
- (6) For the purposes of subsection (5)(b) the withdrawal of an appeal has the same effect as a decision confirming the variation appealed against.
- (7) In this section “change of circumstances” includes any discovery of new information.
- 74 Revocation of licences** 20
- (1) The local housing authority may revoke a licence –
- (a) with the agreement of the licence holder;
- (b) under the power conferred by subsection (2); or
- (c) in accordance with the terms of the licence or under regulations made under section 68(8). 25
- (2) The local housing authority may revoke a licence if, at a time while the licence is in force, it considers that, if the licence expired at that time, it would not grant a new licence on similar terms to the licence holder in relation to the house in multiple occupation concerned.
- (3) Subsection (4) applies where the local housing authority is considering whether to revoke a licence under subsection (2) on the grounds of lack of reasonable suitability for the number of households or persons specified in the licence as the maximum number permitted to occupy it. 30
- (4) The local housing authority shall, subject to subsection (5), apply the same standards in relation to the circumstances existing at the time of the decision as were applicable on the grant of the licence. 35
- (5) Where the standards prescribed under section 71 and applicable on the grant of the licence have been revised or superseded by regulations made under that section, the local housing authority may apply the new standards.
- (6) A revocation of the kind mentioned in subsection (1)(b) or (c) shall not come into force until – 40
- (a) the period of 21 days mentioned in section 76(2) has expired without an appeal being made under section 75(3); or
- (b) if an appeal is made under section 75(3) within that period – 45
- (i) a decision on the appeal confirming the revocation (with or without variation) is given and the period within which an

- appeal to the Court of Appeal may be brought expires without any such appeal having been brought; or
- (ii) if a further appeal to the Court of Appeal is brought, a final decision is given confirming the revocation (with or without variation). 5
- (7) For the purposes of subsection (6)(b) the withdrawal of an appeal has the same effect as a decision confirming the revocation appealed against.

## 75 Appeals against licence decisions

- (1) The person seeking to be granted a licence or any relevant person may appeal to the county court against any decision by the local housing authority – 10
- (a) to refuse to grant a licence; or
- (b) to grant a licence.
- (2) An appeal under subsection (1)(b) may, in particular, relate to the particular terms of a licence.
- (3) The licence holder or any relevant person may appeal to the county court against any decision by the local housing authority to vary or revoke a licence or refuse to vary or revoke a licence. 15
- (4) On an appeal under this section, the court may confirm, reverse or vary the decision of the local housing authority.
- (5) The court may, in particular, direct the local housing authority to grant a licence on such terms as the court may direct. 20
- (6) An appeal under this section –
- (a) shall be a re-hearing of the local housing authority’s decision; and
- (b) may be determined having regard to matters of which the local housing authority was unaware. 25
- (7) In this section “relevant person” means –
- (a) the person having control of the house in multiple occupation concerned;
- (b) the person managing that house; or
- (c) any person having an estate or interest in that house. 30

## 76 Time-limits for appeals against licence decisions

- (1) If the notices which are required to be served by paragraph 7 or 8 of Schedule 3 in relation to a decision to grant or (as the case may be) refuse to grant a licence have been served, an appeal under section 75(1) in relation to the decision concerned shall be made within the period of 21 days beginning with the day on which the last of the notices was served. 35
- (2) If the notices which are required to be served by paragraph 14, 19, 22 or 26 of Schedule 3 in relation to a decision to vary, refuse to vary, revoke or (as the case may be) refuse to revoke a licence have been served, an appeal under section 75(3) in relation to the decision concerned shall be made within the period of 21 days beginning with the day on which the last of the notices was served. 40
- (3) The court may allow an appeal to be made after the end of the period of 21 days mentioned in subsection (1) or (2) if it is satisfied –



- (a) where permission is sought before the end of that period, that there is a good reason why the applicant is unable to make the appeal in time; and
  - (b) where permission is sought after that time, that there was a good reason for the applicant's failure to bring the appeal in time and for any delay in applying for permission. 5
- (4) Except as provided by this section, an appeal under section 75 may be made at any time.

*Supplementary provisions*

**77 Procedural requirements relating to licences 10**

Schedule 3 (which contains procedural requirements in relation to the grant, variation or revocation of licences) shall have effect.

**78 Codes of practice: Part 2**

- (1) The relevant Minister may by order –
  - (a) approve any code of practice (whether prepared by him or another person) which, in his opinion, gives suitable guidance to any person in relation to any matter arising under this Part; 15
  - (b) approve any modification of such a code; or
  - (c) withdraw such a code or modification.
- (2) The relevant Minister shall only approve a code of practice or a modification of a code if he is satisfied that –
  - (a) the code or modification has been published (whether by him or by another person) in such manner as he considers appropriate for the purpose of bringing the code or modification to the attention of those likely to be affected by it; or 20
  - (b) arrangements have been made for the code or modification to be so published. 25
- (3) The relevant Minister may approve –
  - (a) more than one code of practice in relation to the same matter;
  - (b) a code of practice which makes different provision in relation to different cases or descriptions of case (including different provision for different areas). 30
- (4) A failure to comply with a code of practice for the time being approved under this section shall not of itself render a person liable to any civil or criminal proceedings. 35
- (5) But in any civil or criminal proceedings –
  - (a) any code of practice approved under this section shall be admissible in evidence; and
  - (b) any provision of any such code which appears to the court to be relevant to any question arising in the proceedings shall be taken into account in determining that question. 40
- (6) In this section references to a code of practice include references to a part of a code of practice.

**79 Transitional provisions: Part 2**

Schedule 4 (which contains transitional provisions about licensing regimes under this Part) shall have effect.

**80 Interpretation: Part 2**

In this Part “house in multiple occupation” has the meaning given by sections 164 to 170 but also includes any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it.

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**81 Index of defined expressions: Part 2**

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions inserted in the right-hand column.

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<i>Expression</i>	<i>Provision of this Act</i>	
Condition of licence	Section 65(7)	
Confirming authority	Section 63(1)	15
District of local housing authority	Section 171(4)	
House in multiple occupation	Section 80	
Licence and licence holder	Section 65(7)	
Local housing authority	Section 171(1) to (3)	
Occupier (and related expressions)	Section 172(5)	20
Person having control	Section 173(1) and (2)	
Person having estate or interest	Section 172(7)	
Person managing	Section 173(3)	
Person involved in management	Section 173(5)	
The relevant Minister	Section 2(3)	25

**PART 3**

## SELECTIVE LICENSING OF OTHER RESIDENTIAL ACCOMMODATION

*Designation of selective licensing areas***82 Designation of selective licensing areas**

- (1) A local housing authority may designate the area of its district or an area in its district as subject to selective licensing if it considers that the conditions mentioned in subsection (2) are satisfied.
- (2) The conditions are –

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- (a) that the area is an area of low housing demand, or is likely to become an area of low housing demand; and
- (b) that the designation will, when considered together with other measures being taken in the area by the local housing authority, or by other persons together with the local housing authority, contribute to the improvement of the social or economic conditions in the area. 5
- (3) In considering whether an area is, or is likely to become, an area of low housing demand a local housing authority shall take into account (among other matters)–
- (a) the value of residential premises in the area, in comparison to similar premises in comparable areas; 10
- (b) the turnover of occupiers of residential premises;
- (c) the number of residential premises which are available for sale or rent and the length of time for which they remain unoccupied.
- (4) The relevant Minister may by order amend subsection (3) by adding new matters or omitting or varying any matters for the time being mentioned in that subsection. 15
- (5) A local housing authority may designate the area of its district or an area in its district as subject to selective licensing if it considers that such conditions as may be specified in an order made by the relevant Minister for the purposes of this subsection are satisfied. 20
- (6) Before deciding to designate an area as subject to selective licensing the local housing authority shall–
- (a) consult such persons as it considers are likely to be affected by the designation; and 25
- (b) consider any representations made in accordance with the consultation and not withdrawn.

### **83 Confirmation of designations: Part 3**

- (1) In this Part “the confirming authority” means–
- (a) in relation to a designation of an area in England, the Secretary of State; 30
- and
- (b) in relation to a designation of an area in Wales, the National Assembly for Wales.
- (2) The designation of an area as subject to selective licensing comes into force only if it is confirmed by the confirming authority. 35
- (3) The confirming authority may refuse to confirm a designation if it considers it appropriate to do so.
- (4) If the confirming authority confirms a designation, the designation comes into force on a date to be specified by the confirming authority.
- (5) The date specified under subsection (4) must be no earlier than three months after the date on which the designation is confirmed. 40
- (6) The confirming authority may by order make provision for dispensing with any requirements of this section about confirming a designation.

- (7) Where, by virtue of an order under subsection (6), there is no requirement for a designation to be confirmed before it comes into force, the designation shall come into force on the date specified for this purpose in the designation.
- (8) The date specified by virtue of subsection (7) must be no earlier than three months after the date on which the designation is made. 5

**84 Duration, review and revocation of designations: Part 3**

- (1) A designation must include the date on which it is to cease to have effect.
- (2) The date specified under subsection (1) must be no later than five years after the designation comes into force.
- (3) The local housing authority shall from time to time review the operation of a designation. 10
- (4) The local housing authority may revoke a designation.
- (5) The local housing authority must revoke a designation made under subsection (1) of section 82 if it considers that the conditions mentioned in subsection (2) of that section are no longer satisfied. 15
- (6) The local housing authority must revoke a designation made under subsection (5) of section 82 if it considers that such conditions as may be specified in an order for the purposes of the making of that designation are no longer satisfied.

*Licensing requirements*

**85 Houses to which this Part applies** 20

- (1) A house to which this Part applies means any building or part of a building which—
  - (a) is situated within an area which is designated as subject to selective licensing and in relation to which the designation is in force; and
  - (b) is occupied under a tenancy or a licence; 25
 but does not include a building or part of a building to the extent that it is occupied otherwise than as a residence or to the extent that it is occupied under a tenancy or a licence which is exempt.
- (2) This Part does not apply to any building or part of a building which is required to be licensed under Part 2. 30
- (3) The relevant Minister may by order provide for descriptions of tenancies or licences specified in the regulations to be exempt.
- (4) A tenancy is exempt if it is mentioned in any of paragraphs 2 to 10 or 12 or 13 of Schedule 1 to the Housing Act 1988 (c. 50) (tenancies which cannot be assured tenancies) and is of a description specified in an order made by the relevant Minister for the purposes of this subsection. 35
- (5) A tenancy or a licence is exempt if it is granted by a body which is registered as a social landlord under Part 1 of the Housing Act 1996 (c. 52).

**86 Requirement for houses to which this Part applies to be licensed**

- (1) Every house— 40

- (a) to which this Part applies; and  
 (b) in relation to which no interim management order under section 96 and no final management order under section 104 is in force;  
 must have a licence authorising occupation under a tenancy or a licence.
- (2) A licence may include such provisions as the local housing authority considers appropriate. 5
- (3) The provisions of a licence may, in particular –
- (a) impose conditions relating to the management of the house or the behaviour of its occupants or persons visiting it;  
 (b) impose conditions relating to the condition of the house or its contents or the amenities available to its occupants or persons visiting it; 10  
 (c) require the carrying out of particular works, or the taking of other action, in connection with the house within such period or periods as may be specified in, or determined by or under, the licence;  
 (d) prevent parts of the house being occupied by persons or households or for particular purposes connected with such occupation. 15
- (4) A licence must include provisions about –
- (a) the supply to the local housing authority by the licence holder, on an annual basis, of documents relating (so far as is relevant to the particular house) to the safety of the gas appliances, the electrical appliances and the furniture in the house; 20  
 (b) the supply to the local housing authority by the licence holder, on an annual basis, of information about smoke alarms in the house;  
 (c) the demand by the licence holder of references from persons who the licence holder intends will occupy the house; 25  
 (d) the supply by the licence holder to the occupants of the house of a written statement of the terms on which they occupy the house.
- (5) No provision shall be made by virtue of subsection (3)(b) which requires a person to remedy or mitigate a category 1 or category 2 hazard (within the meanings given by section 2(1)) in connection with the house concerned. 30
- (6) A licence must not impose restrictions or obligations on any person other than the licence holder unless the person concerned consents to the imposition of the restrictions or obligations.
- (7) Such provisions of a licence as the local housing authority considers appropriate may be expressed as conditions. 35
- (8) References in this Part, unless the context otherwise requires –
- (a) to a licence are to a licence under this Part;  
 (b) to a licence holder are to be read accordingly; and  
 (c) to a condition of a licence are to a provision of a licence which is expressed as a condition. 40

## 87 Main offences in relation to licensing

- (1) A person commits an offence if he is the person having control of or managing a house to which this Part applies which ought to be licensed under this Part but is not so licensed.
- (2) It is a defence to an offence under subsection (1) for a person to prove that – 45

- 
- (a) he is taking all reasonable steps to try to ensure that the house is licensed; or
- (b) he is taking all reasonable steps to try to ensure that the house ceases to be a house to which this Part applies.
- (3) A person commits an offence if— 5
- (a) he fails, without reasonable excuse, to comply with any condition of a licence; and
- (b) his failure is intentional or the result of his negligence.
- (4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £20,000. 10
- (5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) The only person who may bring proceedings in respect of an offence under this section is the local housing authority.
- 88 Further provisions in relation to houses which are not licensed** 15
- (1) Subsection (2) has effect in relation to a house which ought to be licensed under this Part but is not licensed.
- (2) For the period during which the house is not licensed—
- (a) no rent or licence fee is payable by a person who occupies the house under a tenancy or licence; and 20
- (b) no other compensation is payable for use or occupation of the house.
- (3) The local housing authority shall take such steps as it considers appropriate to try to ensure that applications for licences are made to it as soon as practicable in relation to houses to which this Part applies which are not licensed.
- Licences* 25
- 89 Part 3 licences: general**
- (1) A licence is not valid unless it is in writing.
- (2) A licence may not be transferred to another person.
- (3) A licence may not relate to more than one house to which this Part applies.
- (4) A licence may be granted in anticipation of being required but, subject to subsection (5), such a licence shall not come into force until it is required. 30
- (5) A licence granted for a house—
- (a) to which this Part applies; and
- (b) in relation to which an interim management order under section 96 or a final management order under section 104 is in force; 35
- shall come into force at such time as may be specified in or determined by or under the licence.
- (6) A licence, unless it previously ceases to have effect in accordance with its provisions, continues in force for the period specified in it or determined by or under it. 40

- (7) Subsection (6) is subject to any regulations made under subsection (8) and to subsection (9).
- (8) The relevant Minister may, subject to subsection (9), make by regulations provision about the period for which licences are to be in force.
- (9) No licence shall be in force for more than 5 years. 5
- (10) The provisions of a licence, or regulations under subsection (8), may, in particular, require or permit the local housing authority to revoke a licence if—
- (a) a person (whether or not the licence holder concerned) fails to comply with a condition of the licence; or
- (b) the premises concerned cease to be a house to which this Part applies. 10
- (11) This section is subject to paragraphs 3 and 9 of Schedule 5.

**90 Applications for licences: Part 3**

- (1) An application for a licence must be made to the local housing authority.
- (2) The application must be made in accordance with such requirements as the authority may specify. 15
- (3) The authority may, in particular, require the application to be accompanied by such fee as it may determine.
- (4) The power of the authority to specify requirements is subject to any regulations made under subsection (5).
- (5) The relevant Minister may by regulations make provision about the making of applications under this section. 20
- (6) Such regulations may, in particular—
- (a) specify the manner and form in which applications are to be made;
- (b) require the applicant to give copies of the application, or information about it, to particular persons; 25
- (c) specify the information which is to be supplied in connection with applications;
- (d) specify the maximum fees which are to be charged (whether by specifying amounts or methods for calculating amounts);
- (e) specify cases in which no fees are to be charged or fees are to be refunded. 30
- (7) Subject to subsections (4) to (6), the local housing authority may, in determining the amounts of fees under this section, take into account all costs incurred by it in carrying out its functions under this Part.

**91 Power to grant licences: Part 3** 35

- (1) The local housing authority may grant a licence if—
- (a) an application is made to the authority under section 90 and not withdrawn; and
- (b) the authority is satisfied as to the matters mentioned in subsection (2).
- (2) The matters are— 40

- (a) that the proposed licence holder is a fit and proper person to be the licence holder and, of the choices reasonably available, is the most appropriate person to be the licence holder;
  - (b) that the proposed manager of the house is a relevant person;
  - (c) that the proposed manager of the house is a fit and proper person to be the manager of the house; and 5
  - (d) that the proposed management arrangements for the house are otherwise satisfactory.
- (3) The condition mentioned in subsection (2)(c) applies whether or not the proposed manager of the house is also the proposed licence holder. 10
- (4) In this section “relevant person” means –
- (a) the person having control of the house concerned; or
  - (b) a person who is an agent or employee of the person having control of the house but who is not an occupant of the house.
- 92 Tests for fitness etc. and satisfactory management arrangements 15**
- (1) The local housing authority shall (among other things) have regard to any evidence of the kind mentioned in subsection (2) in deciding for the purposes of section 91(2)(a) or (c) whether a person is a fit and proper person to be a licence holder or (as the case may be) a manager.
- (2) The evidence is evidence tending to show that the person concerned, or any person associated or formerly associated with him (whether on a personal, work or other basis), has – 20
- (a) committed any offence involving fraud or other dishonesty, or violence or drugs;
  - (b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business; or 25
  - (c) contravened any provision of the law relating to housing or of landlord and tenant law.
- (3) For the purposes of section 91(2)(a) the local housing authority shall assume, unless shown otherwise, that a person having control of the house concerned is a more appropriate person to be the licence holder than a person who is not a person having control of the house concerned. 30
- (4) The local housing authority shall (among other things) have regard to the considerations mentioned in subsection (5) in deciding for the purposes of section 91(2)(d) whether the proposed management arrangements for a house to which this Part applies are otherwise satisfactory. 35
- (5) The considerations are –
- (a) whether any person proposed to be involved in the management of the house is of a sufficient level of competence to be so involved; 40
  - (b) whether any person proposed to be involved in the management of the house (other than the manager) is a fit and proper person to be so involved;
  - (c) whether those persons proposed to be involved in the management of the house will be able to protect the health and safety of those occupying the house; and 45



- (d) whether any proposed management structures and funding arrangements are suitable.

**93 Further provisions about licences under this Part**

Schedule 5 (which contains further provisions about licences under this Part) shall have effect.

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*Supplementary provisions*

**94 Interpretation: Part 3**

In this Part “house to which this Part applies” includes any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it.

**95 Index of defined expressions: Part 3**

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In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions inserted in the right-hand column.

<i>Expression</i>	<i>Provision of this Act</i>	
Condition of licence	Section 86(8)	
Confirming authority	Section 83(1)	
District of local housing authority	Section 171(4)	
House to which this Part applies	Sections 85 and 94	
Licence and licence holder	Section 86(8)	20
Local housing authority	Section 171(1) to (3)	
Occupier (and related expressions)	Section 172(5)	
Person having control	Section 173(1) and (2)	
Person having estate or interest	Section 172(7)	
Person managing	Section 173(3)	25
Person involved in management	Section 173(5)	
The relevant Minister	Section 2(3)	

## PART 4

### ADDITIONAL CONTROL PROVISIONS IN RELATION TO RESIDENTIAL ACCOMMODATION

#### *Interim management orders*

#### **96 Making of interim management orders**

- (1) The local housing authority shall make an interim management order in relation to an unlicensed house if it considers that there is no reasonable prospect that the house will be licensed in the near future. 5
- (2) The local housing authority shall make an interim management order in relation to an unlicensed house if it considers that the condition mentioned in subsection (8) is satisfied. 10
- (3) In subsections (1) and (2) “unlicensed house” means –
  - (a) a house in multiple occupation which ought to be licensed under Part 2 but is not so licensed; or
  - (b) a house which ought to be licensed under Part 3 but is not so licensed.
- (4) The local housing authority shall make an interim management order in relation to a house which is licensed under Part 2 or 3 and ought to be so licensed if – 15
  - (a) it has revoked the licence concerned but the revocation is not yet in force; and
  - (b) it considers that there is no reasonable prospect that the house will, if the revocation comes into force, be licensed in the near future. 20
- (5) The local housing authority shall make an interim management order in relation to a house which is licensed under Part 2 or 3 and ought to be so licensed if – 25
  - (a) it has revoked the licence concerned but the revocation is not yet in force; and
  - (b) it considers that, if the revocation comes into force, the condition mentioned in subsection (8) will be satisfied.
- (6) The local housing authority may make an interim management order in relation to a house in multiple occupation other than one which ought to be licensed under Part 2 if, on an application by the authority, the county court authorises it to make such an order. 30
- (7) The court shall not authorise a local housing authority to make an interim management order under subsection (6) unless it considers that the condition mentioned in subsection (8) is satisfied. 35
- (8) The condition is that the making of an interim management order is necessary to protect the health, safety or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity.

#### **97 Duties of local housing authorities**

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- (1) Subsections (2) and (3) apply where a local housing authority has made an interim management order in relation to a house.

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- (2) The local housing authority shall, as soon as practicable after the making of the order, take any immediate steps under the powers conferred by virtue of this Part which it considers to be necessary to protect the health, safety or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity. 5
- (3) The local housing authority shall take such other steps under the powers conferred by virtue of this Part as it considers appropriate in the particular circumstances of the case.
- (4) The local housing authority shall, as soon as practicable after the making of an interim management order in relation to a house which (but for the making of the interim management order) ought to be licensed under Part 2 or 3, grant a licence in relation to the house or make a final management order in relation to the house. 10
- (5) The local housing authority shall, as soon as practicable after the making of an interim management order in relation to a house in multiple occupation which (disregarding the making of the interim management order) is not required to be licensed under Part 2, apply to the county court for authorisation to make a final management order in relation to the house. 15
- (6) Subsections (4) and (5) do not apply if the local housing authority decides to revoke the interim management order under section 103. 20

## **98 General effect of interim management orders**

- (1) Subsection (2) applies while an interim management order is in force in relation to a house.
- (2) The local housing authority –
- (a) has the right to possession of the house; 25
  - (b) has the right to do (and authorise a manager or other person to do) in relation to the house anything which a person having an estate or interest in the premises would (but for the making of the order) be entitled to do; and
  - (c) may create an interest in the house which, as near as may be, has the incidents of a leasehold. 30
- (3) In exercising its powers under subsection (2)(b) the local housing authority shall not incur any liability, other than as expressly provided by this Part, to any person having an estate or interest in the premises concerned.
- (4) The power conferred by subsection (2)(c) exists despite the fact that the local housing authority does not under this section have an interest amounting to an estate in law in the house concerned. 35
- (5) Subsection (2) is subject to section 113 in relation to the rights of persons occupying the house under existing tenancies or agreements.
- (6) The local housing authority shall not, without the consent in writing of the person or persons who would have power to create the right if the interim management order were not in force, create in exercise of the powers conferred by this section any right in the nature of a lease or licence. 40
- (7) Any enactment or rule of law relating to landlords and tenants or leases applies in relation to – 45

- (a) an interest created by the local housing authority under subsection (2)(c); or
- (b) a lease to which the local housing authority becomes a party under section 113;
- as if the authority were the legal owner of the premises. 5
- (8) Subsection (7) is subject to the provisions of section 113.
- (9) References in any enactment to housing accommodation provided or managed by the local housing authority do not include a house in relation to which an interim management order is in force.
- (10) This section is subject to section 99. 10
- 99 Financial arrangements**
- (1) The local housing authority shall pay to such relevant person as it considers appropriate –
- (a) the surplus (if any) of its income over its expenditure in respect of a house to which an interim management order relates; and 15
- (b) the interest on any such surplus at such reasonable rate as the local housing authority may determine.
- (2) The expenditure of the local housing authority may, in particular, include its reasonable administrative costs which may be recovered from rent or other charges collected or recovered in the exercise of its powers under section 98. 20
- (3) The relevant Minister may by order make provision for the maximum amount (whether expressed as a figure or as a percentage of the rent or other charges collected) which may be recovered as mentioned in subsection (2).
- (4) The local housing authority shall –
- (a) keep full accounts of its income and expenditure in respect of a house to which an interim management order relates; and 25
- (b) afford to each relevant person all reasonable facilities for inspecting, taking copies of and verifying those accounts.
- (5) In this section “relevant person” means any person who –
- (a) was, prior to the interim management order coming into force, the person having control of the house; 30
- (b) was, prior to the interim management order coming into force, the person managing the house; or
- (c) has an estate or interest in the house.
- 100 Operation of interim management orders** 35
- (1) Subject to subsection (2), an interim management order comes into force when it is made.
- (2) An interim management order which is made under section 96(4) or (5) comes into force when the revocation of the licence comes into force.
- (3) Subject to subsection (5), an interim management order shall include the date on which it will cease to be in force. 40
- (4) The date shall be no later than 12 months after the date on which the interim management order is made.

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- (5) An interim management order which is made under section 96(4) or (5) shall include provision for determining the date on which it will cease to be in force.
- (6) Provision made under subsection (5) must ensure that the date is no later than 12 months after the date on which the order comes into force.
- (7) Subsection (8) applies where a final management order has been made so as to replace an interim management order but the final management order has not come into force because of an appeal under section 110. 5
- (8) If the date on which the interim management order is to cease to be in force is passed before the appeal is finally determined or otherwise disposed of, that date shall be treated as extended until the appeal is finally determined or otherwise disposed of. 10

### 101 Interim management orders: appeals

- (1) A person aggrieved by an interim management order (other than an order made under section 96(6)) may, at any time while the order is in force, appeal to the county court. 15
- (2) On an appeal under subsection (1) the court may confirm, quash or vary the order.
- (3) The court may, in particular and in consequence of its decision, direct the local housing authority to grant a licence under Part 2 or 3 on such terms as the court may direct. 20
- (4) A person aggrieved by –  
 (a) a decision of a local housing authority to vary or revoke an interim management order; or  
 (b) a refusal of a local housing authority to vary or revoke such an order; may appeal to the county court. 25
- (5) If notices which are required by paragraph 9 or 14 of Schedule 6 have been served, an appeal under subsection (4) in relation to a decision to vary or refuse to vary an interim management order shall be made within the period of 21 days beginning with the day on which the last of the notices was served.
- (6) If notices which are required to be served by paragraph 17 or 20 of Schedule 6 have been served, an appeal under subsection (4) in relation to a decision to revoke or refuse to revoke an interim management order shall be made within the period of 21 days beginning with the day on which the last of the notices was served. 30
- (7) Except as provided by this section, an appeal under subsection (4) may be made at any time. 35
- (8) On an appeal under subsection (4) the court may confirm, reverse or vary the decision of the local housing authority.
- (9) No appeal is possible under this section by a person who is in occupation of the house or part of the house under a lease or agreement with an unexpired term of three years or less. 40

### 102 Variation of interim management orders

- (1) The local housing authority may vary an interim management order.

- (2) A variation of an interim management order made by virtue of subsection (1) shall not come into force until –
  - (a) the period of 21 days mentioned in subsection (5) of section 101 has expired without an appeal being made under subsection (4) of that section; or 5
  - (b) if an appeal is made under subsection (4) of that section within that period –
    - (i) a decision on the appeal confirming the variation (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought; or 10
    - (ii) if a further appeal to the Court of Appeal is brought, a final decision is given confirming the variation (with or without variation).
- (3) For the purposes of subsection (2)(b) the withdrawal of an appeal has the same effect as a decision confirming the variation appealed against. 15

**103 Termination of interim management orders**

- (1) An interim management order shall cease to have effect if –
  - (a) a licence under Part 2 or 3 comes into force in relation to the house concerned; or 20
  - (b) a final management order comes into force in relation to the house concerned.
- (2) The local housing authority may revoke an interim management order if it considers it appropriate to do so.

*Final management orders* 25

**104 Final management orders**

- (1) The local housing authority shall make a final management order in relation to a house if –
  - (a) an interim management order is in force in relation to the house; and
  - (b) the authority considers that making the final management order is the best alternative available to it. 30
- (2) The local housing authority shall make a new final management order so as to replace an existing final management order if the authority considers that making the new order is the best alternative available to it.
- (3) Subsections (1) and (2) are subject to subsections (4) to (6). 35
- (4) The local housing authority shall make a final management order in relation to a house in multiple occupation in relation to which an interim management order under section 96(6) is in force if, on an application by the authority, it is authorised to do so by the county court.
- (5) The local housing authority shall make a new final management order so as to replace an existing final management order made under subsection (5) if –
  - (a) it considers that making the new order is the best alternative available to it; and 40

- (b) on an application by the authority, it is authorised to make the new order by the county court.
- (6) The court shall not authorise a local housing authority to make a final management order under subsection (4) or (5) unless it considers that the condition mentioned in subsection (7) is satisfied. 5
- (7) The condition is that the making of a final management order is necessary to protect the health, safety or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity.
- (8) A final management order must include the date on which it will cease to be in force. 10
- (9) The date shall be no later than 5 years after the date on which the final management order is made.
- 105 Duties of local housing authorities: final management orders**
- (1) Subsection (2) applies where a final management order has come into force.
- (2) The local housing authority shall take such steps under the powers conferred by virtue of this Part as it considers appropriate in the particular circumstances of the case. 15
- (3) The local housing authority shall from time to time keep under review whether keeping a final management order in force is the best alternative available to it.
- (4) If, in the case of a house which (but for the making of the final management order) ought to be licensed under Part 2 or 3, the local housing authority considers on such a review that granting a licence in relation to the house is the best alternative available to it, it shall do so. 20
- (5) If, in the case of a house which (disregarding the making of the final management order) is not required to be licensed under Part 2 or 3, the local housing authority considers on such a review that revoking the final management order and taking no further action is the best alternative available to it, it shall do so. 25
- 106 General effect of final management orders**
- (1) Subsection (2) applies while a final management order is in force in relation to a house. 30
- (2) The local housing authority –
- (a) has the right to possession of the house;
- (b) has the right to do (and authorise a manager or other person to do) in relation to the house anything which a person having an estate or interest in the house would (but for the making of the order) be entitled to do; and 35
- (c) may create an interest in the house which, as near as may be, has the incidents of a leasehold.
- (3) In exercising its powers under subsection (2)(b) the local housing authority shall not incur any liability, other than as expressly provided by this Part, to any person having an estate or interest in the house concerned. 40

- (4) The power conferred by subsection (2)(c) exists despite the fact that the local housing authority does not under this section have an interest amounting to an estate in law in the house concerned.
- (5) Subsection (2) is subject to section 113 in relation to the rights of persons occupying the premises under existing tenancies or agreements. 5
- (6) The local housing authority shall not, without the consent in writing of the person or persons who would have power to create the right if the final management order were not in force, create in exercise of the powers conferred by this section any right in the nature of a lease or licence which is for a fixed term exceeding the date on which the order is due to expire. 10
- (7) Any enactment or rule of law relating to landlords and tenants or leases applies in relation to –
- (a) an interest created by the local housing authority under subsection (2)(c); or
  - (b) a lease to which the local housing authority becomes a party under section 113; 15
- as if the authority were the legal owner of the premises.
- (8) Subsection (7) is subject to the provisions of section 113.
- (9) References in any enactment to housing accommodation provided or managed by the local housing authority do not include a house in relation to which a final management order is in force. 20

#### 107 Financial arrangements: final management orders

- (1) The local housing authority shall pay to such relevant person as it considers appropriate –
- (a) the surplus (if any) of its income over its expenditure in respect of a house to which a final management order relates; and 25
  - (b) the interest on any such surplus at such reasonable rate as the local housing authority may determine.
- (2) The expenditure of the local housing authority may, in particular, include its reasonable administrative costs which may be recovered from rent or other charges collected or recovered in the exercise of its powers under section 106. 30
- (3) The relevant Minister may by order make provision for the maximum amount (whether expressed as a figure or as a percentage of the rent or other charges collected) which may be recovered as mentioned in subsection (2).
- (4) The local housing authority shall – 35
- (a) keep full accounts of its income and expenditure in respect of a house to which a final management order relates; and
  - (b) afford to each relevant person all reasonable facilities for inspecting, taking copies of and verifying those accounts.
- (5) Any relevant person who is aggrieved by a decision of the local housing authority under subsection (1) may appeal to the county court. 40
- (6) On an appeal the court may confirm, quash or vary the decision.
- (7) In this section “relevant person” means any person who has an estate or interest in the house.



**108 Incorporation of management schemes**

- (1) A final management order must contain a management scheme.
- (2) The scheme must set out, in general terms, how the house is to be managed.
- (3) It must, in particular, specify –
  - (a) any works which are to be undertaken by the local housing authority; 5
  - (b) an estimate of the costs of carrying out the works; and
  - (c) what, in the opinion of the local housing authority, is the maximum number of households or persons for whom the house is reasonably suitable for occupation.

**109 Operation of final management orders 10**

- (1) A final management order does not become operative until –
  - (a) the period of 21 days mentioned in subsection (1) of section 110 has expired without an appeal being made under that subsection; or
  - (b) if an appeal is made under that subsection within that period –
    - (i) a decision on the appeal confirming the order (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought; or 15
    - (ii) if a further appeal to the Court of Appeal is brought, a final decision is given confirming the order (with or without variation). 20
- (2) For the purposes of subsection (1)(b) the withdrawal of an appeal has the same effect as a decision confirming the order appealed against.
- (3) Subsection (4) applies where a final management order has been made so as to replace an existing final management order but the new order has not come into force because of an appeal under section 110(1). 25
- (4) If the date on which the existing final management order is to cease to be in force is passed before the appeal is finally determined or otherwise disposed of, that date shall be treated as extended until the appeal is finally determined or otherwise disposed of. 30

**110 Final management orders: appeals**

- (1) A person aggrieved by a final management order (other than an order made under section 104(5) or (6)) may, within the period of 21 days beginning with the day on which the last of the copies of the order was served under subsection (3) of section 117, appeal to the county court. 35
- (2) If no appeal is brought against a final management order within the permitted period, the order is final and conclusive as to matters which could have been raised on appeal.
- (3) On an appeal the court may confirm, quash or vary the order.
- (4) The court may, in particular and in consequence of its decision, direct the local housing authority to grant a licence under Part 2 or 3 or make a further interim management order on such terms as the court may direct. 40
- (5) A person aggrieved by –

- (a) a decision of a local housing authority to vary or revoke a final management order; or
  - (b) a refusal of a local housing authority to vary or revoke such an order; may appeal to the county court.
- (6) If notices which are required to be served by paragraph 9 or 14 of Schedule 6 have been served, an appeal under subsection (5) in relation to a decision to vary or refuse to vary a final management order shall be made within the period of 21 days beginning with the day on which the last of the notices was served. 5
- (7) If notices which are required to be served by paragraph 17 or 20 of Schedule 6 have been served, an appeal under subsection (5) in relation to a decision to revoke or refuse to revoke a final management order shall be made within the period of 21 days beginning with the day on which the last of the notices was served. 10
- (8) Except as provided by this section, an appeal under subsection (5) may be made at any time. 15
- (9) On an appeal under subsection (5) the court may confirm, reverse or vary the decision of the local housing authority.
- (10) No appeal is possible under this section by a person who is in occupation of the house or part of the house under a lease or agreement with an unexpired term of three years or less. 20

**111 Variation of final management orders**

- (1) The local housing authority may vary a final management order.
- (2) A variation of a final management order made by virtue of subsection (1) shall not come into force until – 25
- (a) the period of 21 days mentioned in subsection (6) of section 110 has expired without an appeal being made under subsection (5) of that section; or
  - (b) if an appeal is made under subsection (5) of that section within that period – 30
    - (i) a decision on the appeal confirming the variation (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought; or
    - (ii) if a further appeal to the Court of Appeal is brought, a final decision is given confirming the variation (with or without variation). 35
- (3) For the purposes of subsection (2)(b) the withdrawal of an appeal has the same effect as a decision confirming the variation appealed against.

**112 Termination of final management orders** 40

- (1) A final management order shall cease to have effect if a licence under Part 2 or 3 comes into force in relation to the house concerned.
- (2) The local housing authority may revoke a final management order if it considers it appropriate to do so.

*Interim and final management orders***113 Effect of management orders on occupiers**

- (1) In this section –
- “an existing occupier” means a person who, at the time when an interim or final management order comes into force – 5
- (a) is occupying part of the house and does not have an estate or interest in the whole of the house; or
- (b) in the case of a house to which Part 3 applies (within the meaning given by sections 85 and 94), is occupying the whole of the house; and 10
- “a new occupier” means a person who is occupying the whole or part of a house under a lease or licence which is created as a result of powers exercisable as a result of the coming into force of an interim or final management order.
- (2) Sections 98 and 106 do not affect the rights or liabilities of an existing occupier under a lease, licence or agreement (whether in writing or not) under which he is occupying the whole or part of the house when the order comes into force. 15
- (3) Such a lease, licence or agreement has effect while the order is in force as if the local housing authority were substituted in it for the lessor, licensor or (as the case may be) person granting the rights under the agreement. 20
- (4) Such a lease continues to have effect as near as may be as a lease despite the fact that the rights of the local housing authority, as substituted for the lessor, do not amount to an estate in law in the premises.
- (5) The provisions which exclude local authority lettings from the Rent Acts, that is – 25
- (a) sections 14 to 16 of the Rent Act 1977 (c. 42); and
- (b) those sections as applied by Schedule 2 to the Rent (Agriculture) Act 1976 (c. 80) and section 5(2) to (4) of that Act;
- do not apply to a lease or agreement under which an existing or new occupier is occupying the whole or part of the house. 30
- (6) Section 1(2) of, and paragraph 12 of Part 1 of Schedule 1 to, the Housing Act 1988 (which exclude local authority lettings from Part 1 of that Act) do not apply to a lease or agreement under which an existing or new occupier is occupying the whole or part of the house.
- (7) If immediately before an interim or final management order has effect an existing occupier was occupying the whole or part of the house under – 35
- (a) a protected or statutory tenancy within the meaning of the Rent Act 1977 (c. 42);
- (b) a protected or statutory tenancy within the meaning of the Rent (Agriculture) Act 1976 (c. 80); or 40
- (c) an assured tenancy or assured agricultural occupancy within the meaning of Part 1 of the Housing Act 1988 (c. 50);
- nothing in this Part prevents the continuance of that tenancy or occupancy or affects the continued operation of any of those Acts in relation to the tenancy or occupancy after the coming into force of the order. 45

- (8) An interest held by the local housing authority by virtue of this section or section 98 or 106 shall be treated as not belonging to the local housing authority for the purposes of—
- (a) section 80 of the Housing Act 1985 (c. 68) (the landlord condition for secure tenancies); or
  - (b) section 124 of the Housing Act 1996 (c. 52) (introductory tenancies).

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#### 114 Effect of management orders: furniture

- (1) Subsection (2) applies where, on the date on which an interim or final management order comes into force, there is furniture in the house which a person occupying the house has the right to use in consideration of periodical payments to the relevant proprietor (whether included in the rent payable by the occupier or not). 10
- (2) The right to possession of the furniture against all persons other than the occupier vests in the local housing authority on that date and remains vested in the authority while the order is in force. 15
- (3) The local housing authority may, on an application in writing by the person owning the furniture, by notice in writing served on that person not less than two weeks before the notice comes into force, renounce the right to possession of the furniture conferred by subsection (2).
- (4) If the local housing authority's right to possession of furniture conferred by subsection (2) is a right exercisable against more than one person interested in the furniture, any of those persons may apply to the county court for an adjustment of their respective rights and liabilities as regards the furniture. 20
- (5) On such an application the county court may make an order for such an adjustment of rights and liabilities either unconditionally or subject to such terms and conditions as it considers appropriate. 25
- (6) The terms and conditions may, in particular, include terms and conditions about the payment of money by a party to the proceedings to another party to the proceedings by way of compensation, damages or otherwise.
- (7) In this section— 30
- “furniture” includes fittings and other articles; and
  - “relevant proprietor” means the person by whom the periodical payments to which the local housing authority become entitled on the coming into force of the interim or final management order would have been receivable but for the making of the order, and the successors in title of that person. 35

#### 115 Exclusion of part of house from management orders

- (1) The local housing authority may exclude from the provisions of an interim or final management order a part of the house which is occupied by a person who has an estate or interest in the whole of the house. 40
- (2) Except where a contrary intention appears, references in this Part to the house to which an interim or final management order relates do not include a part of the house so excluded from the provisions of the order.

**116 Rights and liabilities on termination of management orders**

The relevant Minister may by regulations make provision about the disposition of interests in property, rights and liabilities as a result of the termination of an interim or final management order.

**117 Service of management orders**

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- (1) As soon as practicable after making an interim or final management order the local housing authority shall affix a copy of the order, together with a notice as described in subsection (2), to the house in a position where it is accessible to those occupying the house.
- (2) The notice shall set out the effect of the order in general terms, referring in particular to the rights of appeal conferred by section 101 or (as the case may be) 110 and stating the principal grounds for making the order. 10
- (3) A copy of an interim or final management order shall be served by the local housing authority on every person who is, to its knowledge –
  - (a) a person having control of the house; 15
  - (b) a person managing the house;
  - (c) a person having an estate or interest in the house; or
  - (d) an occupier of the house.
- (4) The references in subsection (3) to the person having control of the house and the person managing the house shall, in the application of that subsection to a final management order, have effect as if they were references to such person or persons as the local housing authority considers appropriate. 20

**118 Further procedural requirements: management orders**

Schedule 6 (further procedural requirements in relation to management orders) shall have effect. 25

**119 Management orders: powers of entry**

- (1) The local housing authority, and any person authorised in writing by it, has the right mentioned in subsection (2).
- (2) The right is the right, as against a person having an estate or interest in a house to which an interim or final management order relates, at all reasonable times to enter any part of the house for the purpose of survey and examination or carrying out works. 30
- (3) Where part of a house is excluded from the provisions of an interim or final management order under section 115, the right conferred by subsection (1) is exercisable as respects that part so far as is reasonably required for the purpose of survey and examination of, or carrying out works in, the part of the house which is subject to the order. 35
- (4) If the occupier of part of a house to which an interim or final management order relates, after receiving notice of the intended action, prevents any officers, agents, servants or workmen of the local housing authority from carrying out work in the house, a magistrates' court may order him to permit to be done on the premises anything which the authority considers to be necessary. 40

- (5) A person who fails to comply with an order of the court under subsection (4) commits an offence.
- (6) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **120 Management orders: power to supply furniture and fittings** 5

The local housing authority may fit out, furnish and supply a house to which an interim or final management order relates with such furniture, fittings and conveniences as it considers to be required.

### **121 Management orders: local land charges**

An interim or final management order is a local land charge when it comes into force. 10

#### *Management regulations*

### **122 Management regulations etc.**

- (1) The relevant Minister may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation, and every house to which Part 3 applies (within the meaning given by sections 85 and 94) – 15
  - (a) there are in place satisfactory management arrangements; and
  - (b) satisfactory standards of management are observed.
- (2) The regulations may, in particular, impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations. 20
- (3) A person commits an offence if, without reasonable excuse, he fails to comply with a regulation under this section.
- (4) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 25

#### *Overcrowding notices*

### **123 Service of overcrowding notices**

- (1) This section applies to any house in multiple occupation – 30
  - (a) in relation to which no interim or final management order is in force; and
  - (b) which is not required to be licensed under Part 2.
- (2) The local housing authority may serve an overcrowding notice on one or more relevant persons if, having regard to the rooms available, it considers that an excessive number of persons is being, or is likely to be, accommodated in the house in multiple occupation concerned. 35
- (3) The local housing authority shall, at least seven days before serving an overcrowding notice –

- 
- (a) inform in writing every relevant person (whether or not the person on whom the authority is to serve the notice) of its intention to serve the notice; and
- (b) ensure that, so far as is reasonably possible, every occupier of the house in multiple occupation concerned is informed of the authority's intention. 5
- (4) The local housing authority shall also give the persons informed under subsection (3) an opportunity of making representations about the proposal to serve an overcrowding notice.
- (5) An overcrowding notice becomes operative, if no appeal is brought under section 127, at the end of the period of 21 days from the date of service of the notice. 10
- (6) If no appeal is brought under section 127, an overcrowding notice is final and conclusive as to matters which could have been raised on such an appeal.
- (7) A person who contravenes an overcrowding notice commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 15
- (8) In this section "relevant person" means a person who is, to the knowledge of the local housing authority –
- (a) a person having control of the house in multiple occupation concerned; 20
- (b) a person managing the house in multiple occupation concerned; or
- (c) a person having an estate or interest in the house in multiple occupation concerned.
- 124 Contents of overcrowding notices**
- (1) An overcrowding notice shall state in relation to each room in the house in multiple occupation concerned – 25
- (a) what the local housing authority considers to be the maximum number of persons by whom the room is suitable to be occupied as sleeping accommodation at any one time; or
- (b) that the local housing authority considers that the room is unsuitable to be occupied as sleeping accommodation. 30
- (2) An overcrowding notice may specify special maxima applicable where some or all of the persons occupying a room are under such age as may be specified in the notice.
- (3) An overcrowding notice shall contain – 35
- (a) the requirement set out in section 125 (not to permit excessive number of persons to sleep in the house in multiple occupation); or
- (b) the requirement set out in section 126 (not to admit new residents if number of persons is excessive).
- (4) The local housing authority may at any time withdraw an overcrowding notice which has been served on any person and which contains the requirement set out in section 126 and serve on him instead an overcrowding notice containing the requirement set out in section 125. 40

**125 Requirement as to overcrowding generally**

- (1) The requirement set out in this section is that the person on whom the notice is served must refrain from –
- (a) permitting a room to be occupied as sleeping accommodation otherwise than in accordance with the notice; or 5
  - (b) permitting persons to occupy the house in multiple occupation as sleeping accommodation in such numbers that it is not possible to avoid persons of opposite sexes who are not living together as husband and wife sleeping in the same room.
- (2) For the purposes of subsection (1)(b) – 10
- (a) children under the age of 12 shall be disregarded; and
  - (b) it shall be assumed that the persons occupying the house in multiple occupation as sleeping accommodation sleep only in rooms for which a maximum is set by the notice and that the maximum set for each room is not exceeded. 15

**126 Requirement as to new residents**

- (1) The requirement set out in this section is that the person on whom the notice is served must refrain from –
- (a) permitting a room to be occupied by a new resident as sleeping accommodation otherwise than in accordance with the notice; or 20
  - (b) permitting a new resident to occupy any part of the house in multiple occupation as sleeping accommodation if that is not possible without persons of opposite sexes who are not living together as husband and wife sleeping in the same room.
- (2) In subsection (1) “new resident” means a person who was not an occupier of the house in multiple occupation immediately before the notice was served. 25
- (3) For the purposes of subsection (1)(b) –
- (a) children under the age of 12 shall be disregarded; and
  - (b) it shall be assumed that the persons occupying any part of the house in multiple occupation as sleeping accommodation sleep only in rooms for which a maximum is set by the notice and that the maximum set for each room is not exceeded. 30

**127 Appeals against overcrowding notices**

- (1) A person aggrieved by an overcrowding notice may, within the period of 21 days beginning with the date of service of the notice, appeal to the county court. 35
- (2) On an appeal the court may by order confirm, quash or vary the notice.
- (3) If an appeal is brought the notice does not become operative until –
- (a) a decision on the appeal confirming the notice (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought; or 40
  - (b) if a further appeal to the Court of Appeal is brought, a final decision is given confirming the notice (with or without variation).



- (4) For the purpose of subsection (3) the withdrawal of an appeal has the same effect as a decision confirming the notice appealed against.

## **128 Revocation and variation of overcrowding notices**

- (1) The local housing authority may at any time, on the application of a relevant person— 5
- (a) revoke an overcrowding notice; or
  - (b) vary it so as to allow more people to be accommodated in the house in multiple occupation concerned.
- (2) The applicant may appeal to the county court if— 10
- (a) the local housing authority refuses an application under subsection (1);  
or
  - (b) does not notify the applicant of its decision within the period of 35 days beginning with the making of the application (or within such further period as the applicant may in writing allow).
- (3) On an appeal the court may revoke the notice or vary it in any manner in which it might have been varied by the local housing authority. 15
- (4) In this section “relevant person” means a person who is, to the knowledge of the local housing authority— 20
- (a) a person having control of the house in multiple occupation concerned;
  - (b) a person managing the house in multiple occupation concerned; or
  - (c) a person having an estate or interest in the house in multiple occupation concerned.

### *Supplementary provisions*

## **129 Codes of practice: Part 4**

- (1) The relevant Minister may by order— 25
- (a) approve any code of practice (whether prepared by him or another person) which, in his opinion, gives suitable guidance to any person in relation to any matter arising under this Part;
  - (b) approve any modification of such a code; or
  - (c) withdraw such a code or modification. 30
- (2) The relevant Minister shall only approve a code of practice or a modification of a code if he is satisfied that— 35
- (a) the code or modification has been published (whether by him or by another person) in such manner as he considers appropriate for the purpose of bringing the code or modification to the attention of those likely to be affected by it; or
  - (b) arrangements have been made for the code or modification to be so published.
- (3) The relevant Minister may approve— 40
- (a) more than one code of practice in relation to the same matter;
  - (b) a code of practice which makes different provision in relation to different cases or descriptions of case (including different provision for different areas).

- (4) A failure to comply with a code of practice for the time being approved under this section shall not of itself render a person liable to any civil or criminal proceedings.
- (5) But in any civil or criminal proceedings—
- (a) any code of practice approved under this section shall be admissible in evidence; and
- (b) any provision of any such code which appears to the court to be relevant to any question arising in the proceedings shall be taken into account in determining that question.
- (6) In this section references to a code of practice include references to a part of a code of practice.

**130 Interpretation: Part 4**

In this Part—

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)); and

“house in multiple occupation” has the meaning given by sections 164 to 170 but also includes any yard, garden, outhouses and appurtenances belonging to the house or usually enjoyed with it.

**131 Index of defined expressions: Part 4**

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions inserted in the right-hand column.

<i>Expression</i>	<i>Provision of this Act</i>		
Enactment	Section 130	25	
House in multiple occupation	Section 130		
Landlord	Section 172(3)		
Lease, lessee, etc.	Section 172(1) to (4)		
Local housing authority	Section 171		
Occupier (and related expressions)	Section 172(5)		30
Owner	Section 172(6)		
Person having control	Section 173(1) and (2)		
Person having estate or interest	Section 172(7)		35
Person managing	Section 173(3)		
Tenancy, tenant, etc.	Section 172(1) to (4)		
The relevant Minister	Section 2(3)		

**PART 5**

## HOME INFORMATION PACKS

*Preliminary***132 Introductory**

Sections 133 to 135 define or explain expressions used in this Part in connection with the requirements relating to home information packs which are imposed – 5

- (a) by section 137 in relation to residential properties which have been put on the market; or
- (b) by section 139 in relation to activities carried out by a persons acting as estate agent with a view to the marketing of residential properties. 10

**133 Meaning of “residential property” and other expressions**

- (1) “Residential property” means premises in England and Wales consisting of a single dwelling-house, including any land intended to be occupied and enjoyed together with that dwelling-house. 15
- (2) “Dwelling-house” means a building or part of a building occupied or intended to be occupied as a separate dwelling (and includes one that is being or is to be constructed).
- (3) A residential property is put on the market when the fact that it is or may become available for sale is, with a view to marketing the property, first made public in England and Wales by or on behalf of the seller. 20
- (4) “Sale”, in relation to a residential property, means a disposal, or agreement to dispose, by way of sale of the freehold interest or the interest under a long lease; and “seller” means a person contemplating disposing of such an interest.
- (5) A residential property which has been put on the market is to be regarded as remaining on the market until it is taken off the market or sold. 25
- (6) A fact is made public when it is advertised or otherwise communicated (in whatever form and by whatever means) to the public or to a section of the public.
- (7) “Home information pack” means a collection of documents relating to a residential property or the terms on which it is or may become available for sale 30

**134 Responsibility for marketing a property which is on the market**

- (1) This section identifies who is, for the purposes of this Part, responsible for marketing a residential property which is being or has been put on the market in England and Wales and when that responsibility arises and ceases. 35
- (2) A person may be responsible for marketing the property on more than one occasion.
- (3) Only the seller or a person acting as estate agent for the seller may be responsible for marketing the property. 40

- 
- (4) A person acting as estate agent becomes responsible for marketing the property when action taken by him or on his behalf –
- (a) puts the property on the market; or
  - (b) makes public the fact that the property is on the market.
- (5) The responsibility of a person acting as estate agent ceases when both of the following conditions are satisfied, namely –
- (a) his contract with the seller is terminated (whether by the withdrawal of his instructions or otherwise); and
  - (b) he has ceased to take any action which makes public the fact that the property is on the market.
- (6) Subject to subsection (7), the seller becomes responsible for marketing the property when action taken by him or on his behalf –
- (a) puts the property on the market; or
  - (b) makes public the fact that the property is on the market.
- (7) The seller does not become responsible under subsection (6) by virtue of any action taken by or on behalf of a person acting as his estate agent (whether or not the action was requested or authorised by the seller).
- (8) The responsibility of the seller under subsection (6) ceases when both of the following conditions are satisfied, namely –
- (a) there is at least one person acting as his estate agent who is responsible for marketing the property; and
  - (b) the seller has ceased to take any action which makes public the fact that the property is on the market.
- (9) Any responsibility arising under this section also ceases when the property is taken off the market or sold.

### 135 Acting as an estate agent

- (1) A person acts as estate agent for the seller of a residential property if he does anything, in the course of a business, in pursuance of instructions from the seller –
- (a) to carry out any activities with a view to effecting the introduction to the seller of a person wishing to buy the property; or
  - (b) to dispose of the property by auction or tender;
- and for this purpose it is immaterial whether or not he describes himself as an estate agent.
- (2) A person does not act as an estate agent for the seller unless the business in question is carried on (in whole or in part) from a place of business in England and Wales.

### 136 Application of Part to subdivided buildings

- (1) This section applies where –
- (a) two or more dwelling-houses contained in a sub-divided building are marketed together for sale as a single property; and
  - (b) any one or more of those dwelling-houses is not available for sale separately.

- (2) This Part applies to any dwelling-house comprised in the property that is not available for sale separately as if it were being marketed for sale as a separate residential property.
- (3) In this section “sub-divided building” means a building (or part of a building) originally constructed or adapted to be a single dwelling which has been subdivided (on one or more occasions) into separate dwelling-houses. 5
- (4) Any reference in this section to a dwelling-house includes any land intended to be occupied and enjoyed together with that dwelling-house.

*Requirements relating to home information packs*

- 137 Duties of responsible person where a property is on the market** 10
- (1) This section applies to any person who becomes responsible for marketing a residential property from the time he becomes responsible until the time his responsibility ceases.
- (2) It is the duty of the responsible person at all times during that period to have in his possession or under his control a home information pack for the property which complies with the requirements of any regulations under section 144. 15
- (3) It is also the duty of the responsible person –
- (a) to comply with any request made to him by a potential buyer (and not withdrawn) for –
- (i) a copy of the home information pack for the property; or 20
- (ii) a copy of (or of an extract from) a document included in that pack;
- by providing him within the permitted period with an authentic copy;
- (b) if he provides a potential buyer with, or allows a potential buyer to inspect, any document purporting to be – 25
- (i) a copy of the home information pack for the property; or
- (ii) a copy of (or of an extract from) a document included in that pack;
- to ensure that the document is an authentic copy.
- (4) In subsection (3) “the home information pack” means the home information pack intended by the responsible person to be the one required by subsection (2). 30
- (5) A sum not exceeding the reasonable cost of providing a copy mentioned in subsection (3) may be charged by the responsible person.
- (6) For the purposes of subsection (3) – 35
- “authentic copy” means a document which is –
- (a) a copy of the home information pack as it stands at the material time; or
- (b) a copy of (or of an extract from) a document as it appears in the home information pack at the material time; 40
- as the case may be; and
- “permitted period” means the period of 14 days beginning with –
- (a) the day on which a request mentioned in subsection (3)(a) is made; or

- (b) if a charge for providing the copy is payable in advance but not paid until after the request is made, the day on which payment is received.
- (7) In subsection (6) “the material time” means—
- (a) in the case of the duty under subsection (3)(a), the time when the request is made; and
- (b) in the case of the duty under subsection (3)(b), the time when the document in question is provided or inspected.
- (8) A person does not comply with the duty in subsection (3)(a) by providing a copy in electronic form unless the person making the request consents to receiving it in that form.
- (9) The duty in subsection (3)(b) does not apply to anything provided at the request of a potential buyer under subsection (3)(a).
- (10) This section has effect subject to sections 138, 140 and 141.
- 138 Circumstances in which section 137 duties may not be breached**
- (1) A failure to comply with the requirements of section 137 does not constitute a breach of duty in the following circumstances.
- (2) A failure by the seller of a residential property to comply with the requirements of section 137(2) is not a breach of duty if—
- (a) there was at the time of the failure a person who was responsible for marketing the property under section 134(3); and
- (b) he believed on reasonable grounds that the responsible person had a home information pack for the property in his possession or under his control which complied with the requirements of any regulations under section 144 which applied at that time.
- (3) A failure by any responsible person to comply with section 137(3)(a) is not a breach of duty if at the time the request was made he believed, on reasonable grounds, that the person making the request—
- (a) was unlikely to have sufficient means to buy the property in question;
- (b) was not genuinely interested in buying a property of a general description which applies to the property; or
- (c) was not a person to whom the seller was likely to be prepared to sell the property.
- Nothing in this subsection authorises the doing of anything which constitutes an unlawful act of discrimination.
- (4) A failure by the seller of a residential property to comply with section 137(3)(a) is not a breach of duty if—
- (a) at the time the request was made there was another person responsible for marketing the property under section 134(3);
- (b) he believed at that time, on reasonable grounds, that that other responsible person had a home information pack for the property in his possession or under his control which complied with the requirements of any regulations under section 144 which applied at that time; and
- (c) he took reasonable steps to inform the potential buyer that any request should be made to the other responsible person.

**139 Other duties of person acting as estate agent.**

- (1) This section applies to a person acting as estate agent for the seller of a residential property where—
- (a) the property is not on the market; or
  - (b) the property is on the market but the person so acting is not a person responsible for marketing the property. 5
- (2) It is the duty of a person to whom this section applies to have in his possession or under his control, when any qualifying action is taken by him or on his behalf, a home information pack for the property which complies with the requirements of any regulations under section 144 that apply at the time that action is taken. 10
- (3) In subsection (2) “qualifying action” means action taken with a view to marketing the property, which—
- (a) communicates to any person in England and Wales the fact that the property is or may become available for sale; but 15
  - (b) does not put the property on the market or make public the fact that the property is on the market.
- (4) It is also the duty of a person to whom this section applies, if he provides a potential buyer with, or allows a potential buyer to inspect, any document purporting to be— 20
- (a) a copy of the home information pack for the property; or
  - (b) a copy of (or of an extract from) a document included in that pack;
- to ensure that the document is an authentic copy.
- (5) In subsection (4)—
- “authentic copy” means a document which is— 25
    - (a) a copy of the home information pack as it stands when it is provided or inspected; or
    - (b) a copy of (or of an extract from) a document as it appears in the home information pack at that time;
  - as the case may be; 30
  - “the home information pack” means the home information pack intended by the person to whom this section applies to be the one required by subsection (2).
- (6) This section has effect subject to sections 140 and 141.

**140 Residential property not available with vacant possession 35**

- (1) The duties under sections 137 and 139 do not apply in relation to a residential property at any time when it is not available for sale with vacant possession.
- (2) A residential property shall be presumed for the purposes of sections 137 and 139 to be available with vacant possession at any time when a duty would apply in relation to the property if it is so available, unless the contrary appears from the manner in which the property is being marketed at that time. 40

**141 Power to provide for further exceptions**

The Secretary of State may by regulations provide for other exceptions from any duty in section 137 or 139 in such cases and circumstances, and to such extent, as may be specified in the regulations.

**142 Breach of duty by employees, bodies corporate and partnerships**

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- (1) Where a breach of a duty under section 137 or 139 is –
- (a) committed by a person due to the act or default of an employee of his;  
or
  - (b) is committed by a body corporate with the consent or connivance of, or is attributable to neglect on the part of, an officer of the body; 10
  - (c) is committed by a partnership with the consent or connivance of, or is attributable to neglect on the part of, a partner;
- the employee, officer or partner (as the case may be) is also in breach of that duty and liable to enforcement action by an enforcement authority.
- (2) In subsection (1) “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in that capacity. 15
- (3) Where the affairs of a body corporate are managed by its members, subsection (1)(b) applies in relation to a member (when acting in connection with his functions of management) as if he were an officer of the body. 20
- (4) A person who commits a breach of duty by virtue of subsection (1) may be the subject of enforcement action whether or not action is also taken against the employer, body corporate or partnership in question.

**143 Right of private action**

- (1) This section applies where a potential buyer makes a request to a person who is responsible for marketing a residential property for a copy of, or of a document included in, the home information pack for the property. 25
- (2) If the responsible person –
- (a) fails to comply with the request; and
  - (b) by doing so commits a breach of duty under section 137(3)(a); 30
- the potential buyer is entitled to recover from the responsible person any reasonable fee paid by him for the purpose of obtaining any prescribed document which was not provided to him in pursuance of his request.
- (3) In this section –
- “prescribed document” means a document (being one required to be included in the home information pack by regulations under section 144) which is prescribed by regulations made by the Secretary of State for the purposes of this section; and 35
  - “home information pack” means the home information pack intended by the responsible person to be the one required by section 137(2). 40



*Contents of home information packs***144 Contents of home information packs**

- (1) The Secretary of State may make regulations prescribing –
  - (a) the documents to be included in a home information pack required for a residential property by section 137(2) or 139(2); and 5
  - (b) particular information which is to be included in or excluded from any prescribed document.
- (2) A document prescribed under subsection (1) must be one that the Secretary of State considers would disclose relevant information.
- (3) Any particular information required to be included in a prescribed document must be information that the Secretary of State considers to be relevant information. 10
- (4) In this section “relevant information” means information about any matter connected with the property (or the sale of the property) that would be of interest to potential buyers. 15
- (5) Without prejudice to the generality of subsection (4), the information which the Secretary of State may consider to be relevant information includes any information about any of the following matters, namely –
  - (a) the interest which is for sale and the terms on which it is proposed to sell it; 20
  - (b) the title to the property;
  - (c) anything relating to or affecting the property that is contained in –
    - (i) a register required to be kept by or under any enactment (whenever passed); or
    - (ii) records kept by a person who can reasonably be expected to give information derived from those records to the seller at his request (on payment, if required, of a reasonable charge); 25
  - (d) the physical condition of the property (including any particular characteristics or features of the property);
  - (e) the energy efficiency of the property; 30
  - (f) any warranties or guarantees subsisting in relation to the property; and
  - (g) any taxes, service charges or other charges payable in relation to the property.
- (6) The regulations may require the home information pack for the property to include –
  - (a) replies the seller proposes to give to prescribed pre-contract enquiries; and
  - (b) documents or particular information indexing or otherwise explaining the contents of the pack. 35
- (7) The regulations may require a prescribed document –
  - (a) to be in such form as may be prescribed; and
  - (b) to be prepared by a person of a prescribed description on such terms (if any) as may be prescribed. 40
- (8) The terms mentioned in subsection (7)(b) may include terms which enable provisions of the contract under which the document is to be prepared to be enforced by – 45

- (a) a potential or actual buyer;
  - (b) a mortgage lender; or
  - (c) any other person involved in the sale of the property who is not a party to that contract.
- (9) The regulations may – 5
- (a) provide for the time at which any document is to be included in or removed from the home information pack;
  - (b) make incidental, supplementary and transitional provision; and
  - (c) make different provision for different areas, for different descriptions of properties or for other different circumstances (including the manner in which a residential property is marketed). 10
- (10) In this section “prescribed” means prescribed by regulations under this section.

#### 145 Home condition reports

- (1) Regulations under section 144 may make the provision mentioned in this section in relation to any description of document dealing with matters mentioned in section 144(5)(d) or (e) (reports on physical condition or energy efficiency) which is to be included in the home information pack for a residential property. 15
- (2) In this section “home condition report” means a document of that description.
- (3) The regulations may require a home condition report to be made by an individual who is a member of an approved certification scheme following an inspection carried out by him in accordance with the provisions of the scheme. 20
- (4) The regulations shall, if the provision mentioned in subsection (3) is made, make provision for the approval by the Secretary of State of one or more suitable certification schemes (and for the withdrawal by him of any such approval). 25
- (5) The regulations shall require the Secretary of State to be satisfied, before approving a certification scheme, that the scheme contains appropriate provision –
- (a) for ensuring that members of the scheme are fit and proper persons who are qualified (by their education, training and experience) to produce home condition reports; 30
  - (b) for ensuring that members of the scheme have in force suitable indemnity insurance;
  - (c) for facilitating the resolution of complaints against members of the scheme; 35
  - (d) for the registration of all home condition reports made by members of the scheme; and
  - (e) for such other purposes as may be specified in the regulations.
- (6) The regulations may require or authorise an approved certification scheme to contain provision about any matter relating to the home condition reports with which the scheme is concerned (including the terms on which members of the scheme may undertake to produce a home condition report). 40
- (7) Nothing in this section limits the power under section 144 to make provision about home condition reports in the regulations. 45

*Enforcement***146 Enforcement powers**

- (1) It is the duty of a local weights and measures authority (in this Part referred to as “an enforcement authority”) to enforce the duties under this Part in their area. 5
- (2) A duly authorised officer of an enforcement authority (“an officer”) may require a person who appears to him to be or to have been a person responsible for marketing a residential property to produce for inspection a copy of, or of any document included in, the home information pack for that property.
- (3) An officer may require a person who appears to him – 10
- (a) to be taking or to have taken any qualifying action (within the meaning of section 139(3)) in relation to that property; and
- (b) to be acting or to have been acting as estate agent for the seller of a residential property when that qualifying action was taken;
- to produce for inspection a copy of, or of any document included in, the home information pack for that property. 15
- (4) An officer may –
- (a) if he has reasonable grounds for suspecting that a breach of duty under section 137 or 139 is being or has been committed; and
- (b) for the purpose of ascertaining whether such a breach of duty is being or has been committed, 20
- require a person carrying on or employed in a business to produce for inspection any record or document relating to the business.
- (5) A requirement under subsections (2) to (4) may not be imposed more than 6 months after the last day on which the person concerned was responsible for marketing the property or was subject to a duty under section 139 in relation to the property (as the case may be). 25
- (6) The powers conferred by subsections (2) to (4) include power –
- (a) to require the production in a visible and legible documentary form of any document included in the home information pack in question which is held in electronic form; and 30
- (b) to take copies of any document produced to him for inspection.
- (7) In subsections (2) and (3) “the home information pack” means the home information pack intended by the person concerned to be the one that is required for the property or (if he is no longer a responsible person) the one that was last required for the property, by section 137(2) or 139(2) (as the case may be). 35
- (8) Nothing in subsection (4) requires a person to produce (or authorises the taking of copies of) a document which he could not be compelled to produce in civil proceedings before the High Court. 40
- (9) The powers of an officer under this section may be exercised by him only at a reasonable hour and on production (if required) of his credentials.

**147 Fixed penalty notices**

- (1) A duly authorised officer of an enforcement authority may, if he believes that a person is committing or has committed a breach of duty under section 137 or 139, serve a penalty notice on that person.
- (2) A fixed penalty notice is a notice which – 5
- (a) states the officer’s belief and gives such particulars of the circumstances as may be necessary to give reasonable notice of the breach to the recipient; and
- (b) requires the person to whom the notice is addressed, within the period specified in the notice- 10
- (i) to pay the penalty charge specified in the notice; or
- (ii) to give notice to the enforcement authority that he wishes the authority to review the notice.
- (3) If the recipient of a penalty charge notice fails to comply with subsection (2)(b) within the specified period, the enforcement authority whose officer served the notice may recover the amount of the penalty charge from the recipient as a debt due to the authority. 15
- (4) Any penalty charge imposed on a partnership shall be paid out of the assets of the partnership.
- (5) Schedule 7 (which makes further provision about fixed penalty notices, reviews of fixed penalty notices and appeals) has effect. 20

**148 Offences relating to enforcement officers**

- (1) A person who obstructs an officer of an enforcement authority acting in pursuance of section 146(4) is guilty of an offence.
- (2) A person who, not being a duly authorised officer of an enforcement authority, purports to act as such in pursuance of section 146 or 147 is guilty of an offence. 25
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*Supplementary***149 Office of Fair Trading**

- (1) An enforcement authority may notify the Office of Fair Trading of any breach of duty under this Part appearing to it to have been committed by a person acting as estate agent. 30
- (2) An enforcement authority shall notify the Office of Fair Trading of – 35
- (a) any penalty charge notice served by an officer of the authority in respect of a breach of duty under this Part;
- (b) any notice given by the authority confirming or withdrawing a penalty charge notice; and
- (c) the result of any appeal from the confirmation of a penalty charge notice. 40
- (3) The Estate Agents Act 1979 (c. 38) shall apply in relation to a person who commits a breach of duty under this Part in the course of estate agency work

(within the meaning of that Act) as it applies to a person who has engaged in a practice such as is mentioned in section 3(1)(d) of that Act in the course of such work.

## 150 Grants

- (1) The Secretary of State may make grants towards expenditure incurred by any person in connection with—
- (a) the development of proposals for any provision to be made by regulations under section 144; or
  - (b) the development of schemes which are intended to be certification schemes for the purposes of any provision made or expected to be made in regulations under section 144 by virtue of section 145.
- (2) A grant under this section may be made on conditions, which may include (among other things)–
- (a) conditions as to the purposes for which the grant or any part of it may be used; and
  - (b) conditions requiring the repayment of the grant or any part of it in such circumstances as may be specified in the conditions.

## 151 Interpretation of Part 5

- (1) In this Part–
- “acting as estate agent for the seller” shall be construed in accordance with section 135;
  - “disposal” includes the creation of, or the grant of an option to acquire, an interest in land;
  - “long lease” means –
    - (a) a lease granted for a term certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture; or
    - (b) a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, other than a lease by sub-demise from one which is not a long lease;
 and for this purpose “lease” does not include a mortgage term; and
    - “potential buyer” means a person who claims that he is or may become interested in buying a residential property.
- (2) Any action taken in the course of a business carried on by any person is to be regarded for the purposes of this Part as action taken by that person.
- (3) A document which is not in electronic form is only to be regarded as being under the control of a person while it is in the possession of another if he has the right to take immediate possession of the document on demand (and without payment).
- (4) A document held in electronic form is to be regarded for the purposes of this Part as being in a person’s possession or under his control if (and only if) he is readily able (using equipment available to him)–
- (a) to view the document in a form that is visible and legible; and
  - (b) to produce copies of it in a visible and legible documentary form.

**152 Index of defined expressions: Part 5**

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions inserted in the right-hand column.

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<i>Expression</i>	<i>Provision of this Act</i>	
Acting as estate agent for the seller	Section 151(1)	
Action taken in course of business	Section 151(2)	
Control of documents	Section 151(3) and (4)	
Disposal	Section 151(1)	10
Dwelling-house	Section 133(2)	
Enforcement authority	Section 146	
Home information pack	Section 133(7)	
Long lease	Section 151(1)	
Make public	Section 133(6)	15
Possession of electronic documents	Section 151(4)	
Potential buyer	Section 151(1)	
Putting on the market	Section 133(3)	
Remaining on the market	Section 133(5)	
Residential property	Section 133(1)	20
Sale	Section 133(4)	
Seller	Section 133(4)	

**PART 6**

## OTHER PROVISIONS ABOUT HOUSING

*Right to buy* 25

**153 Extension of qualifying period for right to buy**

- (1) In section 119(1) of the Housing Act 1985 (c. 68) (qualifying period for right to buy) for “two” there is substituted “five”.
- (2) In subsection (2)(a) of section 129 of that Act (discount) –
  - (a) for “two” there is substituted “five”; and
  - (b) for “32 per cent” there is substituted “35 per cent”.
- (3) In subsection (2)(b) of that section –

30

- (a) for “two”, where it appears for the second time, there is substituted “five”; and
  - (b) for “44 per cent” there is substituted “50 per cent”.
- (4) In subsection (2A)(b) of that section for “two” there is substituted “five”.
- (5) The amendments made by this section do not apply in relation to a secure tenancy which begins before, or in pursuance of a contract made before, the coming into force of this section. 5

**154 Period during which discount to be repaid**

- (1) Section 155 of the Housing Act 1985 (c. 68) (repayment of discount on early disposal) is amended as follows. 10
- (2) In subsection (2) for “three” there is substituted “five”.
- (3) In subsection (3) for “three” there is substituted “five”.
- (4) In subsection (3A)(a) for “three” there is substituted “five”.
- (5) The amendments made by this section do not apply in relation to a conveyance of the freehold or grant of a lease in pursuance of Part 5 of that Act if the notice under section 122 of that Act (tenant’s notice claiming to exercise right to buy) is served before the coming into force of this section. 15

**155 Repayment of discount on early disposal**

- (1) In section 155 of the Housing Act 1985 (c. 68) (repayment of discount on early disposal), in subsection (2) – 20
- (a) for “on demand” there is substituted “such sum (if any) as the landlord may demand in accordance with section 155A”; and
  - (b) the words from “, the discount” to the end are omitted.
- (2) In subsection (3) of that section –
- (a) for “on demand” there is substituted “such sum (if any) as the landlord may demand in accordance with section 155B”; and 25
  - (b) the words from “, the discount” to the end are omitted.
- (3) After that section there is inserted –

**“155A Amount of discount which may be demanded by landlord: right to buy 30**

- (1) The landlord may demand such sum as he considers appropriate, up to and including the maximum amount specified in this section.
- (2) The maximum amount which may be demanded by the landlord is a percentage of the price paid for the disposal which is equal to the discount to which the secure tenant was entitled, where the discount is expressed as a percentage of the value which under section 127 was taken as the value of the dwelling-house at the relevant time. 35
- (3) But for each complete year which has elapsed after the conveyance or grant and before the disposal the maximum amount which may be demanded by the landlord is reduced by one-fifth. 40

- (4) This section is subject to section 155C.

**155B Amount of discount which may be demanded by landlord: right to acquire on rent to mortgage terms**

- (1) The landlord may demand such sum as he considers appropriate, up to and including the maximum amount specified in this section. 5
- (2) The maximum amount which may be demanded by the landlord is the discount (if any) to which the tenant was entitled on the making of –
- (a) the initial payment;
  - (b) any interim payment made before the disposal; or
  - (c) the final payment if so made; 10
- reduced, in each case, by one-fifth for each complete year which has elapsed after the making of the initial payment and before the disposal.”
- (4) The amendments made by this section do not apply in relation to a conveyance of the freehold or grant of a lease in pursuance of Part 5 of that Act if the notice under section 122 of that Act (tenant’s notice claiming to exercise right to buy) is served before the coming into force of this section. 15

**156 Increase attributable to home improvements**

- (1) After section 155B of the Housing Act 1985 (c. 68) (inserted by section 155 of this Act) there is inserted – 20

**“155C Increase attributable to home improvements**

- (1) In calculating the maximum amount which may be demanded by the landlord under section 155A, such amount (if any) of the price paid for the disposal which is attributable to improvements made to the dwelling-house – 25
- (a) by a person falling within subsection (2); and
  - (b) after the conveyance or grant and before the disposal;
- shall be disregarded.
- (2) A person falls within this subsection if he is – 30
- (a) the secure tenant; or
  - (b) the person by whom the disposal is, or is to be, made.
- (3) The amount to be disregarded under this section shall be such amount as may be agreed between the parties or determined by the district valuer.
- (4) The district valuer shall not be required by virtue of this section to make a determination for the purposes of this section unless – 35
- (a) it is reasonably practicable for him to do so; and
  - (b) the reasonable costs of the district valuer in making the determination are paid by the person by whom the disposal is, or is to be, made. 40
- (5) If the district valuer does not make a determination for the purposes of this section (and in default of an agreement), no amount is required to be disregarded under this section.”



- (2) In section 181 of that Act (jurisdiction of county court) for “and 158” there is substituted “, 155C and 158”.

*Social Housing Ombudsman for Wales*

**157 Social Housing Ombudsman for Wales**

- (1) After subsection (6) of section 51 of the Housing Act 1996 (c. 52) (schemes for investigation of housing complaints) there is inserted – 5
- “(7) This section shall not apply in relation to social landlords in Wales (within the meaning given by section 51C).”
- (2) After that section there is inserted –

**“51A Social Housing Ombudsman for Wales” 10**

- (1) For the purpose of the investigation of complaints made about social landlords in Wales, there shall be an office of Social Housing Ombudsman for Wales or Ombwdsmon Tai Cymdeithasol Cymru.
- (2) The person who is the Local Commissioner for Wales shall also be the Social Housing Ombudsman for Wales. 15
- (3) If there is more than one person who is a Local Commissioner for Wales, the Commission for Local Administration in Wales shall designate one of them to be the Social Housing Ombudsman for Wales.
- (4) If a person who is the Social Housing Ombudsman for Wales ceases to be a Local Commissioner for Wales, he shall cease to be the Social Housing Ombudsman for Wales. 20
- (5) The power under section 23(6) of the Local Government Act 1974 to remove a Local Commissioner for Wales from office on grounds of incapacity or misbehaviour includes a power to remove him from that office on grounds of incapacity or misbehaviour which are exclusively or partly relevant to the office of Social Housing Ombudsman for Wales. 25
- (6) “Local Commissioner for Wales” shall be construed in accordance with section 23 of the Local Government Act 1974.
- (7) Schedule 2A (which contains further provision about the Social Housing Ombudsman for Wales) shall have effect. 30

**51B Investigation of complaints**

- (1) The National Assembly for Wales may by regulations make provision about the investigation by the Social Housing Ombudsman for Wales of complaints made about social landlords in Wales. 35
- (2) Regulations under subsection (1) may in particular make provision about –
- (a) the matters about which complaints may be made;
- (b) the grounds on which a matter may be excluded from investigation, including that the matter is the subject of court 40

- proceedings or was the subject of court proceedings where judgment on the merits was given;
- (c) the description of individual who may make a complaint;
  - (d) a duty of the Social Housing Ombudsman for Wales to investigate any complaint duly made and not withdrawn, and a power to investigate any complaint duly made but withdrawn, and where he investigates the making of a determination; 5
  - (e) a power of the Social Housing Ombudsman for Wales to propose alternative methods of resolving a dispute; 10
  - (f) the powers of the Social Housing Ombudsman for Wales for the purposes of his investigations, and the procedure to be followed in the conduct of investigations;
  - (g) the powers of the Social Housing Ombudsman for Wales on making a determination; 15
  - (h) the manner in which determinations are to be –
    - (i) communicated to the complainant and the person against whom the complaint was made; and
    - (ii) published (with or without excisions).
- (3) Regulations under this section may contain such supplementary, incidental, consequential or transitional provisions and savings as the National Assembly for Wales considers appropriate. 20
- (4) Regulations under this section may make different provision for different cases or descriptions of case.
- (5) Regulations under this section shall be made by statutory instrument. 25

### 51C Meaning of “social landlord in Wales”

- (1) “Social landlord in Wales” means –
- (a) a body which is registered as a social landlord in the register maintained by the National Assembly for Wales under section 1 of this Act; 30
  - (b) a body which was at any time registered as a social landlord in that register (or in the register previously maintained under that section by the Secretary of State or Housing for Wales); and
  - (c) any other body which was at any time registered with Housing for Wales, the Secretary of State or the National Assembly for Wales and which owns or manages publicly-funded dwellings. 35
- (2) In subsection (1)(c) a “publicly-funded” dwelling means a dwelling which was –
- (a) provided by means of a grant under –
    - (i) section 18 of this Act (social housing grant); or 40
    - (ii) section 50 of the Housing Act 1988, section 41 of the Housing Associations Act 1985, or section 29 or 29A of the Housing Act 1974 (housing association grant); or
  - (b) acquired on a disposal by a public sector landlord.
- (3) The National Assembly for Wales may by order made by statutory instrument add to or amend the descriptions of landlords who are to be treated as social landlords in Wales. 45

- (4) Before making any such order the National Assembly for Wales shall consult such persons as it considers appropriate.
- (5) Any such order may contain such supplementary, incidental, consequential or transitional provisions and savings as the National Assembly for Wales considers appropriate.” 5
- (3) After Schedule 2 to that Act there is inserted, as Schedule 2A, the Schedule set out in Schedule 8 to this Act.
- (4) In Schedule 4 to the Local Government Act 1974 (c. 7), in paragraph 1(3) (validity of acts despite disqualification for being appointed as, or for being, a Local Commissioner) after “office” there is inserted “or in the office of Social Housing Ombudsman for Wales”. 10

## PART 7

### SUPPLEMENTARY AND FINAL PROVISIONS

#### *Information provisions*

- 158 Powers to require information** 15
- (1) A local housing authority may, for any relevant purpose, give notice to any relevant person requiring him –
- (a) to produce any documents which –
- (i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice; and 20
- (ii) are in that person’s custody or under his control; and
- (b) to produce them at a time and place so specified and to a person so specified.
- (2) A local housing authority may, for any relevant purpose, give notice to any relevant person requiring him – 25
- (a) to supply to the authority such information as may be specified or described in the notice; and
- (b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.
- (3) A notice under this section shall include information about the possible consequences of not complying with the notice. 30
- (4) The person to whom any document is produced in accordance with a notice under this section may, for any relevant purpose, copy the document so produced.
- (5) No person shall be required under this section – 35
- (a) to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the High Court; or
- (b) to supply any information which he could not be compelled to supply in evidence in such proceedings. 40
- (6) No person shall be required, in compliance with a notice under this section, to go more than 10 miles from his place of residence unless his necessary travelling expenses are paid or offered to him.

- (7) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.
- (8) In this section “relevant person” means, in connection with reviewing an improvement notice under section 5 or 6, any person on whom, by virtue of section 8, 9 or 10, the improvement notice concerned, or a copy of it, was served or might have been served. 5
- (9) In this section “relevant person” means, in connection with reviewing a prohibition order made under section 30 or 31, any person on whom, by virtue of section 33, the prohibition order concerned was served or might have been served. 10
- (10) In this section (except in cases to which subsection (8) or (9) applies) “relevant person” means, in connection with premises –
- (a) a person having control of the premises;
  - (b) a person involved in the management of the premises; 15
  - (c) a person who has an estate or interest in the premises; or
  - (d) a person who occupies the premises;
- and, if different, also includes, in connection with a proposed licence under Part 2 or 3, the applicant, the proposed licence holder and any person proposed to be involved in the management of the house and, in connection with a licence granted under Part 2 or 3, the licence holder and any person who is subject to an obligation or restriction under the licence. 20
- (11) In this section “relevant purpose” means –
- (a) the purpose of reviewing an improvement notice served under section 5 or 6; 25
  - (b) the purpose of reviewing a prohibition order made under section 30 or 31;
  - (c) the purpose of ascertaining whether a building or part of a building is a house in multiple occupation to which Part 2 applies;
  - (d) the purpose of ascertaining whether a building or part of a building is a house to which Part 3 applies (within the meaning given by sections 85 and 94); 30
  - (e) any purpose connected with the investigation of an offence under section 66, 87 or 122(3) or any proceedings for such an offence; or
  - (f) any other purpose connected with the exercise of the functions of a local housing authority under Part 2, 3 or 4. 35

### 159 Enforcement of powers under section 158

- (1) A person commits an offence if, intentionally and without reasonable excuse, he fails to do anything required of him by a notice under section 158.
- (2) A person commits an offence if he intentionally obstructs or delays any person in the exercise of his powers under section 158(4). 40
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person commits an offence if he intentionally alters, suppresses or destroys any document which he has been required to produce by a notice under section 158. 45

- (5) A person who commits an offence under subsection (4) is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) If a person makes default in complying with a notice under section 158, the High Court may, on the application of the local housing authority concerned, make such order as the High Court considers appropriate for requiring the default to be made good. 5
- (7) Any such order may, in particular, provide that all the costs or expenses of, and incidental to, the application shall be borne – 10
- (a) by the person in default; or
  - (b) if officers of a company or other association are responsible for its default, by those officers.
- (8) The reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form. 15
- 160 Use of information obtained for housing benefit purposes**
- A local housing authority may use information it has obtained in the exercise of its duty under section 134 of the Social Security Administration Act 1992 (c. 5) (funding and administration of housing benefit) for the purpose of exercising its functions under Parts 1 to 4 of this Act. 20
- 161 False or misleading information**
- (1) A person commits an offence if – 25
- (a) he supplies any information to a local housing authority in connection with any of its functions under Part 1, 2, 3 or 4 or this Part;
  - (b) the information is false or misleading in a material respect; and
  - (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect. 30
- (2) A person commits an offence if he –
- (a) supplies any information to another person which he knows to be false or misleading in a material respect; or
  - (b) recklessly supplies any information to another person which is false or misleading in a material respect; 35
- knowing that the information is to be used for the purpose of supplying information to a local housing authority in connection with any of its functions under Part 1, 2, 3 or 4 or this Part.
- (3) A person who commits an offence under subsection (1) or (2) is liable – 40
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

**162 Powers of entry**

- (1) Subsection (2) applies where the local housing authority considers that survey or examination of any premises is necessary in order to determine whether any functions under Part 2, 3 or 4 or this Part should be exercised in relation to the premises. 5
- (2) A person authorised by the local housing authority may at any reasonable time, on giving at least 24 hour's notice of his intention to the occupier and to the owner (if known), enter the premises for the purpose of such a survey and examination.
- (3) A person authorised by the local housing authority may at any reasonable time, without giving any prior notice as mentioned in subsection (2), enter any premises for the purpose of ascertaining whether an offence has been committed under section 66, 87 or 122(3). 10
- (4) An authorisation for the purposes of this section –  
 (a) must be in writing; and 15  
 (b) must state the particular purpose or purposes for which the entry is authorised.
- (5) An authorisation for the purposes of this section shall, if so required, be produced for inspection by the occupier or anyone acting on his behalf.

**163 Warrant to authorise entry** 20

- (1) Subsection (2) applies where a justice of the peace is satisfied, on a sworn information in writing, that admission to premises specified in the information is reasonably required by a person employed by, or acting on the instructions of, the local housing authority –  
 (a) for the purpose of survey and examination to determine whether any functions under Part 2, 3 or 4 or this Part should be exercised in relation to the premises; or 25  
 (b) for the purpose of ascertaining whether an offence has been committed under section 66, 87 or 122(3).
- (2) The justice may by warrant under his hand authorise that person to enter on the premises for those purposes or for such of those purposes as may be specified in the warrant. 30
- (3) The justice shall not grant the warrant unless he is satisfied –  
 (a) that admission to the premises has been refused and, except where the purpose specified in the information is that mentioned in subsection (1)(b), that admission was sought after not less than 24 hour's notice of the intended entry had been given to the occupier; or 35  
 (b) that application for admission would defeat the purpose of the entry.
- (4) The power of entry conferred by a warrant under this section –  
 (a) includes power to enter by force (if necessary); and 40  
 (b) may be exercised by the person on whom it is conferred either alone or together with other persons.
- (5) A warrant under this section shall, if so required, be produced for inspection by the occupier or anyone acting on his behalf.

- (6) If the premises are unoccupied or the occupier is temporarily absent, a person entering under the authority of a warrant under this section shall leave the premises as effectively secured against trespassers as he found them.
- (7) A warrant under this section continues in force until the purpose for which the entry is required is satisfied. 5

*Meaning of "house in multiple occupation"*

**164 Meaning of “house in multiple occupation”**

- (1) In this Act “house in multiple occupation” means a house, hostel, self-contained flat or relevant building—
- (a) which (whether wholly or to a significant degree) is occupied as relevant residential accommodation by persons who do not form a single household; and 10
- (b) in which one or more of the following amenities is shared by more than one of the different households concerned—
- (i) a toilet; 15
- (ii) personal washing facilities; or
- (iii) cooking facilities;
- but does not include a house, hostel, self-contained flat or relevant building which is, or to the extent that it is, exempt.
- (2) In subsection (1) “relevant building” means a building or part of a building which falls within one or more of the descriptions of buildings or parts of buildings which are specified for the purposes of this subsection in regulations made by the relevant Minister. 20
- (3) For the purposes of this section a building or part of a building is occupied by persons as relevant residential accommodation if it is occupied by them—
- (a) as their only or main residence; 25
- (b) as their residence for the purpose of undertaking full-time courses of further or higher education;
- (c) as a women’s refuge; or
- (d) for any other residential purpose (whether temporary or otherwise) which is specified in regulations made by the relevant Minister. 30
- (4) In subsection (3) “women’s refuge” means a building or part of a building managed by a voluntary organisation and used wholly or mainly for the temporary accommodation of persons who have left their homes as a result of—
- (a) physical violence or mental abuse; or 35
- (b) threats of such violence or abuse;
- from persons to whom they are or were married or with whom they are or were co-habiting.
- (5) For the purposes of subsection (1) and subject to subsection (6), a building or part of a building is occupied to a significant degree by persons as relevant residential accommodation if their occupation of the building or part of the building as relevant residential accommodation is the main use of the building or part. 40

- (6) The relevant Minister may by regulations provide for other circumstances in which buildings or parts of buildings of particular descriptions are to be treated as occupied to a significant degree by persons as relevant residential accommodation.

### 165 Exemptions from definition of “house in multiple occupation”

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- (1) The following are exempt for the purposes of section 164(1) in its application to this Act other than Part 1.
- (2) Any building or part of a building in which the local housing authority has an estate or interest.
- (3) Any building or part of a building if the person having control of or managing it is –
- (a) a body which is registered as a social landlord under Part 1 of the Housing Act 1996 (c. 52);
- (b) a police authority established under section 3 of the Police Act 1996 (c. 16);
- (c) the Metropolitan Police Authority established under section 5B of the Act of 1996;
- (d) a fire authority in England and Wales within the meaning of the Fire Services Act 1947 (c. 41) (including the London Fire and Emergency Planning Authority and a metropolitan county fire and civil defence authority established by section 26 of the Local Government Act 1985 (c. 51)) and acting in its capacity as such; or
- (e) a health service body within the meaning of section 4 of the National Health Service and Community Care Act 1990 (c. 19).
- (4) Any building or part of a building the occupation of which is regulated otherwise than by or under this Act and which is of a description specified for the purposes of this subsection in regulations made by the relevant Minister.
- (5) Any building or part of a building if –
- (a) it is occupied only by persons who occupy it for the purpose of undertaking a full-time course of further or higher education at an educational establishment or description of educational establishment specified for the purposes of this subsection in regulations made by the relevant Minister; and
- (b) the person having control of or managing it is the educational establishment in question or such other person or description of person as may be specified for the purposes of this subsection in regulations made by the relevant Minister.
- (6) Any building or part of a building which is occupied only by two persons who form two households.
- (7) Any building or part of a building which is occupied by –
- (a) one or more persons who have a freehold estate in the whole of the building or part or a leasehold estate in it granted for a term of more than 21 years;
- (b) any member of the household of such a person or persons; and
- (c) no more than such other number of persons as is specified for the purposes of this subsection in regulations made by the relevant Minister.



- (8) Any building or part of a building which is occupied principally for the purposes of a religious community whose principal occupation is prayer, contemplation, education or the relief of suffering.
- (9) The relevant Minister may by regulations provide for descriptions of buildings or parts of buildings to be exempt (whether wholly or partly) for any or all of the purposes of section 164(1). 5
- (10) Regulations under subsection (9) may –
- (a) amend or remove the descriptions of buildings or parts of buildings which are for the time being mentioned in this section;
  - (b) add new descriptions of buildings or parts of buildings to those which are for the time being mentioned in this section; 10
  - (c) otherwise amend this section or any other provision of this Act for the purposes of the regulations.

**166 Section 164: meaning of “house” etc.**

- (1) In section 164 and this section, and subject to section 169, “house” does not include – 15
- (a) a building or part of a building which consists of self-contained flats;
  - (b) a hostel; or
  - (c) anything which is not a building or part of a building.
- (2) For the purposes of section 164 and this section – 20
- (a) where a building is divided horizontally, the flats or other units into which it is divided are not houses;
  - (b) where a building is divided vertically, the units into which it is divided may be houses; and
  - (c) where a building is not structurally detached, it is not a house if a material part of it lies above or below the remainder of the structure. 25
- (3) In section 164 and this section “hostel” does not include –
- (a) a building or part of a building which consists of self-contained flats;
  - (b) a house; or
  - (c) anything which is not a building or part of a building; 30
- and a building or part of a building is not prevented from being a hostel merely because it is called by a different name.
- (4) In section 164 and this section a “self-contained flat” means a separate set of premises (whether or not on the same floor) – 35
- (a) which forms part of a building;
  - (b) which is constructed or adapted to be occupied by a single household;
  - (c) either the whole or a material part of which lies above or below some other part of the building; and
  - (d) which has for the exclusive use of its occupants one or more of each of the following amenities – 40
    - (i) a toilet;
    - (ii) personal washing facilities; and
    - (iii) personal cooking facilities.
- (5) The relevant Minister may, subject to subsections (1) to (4), make regulations prescribing descriptions of buildings or parts of buildings which are, or are not, 45

to be regarded for the purposes of section 164 and this section as houses, hostels or self-contained flats.

#### **167 Section 164: occupation as a single household**

- (1) For the purposes of section 164 persons shall be treated as forming a single household if they are all members of the same family. 5
- (2) For the purposes of subsection (1) a person is a member of the same family as another person if—
- (a) those persons are married to each other or live together as a couple; or
  - (b) one of them is the parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece of the other. 10
- (3) For the purposes of subsection (2)(b)—
- (a) a relationship by marriage shall be treated as a relationship by blood;
  - (b) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
  - (c) the stepchild of a person shall be treated as his child. 15
- (4) The relevant Minister may, subject to subsections (1) to (3), make regulations prescribing circumstances in which persons are, or are not, to be treated for the purposes of section 164 as forming a single household.
- (5) Regulations under subsection (4) may, in particular, secure that persons are regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others. 20
- (6) In subsection (5) “prescribed relationship” means any relationship of a description specified in the regulations.

#### **168 Section 164: occupation as only or main residence** 25

- (1) The relevant Minister may make regulations prescribing circumstances in which persons are, or are not, to be treated for the purposes of section 164 as occupying a building or part of a building as their only or main residence.
- (2) Regulations under subsection (1) may, in particular, prescribe the circumstances in which persons are to be treated for the purposes of section 164 as occupying a building or part of a building as their only or main residence unless they satisfy the local housing authority concerned that they are not so occupying it. 30

#### **169 Section 164: certain blocks of flats**

- (1) For the purposes of section 164(1) a relevant block of flats shall be treated as a house. 35
- (2) In this section a “relevant block of flats” means a building or part of a building—
- (a) which has been converted into, and consists of, self-contained flats;
  - (b) which, in relation to building work undertaken in connection with the conversion, did not comply with the appropriate building standards and still does not comply with them; and 40

- (c) in which less than two thirds of the self-contained flats are flats, each of which is either –
- (i) occupied by a person who has a lease of the flat which has been granted for a term of more than 21 years and by any member of his household; or 5
  - (ii) occupied by the person who has the freehold estate in the building or part of the building and by any member of his household.
- (3) In subsection (2) “appropriate building standards” means –
- (a) in the case of a building or part of a building – 10
    - (i) on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulations 1991 (S.I. 1991/2768); and
    - (ii) which would not have been exempt under the Regulations of 1991; 15
 

building standards equivalent to those imposed, in relation to a building or part of a building to which those Regulations applied, by the Regulations of 1991 as they had effect on 1st June 1992; and
  - (b) in the case of a building or part of a building not falling within paragraph (a), the requirements imposed at the time in relation to that building or part by regulations under section 1 of the Building Act 1984 (c. 55). 20
- (4) Subsection (1) of section 164 shall, in its application by virtue of this section to a relevant block of flats, have effect as if paragraph (b) of that subsection were omitted. 25
- (5) Section 165 shall, in its application by virtue of this section to a relevant block of flats, have effect as if subsections (7) and (8) were omitted.
- (6) Where a relevant block of flats is treated by virtue of this section as a house for the purposes of section 164(1), the flats in the block and any other dwelling in the block shall not be treated as a house in multiple occupation for the purposes of this Act. 30

#### 170 Sections 164 to 169: additional provision about regulations

Regulations under section 164(2) or (6), 165(5) or (9) or 166(5) may, in particular, frame a description of a building or part of a building by reference to any features of the building or part (including the nature of its use or occupation or of its ownership or management). 35

#### *Other general interpretation provisions*

#### 171 Meaning of “local housing authority” etc.

- (1) In this Act “local housing authority” means –
- (a) in relation to England – 40
    - (i) a unitary authority; or
    - (ii) a district council so far as it is not a unitary authority; and
  - (b) in relation to Wales, a county council or a county borough council.
- (2) In this section “unitary authority” means –

- 
- (a) the council of a county so far as it is the council for an area for which there are no district councils;
- (b) the council of any district comprised in an area for which there is no county council;
- (c) a London borough council; 5
- (d) the Common Council of the City of London in its capacity as a local authority; and
- (e) the Council of the Isles of Scilly.
- (3) References in this Act to “the local housing authority”, in relation to land, are to the local housing authority in whose district the land is situated. 10
- (4) References in this Act to the district of a local housing authority are to the area of the council concerned, that is to say –
- (a) in the case of a unitary authority, the area, district, London borough, the City of London or (as the case may be) the Isles of Scilly;
- (b) in the case of a district council so far as it is not a unitary authority, the district; and 15
- (c) in the case of a Welsh county council or a county borough council, the Welsh county or county borough.
- 172 Meaning of “lease”, “tenancy”, “occupier” and “owner” etc.**
- (1) In this Act “lease” and “tenancy” have the same meaning. 20
- (2) Both expressions include –
- (a) a sub-lease or sub-tenancy; and
- (b) an agreement for a lease or tenancy (or sub-lease or sub-tenancy).
- (3) The expressions “lessor” and “lessee” and “landlord” and “tenant” and reference to letting, to the grant of a lease or to covenants or terms, shall be construed accordingly. 25
- (4) In this Act “lessee” includes a statutory tenant of the premises; and references to a lease or to a person to whom premises are let shall be construed accordingly.
- (5) In this Act (other than Part 5) “occupier” means a person occupying as a residence; and related expressions shall be construed accordingly. 30
- (6) In this Act “owner”, in relation to premises –
- (a) means a person (other than a mortgagee not in possession) who is for the time being entitled to dispose of the fee simple of the premises whether in possession or in reversion; and 35
- (b) includes also a person holding or entitled to the rents and profits of the premises under a lease of which the unexpired term exceeds three years.
- (7) In this Act “person having an estate or interest” includes a statutory tenant of the premises. 40
- 173 Meaning of “person having control” and “person managing” etc.**
- (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the

- premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises – 5
- (a) receives (whether directly or through an agent or trustee) rents or other payments from –
- (i) in the case of a house in multiple occupation, persons who are tenants of parts of the premises, or who are lodgers; and 10
- (ii) in the case of a house to which Part 3 applies (within the meaning given by sections 85 and 94), persons who are tenants of parts of the premises or the whole of the premises, or who are lodgers; or
- (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; 15
- and includes, where those rents or other payments are received through another person as agent or trustee, that other person. 20
- (4) In its application to Part 1, subsection (3) has effect as if sub-paragraph (ii) of paragraph (a) were omitted.
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (within the meaning given by sections 85 and 94) include references to the person managing it. 25

*Other supplementary provisions*

**174 Penalty for obstruction or delay**

- (1) A person who, without reasonable excuse, obstructs or delays a relevant person in the performance of anything which, by virtue of Part 2, 3 or 4 or section 162, that person is required or authorised to do commits an offence. 30
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) In this section “relevant person” means an officer of a local housing authority or any person authorised to enter premises by virtue of Part 2, 3 or 4 or section 162. 35

**175 Orders and regulations**

- (1) Any power of the Secretary of State or the National Assembly for Wales to make an order or regulations under this Act shall be exercisable by statutory instrument. 40
- (2) Any power of the Secretary of State or the National Assembly for Wales to make an order or regulations under this Act –
- (a) may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas; and

- (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State or (as the case may be) the National Assembly for Wales considers appropriate.
- (3) The Secretary of State shall consult the National Assembly for Wales before making any regulations under Part 5 which relate to residential properties in Wales. 5
- (4) Subject to subsections (5) and (6), any order or regulations made by the Secretary of State under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (5) Subsection (4) does not apply to an order made under section 187 or 189.
- (6) No order shall be made by the Secretary of State under section 186 unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- 176 Offences by bodies corporate** 15
- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
- (a) a director, manager, secretary or other similar officer of the body corporate; or 20
- (b) a person purporting to act in such a capacity;  
he as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. 25
- 177 Power to up-rate level of certain offences**
- (1) Subsection (2) applies if the Secretary of State considers that there has been a change in the value of money since the relevant date.
- (2) The Secretary of State may by order substitute for the sum or sums for the time being specified in any provision mentioned in subsection (3) such other sum or sums as he considers to be justified by the change. 30
- (3) The provisions are –
- (a) section 22(7);
- (b) section 42(2)(b); 35
- (c) section 44(7);
- (d) section 66(5); and
- (e) section 87(4).
- (4) In subsection (1) “the relevant date” means –
- (a) the date of the passing of this Act; or 40
- (b) where the sums specified in a provision mentioned in subsection (3) have been substituted by an order under subsection (2), the date of that order.

- (5) An order under subsection (2) shall not affect the punishment for an offence committed before the order comes into force.

**178 Power to dispense with notices**

- (1) The relevant Minister may dispense with the service of a notice which is required to be served by a local housing authority under this Act if he is satisfied that it is reasonable to do so. 5
- (2) A dispensation may be given either before or after the time at which the notice is required to be served.
- (3) A dispensation may be given either unconditionally or on such conditions (whether as to the service of other notices or otherwise) as the relevant Minister considers appropriate. 10
- (4) Before giving a dispensation under this section, the relevant Minister shall, in particular, have regard to the need to ensure, so far as possible, that the interests of any person are not prejudiced by the dispensation.

**179 Local inquiries**

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For the purposes of the execution of his functions under this Act, the relevant Minister may cause such local inquiries to be held as he considers appropriate.

**180 Service of documents**

- (1) Subsection (2) applies where the local housing authority is, by virtue of any provision of Part 1, 2, 3 or 4, under a duty to serve a document on a person who is to the knowledge of the authority – 20
- (a) a person having control of premises, however defined;
- (b) a person managing premises, however defined; or
- (c) a person having an estate or interest in premises, whether or not restricted to persons who are owners or lessees or mortgagees or to any other class of those having an estate or interest in premises. 25
- (2) The local housing authority shall take reasonable steps to identify the person or persons falling within the description in that provision.
- (3) A person having an estate or interest in premises may for the purposes of any provision to which subsections (1) and (2) apply give notice to the local housing authority of his interest in the premises. 30
- (4) The local housing authority shall enter a notice under subsection (3) in its records.
- (5) A document required or authorised by Part 1, 2, 3 or 4 to be served on a person as being a person having control of premises (however defined) may, if it is not practicable after reasonable enquiry to ascertain the name or address of that person, be served by – 35
- (a) addressing it to him by the description of “person having control of” the premises (naming them) to which it relates; and
- (b) delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises. 40

- (6) Where under any provision of Schedule 3 a document is to be served on—  
 (a) the person having control of premises, however defined;  
 (b) the person managing premises, however defined; or  
 (c) the owner of premises, however defined;  
 and more than one person comes within the description in the enactment, the document must be served on more than one of those persons. 5
- (7) Where under any provision of Part 1, 2, 3, 4 or this Part a document is otherwise to be served on—  
 (a) the person having control of premises, however defined;  
 (b) the person managing premises, however defined; or  
 (c) the owner of premises, however defined;  
 and more than one person comes within the description in the enactment, the document may be served on more than one of those persons. 10
- (8) In this section references to serving include references to similar expressions (such as giving or sending). 15
- (9) In this section “document” includes anything in writing.

### 181 Service of documents in electronic form

- (1) A local housing authority may, subject to subsection (3), serve a relevant document by transmitting it—  
 (a) by means of an electronic communications network; or  
 (b) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible. 20
- (2) The local housing authority may, subject to subsection (3), determine—  
 (a) the manner in which the transmission is made; and  
 (b) the form in which the document is transmitted. 25
- (3) The recipient, or the person on whose behalf the recipient receives the document, must have indicated to the local housing authority the recipient’s willingness to receive documents transmitted in the form and manner used.
- (4) An indication for the purposes of subsection (3)—  
 (a) must be given to the local housing authority in such manner as it may require; 30  
 (b) may be a general indication or one that is limited to documents of a particular description;  
 (c) must state the address to be used and must be accompanied by such other information as the local housing authority requires for the making of the transmission; and 35  
 (d) may be modified or withdrawn at any time by a notice given to the local housing authority in such manner as it may require.
- (5) In this section—  
 “document” includes anything in writing; 40  
 “electronic communications network” has the meaning given by section 28 of the Communications Act 2003; and  
 “relevant document” means any document which a local housing authority is, by virtue of any provision of Part 1, 2, 3 or 4 or this Part, under a duty to serve on any person. 45



**182 Timing and location of things done electronically**

- (1) The Secretary of State may by regulations make provision specifying, for the purposes of Part 1, 2, 3 or 4 or this Part, the manner of determining—
- (a) the times at which things done under Part 1, 2, 3 or 4 or this Part by means of electronic communications networks are done; 5
  - (b) the places at which things done under Part 1, 2, 3 or 4 or this Part by means of such networks are done; and
  - (c) the places at which things transmitted by means of such networks are received.
- (2) Regulations under subsection (1) may, in particular, include provision as to the country or territory in which an electronic address is to be treated as located. 10
- (3) The Secretary of State may by regulations make provision about the manner of proving in any legal proceedings—
- (a) that something done by means of an electronic communications network satisfies any requirements of Part 1, 2, 3 or 4 or this Part for the doing of that thing; and 15
  - (b) the matters mentioned in subsection (1)(a) to (c).
- (4) Regulations under this section may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate.
- (5) In this section “electronic communications network” has the meaning given by section 28 of the Communications Act 2003. 20

**183 The Common Council of the City of London**

- (1) The Common Council of the City of London may appoint a committee for any purposes of this Act which in their opinion may be better regulated and managed by means of a committee. 25
- (2) A committee so appointed shall consist of such number of persons as the Common Council consider appropriate.
- (3) A majority of such a committee shall consist of members of the Common Council.
- (4) Such a committee— 30
- (a) shall not be authorised to borrow money or to make a rate; and
  - (b) shall be subject to any regulations and restrictions which may be imposed by the Common Council.
- (5) A person is not disqualified from being elected or being a member of the Common Council or any committee of that Council merely because he occupies a house at a rental from that Council. 35
- (6) But no person shall vote as a member of the Common Council, or any committee of that Council, on a resolution or question which is proposed or arises in pursuance of this Act and relates to land in which he is beneficially interested. 40
- (7) A person who votes in contravention of subsection (6) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (8) But the fact of him voting does not invalidate any resolution or proceeding of the authority.

**184 The Inner and Middle Temples**

The provisions of Parts 1, 2, 3 and 4 and this Part are among those for which provision may be made by Order in Council under section 94 of the Local Government Act 1985 (c. 51) (general power to provide for exercise of local authority functions as respects the Temples). 5

**185 The Isles of Scilly**

- (1) This Act (other than Parts 5 and 6) applies to the Isles of Scilly subject to such exceptions, adaptations and modifications as the Secretary of State may by order direct. 10
- (2) Subsection (1) does not affect the application of section 620 of the Housing Act 1985 (c. 68) (power to make modifications etc. in relation to the Isles of Scilly) to that Act as amended by this Act.

*Final provisions* 15

**186 Minor and consequential amendments**

- (1) Schedule 9 (which contains minor and consequential amendments) shall have effect.
- (2) The Secretary of State may by order make such supplementary, incidental or consequential provision as he considers appropriate – 20
  - (a) for the general purposes, or any particular purpose, of this Act; or
  - (b) in consequence of any provision made by or under this Act or for giving full effect to it.
- (3) An order under this section may modify any Act or subordinate legislation (including this Act). 25
- (4) The power conferred by this section is also exercisable by the National Assembly for Wales in relation to provision dealing with matters with respect to which functions are exercisable by the Assembly.
- (5) The power conferred by this section is not restricted by any other provision of this Act. 30

**187 Transitional provision etc.**

- (1) The Secretary of State may by order make such provision as he considers necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.
- (2) The power conferred by this section is also exercisable by the National Assembly for Wales in relation to provision dealing with matters with respect to which functions are exercisable by the Assembly. 35

**188 Repeals**

Schedule 10 (which contains repeals) shall have effect.

**189 Short title, commencement and extent**

- (1) This Act may be cited as the Housing Act 2003.
- (2) Parts 1 to 4, and sections 158 to 163, 174, 186(1) and 188 and Schedules 9 and 10, shall come into force in relation to Wales on such day as the National Assembly for Wales may by order appoint. 5
- (3) Parts 1 to 4, and sections 158 to 163, 174, 186(1) and 188 and Schedules 9 and 10, shall otherwise come into force on such day as the Secretary of State may by order appoint. 10
- (4) Part 5 (other than section 150) shall come into force on such day as the Secretary of State may by order appoint.
- (5) Sections 153 to 156 shall come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (6) Section 157 and Schedule 8 shall come into force on such day as the National Assembly for Wales may by order appoint. 15
- (7) Different days may be appointed for different purposes or different areas under subsection (2), (3) (4) or (6).
- (8) This Act extends to England and Wales only.

## SCHEDULES

## SCHEDULE 1

Section 15(6)

## CERTAIN GROUNDS OF APPEAL UNDER SECTION 15

*Certain appeals involving other persons*

- |   |   |    |
|---|---|----|
| 1 | (1) One ground of appeal under section 15 is that—  | 5  |
|   | (a) an owner of the premises concerned who is not the appellant; or   |    |
|   | (b) owners of the premises concerned who are not the appellant; ought to take the action concerned or pay the whole or part of the cost of taking the action concerned.   |    |
|   | (2) Where the grounds on which an appeal under section 15 is brought are or include the ground mentioned in sub-paragraph (1) above, the appellant shall serve a copy of his notice of appeal on the other person or persons concerned. | 10 |
| 2 | (1) On the hearing of the appeal the court may—   |    |
|   | (a) vary the improvement notice so as to require the action to be taken by any such other person concerned; or  | 15 |
|   | (b) make such order as it considers appropriate with respect to the payment to be made by any such other person to the appellant or, where the action is taken by the local housing authority, to the authority.                        | 20 |
|   | (2) In the exercise of its powers under sub-paragraph (1), the court shall take into account, as between the appellant and any such other person—   |    |
|   | (a) their relative interests in the premises concerned (considering both the nature of the interests and the rights and obligations arising under or by virtue of them);  | 25 |
|   | (b) their relative responsibility for the state of the premises which gives rise to the need for the taking of the action concerned; and  |    |
|   | (c) the relative degree of benefit to be derived from the taking of the action concerned.   |    |
| 3 | (1) Sub-paragraph (2) applies where, by virtue of the exercise of the court's powers under paragraph 2, a person other than the appellant is required to take the action specified in an improvement notice.                            | 30 |
|   | (2) That other person shall, so long as he continues to be an owner of the premises to which the notice relates, be regarded as the person on whom the notice was served for the purposes of the provisions of this Chapter.            | 35 |

*Certain appeals suggesting other courses of action*

- |   |   |  |
|---|---|--|
| 4 | (1) One ground of appeal under section 15 in relation to an improvement notice served under section 5 in relation to a category 1 hazard is that one of the |  |
|---|---|--|

- courses of action mentioned in sub-paragraph (2) is the best course of action in relation to that hazard.
- (2) The courses of action are –
- (a) making a prohibition order under section 30 of this Act;
  - (b) serving a notice under section 53 of this Act; 5
  - (c) making a demolition order under section 265(1) or (1A) of the Housing Act 1985 (c. 68); and
  - (d) declaring the area in which the premises concerned are situated to be a clearance area in accordance with section 289 of the Act of 1985.
- (3) Sub-paragraph (4) applies where – 10
- (a) the court is hearing an appeal under section 15 in relation to an improvement notice served under section 5 in relation to a category 1 hazard; and
  - (b) the grounds on which an appeal under section 15 is brought are or include the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to that hazard. 15
- (4) The court shall have regard to any guidance given to the local housing authority under section 4.
- 5 (1) Sub-paragraph (2) applies where – 20
- (a) an appeal under section 15 is allowed against an improvement notice served under section 5 in relation to a category 1 hazard; and
  - (b) the reason or one of the reasons for allowing the appeal is that one of the courses of action mentioned in paragraph 4(2) is the best course of action in relation to that hazard. 25
- (2) The judge shall, if requested to do so by the appellant or the local housing authority, include in his judgement a finding to that effect and identifying the course of action concerned.
- Other*
- 6 Paragraphs 1(1) and 4(1) of this Schedule are without prejudice to the generality of section 15. 30

## SCHEDULE 2

Section 20

### ENFORCEMENT BY LOCAL HOUSING AUTHORITIES

#### PART 1

#### TAKING OF ACTION BY AGREEMENT 35

##### *Power to take action by agreement*

- 1 (1) The local housing authority may by agreement with the person on whom the notice is served take any action which that person is required to take in relation to any premises in pursuance of an improvement notice which is served under section 5 or 6 and whose operation is not suspended. 40

- (2) For that purpose, the authority shall have all the rights which that person would have against any occupying tenant of, and any other person having an interest in, the premises (or any part of the premises).

*Expenses of taking action by agreement*

- 2 Action shall be taken by the local housing authority under paragraph 1 at the expense of the person on whom the notice is served. 5

PART 2

POWERS TO TAKE ACTION WITHOUT AGREEMENT

*Power to take action without agreement*

- 3 (1) The local housing authority may itself take the action required to be taken in relation to a hazard by an improvement notice whose operation is not suspended if the notice is not complied with in relation to that hazard. 10
- (2) The local housing authority may itself take the action required to be taken in relation to a hazard by an improvement notice whose operation is not suspended if, before the end of the period which under section 18(2) is appropriate for completion of the action specified in the notice in relation to the hazard, it considers that reasonable progress is not being made towards compliance with the notice in relation to the hazard. 15

*Notice requirements in relation to taking action without agreement*

- 4 (1) The local housing authority shall serve a notice under this paragraph before it enters any premises under paragraph 3 for the purpose of taking action in relation to a hazard. 20
- (2) The notice must state –
- (a) the premises and hazard concerned;
  - (b) that the authority intends to enter the premises; 25
  - (c) the action which the authority intends to take on the premises; and
  - (d) the power under which the authority intends to enter the premises and take the action.
- (3) The notice must be served on the person on whom the improvement notice was served. 30
- (4) The notice may also be served on any owner of the premises.
- (5) The notice must be in writing.

*Obstruction of action taken without agreement*

- 5 (1) Sub-paragraph (2) applies if, in relevant circumstances –
- (a) the person on whom the notice under paragraph 4 was served is on the premises for the purpose of carrying out any works; or 35
  - (b) any workman employed by him or by any contractor employed by him is on the premises for such a purpose.
- (2) The person on whom the notice under paragraph 4 was served shall be treated for the purpose of section 19 as obstructing the authority in the execution of this Chapter unless he shows that there was an urgent necessity 40

to carry out the works in order to prevent danger to occupants of the premises.

- (3) In sub-paragraph (1) “relevant circumstances” means –
- (a) at any time after the end of the period of 7 days beginning with the date of service of the notice under paragraph 4; and 5
  - (b) at a time when any workman or contractor employed by the local housing authority is taking action on the premises which has been mentioned in the notice under paragraph 4 by virtue of sub-paragraph (2)(c) of that paragraph.

*Expenses in relation to taking action without agreement* 10

- 6 (1) Part 3 of this Schedule applies with respect to the recovery by the local housing authority of expenses incurred by it under paragraph 3.
- (2) Sub-paragraph (3) applies where, after a local housing authority has given notice under paragraph 4 of its intention to enter premises and take action, the action is in fact taken by the person on whom the improvement notice is served. 15
- (3) Any administrative and other expenses incurred by the authority with a view to itself taking the action shall be treated for the purposes of Part 3 of this Schedule as expenses incurred by it in taking action under paragraph 3.

PART 3 20

RECOVERY OF CERTAIN EXPENSES

*Introductory*

- 7 This Part of this Schedule applies for the purpose of enabling a local housing authority to recover expenses reasonably incurred by it in taking action under paragraph 3. 25

*Recovery of expenses*

- 8 (1) The expenses are recoverable by the local housing authority from the person on whom the improvement notice is served and, in this paragraph, the person from whom the expenses are recoverable under this sub-paragraph shall be known as the relevant person. 30
- (2) Where the relevant person receives the rent of the premises as agent or trustee for another person, the expenses are also recoverable by the local housing authority from the other person, or partly from him and partly from the relevant person.
- (3) Sub-paragraph (4) applies where the relevant person proves – 35
- (a) that sub-paragraph (2) applies; and
  - (b) that he has not, and since the date of the service on him of the demand has not had, in his hands on behalf of the other person sufficient money to discharge the whole demand of the local housing authority. 40
- (4) The liability of the relevant person is limited to the total amount of the money which he has, or has had, in his hands as mentioned in sub-paragraph (3)(b).

- (5) Expenses are not recoverable under this paragraph so far as they are, by any direction of a court on appeal, recoverable under an order of the court.

*Service of demand*

- 9 (1) A demand for the expenses, together with interest in accordance with paragraph 10, shall be served on the person from whom the local housing authority is seeking to recover them. 5
- (2) The local housing authority shall, on the date on which the demand is served, serve a copy of it on every other person who, to the knowledge of the authority, is an owner, lessee or mortgagee of the premises.
- (3) The demand becomes operative, if no appeal is brought, at the end of the period of 21 days beginning with the date of service of the demand. 10
- (4) A demand which becomes operative under sub-paragraph (3) is final and conclusive as to matters which could have been raised on an appeal.

*Interest*

- 10 Expenses in respect of which a demand is served carry interest, at such reasonable rate as the local housing authority may determine, from the date of service until payment of all sums due under the demand. 15

*Appeals*

- 11 (1) A person aggrieved by a demand for the recovery of expenses may appeal to the county court. 20
- (2) An appeal must be made within the period of 21 days beginning with the date of service of the demand or copy.
- (3) It shall be a ground of appeal, where the demand relates to action taken by virtue of paragraph 3(2), that reasonable progress was being made towards compliance with the improvement notice when the local housing authority gave notice under paragraph 4 of its intention to enter and take the action. 25
- (4) The court may, on an appeal, make such order confirming, quashing or varying the demand as it considers appropriate.
- (5) A demand against which an appeal is brought becomes operative on—
- (a) a decision on the appeal confirming the demand (with or without variation) being given and the period within which an appeal to the Court of Appeal may be brought expiring without any such appeal having been brought; or 30
- (b) if a further appeal to the Court of Appeal is brought, a final decision being given confirming the demand (with or without variation). 35
- (6) For the purposes of sub-paragraph (5) the withdrawal of an appeal has the same effect as a decision confirming the demand appealed against.
- (7) No question may be raised on appeal under this paragraph which might have been raised on an appeal against the improvement notice.

*Expenses and interest recoverable from occupiers* 40

- 12 (1) Where a demand becomes operative by virtue of paragraph 9(3) or 11(5), the local housing authority may serve a recovery notice on any person—



- 
- (a) who occupies the premises concerned, or part of those premises, as the tenant or licensee of the person on whom the demand was served under paragraph 9(1); and
- (b) who, by virtue of his tenancy or licence, pays rent or any sum in the nature of rent to the person on whom the demand was served. 5
- (2) A recovery notice is a notice –
- (a) stating the amount of expenses recoverable by the local housing authority; and
- (b) requiring all future payments of rent or sums in the nature of rent, whether already accrued due or not, by the tenant or licensee to be made direct to the authority until the expenses recoverable by the authority, together with interest accrued due, have been duly paid. 10
- (3) Sub-paragraph (1) shall have effect, in the case of a demand which was served on any person as agent or trustee for another person (“the principal or beneficiary”), as if the references in paragraphs (a) and (b) to the person on whom the demand was served were references to that person or the principal or beneficiary. 15
- (4) The effect of a recovery notice, once served under sub-paragraph (1), is to transfer to the local housing authority the right to recover, receive and give a discharge for the rent or sums in the nature of rent. 20
- (5) This is subject to any direction to the contrary contained in a further notice served by the local housing authority on the tenant or licensee.
- (6) The right to recover, receive and give a discharge for any rent or sums in the nature of rent is also postponed to any right in respect of that rent or those sums which may at any time be vested in a superior landlord by virtue of a notice under section 6 of the Law of Distress Amendment Act 1908 (c. 53). 25

*Expenses and interest to be a charge on the premises*

- 13 (1) The expenses recoverable by the local housing authority, together with the interest accrued due, are, until recovered, a charge on the premises to which the improvement notice related. 30
- (2) The charge takes effect when the demand for the expenses and interest becomes operative.
- (3) For the purpose of enforcing the charge, the local housing authority has the same powers and remedies under the Law of Property Act 1925 (c. 20) and otherwise, as if they were mortgagees by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver. 35
- (4) The power of appointing a receiver is exercisable at any time after the end of one month beginning with the date when the charge takes effect.

*Recovery of expenses and interest from other persons profiting from taking of action*

- 14 (1) Sub-paragraph (2) applies if, on an application to the county court, the local housing authority satisfies the court that – 40
- (a) the expenses and interest have not been and are unlikely to be recovered; and
- (b) a person is profiting by the taking of the action under paragraph 3 in respect of which the expenses were incurred in that he is obtaining rents or other payments which would not have been obtainable if the 45

- number of persons living in the premises was limited to that appropriate for the premises in their state before the action was taken.
- (2) The court may, if satisfied that the person concerned has had proper notice of the application, order him to make such payments to the local housing authority as the court considers to be just. 5

SCHEDULE 3

Section 77

PROCEDURAL REQUIREMENTS IN RELATION TO LICENCES

PART 1

GRANT OR REFUSAL OF LICENCES 10

*Requirements before grant of licence*

- 1 Before granting a licence, the local housing authority shall –  
 (a) serve a notice and a copy of the proposed licence on the applicant and each relevant person; and  
 (b) consider any representations made in accordance with the notice and not withdrawn. 15
- 2 The notice must state –  
 (a) that the local housing authority proposes to grant a licence;  
 (b) the reasons for granting the licence;  
 (c) the main terms of the licence; and  
 (d) the consultation period. 20
- 3 The local housing authority shall not grant the licence with modifications unless it –  
 (a) serves a notice of the proposed modifications on the applicant and each relevant person; and  
 (b) considers any representations made in accordance with the notice and not withdrawn. 25
- 4 The notice must state –  
 (a) the proposed modifications;  
 (b) the reasons for them; and  
 (c) the consultation period. 30

*Requirements before refusal to grant licence*

- 5 Before refusing to grant a licence, the local housing authority shall –  
 (a) serve a notice on the applicant and each relevant person; and  
 (b) consider any representations made in accordance with the notice and not withdrawn. 35
- 6 The notice must state –  
 (a) that the local housing authority proposes to refuse to grant the licence;

- (b) the reasons for refusing to grant the licence; and
- (c) the consultation period.

*Requirements following grant or refusal of licence*

- |   |   |    |
|---|---|----|
| 7 | (1) Sub-paragraph (2) applies where the local housing authority grants a licence.   | 5  |
|   | (2) The local housing authority shall serve on the applicant and each relevant person—  |    |
|   | <ul style="list-style-type: none"> <li>(a) a copy of the licence; and</li> <li>(b) a notice informing him of—           <ul style="list-style-type: none"> <li>(i) the reasons for granting the licence;</li> <li>(ii) the right of appeal against the decision; and</li> <li>(iii) the period within which an appeal may be made.</li> </ul> </li> </ul> | 10 |
| 8 | (1) Sub-paragraph (2) applies where the local housing authority refuses to grant a licence.   |    |
|   | (2) The local housing authority shall serve on the applicant and each relevant person a notice informing him of—  | 15 |
|   | <ul style="list-style-type: none"> <li>(a) the decision;</li> <li>(b) the reasons for the decision;</li> <li>(c) the right of appeal against the decision; and</li> <li>(d) the period within which an appeal may be made.</li> </ul>   | 20 |

*Exceptions from requirements in relation to grant or refusal of licences*

- |    |  |              |
|----|--|--------------|
| 9  | The requirements of paragraph 3 (and those of paragraph 1) do not apply if the local housing authority—  |              |
|    | <ul style="list-style-type: none"> <li>(a) has already served notice under paragraph 1 but not paragraph 3 in relation to the proposed licence; and</li> <li>(b) considers that the modifications which are now being proposed are not material in any respect.</li> </ul>   | 25           |
| 10 | The requirements of paragraph 3 (and those of paragraph 1) do not apply if the local housing authority—  |              |
|    | <ul style="list-style-type: none"> <li>(a) has already given notice under paragraphs 1 and 3 in relation to the matter concerned; and</li> <li>(b) considers that the further modifications which are now being proposed do not differ in any material respect from the modifications in relation to which notice was last given under paragraph 3.</li> </ul> | 30<br><br>35 |
| 11 | Paragraphs 5, 6 and 8 do not apply to a refusal to grant a licence on particular terms if the local housing authority is proposing to grant the licence on different terms.  |              |

## PART 2

## VARIATION OR REVOCATION OF LICENCES

*Variation of licences*

- 12 Before varying a licence, the local housing authority shall –
- (a) serve a notice on the licence holder and each relevant person; and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- 13 The notice must state –
- (a) that the local housing authority proposes to make the variation;
  - (b) the effect of the variation;
  - (c) the reasons for the variation; and
  - (d) the consultation period.
- 14 (1) Sub-paragraph (2) applies where the local housing authority varies a licence.  
 (2) The local housing authority shall serve on the licence holder and each relevant person –
- (a) a copy of the variation; and
  - (b) a notice informing him of –
    - (i) the reasons for the variation;
    - (ii) the right of appeal against the decision; and
    - (iii) the period within which an appeal may be made.

*Exceptions from requirements of paragraph 12*

- 15 The requirements of paragraph 12 do not apply if –
- (a) the local housing authority considers that the variation is not material; or
  - (b) the variation is agreed by the licence holder and the local housing authority considers that it would not be appropriate to comply with the requirements of that paragraph.
- 16 The requirements of paragraph 12 do not apply if the local housing authority –
- (a) has already served a notice under that paragraph in relation to a proposed variation; and
  - (b) considers that the variation which is now being proposed is not materially different from the previous proposed variation.

*Refusal to vary a licence*

- 17 Before refusing to vary a licence, the local housing authority shall –
- (a) serve a notice on the applicant and each relevant person; and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- 18 The notice must state –
- (a) that the local housing authority proposes to refuse to vary the licence;

- 
- (b) the reasons for refusing to vary the licence; and
  - (c) the consultation period.
- 19 (1) Sub-paragraph (2) applies where the local housing authority refuses to vary a licence.
- (2) The local housing authority shall serve on the applicant and each relevant person a notice informing him of –
- (a) the decision;
  - (b) the reasons for the decision;
  - (c) the right of appeal against the decision; and
  - (d) the period within which an appeal may be made. 10

*Revocation of licences*

- 20 Before revoking a licence, the local housing authority shall –
- (a) serve a notice on the licence holder and each relevant person; and
  - (b) consider any representations made in accordance with the notice and not withdrawn. 15
- 21 The notice must state –
- (a) that the local housing authority proposes to revoke the licence;
  - (b) the reasons for the revocation; and
  - (c) the consultation period.
- 22 (1) Sub-paragraph (2) applies where the local housing authority revokes a licence. 20
- (2) The local housing authority shall serve on the licence-holder and each relevant person –
- (a) a copy of the revocation; and
  - (b) a notice informing him of – 25
    - (i) the reasons for the revocation;
    - (ii) the right of appeal against the decision; and
    - (iii) the period within which an appeal may be made.

*Exception from requirements of paragraph 20*

- 23 The requirements of paragraph 20 do not apply if the revocation is agreed by the licence holder and the local housing authority considers that it would not be appropriate to comply with the requirements of that paragraph. 30

*Refusal to revoke a licence*

- 24 Before refusing to revoke a licence, the local housing authority shall –
- (a) serve a notice on the applicant and each relevant person; and 35
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- 25 The notice must state –
- (a) that the local housing authority proposes to refuse to revoke the licence; 40
  - (b) the reasons for refusing to revoke the licence; and
  - (c) the consultation period.

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<i>Part 2 – Variation or revocation of licences</i>	
<hr/>	
26 (1) Sub-paragraph (2) applies where the local housing authority refuses to revoke a licence.	
(2) The local housing authority shall serve on the applicant and each relevant person a notice informing him of –	
(a) the decision;	5
(b) the reasons for the decision;	
(c) the right of appeal against the decision; and	
(d) the period within which an appeal may be made.	
PART 3	
SUPPLEMENTARY PROVISIONS	
	10
<i>The consultation period</i>	
27 In this Schedule “the consultation period” means the period within which representations may be made.	
28 The consultation period shall be –	
(a) in the case of a notice under paragraph 1, 5, 12, 17, 20 or 24, not less than 15 days beginning with the date of service of the notice; and	15
(b) in the case of a notice under paragraph 3, not less than 7 days beginning with the date of service of the notice.	
<i>Other interpretation provisions</i>	
29 In this Schedule –	20
“the date of service” means, in a case where more than one notice is to be served, the date on which the last of the notices is served; and	
“relevant person” means any person who, to the knowledge of the local housing authority concerned, is –	
(a) the person having control of the house in multiple occupation concerned;	25
(b) the person managing that house; or	
(c) any person having an estate or interest in that house.	
SCHEDULE 4	
	Section 79
TRANSITIONAL ARRANGEMENTS FOR PART 2 LICENSING REGIMES	
	30
<i>Application of new licensing regimes to existing occupiers</i>	
1 (1) Sub-paragraph (2) applies where –	
(a) an order under section 61(2) which prescribes a particular description of houses in multiple occupation comes into force; or	
(b) a designation under section 62(1) comes into force in relation to houses in multiple occupation of a particular description.	35
(2) This Part applies, subject to sub-paragraphs (3) to (6), in relation to the occupation of premises on or after the coming into force of the order or designation by persons or households whose occupation began before, or in	

pursuance of a contract made before, that date as it applies in relation to the occupation of premises on or after the coming into force of the order or designation by persons or households whose occupation began on or after that date.

- (3) Sub-paragraph (4) applies where – 5
- (a) a house in multiple occupation to which this Part applies or a part of such a house is occupied by more households or persons than the number permitted by the licence; and
  - (b) the occupation of those households or persons began before, or in pursuance of a contract made before, the licence came into force. 10
- (4) It is a defence to an offence under section 66(4) for a person to prove that he is taking all reasonable steps to try to reduce the number of households or persons occupying the house to the number permitted by the licence.
- (5) Sub-paragraph (4) does not apply if the licence came into force immediately after a previous licence for the same house in multiple occupation unless the occupation in question began before, or in pursuance of a contract made before, the coming into force of the original licence. 15
- (6) Sub-paragraph (2) is subject to any different provision which may be made by the order concerned or a scheme under paragraph 2.

*Schemes for transitional provision in connection with designations* 20

- 2 (1) The local housing authority may make a scheme containing such transitional provisions as it considers appropriate in connection with –
- (a) the coming into force of a designation; or
  - (b) a designation ceasing to have effect.
- (2) The confirming authority may prepare model schemes for the purposes of sub-paragraph (1). 25
- (3) A scheme under sub-paragraph (1) which conforms to a model scheme –
- (a) does not require confirmation by the confirming authority; and
  - (b) comes into force on such date (at least one month after the making of the scheme) as may be specified in the scheme. 30
- (4) Any other scheme comes into force only if it is confirmed by the confirming authority.
- (5) The confirming authority may, if it considers it appropriate, confirm a scheme with or without modifications.
- (6) A scheme requiring confirmation comes into force on such date as may be specified in the scheme or, if no date is specified, one month after it is confirmed. 35
- (7) The local housing authority shall publish a scheme under this section in such manner as it considers appropriate for the purpose of bringing it to the attention of those likely to be affected by it. 40

*Termination of licence on cessation of designation*

- 3 (1) A licence which –
- (a) relates to a house in multiple occupation to which this Part applies by virtue of a designation under section 62(1); and
  - (b) is in force on the expiry or revocation of the designation; 45

- shall cease to have effect on the expiry or revocation of the designation.
- (2) Sub-paragraph (1) does not apply if the designation is replaced by another designation which comes into force on the expiry or revocation of the previous designation.
  - (3) Sub-paragraph (1) is without prejudice to the operation of section 66 in relation to any act or omission occurring before the expiry or revocation of the designation. 5
  - (4) Sub-paragraph (1) is without prejudice to any additional provision which may be made by a scheme under paragraph 2.

SCHEDULE 5

FURTHER PROVISIONS ABOUT LICENCES UNDER PART 3

*Procedural requirements in relation to grant, variation or revocation of licences*

- 1 (1) Schedule 3 (which contains procedural requirements in relation to the grant, variation or revocation of licences) shall have effect in relation to licences under Part 3 as it has effect in relation to licences under Part 2. 15
- (2) References in this Schedule to Schedule 3 shall be construed accordingly.

*Variation of licences*

- 2 (1) The local housing authority may vary a licence –
  - (a) with the agreement of the licence holder; or
  - (b) if it considers that there has been a change of circumstances since the time when the licence was granted. 20
- (2) In sub-paragraph (1) “change of circumstances” includes any discovery of new information.
- (3) A variation of a licence made by virtue of sub-paragraph (1)(b) shall not come into force until –
  - (a) the period of 21 days mentioned in paragraph 5(2) has expired without an appeal being made under paragraph 4(3); or
  - (b) if an appeal is made under paragraph 4(3) within that period –
    - (i) a decision on the appeal confirming the variation (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought; or 30
    - (ii) if a further appeal to the Court of Appeal is brought, a final decision is given confirming the variation (with or without variation). 35
- (4) For the purposes of sub-paragraph (3)(b) the withdrawal of an appeal has the same effect as a decision confirming the variation appealed against.

*Revocation of licences*

- 3 (1) The local housing authority may revoke a licence –
  - (a) with the agreement of the licence holder; 40



- (b) under the power conferred by sub-paragraph (2); or
  - (c) in accordance with the terms of the licence or under regulations made under section 89(8).
- (2) The local housing authority may revoke a licence if, at a time while the licence is in force, it considers that, if the licence expired at that time, it would not grant a new licence on similar terms to the licence holder in relation to the house concerned. 5
- (3) A revocation of the kind mentioned in sub-paragraph (1)(b) or (c) shall not come into force until –
- (a) the period of 21 days mentioned in paragraph 5(2) has expired without an appeal being made under paragraph 4(3); or 10
  - (b) if an appeal is made under paragraph 4(3) within that period –
    - (i) a decision on the appeal confirming the revocation (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought; or 15
    - (ii) if a further appeal to the Court of Appeal is brought, a final decision is given confirming the revocation (with or without variation).
- (4) For the purposes of sub-paragraph (3)(b) the withdrawal of an appeal has the same effect as a decision confirming the revocation appealed against. 20

#### *Appeals against licence decisions*

- 4 (1) The person seeking to be granted a licence or any relevant person may appeal to the county court against any decision by the local housing authority – 25
- (a) to refuse to grant a licence; or
  - (b) to grant a licence.
- (2) An appeal under sub-paragraph (1)(b) may, in particular, relate to the particular terms of a licence.
- (3) The licence holder or any relevant person may appeal to the county court against any decision by the local housing authority to vary or revoke a licence or refuse to vary or revoke a licence. 30
- (4) On an appeal under this section, the court may confirm, reverse or vary the decision of the local housing authority.
- (5) The court may, in particular, direct the local housing authority to grant a licence on such terms as the court may direct. 35
- (6) An appeal under this paragraph –
- (a) shall be a re-hearing of the local housing authority’s decision; and
  - (b) may be determined having regard to matters of which the local housing authority was unaware. 40
- (7) In this paragraph “relevant person” means –
- (a) the person having control of the house concerned;
  - (b) the person managing that house; or
  - (c) any person having an estate or interest in that house.

*Time-limits for appeals against licence decisions*

- 5 (1) If the notices which are required to be served by paragraph 7 or 8 of Schedule 3 in relation to a decision to grant or (as the case may be) refuse to grant a licence have been served, an appeal under paragraph 4(1) in relation to the decision concerned shall be made within the period of 21 days beginning with the day on which the last of the notices was served. 5
- (2) If the notices which are required to be served by paragraph 14, 19, 22 or 26 of Schedule 3 in relation to a decision to vary, refuse to vary, revoke or (as the case may be) refuse to revoke a licence have been served, an appeal under paragraph 4(3) in relation to the decision concerned shall be made within the period of 21 days beginning with the day on which the last of the notices was served. 10
- (3) The court may allow an appeal to be made after the end of the period of 21 days mentioned in sub-paragraph (1) or (2) if it is satisfied – 15
- (a) where permission is sought before the end of that period, that there is a good reason why the applicant is unable to make the appeal in time; and
- (b) where permission is sought after that time, that there was a good reason for the applicant’s failure to bring the appeal in time and for any delay in applying for permission. 20
- (4) Except as provided by this paragraph, an appeal under paragraph 4 may be made at any time.

*Codes of practice*

- 6 (1) The relevant Minister may by order – 25
- (a) approve any code of practice (whether prepared by him or another person) which, in his opinion, gives suitable guidance to any person in relation to any matter arising under this Part;
- (b) approve any modification of such a code; or
- (c) withdraw such a code or modification.
- (2) The relevant Minister shall only approve a code of practice or a modification of a code if he is satisfied that – 30
- (a) the code or modification has been published (whether by him or by another person) in such manner as he considers appropriate for the purpose of bringing the code or modification to the attention of those likely to be affected by it; or 35
- (b) arrangements have been made for the code or modification to be so published.
- (3) The relevant Minister may approve –
- (a) more than one code of practice in relation to the same matter;
- (b) a code of practice which makes different provision in relation to different cases or descriptions of case (including different provision for different areas). 40
- (4) A failure to comply with a code of practice for the time being approved under this paragraph shall not of itself render a person liable to any civil or criminal proceedings. 45
- (5) But in any civil or criminal proceedings –

- (a) any code of practice approved under this paragraph shall be admissible in evidence; and
- (b) any provision of any such code which appears to the court to be relevant to any question arising in the proceedings shall be taken into account in determining that question. 5
- (6) In this paragraph references to a code of practice include references to a part of a code of practice.

*Transitional provisions*

- 7 (1) Sub-paragraph (2) applies where a designation under section 82 comes into force in relation to an area. 10
- (2) This Part applies, subject to sub-paragraph (3), in relation to the occupation of premises on or after the coming into force of the designation by persons or households whose occupation began before, or in pursuance of a contract made before, that date as it applies in relation to the occupation of premises on or after the coming into force of the designation by persons or households whose occupation began on or after that date. 15
- (3) Sub-paragraph (2) is subject to any different provision which may be made by a scheme under paragraph 8.
- 8 (1) The local housing authority may make a scheme containing such transitional provisions as it considers appropriate in connection with— 20
- (a) the coming into force of a designation; or
- (b) a designation ceasing to have effect.
- (2) The confirming authority may prepare model schemes for the purposes of sub-paragraph (1).
- (3) A scheme under sub-paragraph (1) which conforms to a model scheme— 25
- (a) does not require confirmation by the confirming authority; and
- (b) comes into force on such date (at least one month after the making of the scheme) as may be specified in the scheme.
- (4) Any other scheme comes into force only if it is confirmed by the confirming authority. 30
- (5) The confirming authority may, if it considers it appropriate, confirm a scheme with or without modifications.
- (6) A scheme requiring confirmation comes into force on such date as may be specified in the scheme or, if no date is specified, one month after it is confirmed. 35
- (7) The local housing authority shall publish a scheme under this section in such manner as it considers appropriate for the purpose of bringing it to the attention of those likely to be affected by it.
- 9 (1) A licence which— 40
- (a) relates to a house to which this Part applies by virtue of a designation under section 82; and
- (b) is in force on the expiry or revocation of the designation;
- shall cease to have effect on the expiry or revocation of the designation.
- (2) Sub-paragraph (1) does not apply if the designation is replaced by another designation which comes into force on the expiry or revocation of the previous designation. 45

- (3) Sub-paragraph (1) is without prejudice to the operation of section 87 in relation to any act or omission occurring before the expiry or revocation of the designation.
- (4) Sub-paragraph (1) is without prejudice to any additional provision which may be made by a scheme under paragraph 8. 5

## SCHEDULE 6

Section 118

## FURTHER PROCEDURAL REQUIREMENTS: MANAGEMENT ORDERS

## PART 1

## MAKING OF FINAL MANAGEMENT ORDERS

- Requirements before making final management orders* 10
- 1 Before making a final management order, the local housing authority shall –
- (a) serve a notice and a copy of the proposed order on each relevant person and such other person or persons (if any) as the local housing authority considers appropriate; and
  - (b) consider any representations made in accordance with the notice and not withdrawn. 15
- 2 The notice must state –
- (a) that the local housing authority proposes to make a final management order;
  - (b) the reasons for granting the order; 20
  - (c) the main terms and effect of the order; and
  - (d) the consultation period.
- 3 The local housing authority shall not make a final management order with modifications unless it –
- (a) serves a notice of the proposed modifications on each relevant person and such other person or persons (if any) as the local housing authority considers appropriate; and 25
  - (b) considers any representations made in accordance with the notice and not withdrawn.
- 4 The notice must state – 30
- (a) the proposed modifications;
  - (b) the reasons for them; and
  - (c) the consultation period.
- Exceptions from requirements*
- 5 The requirements of paragraph 3 (and those of paragraph 1) do not apply if the local housing authority – 35
- (a) has already served notice under paragraph 1 but not paragraph 3 in relation to the proposed final management order; and
  - (b) considers that the modifications which are now being proposed are not material in any respect. 40

- 6 The requirements of paragraph 3 (and those of paragraph 1) do not apply if the local housing authority –
- (a) has already given notice under paragraphs 1 and 3 in relation to the matter concerned; and
  - (b) considers that the further modifications which are now being proposed do not differ in any material respect from the modifications in relation to which notice was last given under paragraph 3. 5

## PART 2

### VARIATION OF MANAGEMENT ORDERS 10

#### *Variation of management orders*

- 7 Before varying an interim or final management order, the local housing authority shall –
- (a) serve a notice on each relevant person and such other person or persons (if any) as the local housing authority considers appropriate; and 15
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- 8 The notice must state –
- (a) that the local housing authority proposes to make the variation; 20
  - (b) the effect of the variation;
  - (c) the reasons for the variation; and
  - (d) the consultation period.
- 9 (1) Sub-paragraph (2) applies where the local housing authority varies an interim or final management order. 25
- (2) The local housing authority shall serve on each relevant person and such other person or persons (if any) as the local housing authority considers appropriate –
- (a) a copy of the variation; and
  - (b) a notice informing him of – 30
    - (i) the reasons for the variation;
    - (ii) the right of appeal against the decision; and
    - (iii) the period within which an appeal may be made.

#### *Exceptions from requirements of paragraph 7*

- 10 The requirements of paragraph 7 do not apply if the local housing authority considers that the variation is not material. 35
- 11 The requirements of paragraph 7 do not apply if the local housing authority –
- (a) has already served a notice under that paragraph in relation to a proposed variation; and 40
  - (b) considers that the variation which is now being proposed is not materially different from the previous proposed variation.

*Refusal to vary interim or final management orders*

- 12 Before refusing to vary an interim or final management order, the local housing authority shall—
  - (a) serve a notice on the applicant, each relevant person and such other person or persons (if any) as the local housing authority considers appropriate; and 5
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- 13 The notice must state—
  - (a) that the local housing authority proposes to refuse to make the variation; 10
  - (b) the reasons for refusing to make the variation; and
  - (c) the consultation period.
- 14 (1) Sub-paragraph (2) applies where the local housing authority refuses to vary an interim or final management order. 15
- (2) The local housing authority shall serve on the applicant, each relevant person, and such other person or persons (if any) as the local housing authority considers appropriate, a notice informing him of—
  - (a) the decision;
  - (b) the reasons for the decision; 20
  - (c) the right of appeal against the decision; and
  - (d) the period within which an appeal may be made.

PART 3

REVOCATION OF MANAGEMENT ORDERS

- Revocation of management orders* 25
- 15 Before revoking an interim or final management order, the local housing authority shall—
    - (a) serve a notice on each relevant person and such other person or persons (if any) as the local housing authority considers appropriate; and 30
    - (b) consider any representations made in accordance with the notice and not withdrawn.
  - 16 The notice must state—
    - (a) that the local housing authority proposes to revoke the order;
    - (b) the reasons for the revocation; and 35
    - (c) the consultation period.
  - 17 (1) Sub-paragraph (4) applies where the local housing authority revokes an interim or final management order.
  - (2) The local housing authority shall serve on each relevant person and such other person or persons (if any) as the local housing authority considers appropriate— 40
    - (a) a copy of the revocation; and
    - (b) a notice informing him of—

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*Schedule 6 – Further procedural requirements: management orders*  
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- (i) the reasons for the revocation;
- (ii) the right of appeal against the decision; and
- (iii) the period within which an appeal may be made.

*Refusal to revoke management orders*

- |    |   |    |
|----|---|----|
| 18 | Before refusing to revoke an interim or final management order, the local housing authority shall –   | 5  |
|    | (a) serve a notice on the applicant, each relevant person and such other person or persons (if any) as the local housing authority considers appropriate; and   |    |
|    | (b) consider any representations made in accordance with the notice and not withdrawn.  | 10 |
| 19 | The notice must state –   |    |
|    | (a) that the local housing authority proposes to refuse to revoke the order;  |    |
|    | (b) the reasons for refusing to revoke the order; and   | 15 |
|    | (c) the consultation period.  |    |
| 20 | (1) Sub-paragraph (2) applies where the local housing authority refuses to revoke an interim or final management order.   |    |
|    | (2) The local housing authority shall serve on the applicant, each relevant person, and such other person or persons (if any) as the local housing authority considers appropriate, a notice informing him of – | 20 |
|    | (a) the decision;   |    |
|    | (b) the reasons for the decision;   |    |
|    | (c) the right of appeal against the decision; and   |    |
|    | (d) the period within which an appeal may be made.  | 25 |

## PART 4

## SUPPLEMENTARY PROVISIONS

*The consultation period*

- |    |   |    |
|----|---|----|
| 21 | In this Schedule “the consultation period” means the period within which representations may be made. | 30 |
|----|---|----|

*Other interpretation provision*

- |    |  |  |
|----|--|--|
| 22 | In this Schedule “relevant person” means any person who, to the knowledge of the local housing authority concerned, is a person having an estate or interest in the house. |  |
|----|--|--|

## SCHEDULE 7

Section 147. 35

## FIXED PENALTY NOTICES UNDER SECTION 147

- |   |  |  |
|---|--|--|
| 1 | (1) A fixed penalty notice shall (in addition to the requirements of section 147) also – |  |
|---|--|--|

- (a) specify the person to whom and the address at which the penalty charge may be paid and the method or methods by which payment may be made;
- (b) specify the person to whom and the address at which a notice under sub-paragraph(2)(b)(ii) may be sent (and to which any representations relating to the giving of the penalty notice may be addressed); 5
- (c) state the consequences of a failure to comply with the requirements of section 147(2)(b).
- 2 (1) The period for complying with the requirements of section 147(2)(b) must not be less than 28 days beginning with the day after that on which the penalty charge notice was served. 10
- (2) The Secretary of State may by regulations amend sub-paragraph (1) by substituting a different period for the period for the time being specified there. 15
- (3) The enforcement authority may extend the period for complying with section 147 in any particular case if it considers it appropriate to do so.
- 3 (1) A penalty notice may not be given to a person acting in the course of a business after the end of—
- (a) the period of three years beginning with the date of the breach of duty; or 20
- (b) the period of one year beginning with the date of the discovery of the breach by an officer of an enforcement authority;
- whichever is earlier.
- (2) A penalty notice may not be given to a person not acting in the course of a business after the end of the period of six months beginning with the date on which the breach in question was committed. 25
- (3) A certificate signed by an officer of an enforcement authority in respect of a breach of duty and stating the date on which the breach was discovered by him shall be evidence of that fact. 30
- (4) A document stating that matter and purporting to be so signed shall be treated as so signed unless the contrary is proved.
- 4 (1) The Secretary of State may by regulations prescribe—
- (a) the amount of the penalty charge;
- (b) circumstances in which penalty charge notices may not be served; 35
- (c) the form of penalty charge notices and notices under section 147; and
- (d) the method or methods by which penalty charges may be paid.
- (2) In proceedings for the enforcement of a penalty charge notice a certificate which—
- (a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the enforcement authority; and 40
- (b) states that payment of the penalty charge was or was not received by a date specified in the certificate;
- shall be evidence of the facts stated. 45
- 5 (1) If the recipient of a penalty charge notice gives notice to the enforcement authority under section 147(2)(b)(ii) requesting a review, the authority shall—



- |   |     |  |    |
|---|-----|--|----|
|   |     | <ul style="list-style-type: none"> <li>(a) consider any representations made by the recipient and all other circumstances of the case;</li> <li>(b) decide whether to confirm or withdraw the notice; and</li> <li>(c) give notice of its decision to the recipient.</li> </ul>  |    |
|   | (2) | If in all the circumstances, the authority is not satisfied –  | 5  |
|   |     | <ul style="list-style-type: none"> <li>(a) that the recipient is committing or has committed a breach of duty; and</li> <li>(b) that it was appropriate for a penalty charge notice to be served on the recipient in respect of that breach of duty;</li> </ul>  |    |
|   |     | it shall withdraw the penalty charge notice.   | 10 |
|   | (3) | In considering whether it was appropriate for a penalty charge notice to be served the authority shall consider whether the recipient exercised all due diligence to avoid committing a breach of duty.  |    |
| 6 |     | The enforcement authority may, if considers that a penalty charge notice ought not to have been served –   | 15 |
|   |     | <ul style="list-style-type: none"> <li>(a) give to the recipient a notice withdrawing the penalty charge notice; and</li> <li>(b) repay any amount previously paid as a penalty charge in pursuance of the withdrawn notice.</li> </ul>  |    |
| 7 | (1) | The recipient of a penalty charge notice which has been confirmed by the enforcement authority may appeal to the county court against the notice.  | 20 |
|   | (2) | Such an appeal must be on one of the following grounds –   |    |
|   |     | <ul style="list-style-type: none"> <li>(a) that the recipient was not guilty of the breach of duty specified in the notice;</li> <li>(b) that the notice was served after the time allowed by paragraph 3 or was otherwise defective.</li> </ul>   | 25 |
|   | (3) | An appeal under this paragraph shall be by way of a rehearing; and the court shall either uphold the notice or quash it.   |    |
| 8 | (1) | A penalty charge notice, a notice under section 147 and any other notice under this Schedule may be served by post.  | 30 |
|   | (2) | Any such notice may be served –  |    |
|   |     | <ul style="list-style-type: none"> <li>(a) in the case of a body corporate, on the secretary or clerk of that body; and</li> <li>(b) in the case of a partnership, on any partner or a person having control or management of the partnership business.</li> </ul>   | 35 |
|   | (3) | For the purposes section 7 of the Interpretation Act 1978 (c. 30) in its application to this paragraph, the proper address of any person is –  |    |
|   |     | <ul style="list-style-type: none"> <li>(a) in the case of a body corporate, the address of its registered or principal office;</li> <li>(b) in the case of a partnership, the address of the principal office of the partnership; and</li> <li>(c) in any other case, his usual or last known address (whether of his residence or of a place where he carries on business or is employed).</li> </ul> | 40 |

SCHEDULE 8

Section 157(3)

NEW SCHEDULE 2A TO THE HOUSING ACT 1996

“SCHEDULE 2A

Section 51A(7)

FURTHER PROVISION ABOUT THE SOCIAL HOUSING OMBUDSMAN FOR WALES

<i>Status</i>		5
1	The Social Housing Ombudsman for Wales shall be a corporation sole.	
<i>Remuneration, etc.</i>		
2	The National Assembly for Wales may pay to or in respect of the Social Housing Ombudsman for Wales such amounts, by way of remuneration, pensions, allowances or gratuities or by way of provision for any such benefits, as it considers appropriate.	10
3	If a person ceases to be the Social Housing Ombudsman for Wales and it appears to the National Assembly for Wales that there are special circumstances which make it right that the person should receive compensation, the National Assembly for Wales may pay to that person a sum of such amount as it considers appropriate.	15
<i>Staff and accommodation</i>		
4	(1) The Social Housing Ombudsman for Wales may appoint such staff as he considers necessary for assisting him in the exercise of his functions.	20
	(2) The Social Housing Ombudsman for Wales shall include among his staff such persons having a command of the Welsh language as he considers are needed to enable him to investigate complaints in Welsh.	25
	(3) Any function of the Social Housing Ombudsman for Wales may be exercised by—	
	(a) a member of his staff; or	
	(b) a member of the staff of the Commission for Local Administration in Wales;	30
	if authorised by the Social Housing Ombudsman for Wales for that purpose.	
	(4) References in any provision made by or under an enactment to a member of staff of the Social Housing Ombudsman for Wales include any person exercising any function of his by virtue of subparagraph (3)(b).	35
5	The National Assembly for Wales may make such arrangements as it considers appropriate to enable the Social Housing Ombudsman for Wales to investigate complaints, and in	

particular arrangements for providing offices and other accommodation.

*Reports*

- 6 (1) The Social Housing Ombudsman for Wales –
- (a) shall annually prepare and lay before the National Assembly for Wales a general report on the performance of his functions; and 5
  - (b) may from time to time prepare and lay before the National Assembly for Wales such other reports with respect to his functions as he thinks fit. 10
- (2) The National Assembly for Wales shall, and the Social Housing Ombudsman for Wales may, publish reports laid before the National Assembly for Wales under sub-paragraph (1).
- (3) The Social Housing Ombudsman for Wales may, subject to any provision made by regulations under section 51B, publish his determination on any complaint. 15
- (4) He may include in any determination or report published under this paragraph statements, communications, reports, papers or other documentary evidence obtained in the exercise of his functions. 20
- (5) In publishing any determination or report, the Social Housing Ombudsman for Wales shall have regard to the need for excluding so far as practicable –
- (a) any matter which relates to the private affairs of an individual, where publication would seriously and prejudicially affect the interests of that individual; and 25
  - (b) any matter which relates specifically to a social landlord in Wales, where publication would seriously and prejudicially affect its interests;
- unless inclusion of the matter concerned is necessary for the purposes of the determination or report. 30

*Expenses*

- 7 (1) The expenses of the Social Housing Ombudsman for Wales shall, so far as they cannot be met out of income received by him, be met by the National Assembly for Wales. 35
- (2) Those expenses include any sums payable by the Social Housing Ombudsman for Wales in consequence of a breach, in the course of the performance of any of his functions, of any contractual or other duty (whether that breach occurs by reason of his act or omission or that of a member of his staff or any other person assisting him in the exercise of his functions). 40

*Absolute privilege for communications etc.*

- 8 For the purposes of the law of defamation absolute privilege attaches to –

- (a) any communication between the Social Housing Ombudsman for Wales and any person by or against whom a complaint is made to him;
- (b) any determination by the Social Housing Ombudsman for Wales; and
- (c) the publication by him of such a determination or any report under paragraph 6.

5

*Accounts and audit*

- 9 The National Assembly for Wales may by regulations make such provision about the accounts or audit of the Social Housing Ombudsman for Wales as it considers appropriate.
- 10 Regulations under paragraph 9 shall be made by statutory instrument.”

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## SCHEDULE 9

Section 186(1)

## MINOR AND CONSEQUENTIAL AMENDMENTS

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*Land Compensation Act 1973 (c. 26)*

- 1 In section 29(7) of the Land Compensation Act 1973 (right to home loss payment where person displaced from dwelling) after paragraph (c) there is inserted –
- “(d) a prohibition order under section 30 or 31 of the Housing Act 2003.”

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*Housing Act 1985 (c. 68)*

- 2 In section 252(c) of the Housing Act 1985 (definition of “house in multiple occupation for purposes of Part 8) for the words from “means” to the end of the paragraph there is substituted “has the meaning given by sections 164 to 170 of the Housing Act 2003 for the purposes of Part 2 of that Act”.
- 3 In section 268 of that Act (service of notice of demolition and closing orders) for subsections (1) and (1A) there is substituted –
- “(1) The local housing authority shall serve a demolition order made by them by serving a copy of the order on –
- (a) every owner or occupier of the premises to which the order relates;
  - (b) every person who, to their knowledge, is entitled or authorised to permit persons to occupy the premises; and
  - (c) every person who, to their knowledge, is a mortgagee of the premises.
- (1A) For the purposes of subsection (1)(a) a copy of a demolition order shall be taken to have been served on every occupier of the premises if it is affixed on the premises in a position where it is accessible to the occupiers of the premises.

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- (1B) Any reference in subsections (1) and (1A) to “the premises”, in the case of an order which relates to a block of flats, includes a reference to the flats in the building or part of a building concerned.”
- 4 After section 269 of that Act (right of appeal against demolition order) there is inserted – 5
- “269A Appeals suggesting certain other courses of action**
- (1) One ground of appeal under section 269 in relation to a demolition order made under section 265(1) or (1A) is that a course of action mentioned in subsection (2) is the best course of action in relation to each hazard concerned. 10
- (2) The courses of action are –
- (a) serving an improvement notice under section 5 of the Housing Act 2003;
- (b) making a prohibition order under section 30 of that Act;
- (c) serving a notice under section 53 of that Act; or 15
- (d) declaring the area in which the premises concerned are situated to be a clearance area in accordance with section 289 of this Act.
- (3) Subsection (4) applies where –
- (a) the court is hearing an appeal under section 269 in relation to a demolition order made under section 265(1) or (1A); and 20
- (b) the grounds on which the appeal is brought are or include the ground that a course of action mentioned in subsection (2) is the best course of action in relation to each hazard concerned.
- (4) The court shall have regard to any guidance given to the local housing authority under section 4 of the Housing Act 2003. 25
- (5) Subsection (6) applies where –
- (a) an appeal under section 269 is allowed against a demolition order made under section 265(1) or (1A); and
- (b) the reason or one of the reasons for allowing the appeal is that a course of action mentioned in subsection (2) is the best course of action in relation to each hazard concerned. 30
- (6) The judge shall, if requested to do so by the appellant or the local housing authority, include in his judgement a finding to that effect and identifying the course of action concerned or courses of action concerned. 35
- (7) Subsection (1) of this section is without prejudice to the generality of section 269.”
- 5 (1) Section 274 of that Act (demolition orders: power to permit reconstruction of condemned house) is amended as follows. 40
- (2) In subsection (2) for the words from “the provision” to “human habitation” there is substituted –

“–

- “(a) in the case of a demolition order made under section 265(1) or (1A), that the hazard or hazards concerned cease to be category 1 hazards; and  
(b) in the case of a demolition order made under section 265(1E) or (1F), that a prescribed state of affairs prevails;” 5
- (3) After subsection (2) there is inserted –
- “(2A) In subsection (2) “prescribed state of affairs” means such state of affairs as may be specified or described in an order made by the relevant Minister.
- (2B) An order under subsection (2A)– 10
- (a) may make different provision for different cases or descriptions of case (including different provision for different areas);  
(b) may contain such incidental, supplementary, consequential, transitory, transitional or saving provision as the relevant Minister considers appropriate; and 15  
(c) shall be made by statutory instrument which, in the case of an order made by the Secretary of State, shall be subject to annulment in pursuance of a resolution of either House of Parliament.” 20
- (4) In subsection (5) after “Part” there is inserted “or Part 1 of the Housing Act 2003”.
- 6 After section 274 of that Act (demolition orders: power to permit reconstruction of condemned house) there is inserted –
- “274A Effect of certain enforcement action under the Housing Act 2003 25**
- (1) No action shall be taken under this Part for the purposes of making, or otherwise in connection with, a demolition order in relation to premises if an interim or final management order under Part 4 of the Housing Act 2003 is in force in relation to the premises.
- (2) A demolition order which has been made in relation to premises shall cease to have effect if an interim or final management order under Part 4 of the Housing Act 2003 comes into force in relation to the premises.” 30
- 7 (1) Section 275 of that Act (demolition orders: substitution of closing orders) is amended as follows. 35
- (2) In subsection (1) for “a closing order as respects the premises” there is substituted “a prohibition order under section 30 or 31 of the Housing Act 2003 in relation to the hazard or hazards concerned”.
- (3) In subsection (2)–
- (a) for “closing order”, where it appears for the first time, there is substituted “prohibition order”; 40  
(b) for “section 268” there is substituted “section 33 of the Act of 2003”; and  
(c) for “closing order made under section 264” there is substituted “prohibition order made under section 30 or 31 of that Act”. 45
- 8 (1) Section 289 of that Act (declaration of clearance area) is amended as follows.

- (2) In subsection (2F)(b) for “are unfit for human habitation” there is substituted “contain category 1 or category 2 hazards”.
- (3) In subsection (3) –
- (a) in sub-paragraph (i) for the words from “unfit” to “health” there is substituted “dangerous or harmful to health or safety”; and 5
- (b) in sub-paragraph (ii) for “injurious to health” there is substituted “harmful to health or safety”.
- 9 (1) Section 300 of that Act (purchase of houses liable to be demolished or closed) is amended as follow.
- (2) In subsection (1) – 10
- (a) for “section 265” there is substituted “section 265(1) or (1A)”;
- (b) for “(not being a flat), a house in multiple occupation (not being a flat in multiple occupation) or the whole of a building” there is substituted “, a house in multiple occupation or a block of flats”; and
- (c) for “building”, where it appears for a second time, there is substituted “block of flats”. 15
- (3) After subsection (1) there is inserted –
- “(1A) Where the local housing authority would be required under section 30 of the Housing Act 2003 to make a relevant prohibition order in respect of a dwelling-house, a house in multiple occupation or a block of flats, they may, if it appears to them that the dwelling-house, house in multiple occupation or, as the case may be, block of flats is or can be rendered capable of providing accommodation of a standard which is adequate for the time being, purchase it instead. 20
- (1B) In subsection (1A) “relevant prohibition order” means a prohibition order which is made by the local housing authority and which prohibits the use of the premises to which it relates for all purposes unless a purpose is approved by the authority.” 25
- (4) In subsection (2) after “under” there is inserted “subsection (1) of”.
- (5) After subsection (2) there is inserted – 30
- “(2A) Where an authority have determined to purchase any premises under subsection (1A) of this section –
- (a) they shall serve a notice of their determination on the persons on whom they would have been required by section 33(1) of the Housing Act 2003 (service of prohibition orders) to serve a copy of a prohibition order; and 35
- (b) sections 33(2) and (3), 35 and 38 of that Act (operative date, right of appeal etc.) apply to such a notice as they apply to a prohibition order which is not suspended.”
- (6) In subsection (3) for “building” there is substituted “block of flats”. 40
- 10 (1) Section 304 of that Act (closing orders in relation to listed buildings) is amended as follows.
- (2) For subsection (2) there is substituted –
- “(2) Where a dwelling-house, house in multiple occupation or block of flats in respect of which a demolition order has been made becomes a listed building, the local housing authority shall determine the order (whether or not it has become operative). 45

- (2A) The local housing authority shall serve notice that the demolition order has been determined on every person on whom they would be required by section 268 to serve a copy of a new demolition order in relation to the premises.”
- (3) In subsection (3) for “building”, in the first and third places where it appears, there is substituted “block of flats”. 5
- 11 In section 308(3) of that Act (approval of owner’s proposals for re-development) –
- (a) after “Part” there is inserted “or Chapter 3 of Part 1 of the Housing Act 2003”; and 10
- (b) for “, closing or purchase of unfit premises” there is substituted “or purchase of premises or the prohibition of uses of premises”.
- 12 Section 310 of that Act (certificate of fitness for human habitation resulting from owner’s improvements or alterations) is omitted.
- 13 In section 318(1)(a) of that Act (power of court to authorise execution of works on unfit premises or for improvement) for “injurious to health or unfit for human habitation” there is substituted “harmful to health or safety”. 15
- 14 (1) Section 322 of that Act (minor definitions) is amended as follows.
- (2) In the first subsection –
- (a) there are inserted at the appropriate places – 20
- ““block of flats” means the whole or part of a building which contains one or more flats;”;
- ““category 1 hazard” has the meaning given by section 2(1) of the Housing Act 2003;”;
- ““category 2 hazard” has the meaning given by section 2(1) of the Housing Act 2003;”;
- ““flat” means – 25
- (a) a dwelling-house which is not a house; or
- (b) a part of a building which is a house in multiple occupation;”;
- ““hazard” has the meaning given by section 2(1) of the Housing Act 2003;”;
- (b) in the definition of “house in multiple occupation” for “have the same meaning as in Part XI” there is substituted “has the meaning given by section 2(4) of the Housing Act 2003”; and 35
- (c) in the definition of “premises” for “building or part of a building” there is substituted “or block of flats”.
- (3) In subsection (2) for “flat” there is substituted “house”.
- 15 In section 323 of that Act (index of defined expressions: Part 9) there are inserted at the appropriate places – 40

“block of flats | section 322”



	“category hazard	1	section 322”	
	“category hazard	2	section 322”	5
	“hazard		section 322”	
	“the relevant Minister		section 265(1G)”.	10
16	In section 439 of that Act (requirements as to fitness of premises before advancing money for certain purposes), subsections (1) and (2) are omitted.			
17	In section 582(8) of that Act (compulsory purchase orders: restriction on recovery of possession of houses in multiple occupation) for the words “same meaning as in Part XI” there is substituted “the meaning given by sections 164 to 170 of the Housing Act 2003 for the purposes of Part 2 of that Act”.			
18	(1)	Section 584A of that Act (compensation payable in case of closing and demolition orders) is amended as follows.		20
	(2)	In subsection (1) for “closing order under section 264” there is substituted “relevant prohibition order becomes operative in respect of any premises”.		
	(3)	In subsection (2)–		
	(a)	for “making of the closing order” there is substituted “coming into operation of the relevant prohibition order”;		25
	(b)	after “as the case may be, the” there is inserted “making of”; and		
	(c)	after “date of the” there is inserted “coming into operation or”.		
	(4)	In subsection (3)–		
	(a)	in paragraph (a) for “a closing” there is substituted “a relevant prohibition”;		30
	(b)	in paragraph (b) for “the closing” there is substituted “the relevant prohibition”; and		
	(c)	for “with the closing order” there is substituted “with the relevant prohibition order”.		
	(5)	In subsection (4)–		
	(a)	for the definition of “premises” there is substituted –		35
		““premises”, in relation to a relevant prohibition order or a demolition order, has the meaning given by section 322 in relation to a demolition order; and”;		
	(b)	after the definition of “premises” there is inserted –		40
		““relevant prohibition order” means a prohibition order under Chapter 3 of Part 1 of the Housing Act 2003 which		

- prohibits for all purposes the use of any premises (as opposed to any part of the premises).”
- 19 (1) Section 584B of that Act (repayment on revocation of demolition or closing order) is amended as follows.
- (2) In subsection (1) – 5
- (a) for “closing”, where it appears for the first time, there is substituted “relevant prohibition”; and
- (b) in paragraph (b) for the words from “the closing” to “fit)” there is substituted “the relevant prohibition order is revoked under section 36(2), (3) or (4) of the Housing Act 2003”. 10
- (3) In subsection (2) –
- (a) in paragraph (a) for “a closing” there is substituted “a relevant prohibition”;
- (b) in paragraph (b) – 15
- (i) for “section 278” there is substituted “section 36(5) of the Housing Act 2003”;
- (ii) for “determined” there is substituted “revoked”; and
- (iii) after “premises” there is inserted “and not varied”; and
- (c) for “determination of the closing order” there is substituted “revocation of the relevant prohibition order”. 20
- (4) After subsection (2) there is inserted –
- “(2A) In any case where –
- (a) a payment in respect of any premises has been made by a local housing authority under section 584A(1) in connection with a relevant prohibition order; and 25
- (b) by virtue of section 36(5) of the Housing Act 2003, the order is varied;
- then, if at the time of the variation of the order the recipient has the same interest in the premises as he had at the time the payment was made, he shall on demand pay to the authority an amount determined in accordance with subsections (3), (4) and (5).” 30
- (5) In subsection (3) –
- (a) after “subsection (2)” there is inserted “or (2A)”; and
- (b) for “determination of the closing order”, in both places where it appears, there is substituted “revocation or variation of the relevant prohibition order”. 35
- (6) In subsection (6) for “has” there is substituted “and “relevant prohibition order” have”.
- 20 (1) Section 605(1) of that Act (consideration by local housing authority of housing conditions in their district) is amended as follows. 40
- (2) For paragraph (e) there is substituted –
- “(e) article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002;”.
- (3) After paragraph (e), there is inserted – 45
- “(f) Part 1 of the Housing Act 2003;
- (g) Part 2 of that Act;
- (h) Part 3 of that Act; and



<i>Short title and chapter</i>	<i>Extent of repeal</i>
Housing Act 1985 (c. 68) – <i>cont.</i>	<p>In section 311, in subsection (1) the words “or section 310 (owner’s improvements or alterations)” and in subsection (3) the words “or 310, as the case may be”. 5</p> <p>In section 317(1), the words “or closing”</p> <p>In section 319(1)(b), the words “or closing”.</p> <p>In section 322, in the first subsection, in the definition of “dwelling house” and “flat”, the words “and “flat”, except in the expression “flat in multiple occupation”,”, in the definition of “house in multiple occupation” and “flat in multiple occupation”, the words “and “flat in multiple occupation”” and in the definition of “premises” the words “or closing” and the words “closing order or, as the case may be,”; and subsection (3). 10</p> <p>In section 323 the entries relating to “closing order”, “fit (or unfit) for human habitation” and “unfit (or fit) for human habitation”. 15</p> <p>Sections 345 to 365. 20</p> <p>Sections 368 and 369.</p> <p>Sections 372 and 373.</p> <p>Sections 375 to 400.</p> <p>In section 439, subsections (1) and (2). 25</p> <p>In section 584A, in subsection (3)(b), the words from “by virtue” to “order),” and, in subsection (4), at the end of the definition of “compulsory purchase value”, the word “and”. 30</p> <p>Section 604.</p> <p>Section 604A.</p> <p>In section 605(1), paragraphs (a) and (c) and the word “and” at the end of paragraph (d). 35</p> <p>Section 606.</p> <p>Schedule 10.</p> <p>Schedule 13.</p>
Local Government and Housing Act 1989 (c. 42)	<p>In section 165(1), paragraph (c). 40</p> <p>In Schedule 9, paragraphs 44, 48 to 52, 53(1) and (3), 54, 55(1) and (3), 56 to 62, 64, 65, 67, 68(1), 69 to 71 and 83.</p>
Housing Act 1996 (c. 52)	<p>Sections 65 to 79.</p>
Housing Grants, Construction and Regeneration Act 1996 (c. 53)	<p>In section 24, subsection (4). 45</p> <p>In section 59, the entry relating to “fit for human habitation”.</p> <p>Sections 81 to 91.</p> <p>Section 97.</p>

# SECTION 3: EXPLANATORY NOTES

## Introduction

1. These explanatory notes relate to the Housing Bill as published in draft on 31 March 2003. They have been prepared by the Office of the Deputy Prime Minister in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or Schedule or part of a clause or Schedule does not seem to require any explanation or comment, none is given.
3. The Bill extends only to England and Wales.

# Structure of the Bill

4. The Bill has 7 parts, as follows:

Part 1 – Housing Conditions

Part 2 – Licensing of Houses in Multiple Occupation (HMOs)

Part 3 – Selective Licensing of Other Residential Accommodation

Part 4 – Additional Control Provisions in relation to Residential Accommodation

Part 5 – Home Information Packs

Part 6 – Other Provisions about Housing

Part 7 – Supplementary and Final Provisions

# Summary and Background

## *Abbreviations used throughout these notes*

*Local Housing Authority* is defined in clause 171. Throughout these notes, this has been abbreviated to LHA.

*Relevant Minister* is defined in clause 2, subsection 3 as the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales.

*House in Multiple Occupation* is defined in clauses 164 to 170. This is referred to throughout these notes as HMO.

*Interim Management Orders and Final Management Orders* are covered by Part 4 of the draft Bill. For the purposes of these notes, they are referred to as IMOs and FMOs.

## **PART 1 – STANDARDS FOR CONDITIONS OF RESIDENTIAL ACCOMMODATION**

5. Part 1 of the Bill replaces the housing fitness standard, in the Housing Act 1985, and adapts and extends the powers available to LHAs to tackle poor housing conditions. These changes are intended to tailor intervention by the LHA to the severity of the health and safety hazards in the home. The new framework is provided for largely through free-standing provisions, though some of the provisions of the 1985 Act will remain in that Act with appropriate amendments.

## **PART 2 – LICENSING OF HOUSES IN MULTIPLE OCCUPATION**

6. The key aims of Part 2 of the Bill are to:
  - Repeal the remaining provisions of Part 11 of the Housing Act 1985;
  - Provide a new definition of HMO for housing law purposes;
  - Provide a requirement that higher-risk types of HMOs in the private sector are licensed by LHAs;
  - Provide LHAs with discretionary powers to license other HMOs;
  - Provide additional powers to deal with individual problematic HMOs outside the licensing regime.

7. The term ‘houses in multiple occupation’ applies to a wide range of housing types, mainly in the private rented sector, that are occupied typically by young lower-income single people including some particularly vulnerable and disadvantaged groups. Physical and management standards in HMOs are often low. Some types of HMO, such as multi-storey older houses converted into bed-sits, can pose particular risks to occupants’ health and safety. Current statutory controls on HMOs are a confusing and ineffective patchwork of provisions that have grown up over several decades.

### **PART 3 – SELECTIVE LICENSING OF OTHER RESIDENTIAL ACCOMMODATION**

8. Selective licensing will be primarily focused on areas of low housing demand or areas that are likely to fall into that category in England. Low house prices in these areas have resulted in unprofessional, and sometimes even criminal, landlords purchasing properties to rent. These people often show no interest in managing their properties properly, often letting to anti-social tenants, who wreak havoc and misery on the local community causing further destabilisation.
9. The Bill provides a discretionary power, subject to approval of the relevant Minister, for LHAs in such areas to license all private landlords so as to ensure that a minimum standard of management is met. Selective licensing will be part of a wider strategy to deal with anti-social behaviour and the regeneration of an area.
10. The Bill also provides the relevant Minister with powers to prescribe by regulation other circumstances in which discretionary schemes may be made. In Wales the criteria for selective licensing will be determined by the National Assembly for Wales.

### **PART 4 – ADDITIONAL CONTROL PROVISIONS IN RELATION TO RESIDENTIAL ACCOMMODATION**

11. Part 4 contains provisions for enforcement action in respect of properties licensable under Parts 2 and 3 and certain other HMOs. It also provides for additional controls in respect of HMOs outside the scope of licensing and makes provision for a management code of practice for certain rented accommodation.

### **PART 5 – HOME INFORMATION PACKS**

12. Part 5 of the Bill imposes new legal duties on people marketing residential properties in England and Wales. It requires sellers, or their agents, to have a home information pack of standard documents and information available for prospective buyers, before marketing a property.
13. These proposals were contained in the seller’s pack provisions of the Homes Bill introduced in Parliament in 2000. That Bill fell when Parliament was dissolved for the general election in 2001. The provisions in this Bill are similar to those in the Homes Bill, except that the description ‘home information pack’ has replaced ‘seller’s pack’ and enforcement of the pack duties is proposed to be by civil rather than criminal remedies.



14. In England and Wales, an offer to buy a home and acceptance of that offer are made 'subject to contract'. Such an offer and its acceptance do not constitute a legally binding agreement. This is usually only achieved with an exchange of contracts. Between agreeing terms and exchanging contracts, both the buyer and seller do a number of things.
15. For the seller, this includes:
  - obtaining the title deeds to the property;
  - establishing title and producing Land Registry office copy entries where the property is registered;
  - replying to pre-contract enquiries;
  - preparing a draft contract.
16. The buyer will carry out local land charges searches and other enquiries of the local authority and other organisations. If required, the buyer will also arrange a survey.
17. These documents and information are important to the decisions home buyers and sellers need to take and yet, under current practices, they normally become available only after terms have been negotiated and agreed 'subject to contract'.
18. Part 5 of the Bill aims to bring forward the availability of this sort of information to the very start of the process. It requires the person marketing a residential property with vacant possession to compile a home information pack before marketing the property. The pack is expected to contain documents and information similar to those mentioned above, including a report on the condition of the property.
19. It is not intended that the provisions of this Bill should alter the principle of 'caveat emptor' ('let the buyer beware') which currently governs the sale of property in England and Wales. The duties imposed would require a person to collate certain documents and make them available at an earlier stage in the transaction process than at present. They do not require any greater warranty by the seller as to the contents of those documents than is currently required by the general law.

#### **PART 6 – OTHER PROVISIONS ABOUT HOUSING: RIGHT TO BUY**

20. Clauses 153-156 amend certain important aspects of the Right to Buy (RTB) scheme. The changes are as follows. The initial qualification period and the period during which discount must be repaid if demanded by the local authority when the property is resold are both extended. The amount to be repaid in such circumstances is to be calculated as a percentage of the resale value of the property (less the value of improvements made by the owner after exercising the Right to Buy) rather than the cash discount received. Landlords' discretion not to require repayment of discount is clarified.

## **PART 6 – OTHER PROVISIONS ABOUT HOUSING: SOCIAL HOUSING OMBUDSMAN FOR WALES**

21. Clause 157 sets up the office of Social Housing Ombudsman for Wales (SHOW) to investigate complaints against registered social landlords in Wales.

## Territorial Application

22. The Bill has been drafted in liaison and agreement with the National Assembly for Wales and the Wales Office.
23. All provisions of the Bill apply to England and Wales with one exception, clause 157 which makes amendments to the Housing Act 1996 such as to provide for a Social Housing Ombudsman for Wales. These amended provisions will only apply in relation to housing in Wales.

## Commentary on Clauses

### Part 1 – Housing Conditions

#### **CHAPTER 1 – INTRODUCTORY**

In the notes for Part 1, ‘*Mandatory courses of action*’ refers to those courses of action listed in *Clause 3 (1)*. An LHA has a duty to take one of these actions as the result of a category 1 hazard.

#### **Clause 1: Repeal of fitness for human habitation test**

24. *Clause 1* repeals the test of fitness for human habitation in s604 of the Housing Act 1985 (‘the 1985 Act’).

#### **Clause 2: New standards for condition of residential accommodation**

25. *Clause 2* introduces the new standards for assessing housing conditions.
26. Under *subsection (2)* a method for calculating the seriousness of hazards in residential property may be prescribed by secondary legislation.
27. *Subsection (1)* provides a definition of ‘hazard’ for the purposes of Part 1. It also provides for the prescription by regulations of two categories of hazard – category 1 and category 2 – according to their seriousness as calculated under the prescribed method under *clause 2(2)*.

**Clause 3: Category 1 hazards: general duty to take action**

28. *Clause 3* provides a general duty on LHAs to take action where there is a category 1 hazard as defined in *clause 2*. *Subsection (1)* sets out the mandatory courses of action available to the LHA:
- to serve an improvement notice under *clause 5*;
  - to make a prohibition order under *clause 30*;
  - to serve a mandatory warning notice under *clause 53*;
  - to make a demolition order under s265 of the Housing Act 1985 as amended by *clause 55*;
  - to declare a clearance area under s289 of the 1985 Act as amended by *clause 56*.
29. Under *subsection (3)*, the LHA is under a duty to take the best course of mandatory action available to it in relation to the hazard. *Clause 4* enables the Minister to give guidance to LHAs on which course of action to take where more than one course of action is available under *clause 3(1)*.
30. *Subsection (4)* provides that, where an LHA gives notice, under section 289 of the 1985 Act, that it intends to declare a clearance area containing a property to which the duty in *clause 3* applies, but decides to exclude that property from the area, it remains under a duty to take what it considers the best of the remaining courses of action in *clause 3(1)* in relation to the hazard.
31. *Subsection (5)* enables an LHA to take another of the courses of action in *clause 3(1)* if the first course of action has not dealt with the hazard satisfactorily.

**Clause 4: Guidance about enforcement action**

32. *Clause 4* enables the relevant Minister to give statutory guidance to LHAs on their use of the enforcement measures set out in *clauses 3(1)* and *4(1)*, and places a duty on LHAs to have regard to it. The guidance will apply both where an LHA is exercising a duty under *clause 3(1)* and where it is taking action against a category 2 hazard using one of the discretionary powers discussed further below.

**CHAPTER 2 – IMPROVEMENT NOTICES****Clause 5: Duty to serve improvement notices in relation to category 1 hazards**

33. *Subsection (1)* places a duty on an LHA to serve an improvement notice where it is satisfied: that relevant residential premises contain a category 1 hazard; that this is the best of the mandatory courses of action in *clause 3*; and that there are no special circumstances such that it is not appropriate to serve a notice. Relevant residential premises covers HMOs, flats and common parts of a building that contains flats.
34. *Subsection (2)* provides the relevant Minister with a power to specify or describe by order circumstances (if any) where the LHA will not be under a duty to serve an improvement notice in relation to a category 1 hazard in accordance with *subsection (1)*.

35. *By virtue of subsection (3)*, where such circumstances exist and the LHA has decided in the light of statutory guidance (under clause 4) not to serve an improvement notice, the duty to act in subsection (1) will not apply.
36. *Subsections (4) and (5)* require the person on whom the notice is served to take the remedial action specified in the notice, which must ensure that the hazard ceases to be a category 1 hazard, but may go further.
37. *Subsection (7)* provides that the operation of a notice may be suspended in accordance with *clause 11*.

**Clause 6: Power to serve improvement notices in relation to category 2 hazards**

38. *Subsection (1) of clause 6* gives an LHA the discretionary power to serve an improvement notice where it is satisfied that relevant residential premises contain a category 2 hazard.
39. *Subsection (2)* requires the person on whom the notice is served to take the remedial action specified in the notice.
40. *Subsection (4)* allows a notice under clause 5 (improvement notice in relation to a category 1 hazard) and this section to be combined in the same notice. *Subsection (5)* provides that the operation of a notice may be suspended in accordance with clause 11.

**Clause 7: Contents of improvement notices**

41. *Clause 7* sets out the mandatory contents of improvement notices, which include the details of the hazard and the category into which it falls, the remedial action to be taken and the period of time allowed for compliance. As more than one hazard may be dealt with in the same notice, the notice will be able to prescribe different deadlines for completion of the various actions required. Under *clause 7(3)*, a notice cannot require remedial works to start within 28 days of the service of the notice.

**Clause 8: Service of improvement notices: dwelling-houses**

42. *Clause 8* provides for persons on whom improvement notices are to be served in respect of hazards in dwelling-houses.

**Clause 9: Service of improvement notices: houses in multiple occupation**

43. *Clause 9* provides for the persons on whom improvement notices are to be served in respect of HMOs. These provisions enable LHAs to deal with a range of ownership and management situations found in HMOs.

**Clause 10: Service of improvement notices: common parts**

44. *Clause 10* provides for the persons on whom improvement notices are to be served in respect of hazards in the common parts of a building or part of a building which contains flats.

**Clause 11: Suspension of improvement notices**

45. *Clause 11* provides for the suspension of an improvement notice at the LHA's discretion. For example, it may be appropriate to suspend the operation of a notice if the current occupant of a dwelling is not vulnerable to the hazard in question. The notice may specify an event, such as non-compliance with an undertaking given to the LHA by the person on

whom the notice is served, that will trigger the end of the suspension. Guidance on the use of suspended notices will be issued under clause 4.

**Clause 12: Operation of certain improvement notices**

46. *Clause 12* provides for the operation of improvement notices where no appeal is brought. Notices will come into operation 21 days after they are served – or, in the cases of notices whose operation is suspended, 21 days after they are served or at the end of the period of suspension, whichever is the later. (The operation of notices against which appeals are brought is dealt with in *clause 15*.)
47. *Subsections (3) and (4)* have the effect of preventing any appeal against the contents of a notice more than 21 days after it has been served.

**Clause 13: Variation and revocation of improvement notices**

48. *Clause 13* provides for the variation and revocation of improvement notices.
49. *Subsection (1)* allows the variation of suspended improvement notices in order to alter the time or events triggering the end of the suspension.
50. *Subsection (2)* specifies the circumstances in which an improvement notice served in response to a category 1 hazard must be revoked. This requires an LHA to revoke an improvement notice if it is satisfied that:
- the hazard does not exist in the premises concerned;
  - serving an improvement notice is not the only or the best of the mandatory courses of action prescribed by clause 3;
  - special circumstances currently exist such as to make it appropriate to revoke the notice; or
  - circumstances prescribed by order made by the relevant Minister, existed at the time the notice was served, such that the LHA had discretion not to serve the notice, and in the light of statutory guidance (issued under clause 4) it is appropriate to revoke the notice.
51. *Subsections (3) and (4)* provide that the LHA may revoke a notice served in relation to a category 2 hazard at any time, but must do so if the hazard no longer exists.
52. *Subsection (5)* provides that where an improvement notice deals with more than one category 1 or 2 hazard or a combination of categories of hazards, the duty or power under subsection (2), (3) or (4), to revoke is a duty or power to revoke the notice so far as it relates to any of those hazards and, if necessary, to vary the remainder of the notice accordingly.
53. *Subsections (6) and (7)* provide that a variation or revocation of an improvement notice shall come into force when it is made if agreed by persons on whom it is served under *clause 14 (1) and (5)*. If not so agreed, it shall not come into force until 21 days after notice of it is served or, if an appeal against a variation or revocation is made, it will not come into force until the appeal has been dealt with.

**Clause 14: Procedural requirements in relation to variations and revocations**

54. *Clause 14* provides for the serving of notices of variation or revocation, and of copies of such notices, on the persons on whom the improvement notice was originally served and on other persons if appropriate.

**Clause 15: Appeals against improvement notices etc**

55. *Clause 15* provides that a person aggrieved by an improvement notice may appeal to the county court within 21 days of service of the notice. The court may confirm, quash or vary the notice.
56. *Subsection (3)* provides that an improvement notice which has been appealed against cannot come into operation until a decision confirming the notice has been given, or any period allowed for appeal to the Court of Appeal has expired and (if appropriate) a decision of that Court to confirm the notice has been given. By *clause 15(4)*, this also applies to suspended improvement notices, but in addition these cannot come into operation until the period of suspension has expired.
57. *Clause 15(6)* gives effect to Schedule 1, which makes further provision about grounds for appeal.

**Clause 16: Appeals against variations or revocations of improvement notices**

58. *Clause 16* provides for appeals to the county court against variations or revocations of improvement notices, which must be made within 21 days of service of copies of the notice given under clause 13. The court may confirm, quash or vary the variation or revocation.

**Clause 17: Review of improvement notices**

59. *Clause 17* requires an LHA to review each suspended improvement notice in the year of service of the notice, and at least annually thereafter. Subject to these requirements, LHAs may review suspended notices at any time. Notices may be varied or revoked as a result of a review.

**Clause 18: Offence of failing to comply with improvement notice**

60. *Clause 18* makes it an offence for a person on whom an improvement notice is served not to comply with that notice and provides penalties for non-compliance.

**Clause 19: Offence of obstruction: Chapter 2**

61. *Clause 19* makes it an offence to obstruct an officer of the LHA or any other person authorised to enter the premises in carrying out its functions in connection with improvement notices, and provides penalties for such obstruction.

**Clause 20: Enforcement by Local Housing Authorities**

62. *Clause 20* gives effect to Schedule 2, which makes provision for LHAs to take the action required by an improvement notice, with or without the agreement of the person on whom the notice was served, and for the recovery of the LHA's expenses in doing so without agreement.

**Clause 21: Power of entry: Chapter 2**

63. *Clause 21* provides that persons authorised by the LHA or the Minister may, subject to 7 days' notice of their intention, enter premises which are the subject of an improvement

notice, to carry out a survey or examination of premises in order to determine whether any of the powers relating to improvement notices should be exercised.

64. *Subsections (3) and (4)* require the officer's authorisation to be in writing, to state the purpose for which entry is authorised, and to be produced for inspection by the occupier of the premises on request.

**Clause 22: Powers of court to prevent obstruction**

65. *Clause 22* provides that, where an occupier, owner, person having control of or managing the premises or licence holder under Part 2 or 3 of the Bill is obstructing the carrying into effect, in relation to the premises, any of the provisions relating to improvement notices, a magistrates' court may order that person to permit that which the court considers necessary or expedient to be done on the premises.
66. *Subsections (6) and (7)* make it an offence to fail to comply with the court order, and provide penalties for non-compliance.

**Clause 23: Power of court to authorise action on behalf of another**

67. *Clause 23* enables a magistrates' court to make an order allowing an owner of premises to enter those premises and, within a fixed period of time, to take the action required by an improvement notice. Before making an order, the court needs to be satisfied that such an order is necessary to safeguard the interests of the applicant, and that the LHA has been given notice of the application.

**Clause 24: Additional notice requirements for owners**

68. By virtue of *clause 24*, where an owner has given the LHA notice of his interest, the LHA is required to give him notice of any proceedings it takes under Chapter 2 (Improvement notices).

**Clause 25: Local land charge: improvement notices**

69. *Clause 25* provides that an improvement notice which is in operation, or in the case of a suspended improvement notice in respect of which there is no outstanding appeal, are local land charges. Local land charges protect buyers of land or property, and help ensure they are not caught unawares by obligations enforceable against successive owners.

**Clause 26: Savings for rights arising from breach of covenant etc**

70. *Clause 26* provides that nothing in Chapter 2 prejudices any rights of an owner of property arising from any breach of covenant or contract by the lessee, or any remedy at common law or otherwise available to tenants against their landlord. The effect of *subsection (2)* is that even where the owner has to take possession in order to comply with the prohibition order he can still sue the tenant for breaches of contract or covenant by the tenant.

**Clause 27: Effect of Part 4 enforcement action and redevelopment proposals**

71. *Subsection (1)* prevents an LHA from taking action under Chapter 2 if an IMO or FMO under Part 4 is in force in relation to the premises.
72. *Subsection (2)* provides that, where an improvement notice has been served in response to a hazard in a dwelling-house or an HMO which is subsequently subject to an IMO or FMO under Part 4 of the Bill, the improvement notice shall cease to have effect.

73. *Subsections (3) and (4)* provide that, where an LHA has approved redevelopment proposals under s308 of the 1985 Act, and the redevelopment is proceeding to its satisfaction, no action can be taken under Chapter 2.

**Clause 28: Interpretation: Chapter 2**

**Clause 29: Index of defined expressions: Chapter 2**

74. *Clauses 28 and 29* contain definitions of terms used in Chapter 2 of Part 1.

**CHAPTER 3 – PROHIBITION ORDERS**

**Clause 30: Duty to make prohibition order in relation to category 1 hazards**

75. *Subsection (1)* places a duty on an LHA to make a prohibition order where it is satisfied that a dwelling-house or HMO contains a category 1 hazard; that this is the best of the mandatory courses of action in clause 3(1); and that there are no special circumstances making it inappropriate to make an order.
76. *Subsection (2)* places a corresponding duty in respect of a block of flats, where there is a category 1 hazard in one or more of the flats.
77. *Subsection (3)* provides the relevant Minister with a power to specify or describe by order circumstances (if any) where the LHA will not be under a duty to make a prohibition order in accordance with subsection (1) or (2).
78. By virtue of *Subsection (4)* where such circumstances exist and the LHA has decided in the light of statutory guidance (under clause 4) not to make a prohibition order under subsection (1) or (2), the duty to act under those subsections will not apply.
79. *Subsection (6)* applies s300(1A) of the 1985 Act (inserted by paragraph 9(3) of Schedule 9 to the Bill), which enables an LHA to purchase a property which is capable of providing adequate accommodation, rather than making a prohibition order in respect of that property.

**Clause 31: Power to make prohibition order in relation to category 2 hazards**

80. *Subsections (1) and (2)* give an LHA discretionary power to make a prohibition order where it is satisfied that a dwelling-house, HMO or block of flats contains a category 2 hazard. *Subsection (3)* allows an order under clause 30 (prohibition order in respect of a category 1 hazard) and this section to be combined in the same order.

**Clause 32: Contents of prohibition orders**

81. *Clause 32* provides for the contents of prohibition orders, which may prohibit: the use of part or all of the premises for some or all purposes unless approved by the LHA; or occupation of the premises or part of them by a particular number of households or occupants or by particular descriptions of persons unless approved by the LHA.
82. Under *subsection (3)* approval must not be unreasonably withheld. *Subsection (4)* allows an appeal to the county court by a person aggrieved by an LHA's decision not to approve the use or occupation of the premises.



**Clause 33: Service of prohibition orders**

83. *Clause 33* provides for the service of prohibition orders. Copies of the order are to be served on every owner and occupier of the premises in question, on every known person entitled to permit occupation of the premises, and on every known mortgagee.
84. Under *subsection (2)*, the duty to serve a copy on every occupier is taken to have been fulfilled if it has been fixed in an accessible position on the premises.

**Clause 34: Suspension of prohibition orders**

85. *Clause 34* provides for the suspension of a prohibition order at the LHA's discretion. For example, it may be appropriate to suspend the operation of an order if the current occupant of a dwelling is not vulnerable to the hazard in question. The order may specify an event, such as non-compliance with an undertaking given to the LHA by the person on whom the order is served, that will trigger the end of the suspension. Guidance on the use of suspended orders will be issued under clause 4.

**Clause 35: Operation of certain prohibition orders**

86. *Clause 35* provides for the operation of prohibition orders where no appeal is brought. Orders will come into operation 21 days after they are served – or, in the case of orders whose operation is suspended, 21 days after they are served or at the end of the period of suspension, whichever is the later. (The operation of orders against which appeals are brought is dealt with in *clause 38*.)
87. *Subsections (3) and (4)* have the effect of preventing any appeal against an order more than 21 days after it has been served.

**Clause 36: Variation or revocation of prohibition orders**

88. *Subsection (1)* allows the variation of suspended prohibition orders in order to alter the time or events triggering the end of the suspension.
89. *Subsection (2)* specifies the circumstances in which a prohibition order made in response to a category 1 hazard must be revoked. This requires an LHA to revoke an improvement notice if it is satisfied that:
- the hazard does not exist in the premises concerned;
  - special circumstances currently exist such as to make it appropriate to revoke the order;
  - making a prohibition order is not the only or the best of the mandatory courses of action prescribed by clause 3; or
  - circumstances prescribed by order, made by the relevant Minister, existed at the time the notice was served, such that the LHA had discretion not to serve the notice, and in the light of statutory guidance (issued under clause 4) it is appropriate to revoke the notice.
90. *Subsections (3) and (4)* provide that an LHA may revoke a prohibition order made in response to a category 2 hazard at any time, but must do so if the hazard no longer exists.

91. *Subsection (5)* provides that where a prohibition order deals with more than one category 1 or 2 hazard or a combination of categories of hazard, the duty or power to revoke under subsection (2), (3) or (4) is a duty or power to revoke the order so far as it relates to any of those hazards and, if necessary, to vary the remainder of the order accordingly.
92. *Subsections (6) and (7)* provide that a variation or revocation of a prohibition order shall come into force when it is made if agreed by the parties on whom it is served (under *clause 37*). If not so agreed, it shall not come into force until 21 days after notice of it is served. If an appeal against a variation or revocation is made, it will not come into force until the appeal has been dealt with.

**Clause 37: Procedural requirements in relation to variations and revocations**

93. *Clause 37* provides for the serving of notices of variation or revocation, and of copies of such notices, on the persons on whom the prohibition order was originally served and on other persons if appropriate. The requirements of *clause 33* are to apply to the service of the variation or revocation notice in the same way as to the service of the original prohibition order.

**Clause 38: Appeals against prohibition orders**

94. *Clause 38* enables a person aggrieved by a prohibition order served under *clause 33* to appeal to the county court within 21 days of service of the order. This right of appeal is not available to occupiers under leases with three years or less unexpired. The court may confirm, quash or vary the notice.
95. *Subsection (4)* provides that a prohibition order which has been appealed against cannot come into operation until a decision confirming the notice has been given, or any period allowed for appeal to the Court of Appeal has expired and (if appropriate) a decision of that Court to confirm the notice has been given. By virtue of *subsection (5)*, this also applies to a suspended improvement notice, but in addition this cannot come into operation until the period of suspension has expired.

**Clause 39: Appeals suggesting certain other courses of action**

96. Without prejudice to the generality of *clause 38*, *clause 39* provides that a ground of appeal against a prohibition order may be that a course of action (listed in subsection (2)) other than the making of a prohibition order should have been taken by the LHA in response to the hazard in question.
97. *Subsection (4)* requires the court hearing such an appeal to have regard to any guidance given by the relevant Minister to the LHA under *clause 4*.
98. *Subsections (5) and (6)* require a court, which allows an appeal on the ground set out in this clause, if requested to do so by the appellant, to include in its judgement a finding to that effect and to identify the course of action that should have been taken.

**Clause 40: Appeals against variations or revocations of prohibition orders**

99. *Clause 40* provides for appeals to the county court against variations or revocations of prohibition orders, which must be made within 21 days of service of copies of the notice given under *clause 37*. The court may confirm, quash or vary the variation or revocation.

100. Under *subsection (4)*, this right of appeal is not available to occupiers under leases with three years or less unexpired.

**Clause 41: Review of prohibition orders**

101. *Clause 41* requires an LHA to review each suspended prohibition order within one year of service of the notice, and at least annually thereafter. Subject to these requirements, LHAs may review suspended orders at any time. Orders may be varied or revoked as a result of a review.

**Clause 42: Offence of failing to comply with prohibition order etc.**

102. *Clause 42* makes it an offence for a person, knowing a prohibition order has become operative, not to comply with that order, and provides penalties for non-compliance.

**Clause 43: Offence of obstruction: Chapter 3**

103. *Clause 43* makes it an offence to obstruct an officer of the LHA or any person authorised to enter the premises in carrying out his functions in connection with prohibition orders, and provides penalties for such obstruction.

**Clause 44: Powers of court to prevent obstruction: Chapter 3**

104. *Clause 44* provides that, where an occupier, owner, person having control of premises or licence holder under Part 2 or 3 is preventing entry to premises in order to execute a prohibition order, a magistrates' court may order that person to permit to be done that which is necessary for that purpose.

105. *Subsections (6) and (7)* make it an offence to fail to comply with the court order, and provide penalties for non-compliance.

**Clause 45: Power of court to determine lease**

106. *Clause 45* enables a lessor or lessee to apply to the county court for an order terminating or varying a lease on a property which is the subject of a prohibition order. Before making an order, the court must take account of all the circumstances of the case, the respective rights and obligations of all parties to the lease and allow any sub-lessees to be heard.

**Clause 46: Power of entry: Chapter 3**

107. *Clause 46* enables an authorised officer of an LHA, subject to giving 7 days' notice of his intention to the occupier and any known owner, to enter premises which are the subject of a prohibition order, or to carry out a survey or examination of premises in order to determine whether any of the powers relating to prohibition orders should be exercised.

108. *Subsections (3) and (4)* require the officer's authorisation to be in writing, to state the purpose for which entry is authorised, and to be produced for inspection by the occupier of the premises on request.

**Clause 47: Recovery of possession of premises**

109. Restrictions on possession under the Rent Acts (Rent Act 1977) or Part 1 of the Housing Act 1988 will cease to have effect where a prohibition order is in force and the owner seeks possession of the premises. Therefore, where possession is sought the owner will be able to determine a tenancy by a notice to quit and then recover possession.

**Clause 48: Local land charge: prohibition orders**

110. *Clause 48* provides that a prohibition order which is in operation, or in the case of a suspended improvement notice in respect of which there is no outstanding appeal, are local land charges. Local land charges protect buyers of land or property, and help ensure they are not caught unawares by obligations enforceable against successive owners.

**Clause 49: Saving for rights arising from breach of covenant etc: Chapter 3**

111. *Clause 49* provides that nothing in Chapter 3 prejudices any rights of an owner of property arising from any breach of covenant or contract by the lessee. The effect of *subsection (2)* is that even where the owner has to take possession in order to comply with the prohibition order he can still sue the tenant for breaches of contract or covenant by the tenant that occurred before he took possession.

**Clause 50: Effect of Part 4 enforcement action**

112. *Subsection (1)* prevents an LHA from taking action under Chapter 3 if an IMO or FMO under Part 4 is in force in relation to the premises.
113. *Subsection (2)* provides that, where a prohibition order has been made in response to a hazard within a house which has come under the control of the LHA as a result of the making of an IMO or FMO under Part 4 of the Bill, the prohibition order shall cease to have effect.

**Clause 51: Interpretation: Chapter 3**

**Clause 52: Index of defined expressions: Chapter 3**

114. *Clauses 51 and 52* contain definitions of terms used in Chapter 3 of Part 1.

**CHAPTER 4 – OTHER ENFORCEMENT ACTION**

**Clause 53: Mandatory warning notices**

115. *Subsection (1)* places a duty on an LHA to serve a mandatory warning notice where it is satisfied that residential premises contain a category 1 hazard; that this is the best of the mandatory courses of action in clause 3(1); and that there are no circumstances in which it would be inappropriate to serve a notice.
116. *Subsection (2)* provides the relevant Minister with a power to specify or describe by order circumstances (if any) where the LHA will not be under a duty to serve a notice in accordance with subsection (1).
117. By virtue of *subsection (3)* where such circumstances exist and the LHA has decided in the light of statutory guidance (under clause 4) not to serve a notice under subsection (1), the duty to act under that subsection will not apply.
118. A notice under this section must set out the reasons for the LHA's decision and contain a description of the hazard concerned and the remedial action considered appropriate to deal with it.
119. The requirements in Chapter 2 of the Bill, as to the persons on whom improvement notices are to be served apply also to warning notices served under this section and under section 54.

**Clause 54: Voluntary warning notices**

120. *Clause 54* provides a discretionary power for LHAs to serve a voluntary warning notice in response to a category 2 hazard. Notices under this section must specify the hazard, the appropriate remedial action and the other courses of action available to the LHA. Service of a notice under this section does not prevent the LHA from taking other action in respect of the same hazard.
121. The relevant Minister will issue guidance under clause 4 on the use of mandatory and voluntary warning notices.

**Clause 55: Demolition orders**

122. *Clause 55* amends section 265 of the 1985 Act (power to make demolition orders) in order to align demolition orders with the hazard assessment and enforcement provisions in Part 1 of the Bill.
123. New *subsections (1) and (1A)* of section 265 place a duty on an LHA to make a demolition order in respect of a dwelling-house, HMO or block of flats containing one or more category 1 hazards, where the LHA is satisfied that this is the best of the mandatory courses of action in clause 3(1), and where there are no circumstances in which it would be inappropriate to make an order.
124. *Subsection (1B)* provides the relevant Minister with a power to specify or describe by order circumstances (if any) where the LHA will not be under a duty to make a demolition order in accordance with subsection (1) or (1A).
125. By virtue of *subsection (1C)* where such circumstances exist and the LHA has decided in the light of statutory guidance (under clause 4) not to make a demolition order under subsection (1) or (1A), the duty to act under one or other of those subsections will not apply.
126. *Subsections (1E) and (1F)* enable LHAs to make a demolition order in respect of a dwelling containing one or more category 2 hazards, but only in circumstances specified or described in an order made by the relevant Minister.

**Clause 56: Clearance areas**

127. *Clause 56* amends section 289 of the 1985 Act in respect of clearance areas, in order to align it with the hazard assessment and enforcement provisions in Part 1 of the Bill.
128. The amendments to section 289 of the 1985 Act enable an LHA to declare a clearance area if they are satisfied that each of the residential buildings in the area contains one or more category 1 hazards, *or* that these buildings are dangerous or harmful to the health or safety of the inhabitants as a result of their bad arrangement or the narrowness or bad arrangement of the streets; *and* if they are satisfied that any other buildings in the area are dangerous or harmful to the health of the inhabitants.
129. The declaration of a clearance area is one of the mandatory courses of action in clause 3(1), and by virtue of the substituted s289(2ZC) the power to declare a clearance area is a duty for the purposes of that clause. However, the presence of a category 1 hazard cannot be the sole reason for a declaration.

**Clause 57: Repeal of deferred action notice regime**

130. *Clause 57* repeals sections 81 to 85 of the Housing Grants Construction and Regeneration Act 1996 (the 1996 Act), relating to deferred action notices. The purpose of these notices, that of identifying the need for remedial action, has been taken over by the prohibition orders provided for in Chapter 3 of the Bill.

**Clause 58: Repeal of power to improve existing enforcement procedures**

131. *Clause 58* repeals section 86 of the 1996 Act, which provides a pre-notice procedure forewarning of the enforcement action contemplated by an LHA. The Housing (Fitness Enforcement Procedures) Order 1996 (SI 1996 No 2885) requires an LHA to issue a ‘minded to take action’ notice prior to taking enforcement action. The regulatory framework set out in Part 1 of the Bill, which includes provision for LHAs to issue warning notices, makes these arrangements unnecessary.

**Clause 59: Power to charge for certain enforcement action**

**Clause 60: Recovery of charge for certain enforcement action**

132. *Clauses 59 and 60* provide powers for LHAs to charge, and to recover charges, incurred in respect of certain enforcement powers and duties exercised under Part 1 of the Bill. These provisions re-enact with modifications sections 87 and 88 of the 1996 Act.

## Part 2 – Licensing of Houses in Multiple Occupation

**Clause 61: Houses in multiple occupation to which this Part applies**

133. *Clause 61* provides that this Part of the Bill applies to any description of HMOs prescribed in regulations by the relevant Minister. It is intended to prescribe HMOs of 3 storeys and above in which at least 5 people live. The meaning of HMO is defined by *clauses 164-170*.

**Clause 62: Designation of additional licensing areas**

134. *Clause 62* allows an LHA to designate part or all of its area as subject to HMO licensing additional to the mandatory licensing provided for in clause 61. It must consider that the designation will be more successful than voluntary methods of dealing with problems. It must consult on any proposal to do so with those likely to be affected by the designation and take account of any representations received.

**Clause 63: Confirmation of designations**

135. *Clause 63* requires that any such additional licensing should be confirmed, in England by the Secretary of State and in Wales by the National Assembly for Wales. The confirming authority may refuse to make a confirmation. Examples of when it might be appropriate to refuse to confirm might be if voluntary measures have not been explored or consultation has been unsatisfactory. On confirmation the confirming authority will determine a date of designation, to be no earlier than 3 months after confirmation.

**Clause 64: Duration, review and revocation of designations**

136. *Clause 64* provides that a designation can last no longer than 5 years. An LHA must, from time to time, review a designation.

**Clause 65: Requirement for houses in multiple occupation to be licensed**

137. *Clause 65* requires that all HMOs to which the Part applies must be licensed. A licence may include provisions imposing such conditions as the LHA considers appropriate. These may include conditions about the management of a house and the behaviour of its occupants. In general licence provisions only apply to the licence holder.
138. By virtue of *subsection (4)* a licence condition under *subsection (3) (b)* (condition relating to the condition of the house or amenities) cannot require the remedy or mitigation of a category 1 or 2 hazard. The intention is that LHAs address such hazards under the duties and powers provided in Part 1 of the Bill.

**Clause 66: Main offences in relation to licensing of houses in multiple occupation**

139. *Clause 66* makes it an offence punishable by a fine of up to £20,000 if a person controlling or managing an HMO does not have the required licence. An offence punishable by a fine on scale 5 (currently up to £5,000) is committed if a person breaches any condition contained in a licence. Proceedings can only be brought by LHAs.

**Clause 67: Further provisions in relation to unlicensed houses in multiple occupation**

140. *Clause 67* provides that for an HMO that is not licensed, but that ought to be licensed, no rent is payable. This will mean that no housing benefit will be payable to anyone residing in such a property.

**Clause 68: Licences: general**

141. *Clause 68* provides that a licence must be in writing, be non-transferable and not relate to more than one HMO. The validity of a licence will be for a period specified in the licence itself although it may be brought to an end earlier if there is non-compliance with a provision of the licence.

**Clause 69: Applications for licences**

142. *Clause 69* provides for applications for a licence to be made to an LHA in accordance with that LHA's requirements, including the payment of a fee. The scope for any LHA to impose requirements will be prescribed by regulations that will also provide for the way in which applications are made and the maximum fees that can be charged. The fee charged should enable an LHA to cover its administrative costs of running the licensing scheme.

**Clause 70: Power to grant licences**

143. *Clause 70* provides that an LHA may grant a licence if the house is suitable for occupation by more than one household, up to a maximum number of households or persons – subject to the following conditions:
- That the proposed licence holder is a fit and proper person and the most appropriate person to be granted a licence;
  - That the proposed manager of the HMO is a relevant person and also a fit and proper person; and
  - That the proposed management arrangements are satisfactory.

144. *Clause 72* sets out the criterion an LHA shall have regard to in deciding whether a person is ‘fit and proper’ and whether the management arrangements are satisfactory. A ‘relevant person’ means the person who has control of the house (see *clause 167* for a definition of this) or an agent or employee of that person, who does not live in the house.

145. The person who is the most appropriate to be granted a licence will generally be the person who has control of the house (see *clause 167* for a definition of this).

**Clause 71: Tests as to suitability for, and extent of, occupation**

146. *Clause 71* sets out what needs to be considered if a house is to be suitable for occupation by more than one household, and for occupation by a particular maximum number of households. Regulations may prescribe standards of amenities such as numbers of toilets, washing facilities and food preparation facilities and certain health and safety standards.

**Clause 72: Tests for fitness etc. and satisfactory management arrangements**

147. *Clause 72* sets out the evidence that needs to be considered when addressing whether a person is fit and proper to be a licence holder. In particular this may relate to offences of fraud, dishonesty, violence, drugs, and discrimination in business. It also sets out the matters to be addressed when considering whether or not the management arrangements for an HMO are satisfactory (in terms of the competence and fitness of the manager, management structure and funding).

**Clause 73: Variation of licences**

148. *Clause 73* provides for an LHA to vary a licence with the agreement of the licence holder or if it appears that circumstances have changed. The change in circumstances may, in particular, relate either to the number of households or persons that can be permitted to occupy the house or to the standards that must apply. A variation does not come into effect until any appeal against it is disposed of or withdrawn.

**Clause 74: Revocation of licences**

149. *Clause 74* provides for the circumstances in which an LHA may revoke a licence. These are: with the agreement of the licence holder; in accordance with the terms of the licence or where, in terms of the number of occupants or other standards currently applying, the house would not currently have been licensable. Other than where revocation takes effect by agreement it does not take effect until any appeal is finally disposed of or withdrawn.

**Clause 75: Appeals against licence decisions**

150. *Clause 75* allows for appeals to the county court against decisions by an LHA to refuse to grant a licence, to grant a licence or to vary or revoke a licence. The court may confirm, vary or reverse a decision of an LHA. Such an appeal is a re-hearing of the original decision by the LHA but new evidence from the appellant is permissible.

**Clause 76: Time-limits for appeals against licence decisions**

151. *Clause 76* provides for a time limit of 21 days for appeals against decisions to grant, refuse, vary or revoke licences in relation to notices served, under Schedule 3. The court has the power to extend this time limit if there are good reasons to do so.



**Clause 77: Procedural requirements relating to licences**

152. *Clause 77* is concerned with the procedural requirements set out in Schedule 3. These include serving on the applicant and on other relevant persons (such as the occupants) a copy of the licence and a notice setting out the reasons for granting the licence.

**Clause 78: Codes of practice: Part 2**

153. *Clause 78* allows the relevant Minister to approve a code of practice in relation to any matter arising under this Part, notably management practices. Although non-compliance with the code is not an offence, the code is admissible in court proceedings as evidence of what is good practice.

**Clause 79: Transitional provisions: Part 2**

154. *Clause 79* gives effect to Schedule 4 which contains transitional provisions.

**Clause 80: Interpretation: Part 2**

155. *Clause 80* provides that an HMO includes any yard, garden, outhouse or appurtenance linked to it.

**Clause 81: Index of defined expressions: Part 2**

156. *Clause 81* provides an index of expressions and how they are defined elsewhere in the Bill.

## Part 3 – Selective Licensing of Other Rented Accommodation

**Clause 82: Designation of selective licensing areas**

157. *Clause 82* provides that an LHA may designate an area as subject to the licensing of private landlords if the area is one of low housing demand, or is likely to become an area of low housing demand, if the designation will contribute to the improvement of social or economic conditions in the area. In addition, regulations made by the relevant Minister can specify other criteria for imposing a licensing requirement in selected areas, such as those which suffer from a high incidence of anti-social behaviour in the private rented sector. The LHA must consult before a making a designation.

**Clause 83: Confirmation of designations: Part 3**

158. *Clause 83* provides for proposals by an LHA to be approved by the Secretary of State for areas in England and by the National Assembly for Wales for areas in Wales. The clause provides for the Secretary of State or the National Assembly to refuse to confirm a designation. The LHA may specify a date for the coming into force of a designation that must be no earlier than three months after the date of confirmation. An order made by the relevant Minister may dispense with the need for confirmation and may make alternative provisions for the coming into force of a designation.

**Clause 84: Duration, review and revocation of designations: Part 3**

159. *Clause 84* requires that a designation should last no longer than 5 years. An LHA must review a designation and revoke it if the conditions which led to its coming into effect are no longer satisfied.

**Clause 85: Houses to which this Part applies**

160. *Clause 85* provides that any residential building within a designated area must have a licence if it is occupied by tenants or licensees. It does not apply to any property that is licensed under the provisions relating to HMOs under Part 2 of the Bill, nor does it apply to exempted tenancies – including those of social landlords.

**Clause 86: Requirement for houses to which this Part applies to be licensed**

161. *Clause 86* deals with the requirements of licensing for properties in areas of selective licensing and provides that a licence may include conditions applying to the management of the house and to certain physical conditions relating to the property itself.

**Clause 87: Main offences in relation to licensing**

162. *Clause 87* provides that an offence is committed if a person has control of a property to which the Part applies which is not licensed. There is a maximum fine of £20,000. It is also an offence to breach a condition of a licence. There is a maximum fine on scale 5 for this offence (currently up to £5,000). Only the LHA may bring proceedings for non-compliance with the requirements to be licensed.

**Clause 88: Further provisions in relation to houses which are not licensed**

163. *Clause 88* provides that where a house that should be licensed is not then no rent or licence fee is payable by a person who occupies the house under a tenancy or licence. This will mean that no housing benefit is payable to anyone residing in such a property.

**Clause 89: Part 3 licences: general**

164. *Clause 89* provides that a licence should be in writing and is not transferable. It may not relate to more than one house. A licence remains in force for a period specified in it, up to a maximum of 5 years.

**Clause 90: Applications for licences: Part 3**

165. *Clause 90* provides that an application for a licence must be made to an LHA in accordance with its requirements and accompanied by such a fee as it might determine. Regulations can prescribe the manner and form in which applications are made and the fees that are to be charged.

**Clause 91: Power to grant licences: Part 3**

166. *Clause 91* provides that an LHA may only grant a licence if: the proposed licence holder is a fit and proper person and is the most appropriate person to be the licence holder and the proposed management arrangements are satisfactory.

**Clause 92: Tests for fitness etc. and satisfactory management arrangements**

167. *Clause 92* sets out the factors to be taken into account by an LHA in reaching a decision as to whether an applicant is a fit and proper person and whether proposed management arrangements are suitable.

**Clause 93: Further provisions about licences under this Part**

168. *Clause 93* gives effect to Schedule 5 that contains further provisions about licences under this Part of the Act.

**Clause 94: Interpretation: Part 3**

169. *Clause 94* provides that the definition of house includes any yard, garden, outhouse or appurtenance linked to the house.

**Clause 95: Index of defined expressions: Part 3**

170. *Clause 95* provides an index of expressions and how they are defined elsewhere in the Bill.

## Part 4 – Additional Control Provisions in Relation to Residential Accommodation

**Clause 96: Making of interim management orders**

171. *Clause 96* sets out the circumstances in which IMOs are made. In the case of a property which requires a licence, the LHA must make an IMO if an existing licence terminates (or no licence is applied for), if there is no reasonable prospect of granting a licence in the near future. In the case of an HMO which does not require a licence, the LHA can apply to the county court for authority to make an IMO if it is necessary to protect the health, safety or welfare of occupiers or neighbours of the HMO.

**Clause 97: Duties of Local Housing Authorities**

172. *Clause 97* requires an LHA, when it has made an IMO, to take immediate steps to protect the interests of the tenants. It must also take steps to provide for management of the property in the longer term either through granting a licence or making an FMO.

**Clause 98: General effect of interim management orders**

173. *Clause 98* allows an LHA to take possession of an HMO to collect rent, arrears of rent and other charges and expend those monies on works in the same way as the landlord might otherwise do. Any enactment as to landlords, tenants and leases will apply to the LHA as if it were the legal owner of the premises. However, the LHA may not create a new tenancy save with the written permission of the owner. Subsection (8) provides that properties subject to an IMO do not count as properties provided or managed by an LHA for the purposes of any other legislation.

**Clause 99: Financial arrangements**

174. *Clause 99* provides that an LHA may recover its reasonable costs in the administration of a house subject to an IMO, through rents and other charges it is entitled to receive under that IMO, subject to a maximum amount the relevant Minister may prescribe by regulations. An LHA must keep accounts of income and expenditure and make them available for inspection. An LHA must pay any balance of income over expenditure (and any interest on such surplus) to the relevant person it considers appropriate to receive it. 'Relevant person' is defined as the person who, prior to the making of the IMO, was the person in control or managing the house or a person with an estate or interest therein. Definitions of these terms are contained in *clauses 172 and 173*.

**Clause 100: Operation of interim management orders**

175. *Clause 100* provides that an IMO comes into force when the revocation of a licence takes effect, and in any other case immediately. The IMO must specify when it ceases to have effect, or include provisions for determining the date on which it ceases to have effect,

which cannot be later than twelve months from the date it comes into force. Where an IMO is replaced by an FMO and an appeal against the making of that order is made, then the IMO will continue in force until the appeal is determined.

**Clause 101: Interim management orders: appeals**

176. *Clause 101* provides for appeals against IMOs by any person aggrieved by them. On appeal a county court may confirm, quash or vary the order or make such other directions as it sees fit – including directing the LHA to grant a licence. Tenants residing in premises will not have any right of appeal unless their tenancy has more than 3 years to run.

**Clause 102: Variation of interim management orders**

177. *Clause 102* allows an LHA to vary an IMO. This may only come into force after 21 days if no appeal is made or, if an appeal is made, when that appeal is disposed of.

**Clause 103: Termination of interim management orders**

178. *Clause 103* provides the circumstances under which an IMO is terminated. *Subsection (1)* provides that it ceases if a licence or an FMO come into force. *Subsection (2)* provides that the LHA may revoke an order if it considers it is appropriate to do so.

**Clause 104: Final management orders**

179. *Clause 104* requires an LHA to make an FMO where, following an IMO (or a previous FMO) it is not able to grant a licence in relation to a property subject to Part 2 or Part 3 of the Bill. The LHA is required to obtain approval of the county court to make an FMO in respect of an HMO which is not required to have a licence under Part 2. The court may only authorise such an order if it is necessary to protect the health, safety or welfare of residents or neighbours of the HMO. An FMO must be of a fixed duration of no more than 5 years.

**Clause 105: Duty to keep final management orders under review**

180. *Clause 105* requires an LHA to keep an FMO under review, to determine whether the continuation of the order is the best alternative available to it. In doing so it must take such steps as it considers appropriate, including whether it is more appropriate to grant a licence or, where the house is an HMO which is not subject to Part 2, to revoke the order and not to take any further action.

**Clause 106: General effect of financial management orders**

181. *Clause 106* provides that an FMO allows the LHA to exercise all the powers that the person previously having control of the property had. This includes granting a new tenancy agreement so long as the term of the agreement does not extend beyond the expiry date of the FMO. Any such agreement will take effect as if granted by the person previously having control and will not give rise to a secure tenancy under the Housing Act 1985.

**Clause 107: Financial arrangements: final management orders**

182. *Clause 107* provides that an LHA may recover its reasonable costs in the administration of a house subject to an FMO, through rents and other charges it is entitled to receive under that FMO, subject to a maximum amount the relevant Minister by prescribe by regulations. An LHA must keep accounts of income and expenditure and make them available for inspection. An LHA must pay any balance of income over expenditure (and any interest on such surplus) to the relevant person it considers appropriate to receive it. 'Relevant person' is defined as the person who, prior to the making of the IMO, was the person in

control or managing the house or a person with an estate or interest therein. Definitions of these terms are contained in clauses 172 and 173. A relevant person aggrieved by decisions of an LHA with regard to the payments of such residues may appeal to the court.

**Clause 108: Incorporation of management schemes**

183. *Clause 108* provides that an FMO must contain a Management Scheme. A scheme must set out the works required and the costs involved in such works. It must specify the maximum number of households or persons that can be accommodated in the HMO concerned.

**Clause 109: Operation of final management orders**

184. *Clause 109* provides that an FMO becomes operative if no appeal is brought by the end of a period of 21 days beginning with the date of service of the order. If an appeal is brought, the FMO becomes operative when the appeal is finally disposed of or withdrawn.

**Clause 110: Final management orders: appeals**

185. *Clause 110* provides for appeals to the county court for those aggrieved by the imposition of an FMO. If a court quashes an FMO it may direct the LHA to grant a licence and can specify the terms of the licence. Tenants residing in premises will not have any right of appeal unless their tenancy has more than 3 years to run.

**Clause 111: Variation of final management orders**

186. *Clause 111* allows an LHA to vary an FMO. A variation comes into force after 21 days if no appeal is made, or if an appeal is made, when that appeal is disposed of or withdrawn.

**Clause 112: Termination of final management orders**

187. *Clause 112* allows an LHA at any time to revoke an FMO if it considers it appropriate to do so.

**Clause 113: Effect of management orders on occupiers of part etc.**

188. *Clause 113* provides that tenants and licensees living in properties subject to a management order retain the same legal status that they had before the management order was made. If a new tenancy is granted while a management order is in force, the tenancy will be the same as it would have been if the former landlord had granted it. Normally any new tenancy agreement will be an assured shorthold tenancy. It is not possible for any resident of a property subject to a management order to acquire the status of a secure tenant of an LHA.

**Clause 114: Effect of management orders: furniture**

189. *Clause 114* provides that any right to possession of furniture provided for the use of the occupiers under a tenancy or licence vests in the LHA under the order so long as it lasts. The LHA may, however, renounce its right of possession. If it does so and more than one person claims an interest in, or right of ownership of, the furniture, the matter will be resolved by the county court on application of the parties concerned. The court may make an order with or without conditions, including financial conditions, as it considers appropriate. 'Furniture' is defined as including fittings and other articles.

**Clause 115: Exclusion of part of house from management orders**

190. *Clause 115* allows for parts of a house to be excluded from any management order if they are occupied by the owner of the property.

**Clause 116: Rights and liabilities on termination of management orders**

191. *Clause 116* provides that by regulations further provisions may be made as to property rights when a management order ends.

**Clause 117: Service of management orders**

192. *Clause 117* requires the posting of notices in houses subject to management orders and their service on persons who control, manage, have an interest in, or occupy such a house.

**Clause 118: Further procedural requirements: management orders**

193. *Clause 118* brings into effect the procedural requirements to be followed when a management order is made, varied or revoked that are set out in Schedule 6.

**Clause 119: Management orders: powers of entry**

194. *Clause 119* provides an LHA with the right of access, at all reasonable times, to any part of a house subject to a management order for the purpose of survey and examination or carrying out of works.

**Clause 120: Management orders: power to supply furniture and fittings**

195. *Clause 120* allows an LHA to fit out and furnish a house subject to a management order.

**Clause 121: Management orders: local land charges**

196. *Clause 121* provides that a management order is a local land charge. Local land charges protect buyers of land or property, and help ensure they are not caught unawares by obligations enforceable against successive owners.

**Clause 122: Management regulations etc**

197. *Clause 122* provides for regulations to be made requiring and prescribing satisfactory standards of management and making it an offence if regulations under this section are not complied with. The maximum penalty on conviction of such an offence is a fine on scale 5 (currently up to £5,000). The regulations can apply to any HMO irrespective of whether it is subject to a licensing requirement, or to a property subject to the licensing requirement under Part 3.

**Clause 123: Service of overcrowding notices**

198. *Clause 123* allows an LHA to serve overcrowding notices in respect of HMOs which are not licensed under Part 2 or subject to an IMO or FMO. It can only serve the notice if it considers, having regard to the number of rooms available, there are, or there are likely to be, an excessive number of persons occupying the house. The LHA must give 7 days notice of its intention to serve the overcrowding notice on all the relevant persons, inform occupiers (so far as possible) of its proposals and consider any representations it receives. An overcrowding notice becomes operative 21 days after it was served, unless an appeal is made. Contravention of the notice is punishable with a scale 4 fine (currently up to £2,500). 'Relevant person' is defined as the person having control or managing the HMO or such other person who has an estate or interest in the property.

**Clause 124: Contents of overcrowding notices**

199. *Clause 124* provides for the content of an overcrowding notice. It must state the maximum number of persons who may occupy each room or specify a room is unsuitable for occupation. The notice must also state the requirements in *clause 125* or *126*. A notice served under *clause 126* may be withdrawn and replaced by a notice under *clause 125*.

**Clause 125: Requirement as to overcrowding generally**

200. *Clause 125* requires the relevant person not to allow a room to be occupied as sleeping accommodation other than in accordance with notice. It also provides that the HMO must not be occupied by such number of persons as would require persons of the opposite sex, not living together, to sleep in the same room. For this purpose, children under the age of 12 are to be disregarded. It is also assumed that persons only sleep in particular rooms and the maximum number of persons set for those rooms in the notice is not exceeded.

**Clause 126: Requirement as to new residents**

201. *Clause 126* prevents overcrowding being created by new residents and operates similarly to clause 125. A new resident is a person who was not in occupation of the HMO when the overcrowding notice was served.

**Clause 127: Appeals against overcrowding notices**

202. *Clause 127* provides that appeals may be made to the county court within 21 days of the overcrowding notice being served. The court may confirm, quash or vary the notice. On appeal the notice does not become operative until court proceedings have finally been disposed of.

**Clause 128: Revocation and variation of overcrowding notices**

203. *Clause 128* permits, on the application of a relevant person, an LHA to revoke an overcrowding notice or to vary it, so more persons may occupy the HMO. If the LHA refuses to revoke or vary the order, or fails to make a written decision within 35 days, the applicant may appeal to the county court.

**Clause 129: Codes of Practice: Part 4**

204. *Clause 129* allows the relevant Minister to approve a code of practice in relation to Part 4 and, although non-compliance with the code is not to be an offence, the code shall be admissible in court proceedings as evidence of what is good practice.

**Clause 130: Interpretation: Part 4**

205. *Clause 130* provides that the definition of house includes any yard, garden, outhouse or appurtenance linked to the house.

**Clause 131: Index of defined expressions: Part 4**

206. *Clause 131* provides an index of expressions and how they are defined elsewhere in the Bill.

## Part 5 – Home Information Packs

**Clause 132: Introductory****Clauses 133 to 136 and 152: Meaning of ‘residential property’ and other expressions**

207. *Clauses 133 to 135* set out the definitions that specify who is subject to the duties set out in the Bill, when and in relation to what properties. *Clause 152* provides an index of expressions defined in this Part of the Bill.
208. This Part of the Bill imposes duties on those responsible for marketing residential property, and on those acting as estate agents in England and Wales. The duties concern the

availability of a home information pack. The requirements commence when the availability, or possible availability, of a residential property for sale is first advertised or otherwise made known to the public or a section of the public.

209. The expression ‘section of the public’ is not defined in the Bill but has been used in many other Acts of Parliament. It would not include an individual, or small group of individuals, or a seller’s family or friends. In general, the seller would know these people in a private capacity. *Clause 139* requires that before a person acting as an estate agent can contact any individual with information about the availability of the property, with a view to marketing that property, there must be a home information pack available.
210. Examples of what would amount to making known the availability of a property for sale include placing an advert in a newspaper or shop window, erecting a ‘For Sale’ sign or placing details of a property on a website indicating that it is for sale.
211. The home information pack duties apply to residential properties marketed for freehold or long leasehold sale. The duties apply also to marketing of an option to acquire such an interest. The home information pack duties do not apply where particular properties are not being advertised for sale. They apply where residential properties are marketed for occupation as a separate dwelling, together with any land with that dwelling. *Clause 136* provides that where a single dwelling which has been sub-divided is marketed for sale as a single dwelling, the home information pack duties apply. This covers, for example, a situation where a house that has been converted into flats is offered for sale as a single property.
212. A home information pack is required also for a residential property that is marketed ‘off-plan’. That is to say a property which is not yet constructed at the date on which the marketing of that property takes place, but where the buyer will purchase a fully constructed home.
213. The effect of these provisions is to exclude from the requirements of this Part of the Bill marketing of:
- non-residential property;
  - mixed commercial (or industrial) and residential property;
  - a residential property that does not qualify as a ‘dwelling-house’, e.g. a mobile home;
  - property sold with sitting tenants and not therefore available for owner-occupation;
  - portfolios of properties in circumstances where no offer for a single dwelling would be accepted; and
  - leases of less than 21 years.
214. The home information pack requirements are thereby targeted on homes being marketed for owner-occupation.



**Clause 134: Responsibility for marketing a property which is on the market****Clause 135: Acting as an estate agent**

215. *Clause 134* identifies who is 'responsible' for carrying out the duties relating to the home information packs, which are contained in *clause 137*. Only a person considered 'responsible' has any obligations under *clause 137* or could become liable to enforcement measures for a breach of the home information pack duties.
216. There are two categories of people who can be considered responsible where a property is on the market – the seller of that property or someone acting as an estate agent for the seller. 'Acting as an estate agent' is defined in *clause 135* as someone acting in the course of business who accepts instructions from a seller to market the property with a view to introducing the seller to a potential buyer or to dispose of the property by auction or tender. It is not relevant whether they describe themselves as an estate agent, but these notes refer to 'an estate agent' for ease of reference.
217. If a seller instructs an estate agent who has a place of business in England and Wales to put his property on the market, the estate agent (and not the seller) will be considered responsible. If the estate agent is a partner in a firm, the firm itself is considered responsible rather than the individual partner.
218. A seller will be considered responsible for marketing a property if:
- he personally takes the action which makes it known that the property is for sale;
  - a person who is not acting as an estate agent (such as a friend or relative) takes the step which puts the property on the market, on the seller's behalf; or
  - he instructs an estate agent who does not have a place of business in England and Wales and the action that puts the property on the market is taken by that agent.
219. More than one person can be considered 'responsible' for the marketing of a property. For instance, if an estate agent accepts instructions from a seller to market a property that is already on the market he becomes responsible (and must therefore comply with the home information pack duties). Equally, if a seller undertakes marketing of a property independently, that seller will become responsible for marketing and subject to the home information pack duties even though an estate agent has also been instructed to act. In such a case, the seller will be able to rely on the home information pack provided by the estate agent.
220. There is no limit on the number of persons who can be 'responsible' for the marketing of a property and all persons who are responsible must be able to comply with all of the home information pack duties. Once a person has become responsible for the marketing of a property that person remains responsible until they lose that status in one of the following ways.
221. A person acting in the course of business can cease to be responsible if:
- the property is sold;
  - the property is taken off the market; or

- the contract with the seller is terminated and the person acting in the course of business carries out no further marketing activities.
222. A seller can also cease to be responsible if:
- the property is sold;
  - the property is taken off the market; or
  - the seller instructs someone acting as an estate agent to carry out the marketing of the property and the seller ceases to carry out any marketing activity personally.
223. A property is sold when a legally binding contract for the sale is agreed. This is usually when contracts are exchanged.
224. The Bill does not define ‘taken off the market’ but this is an ordinary expression that should be given its usual meaning. It will include putting up a sign that says ‘sold subject to contract’ or simply ‘sold’ provided marketing activity has ceased. It will also include removing an advert from a window, or taking down a ‘for sale’ sign.
225. If a person wishes to cease being responsible for the marketing of a property under the second method described in paragraphs 221 and 222, the obligation is an active one, namely to cease marketing. So if there is some marketing activity already under way (for example if a ‘for sale sign’ has been erected or an advert placed in a window), it is necessary to take steps to discontinue that marketing activity (e.g. by taking down the ‘for sale sign’ or removing the advert from the window).
226. There may be some circumstances where a person has put in train some marketing activity that it is not within that person’s power to stop, such as placing an advert in a newspaper that has already gone to print. A person is only required to take such steps as he reasonably can in order to stop marketing.
227. It is possible that no person is responsible for the marketing of a property that is on the market. But as soon as any person takes a step which advertises to the public or a section of the public that the property is available for sale, however, that person will be considered responsible and will have an obligation to comply with the home information pack duties.

**Clause 137: Duties of responsible person where a property is on the market**

228. *Clause 137* sets out obligations to make the home information pack available to potential buyers.
229. From the point that a property is put on the market, the person responsible must have a copy of the home information pack. Any part of the pack held in electronic form must be capable of being properly viewed and capable of being copied, using readily available equipment.
230. While a property is on the market, anyone responsible for marketing must provide to a potential buyer who requests it, a copy of the home information pack (or any part of it) within fourteen days of receiving a request and payment of any reasonable fee charged to cover copying costs. Copies can be provided in electronic form where that suits a potential

buyer. A potential buyer does not include someone whom the seller, or his or her agent, reasonably believes either cannot afford, is not genuinely interested, or to whom the seller does not wish to sell the property.

**Clause 138: Circumstances in which clause 137 duties may not be breached**

231. *Clause 138* sets out circumstances in which failure to comply with home information pack duties would not constitute a breach of those duties:
- in relation to *clause 137(2)* (which requires a seller to have a home information pack), they were relying on possession of a pack by an estate agent instructed by them;
  - in relation to *clause 137(3)* (which requires anyone responsible for marketing a property to provide a copy of a home information pack to any potential buyer), they reasonably believed that the person requesting the pack could not afford, was not genuinely interested or was not the sort of person to whom the seller intended or was prepared to sell the property; and
  - they can show reasonable grounds for believing that an estate agent had the pack, and they informed the buyer that requests for copies should be made to the estate agent.
232. The circumstances set out in *clause 138 (3)* do not authorise a person to do anything that constitutes unlawful discrimination.

**Clause 139: Other duties of person acting as estate agent**

233. *Clause 139* provides that where an estate agent accepts an instruction from the seller to market the property, they must have a copy of the pack before taking any action to communicate to any possible buyer information that the property is, or may become, available.

**Clause 140: Residential property not available with vacant possession**

234. *Clause 140* sets out circumstances where the duties in clauses 137 and 139 will not apply. A property that is being sold subject to a tenancy does not have to be marketed with a home information pack. Any property marketed will be assumed to be vacant, and therefore subject to the duties, unless the manner in which the property is marketed makes it clear that it is not being sold with vacant possession.

**Clause 141: Power to provide for further exceptions**

235. *Clause 141* allows the Secretary of State to make regulations to specify other circumstances in which the duty to provide a home information pack will not apply. This power would, for example, allow the Secretary of State to make different arrangements with regard to the sale of low value properties in areas of low demand.

**Clause 142: Breach of duty by employees, bodies corporate, and partnerships**

236. *Clause 142* deals with breaches of duty committed by companies and partnerships. They provide that an officer of a company, or a partner in a firm, may be liable for a breach committed by the company or partnership, if responsible for the commission of an offence by that company or partnership.

**Clause 144: Contents of home information packs**

237. *Clause 144* sets out provisions relating to the contents of a home information pack.

238. This gives the Secretary of State the power to prescribe the documents to be included in the home information pack and what information should be included in those documents. The power extends to prescribing the form and detail of documents in the home information pack, how they should be provided and by whom and who may rely on them. The power also extends to allowing the contents of the pack to vary according to circumstances. An example of the use of this power could be the exclusion of a home condition report from the home information pack where a new home was marketed for sale 'off plan' before construction had commenced or been completed. In addition, different documentation will generally be required depending on whether the interest in a property is leasehold or freehold.
239. The prescribed documents and information must relate to matters connected with the property, or its sale, which would be of interest to potential buyers.
240. *Clause 144(5) and (6)* provide an indicative list of contents of a home information pack. The documents and information listed are of a type currently normally obtained by or on behalf of the seller or buyer during the process of a normal home sale. An item which, under current arrangements, is not normally available but which is intended to be included in the home condition report is information about the energy efficiency of the property. This will contribute towards the implementation of EU Directive 2002/91/EC which requires member states to introduce requirements for energy performance certificates and to ensure that these are made available by the owner to prospective buyers when properties are sold.
241. *Clause 144 (8)* enables the Secretary of State to ensure that buyers, potential buyers, lenders and any other person involved in the sale of the property have a legal right to rely on the home condition report and other documents in the home information pack.

#### **Clause 145: Home condition reports**

242. *Clause 145* contains provisions relating to home condition reports. A home condition report is intended to be a report on the physical condition of a property which involves a similar level of inspection to that for the existing Home Buyers' Survey and Valuation. These provisions are intended to give confidence to home buyers, sellers, mortgage lenders and any others who need to rely on the contents of the report. Regulations would ensure that only inspectors who are members of a certification scheme approved by the Secretary of State will be able to carry out inspections and provide home condition reports for inclusion in the home information pack. *Clause 145(5)* lists a number of points on which the Secretary of State will need to be satisfied before approving any certification scheme, including that inspectors are appropriately qualified, with adequate insurance and complaints resolution procedures.

#### **Clauses 146 to 148: Enforcement**

243. *Clauses 146 to 148 and Schedule 7* provide for the enforcement of the home information pack duties by local weights and measures authorities (who act through Trading Standards Officers). *Clause 147* gives Trading Standards Officers power to serve a fixed penalty notice on a person who fails, without reasonable excuse, to comply with the duties. This is a civil penalty. The Secretary of State has power to prescribe the form of a fixed penalty notice, the level of penalty and methods of payment and also circumstances in which fixed penalty notices may not be given.

244. The Trading Standards Officer will decide what action to take over a suspected breach of duty under this Bill. The officer will have the discretion to:
- give advice;
  - give a warning; or
  - serve a fixed penalty notice.
245. *Clause 146 and Schedule 7* set out the powers of officers of the enforcement authority and the procedures relating to fixed penalty notices. *Schedule 7* also provides for the Secretary of State to prescribe by regulation the amount of the fixed penalty charge, and other matters relating to fixed penalty notices and their service. *Clause 148* provides that it is an offence to obstruct or impersonate enforcement officers and an offence for an officer of the enforcement authority to disclose information to another person except in performance of the enforcement function. It also provides privilege against self-incrimination.
246. *Schedule 7* provides that any penalty notice must be given within three years of the breach of duty or one year of its discovery by a trading standards officer, whichever is earlier. Where the offence is committed by a person not acting in the course of business (for example by a home owner marketing his own home), any penalty notice must be given within six months of the breach.

**Clause 143: Right of private action**

247. *Clause 143* provides also that potential buyers may recover from a person breaching the home information pack duty, the cost of obtaining any home information pack document prescribed by the Secretary of State.

**Clause 149: Office of Fair Trading**

248. *Clause 149* sets out circumstances in which a breach of the home information pack duties by a person acting as estate agent would be notified to the Office of Fair Trading. This procedure could result, ultimately, in the agent being required to cease trading.

**Clause 150: Grants**

249. *Clause 150* provides power for the Secretary of State to give grant assistance towards the cost of developing a certification scheme for home condition reports (and for other aspects of the home information pack).

**Clauses 151 and 152: Interpretation of Part 5 and index of defined expressions**

250. *Clauses 151 and 152* give definitions for expressions used in Part 5 of the Bill. The effect of these definitions has been explained in these Explanatory Notes where those expressions have been used.

## Part 6 – Other provisions about Housing – Right to Buy

### **Clause 153: Extension of qualifying period for right to buy**

251. At present, the Right to Buy does not arise unless the tenant has occupied accommodation under a public sector tenancy (i.e. armed forces accommodation or as a tenant of one of the classes of public sector landlord specified in Schedule 4 to the 1985 Act) for a period of at least two years. *Clause 153* will extend the qualifying period from 2 years to 5 years. In all other ways, qualification will remain subject to the requirements of Schedule 4. However, although tenants will in future have to wait 5 years instead of 2 years to qualify for the Right to Buy, the amount of discount they will qualify for under section 129 of the 1985 Act will be equal to their current discount entitlement after 5 years. Hence, after 5 years, they will qualify for discount as follows:
- for a house, 35 per cent – under the current rules, 32 per cent after two years plus one per cent for each of the additional three qualifying years
  - for a flat, 50 per cent – under the current rules, 44 per cent after two years plus two per cent for each of the additional three qualifying years.
252. The total amount of discount for which any tenant is eligible will however remain subject to the limits set by the Secretary of State under section 131 of the 1985 Act.

### **Clause 154: Period during which discount is to be repaid**

253. At present, if a person who has exercised their Right to Buy wishes to resell the property within three years of acquiring it, he or she is required to repay to the former landlord all or some of the Right to Buy discount which they received. *Clause 154* extends this period from three years to five years, in respect of both the Right to Buy and the Rent to Mortgage schemes (sections 143-151 of the 1985 Act).

### **Clause 155: Repayment of discount on early disposal**

254. *Clause 155* makes three separate changes. Firstly, it makes clear that former landlords have discretion as to whether or not to demand repayment of discount on early resale within the specified period in relation to purchases under both the Right to Buy and Rent to Mortgage schemes. Secondly, it changes the calculation of the amount of discount to be repaid from a flat-rate basis to a percentage basis, in relation to the Right to Buy only. Thirdly, it changes the repayment taper (i.e. the amount by which the level of discount which has to be repaid is reduced after each complete year since purchase) from one third per year to one fifth per year, in respect of both the Right to Buy and the Rent to Mortgage schemes.

### **Discretion to waive repayment of discount**

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

**Section 155A**

256. This provision applies to Right to Buy sales only, and recoups for the public purse a proportion of any appreciation in the value of a property originally sold with the benefit of discount, which is resold during the period within which the former landlord may demand repayment of some or all of that discount. However, it will also benefit Right to Buy purchasers whose property has fallen in value, as the amount they will have to repay will be reduced.
257. Section 155A provides that the maximum amount that the former landlord may demand (subject to the repayment taper) is that percentage of the resale price which is equal to the discount to which the tenant was entitled at the time of the original sale, where that discount is expressed as a percentage of the value of the property at that time. For example, if a tenant received discount equivalent to 10 per cent of the Right to Buy sale price, the landlord may demand repayment of 10 per cent of the property's resale value. However, this is also subject to the provisions of clause 155C (see below) regarding the value of improvements to the property made by the owner after purchasing it under the Right to Buy. The repayment taper is changed from one third per year to one fifth per year.

**Section 155B**

258. Section 155B extends the change in the discount repayment taper to the Rent to Mortgage scheme.

**Clause 156: Increase attributable to home improvements**

259. This clause is designed to ensure that an owner retains the value of improvements he or she has made to a property after exercising their Right to Buy on a subsequent resale in the five-year period during which discount may be recovered.
260. The new section 155A inserted by clause 155 provides that the amount of discount to be repaid shall be a percentage of the resale value of the property. However, clause 156 inserts new section 155C, under which the resale value will be treated as net of the value of any improvements made by the owner (or successor in title) after buying the property and before disposing of it.
261. If the value of such improvements is disputed, it shall be determined by the District Valuer, so long as (a) it is reasonably practicable for him to do so and (b) the reasonable costs of his doing so are paid by the person making the disposal. If there is no agreement between the parties as to the value of improvements, and the District Valuer does not make a determination, there will be no disregard for the value of improvements.

## Part 6: Other provisions about Housing – Social Housing Ombudsman for Wales

**Clause 157: Social Housing Ombudsman for Wales**

262. *Clause 157* inserts a new subsection 7 after s51(6) of the Housing Act 1996. It also inserts new sections 51A, 51B and 51C. These sections, together with Schedule 8 (which inserts a new Schedule 2A into the Housing Act 1996) contain new provisions in respect of the office of the Social Housing Ombudsman for Wales (SHOW).

263. *Clause 157(1)* disapplies section 51 of the Housing Act 1996 (schemes for the investigation of complaints) in relation to social landlords in Wales. *Clause 157(2)* inserts section 51A, which sets up the office of Social Housing Ombudsman for Wales (SHOW) to investigate complaints against registered social landlords in Wales. It also provides for the Local Commissioner for Wales to undertake this role. In Wales, investigation of complaints against registered social landlords is currently undertaken by the National Assembly for Wales. Provision is made to allow for designation of the office, where there is more than one Local Commissioner. The power to remove a Local Commissioner for Wales from office in the Local Government Act 1974 is extended to allow for his removal on the grounds of incapacity or misbehaviour in the office of SHOW. Schedule 2A contains further provisions about the SHOW (see below).
264. S51B contains provisions whereby the National Assembly for Wales can make regulations containing provision for the investigation of complaints against registered social landlords in Wales, including those matters as outlined under s51(2)(a)-(h).
265. S51C defines the meaning of ‘social landlord in Wales’ and gives the National Assembly for Wales the power to amend or add to the descriptions of landlords who are to be treated as social landlords in Wales, subject to consultation with such persons as it considers appropriate. *Subsection 2* defines a ‘publicly-funded’ dwelling. *Schedule 8* to the Bill inserts a new Schedule 2A into the Housing Act 1996 which makes further provision about the Social Housing Ombudsman for Wales, in particular his status, remuneration, staff and accommodation, the provision and publication of reports, expenses, including provisions relating to absolute privilege for communication. The National Assembly for Wales can make provision in respect of accounts and audit as it considers appropriate by regulations made by statutory instrument.

## Part 7: Supplementary and Final Provisions

### **Clause 158: Powers to require information**

266. *Clause 158* allows an LHA to require a relevant person to provide documentation and information that they need to carry out their functions under the Bill. There are limitations on the power to require the production of documents. These relate to documents that would not be required to be produced in any Court proceedings or where the provision of a document would involve travel of more than ten miles, unless travelling expenses are paid.

### **Clause 159: Enforcement of powers under clause 158**

267. *Clause 159* provides for enforcement powers where a person fails to respond to a notice to provide information or documentation under the preceding clause. Failure to co-operate is an offence punishable by a fine on scale 5 (currently up to £5,000).

### **Clause 160: Use of information obtained for housing benefit purposes**

268. *Clause 160* allows an LHA to use information that it has obtained for housing benefit purposes in order to carry out its functions under this Bill. So, for example, if several claims for Housing Benefit are made from the same address the LHA will be able to investigate whether the property in question ought to have a licence under Part 2 of the Bill.



**Clause 161: False or misleading information**

269. *Clause 161* makes it an offence if a person supplies false or misleading information. The maximum penalty on conviction on indictment is imprisonment for two years or a fine or both. The maximum penalty on summary conviction is to a fine not exceeding the statutory maximum (£5,000).

**Clause 162: Powers of entry**

270. *Clause 162* allows an LHA reasonable powers of access to a property in order to determine whether its powers under Part 2, 3, 4 or 7 of the Act should be exercised. A person authorised to enter a property will need written authorisation from the LHA stating the purposes for which entry is to be authorised.

**Clause 163: Warrant to authorise entry**

271. *Clause 163* provides powers for a Justice of the Peace to issue a warrant for admission to premises where entry under the previous clause has been refused.

**Clause 164: Meaning of ‘House in multiple occupation’**

272. *Clause 164* provides a definition of a ‘house in multiple occupation’. Essentially this is a house, hostel, self-contained flat or relevant building which is occupied by persons who do not form a single household and where there is a degree of sharing of the facilities of a toilet, personal washing facilities or cooking facilities. However there are exemptions specified in subsequent clauses for certain premises.
273. There are also provisions in the subsequent clauses for certain categories of property to come within the meaning of HMO for the purposes of licensing (such as self-contained flats that have not been converted to most recent building regulations).

**Clause 165: Exemptions from definition of ‘house in multiple occupation’**

274. *Clause 165* provides exemptions from the definition of HMO. Principally these are buildings operated by social landlords or by other public bodies, including ones operated by educational establishments. It excludes from the definition of HMO any building occupied by two persons sharing or one occupied by persons who have a freehold or leasehold estate exceeding 21 years. Buildings occupied by religious communities whose principal occupation is prayer, contemplation, education or the relief of suffering are also exempt. Further exemptions may be provided by regulations. The exemptions under this clause or these regulations do not apply for the purposes of Part 1 of the Bill.

**Clause 166: Section 164: meaning of ‘house’ etc**

275. *Clause 166* provides a definition of ‘house’, ‘hostel’ and ‘self-contained flat’. Regulations made by the relevant Minister may further prescribe what is or is not to be regarded as coming within those definitions.

**Clause 167: Section 164: occupation as a single household**

276. *Clause 167* sets out that persons shall be treated as a single household if they are all members of the same family. Persons married to each other or living together as a couple may be regarded as members of the same family. Couples of the same sex who are living together as if they were husband and wife are to be regarded as members of the same family. Regulations made by the relevant Minister may further specify how persons may be regarded as forming a single household by reference to particular relationships. It is

intended to make regulations to provide that employees such as au pairs and nannies are treated as part of a single household with their employers.

**Clause 168: Section 164: occupation as only or main residence**

277. *Clause 168* allows that regulations may prescribe how persons may be regarded as occupying a building or part of the building as their only or main residence.

**Clause 169: Section 164: certain blocks of flats**

278. *Clause 169* provides that certain blocks of flats are to be treated as HMOs. These are blocks that have been converted into self contained flats that did not comply with the most recent Building Regulations when they were built and where the vast majority of occupants are not owner-occupiers.

**Clause 170:**

279. *Clause 170* allows that regulations to be made can frame descriptions of HMOs by reference to features of the building, including its use, occupation or management.

**Clause 171:**

280. *Clause 171* defines the meaning of 'LHA'.

**Clause 172:**

281. *Clause 172* defines the meaning of 'lease', 'tenancy', 'occupier' and 'owner'. In particular sub clauses (4) and (7) provide that the definition includes a statutory tenancy.

**Clause 173: Meaning of 'person having control' and 'person managing' etc**

282. *Clause 173* defines what 'person having control' means in relation to the person receiving the rent of the tenanted property. Essentially this is the person who receives directly or through an agency or trustee the rents of the tenants. This clause also contains a definition of 'person managing'.

**Clause 174: Penalty for obstruction or delay**

283. *Clause 174 (1)* makes it a criminal offence to obstruct an officer of the LHA in the performance of the LHA's functions under Parts 2, 3 and 4 and clause 162.

**Clause 175: Orders and regulations**

284. *Clause 175* makes provision in relation to orders and regulations made under the Bill. Any power of the Secretary of State and the National Assembly for Wales to make orders or regulations under the Bill may be made by statutory instrument. Orders and regulations made by the Secretary of State shall be made by negative resolution procedure, except orders under clause 186 which must be made under the affirmative resolution procedure. Subsection (3) requires the Secretary of State to consult the National Assembly for Wales before making regulations under Part 5 which relate to residential properties in Wales.

**Clause 176: Offences by bodies corporate**

285. *Clause 176* makes provision for offences by a body corporate. It provides that an officer of the body corporate may be liable for a breach committed by the body corporate, if responsible for an offence committed by that body.

**Clause 177: Power to up-rate level of certain offences**

286. *Clause 177* allows the Secretary of State to up-rate the fines for certain offences in line with inflation.

**Clause 178: Power to dispense with notices**

287. *Clause 178* provides that the relevant Minister may dispense with the service of a notice required to be served by an LHA under the Act if certain conditions apply.

**Clause 179: Local inquiries**

288. *Clause 179* allows the relevant Minister to carry out any local inquiries he considers appropriate for carrying out his functions under this Act.

**Clauses 180-182: Service of documents and things done electronically**

289. *Clauses 180–182* make provision for the service of documents, including the service of documents in electronic form.

**Clause 183: The Common Council of the City of London**

290. *Clause 183* makes provision for the Common Council of the City of London.

**Clause 184: The Inner and Middle Temples**

291. *Clause 184* makes provision for Inner and Middle Temples.

**Clause 185: The Isles of Scilly**

292. *Clause 185* makes provision for the Isles of Scilly.

**Clause 186: Minor and consequential amendments**

293. *Clause 186* introduces Schedule 9 which contains minor and consequential amendments. *Clause 186 (3)* allows any order made by the Secretary of State under this section to modify any Act or subordinate legislation. Any order made under this provision must receive the approval of both Houses of Parliament.

**Clause 187: Transitional provision etc**

294. *Clause 187* makes provision for transitional provisions to be made by order.

**Clause 188: Repeals**

295. *Clause 188* introduces Schedule 10 which contains repeals.

**Clause 189: Short title, commencement and extent**

296. *Clause 189* provides that the Act extends to England and Wales and makes provision for commencement.

**Schedule 1: Certain grounds of appeal under Section 15**

297. *Schedule 1* provides for the handling of certain kinds of appeal under section 15 of Part 1 which allows appeals against improvement notices.

**Schedule 2: enforcement by local housing authorities**

298. *Schedule 2* makes provision for LHAs to take the action required by an improvement notice, with or without the agreement of the person on whom the notice was served, and for the recovery of the LHA's expenses in taking action without agreement.

**Schedule 3: Procedural requirements in relation to licences**

299. An LHA before granting a licence is required to serve a notice on the applicant and any relevant person stating the grounds on which the licence is proposed to be granted and inviting representations within a particular period. Before refusing to grant a licence a similar notice must be served stating the grounds for refusing the licence.
300. If, after considering the representations, the LHA decides to grant a licence, it must serve on the applicant and each relevant person a copy of the licence and a notice setting out the reasons for granting it. Similarly where the LHA refuses to grant a licence a notice setting out the decision and the reasons for that decision is to be served.
301. In both cases the right of appeal and the period within which the appeal may be made must be set out.
302. For the variation of licences similar procedures apply. Notices must be served on the licence holder and relevant persons setting out the nature and reasons for the variation or refusal to vary.
303. A similar procedure is involved in the revocation of licences. Notices setting out a proposal for revocation and then notices stating either the decision to revoke or the reasons for not revoking must be served on the licence holder or any relevant person. There is a right of appeal against the decision and there is a period within which an appeal may be made.
304. A ‘relevant person’ is one who has either control of the HMO, manages it or has an estate or interest in the house.

**Schedule 4: Transitional arrangements for Part 2 licensing regimes**

305. *Schedule 4* makes arrangements for transitional provisions in relation to the coming into force and ending of additional licensing schemes under Part 2. It also provides that when an HMO becomes licensed for the first time under Part 2 and more persons occupy the property at that time than is permitted under the licence, it is a defence to the offence under clause 66(4) that the licence holder is taking reasonable steps to reduce the number of residents so as to comply with the term of the licence.

**Schedule 5: Further provisions about licences under Part 3**

306. This Schedule sets out procedural requirements in relation to the grant or refusal of licences. It provides for the time scales for the variation and revocation of licences. It also deals with the legal process under which appeals against licence decisions may be conducted. It also set time limits for appeals against licence decisions.
307. Finally it makes provision for the procedures whereby the relevant Minister may by order approve codes of practice.

**Schedule 6: Further procedural requirements: management orders**

308. This Schedule provides for the contents of management schemes established in relation to management orders under section 104 (2). A scheme needs to set out the works required and the costs involved in such works. It must specify what the maximum number of households or persons can be accommodated in the HMO concerned. It must also assess the balance between revenue from rent and expenditure on works. It allows that in estimating the likely surpluses on revenue an LHA may take into account the cost of re-housing people during a period of works.

**Schedule 7: Fixed penalty notices under section 147**

309. *Schedule 7* relates to home information packs. It gives Trading Standards Officers power to serve a fixed penalty notice. This is a civil penalty. The Secretary of State has power to prescribe the form of a fixed penalty notice, the level of penalty and methods of payment and also circumstances in which fixed penalty notices may not be given. The Trading Standards Officer will decide what action to take over a suspected breach of duty under this Bill. The officer will have the discretion to: give advice; give a warning; or serve a fixed penalty notice.
310. Schedule 7 also sets out the powers of officers of the enforcement authority. It provides that it is an offence to obstruct or impersonate those officers and an offence for an officer of the enforcement authority to disclose information to another person except in performance of the enforcement function. It also provides privilege against self-incrimination. These powers, functions, offences and privileges are modelled on those that currently apply to the enforcement of the Property Misdescriptions Act 1991.

**Schedule 8: New Schedule 2A to the Housing Act 1996**

311. This creates a new Schedule 2A in the Housing Act 1996 which makes further provision about the Social Housing Ombudsman for Wales, in particular his status, remuneration, staff, the provision of reports, and expenses. It includes provisions relating to absolute privilege for communication.

**Schedule 9: Minor and consequential amendments**

312. This Schedule makes minor and consequential amendments needed as a result of this Bill.

**Schedule 10: Repeals**

313. This Schedule repeals a number of provisions made redundant by changes made by this Bill.

# Financial Effects of the Bill

## Part 1: Housing Conditions

314. Part 1 of the Bill provides for the enforcement of housing conditions on the basis of a method of calculating the seriousness of hazards – the Housing Health and Safety Rating System (the ‘rating’ system). The introduction of the rating system will have little long-term effect on public expenditure, although prior to implementation and in the first years, LHAs will have to acquire appropriate IT hardware and ensure their officers are trained in the use of the rating system. On average, the cost of compliance for property owners will not be greater than under the current housing fitness regime.

## Parts 2–4: HMO Licensing and Selective Licensing of Landlords

315. There will be little effect on public expenditure, although prior to implementation and in the first years LHAs will have to incur the minor costs of setting up licensing regimes – although this will involve adapting existing schemes for the registration of HMOs in many cases. HMO Licensing and Selective Licensing schemes should in the main be self-financing out of application fees.

## Part 5 – Home Information Packs

316. There will be little effect on public expenditure, although the Secretary of State will incur expenditure as a result of making grants under clause 150. Sellers and/or private companies, such as estate agents, will meet any costs relating to the home information pack proposals. Both sellers and buyers, as well as others involved in the process, stand to benefit from efficiency savings and reductions in abortive costs which result from an improved process.

## Part 6 – Right to Buy

317. There will be a limited effect on public expenditure. The number of sales under the scheme is unlikely to be affected. The sums repaid to landlords as a consequence of resales within the specified five-year period will increase by small amounts where property values increase.

# Effects of the Bill on Public Service Manpower

## The Housing Health and Safety Rating System

318. There will be limited effect on public service manpower. Enforcement will continue to be the responsibility of local authority environmental health officers, who will already be professionally qualified and trained in risk assessment procedures. The courts will continue to hear appeals arising from enforcement decisions. There are no new criminal penalties, and it is not expected that the limited consequential amendments to the enforcement procedures will lead to a significant increase in appeals.

## HMO Licensing and Selective Licensing of Landlords

319. There will be a limited effect on public service manpower. In practice the extra staff costs should be met out of fee income. Most of the extra costs will involve carrying out inspections and enforcement under the Rating System.

## Home Information Packs

320. There will be little effect on public service manpower. The proposed new regulations will be enforced by local authority trading standards officers who will operate a fixed penalty scheme. The average cost to individual local authorities is estimated at less than £10,000 (or about a half of one post). The cost of any additional workload for the Courts and Tribunals is likely to be negligible.

## Right to Buy

321. There will be little effect on public service manpower, as the administration of the scheme will not change significantly.

# Summary of Regulatory Appraisal

322. Partial Regulatory Impact Assessments have been carried out for each of the major elements of the draft Bill and are published in Section 4. These will continue to be developed during the consultation.

## The Housing Health and Safety Rating System

323. The proposed enforcement regime refocuses the regime set down in the 1985 Housing Act (as amended). It does not place significant new burdens on private sector or public sector landlords, or on owner-occupiers. The overall responsibilities of LHAs are unchanged.

## HMO Licensing and Selective Licensing of Landlords

324. The proposed licensing regimes should not add significant new burdens to private sector landlords. The main cost to private landlords will be the licence fee that will be subject to limits set by regulations under the Bill. Although mandatory HMO licensing and selective licensing will involve some new responsibilities for LHAs, in the main HMO licensing will have many features that are in line with the existing arrangements that many LHAs with significant numbers of HMOs already have for registering them.

## Home Information Packs

325. The proposals will put a new burden on those marketing residential property for sale. The main business sectors affected by this requirement would be estate agents, solicitors acting as estate agents, house builders and the surveying profession. There would also be consequential effects on mortgage lenders and conveyancers.

## Right to Buy

326. The proposals will limit the financial returns available to incentives companies that seek to exploit the rules. But they will have an insignificant impact on those firms – for example, advisers and lenders – that are operating within the spirit of the rules.



# Commencement

327. Provisions relating to the rating system and licensing will be brought into force by order of the Secretary of State for England and by order of the National Assembly for Wales for Wales. Provisions on home information packs will be brought into force by order of the Secretary of State in England and Wales (except for clause 150 which comes into force on Royal Assent). The provisions on Right to Buy will come into force 2 months after Royal Assent and the provisions on the Social Housing Ombudsman for Wales will be brought into force by order of the National Assembly for Wales.

# SECTION 4: REGULATORY IMPACT ASSESSMENTS

## Housing Conditions

### A Regulatory Impact Assessment

#### I. INTRODUCTION AND RISK ASSESSMENT

1. This assessment estimates the costs and benefits of replacing the Housing Fitness Standard (HFS) with the Housing Health and Safety Rating System (HHSRS). It reflects the response to the public consultation document, containing the proposals for a new enforcement regime to replace the current HFS, published in March 2001.
2. The partial regulatory impact assessment, within the consultation paper, considered the two options of:
  - Broadening the current fitness standard through secondary legislation, retaining its focus on property condition but adding new criteria and amending the guidance;
  - Replacing the current fitness regime with a regulatory regime based on the HHSRS and providing new guidance.

It recommended proceeding with the latter option. The first option was dismissed, as it did not overcome the problem of failing to distinguish between the varying severity of health and safety risks. Simply adding the four most important health risks, without modifying the way the standard is applied, would result in an increase in the number of potentially unfit dwellings from 1.5 million to 2.8 million (based on 1996 EHCS data). There would thus be an increase in costs without the benefit afforded under the second option of distinguishing between serious and more marginal problems.

3. There have been no major changes to the proposals as a result of consultation.
4. A risk assessment of maintaining the current HFS is considered by comparing it to the advantages the HHSRS will introduce. The HHSRS:
  - Is intended to replace the current Housing Fitness Standard (HFS) regime, as set out in the Housing Act 1985 (as amended by Schedule 9 to the Local Government and Housing Act 1989). There is a general consensus that the HFS does not reflect the

latest understanding of health and safety risks. There will also be replacement guidance alongside the regulatory regime.

- Provides an inspection tool for surveyors. As well as looking at the defects on a dwelling, it enables their effects on the health and safety of the current and potential occupants to be assessed. This point is not addressed under the current fitness standard.
  - Generates hazard scores that provide a basis upon which LAs may determine the most appropriate enforcement action. The current fitness standard operates a simplistic Pass or Fail rating, which does not leave adequate room for discretion, which local circumstances often require.
5. It is estimated that 1.9m dwellings have one or more health and safety hazards that would exceed the threshold that could lead to mandatory intervention by LHAs. This compares with 1.5m estimated to be unfit under the current system – this figure is taken from the 1996 English House Condition Survey, which was designed to measure the HFS. The estimate of 1.9m dwellings has been derived from work by the Building Research Establishment based on the 1996 EHCS and other data sources. As neither the EHCS 1996 nor the other data sources were designed to collect information on the HHSRS, the estimate should be treated as an indicative, broad estimate only. This applies to any reference in this paper on the number of dwellings affected by the HHSRS. However, these are the best estimates available at the current time.

## II. BENEFITS

6. The benefits of the HHSRS are difficult to quantify but could be substantial. Poor housing conditions and design contribute to major accidents, particularly in older people, and seemingly minor accidents, which may have grave consequences. Poor quality housing is associated with poor health in childhood, increased risk of asthma and inflammatory lung diseases. Damp homes in particular have been linked to respiratory symptoms. The improvement of housing conditions has been shown to have a number of positive impacts on health, including:
- Lower rates of mortality in those re-housed from socially isolated sub-standard housing;
  - Reduced sense of isolation, fear of crime, and increased involvement in community affairs;
  - Improved mental health including higher levels of psychological well being, reduced anxiety and depression;
  - Lower rates of GP contact.

It remains difficult to offer any precise numerical estimate of benefits. The main benefit from implementation of the HHSRS will be health gains owing to better targeted intervention over a number of years. The HHSRS is focussed on dealing directly with those hazards that cause accidents and ill health, whereas the HFS is less directly targeted at these hazards.

7. A further benefit is the estimated cost savings as a result of the lower compliance costs under the HHSRS compared with the HFS. Full details are provided in section III(i) below.

### **III(i) POLICY COSTS**

8. The consultation was of some, albeit limited, help in quantifying costs. Comments had been sought, particularly from LHAs and private landlords, on how the costs they would expect to incur in implementing and complying with the proposals would compare with the costs incurred under existing legislation. Fifty-five percent of respondents, including a majority of LHAs, thought that LHAs would incur extra or even significant extra costs as a result of the proposals, largely as a result of monitoring suspended Improvement or Prohibition notices<sup>1</sup>. Only eight percent thought landlords would incur extra costs, although that figure is affected by the low response rate from landlord representatives.
9. The average cost of compliance has been estimated for each of the twenty-four forms of hazard to be rated under the HHSRS alongside the expected number of dwellings affected. The full details are given in Appendix A, alongside all further information on cost calculations. An indicative worked example is attached at Appendix B as an illustration.
10. The annual total cost, in England and Wales, of repairs carried out as a result of the LHA having a duty to act is estimated as approximately £175m, at 1996 prices. This compares with £279m under the HFS. This represents an annual cost saving of £104m. This may be explained by two factors. Firstly, both figures represent the minimum cost required to undertake all urgent repair and replacement work and the cost to rectify the problems of unfitness (for the HFS), or to remove or reduce the hazard (for the HHSRS). However, under the HHSRS LHAs will have the discretion to act according to local circumstances, or to require work upon hazards that score just under the threshold for mandatory action. Secondly, some quite serious hazards are not that expensive to remove or reduce. Over a thirty year period, the Net Present Value of complying with the HHSRS is calculated as £2.42bn, as compared to £3.84bn with the HFS. This represents a cost saving over thirty years of £1.42bn.
11. If the assumption that the number of inspections will be the same under HHSRS as it was under HFS is dropped then the following results are apparent. In the instance that there were 10% more inspections per year then the annual cost of compliance is £193m, leading to a thirty year saving from introducing the HHSRS of £1.2bn. Given a 10% decrease in the number of inspections annually, then there would be an annual cost of compliance of £158m, leading to a thirty year cost saving of £1.7bn.
12. It is estimated that there will be just over two million serious hazards within just under 1.9million dwellings under the HHSRS, compared with 1.8million causes of unfitness in 1.5million dwellings under the HFS.
13. The costs of repairs will be borne across sectors to reflect the cross-tenure nature of the legislation. In practice, methods of enforcement mean that the main bearer of costs will be the private rented sector.

<sup>1</sup> The normal operation of the notice, for example requiring works or prohibiting occupancy, is suspended until triggered by a change of circumstances such as a change of occupancy. Local Authorities will have discretion over the use of suspended notices.

14. The estimated costs of additional equipment required, including the hand-held computers is £150-£200 per person, whilst the initial training necessary is estimated as £100 per person.

### **III(ii) IMPLEMENTATION COSTS**

15. The consultation paper invited comments on the costs that individual landlords or larger professional bodies would face as a result of remaining informed about the new system, whether running costs or initial costs. There was no response on this point so it is assumed that the costs to landlords of updating their knowledge will be negligible.
16. The running costs faced by LHAs are not expected to be any higher than under the existing HFS system. In consultation some LHAs raised two concerns:
- Issuing Suspended Improvement Notices (in the incidence that a hazard would only hit the threshold for mandatory action if a member of a vulnerable group were resident) would be costly to them in terms of re-inspection and enforcement. However, the issue of Suspended Improvement Notices will be at LHAs' discretion. Furthermore, LHAs already monitor the condition of dwellings that are borderline under the HFS.
  - Inspections would take a longer period of time, and therefore fewer of them would take place without extra resources. Current research supports this view, indicating that, at the moment, time savings are not as expected. However, it is still expected that once inspectors are proficient in the use of the hand-held computers, time spent in the office after the inspection will be less under the HHSRS than with the HFS
17. Current research indicates that Version 2 will require greater government expenditure on the publicity surrounding the HHSRS.

### **IV. COMPETITION ASSESSMENT**

18. Many smaller landlords employ professional agents to manage the property on their behalf. Where agents are employed in this way the requirements to improve the health and safety of the dwellings also applies to these companies. The proposed regulation will therefore affect landlords and the management agents employed by them.
19. We do not anticipate that there will be any significant impact on existing levels of competition in the affected market(s), even though HHSRS is likely to impact mostly upon the private rented sector.
20. The costs involved in remedying health and safety deficiencies are likely to be proportional to the value of the property, and are thus unlikely to result in any change in the market structure. The requirement to provide a safe dwelling will not result in any additional or ongoing costs for firms seeking to enter the market that will not be faced by existing firms.
21. The redefining of minimum standards with which all suppliers must comply will not raise barriers to entry, instead it will concentrate the efforts already expected of suppliers at alternative remedial works. It is also possible that some small landlords/agents who are either not willing, or not able, to meet the basic standards that will be required may exit

the market. However, they would already be expected to meet standards under the current fitness regime, and thus we consider that these effects are unlikely to be sufficiently great to result in any significant change to existing levels of competition.

## **V. ENFORCEMENT, MONITORING AND REVIEW**

22. Intervention by LHAs will not on its own quickly lead to the benefits and cost savings identified above. Rather, dissemination of HHSRS will make homeowners and private and social sector landlords more aware of the potential hazards in their property.
23. It is proposed that the formal monitoring process of the new enforcement regime should be in the form of an evaluation commissioned within three years of implementation. This is in line with proposed monitoring of the HMO licensing scheme, and will enable an assessment of the impact and effectiveness of the enforcement regime, particularly through the use of the HHSRS as an intervention tool.

# Appendix A: Calculating repair costs associated with implementation of HHSRS.

## **HOUSING FITNESS STANDARD**

1. The first step in calculating the repair cost implications of moving to the HHSRS involves producing an estimate of the repair costs associated with the Housing Fitness Standard (HFS) system. This is achieved by multiplying the number of dwellings declared unfit under the Fitness Standard in 1997/98, by the estimated 'average cost to make fit'<sup>2</sup> for 1996. The number of dwellings declared unfit in 1997/98 was drawn directly from the 1988-98 Housing Construction and Statistics. The 'average cost to make fit' is derived from data included in the English House Condition Survey: 1996 (the most recent figure available). The estimate of the repair costs derived is approximately equal to £280m.

## **HOUSING HEALTH AND SAFETY RATING SYSTEM**

2. Estimating the repair costs associated with HHSRS implementation is not straightforward as there is no evidence of costs upon which to draw. Thus some assumptions are made:
  - The repair costs produced for the HHSRS represent the costs associated with local authorities' duty to act and not the more uncertain costs associated with the power to act.
  - For the same number of inspections the number of dwellings containing unacceptable hazards under the HHSRS is assumed to be equal to the number of dwellings that are inspected and declared unfit under the HFS. This assumption may be supported by
- 2 The costs of undertaking all urgent repair and replacement work, plus any additional costs to rectify the problems of unfitness. These are the required expenditure costs to make just fit and not secure the dwelling in the long term.

considering that as a proportion of the total stock the numbers estimated to be failing the HFS, 1.5m, and the HHSRS, 1.9m, are similar.

3. Table 1 below shows the number of dwellings within the total housing stock likely to have a rating within a given risk-band, for each hazard, estimated by the Building Research Establishment (BRE) in internal research. In keeping with the first assumption in §2, the risk band categories under 1000 are ignored here. Bands A, B, and C represent HHSRS scores of over 4,999; 2,000 – 4,999; and 1,000 – 1,999 respectively. It is these Bands that lead to an LHA's duty to act.
4. However these numbers will only be useful if it is assumed that each dwelling containing unacceptable hazards only scores over 1000 on one hazard. A more realistic assumption is that, on average, dwellings that are declared to be of an 'unacceptable risk' score 1000 or more on more than one hazard. The bottom right-hand cell of Table 1 indicates there are an estimated total of 2.015m hazards. The latest estimate, derived from 1996 EHCS data, of the numbers of dwellings with hazard scores greater than 1000, regardless of the number of hazards, is 1.9m. There is thus a mean of 1.06 hazards per dwelling at unacceptable risk.
5. In keeping with the second assumption of §2, the figures in Table 1 must be scaled down to reflect the number of dwellings actually inspected per annum. Housing Construction and Statistics 1988-1998 show that 48,047 dwellings were inspected in the year 1997/98 – the most recent available. The figures in Table 1 are thus multiplied by a factor of  $48,047/1,900,000 = 0.025287$ . This reflects the proportion of houses estimated to be of unacceptable risk that are likely to be inspected annually. The results are given in Table 2.
6. To calculate the costs involved, the level of repair needs to be determined. Costs are estimated using the HHSRS worked examples of hazards in the home. The examples are not a statistically valid sample, but are provided to indicate a range of hazards likely to be encountered – one of these is illustrated in Appendix 2. A mean is then calculated for each of the hazard types using the examples where the original rating score was greater than a thousand. Table 3 below shows the result of multiplying all the hazards identified following inspection (Table 2) by these cost estimates. The same cost estimate is used for an individual hazard type regardless of risk band. As can be seen in the bottom right-hand cell the total estimated annual cost of repair associated with implementing the HHSRS is approximately £175m.

**Table 1: Estimated number of dwellings in total housing stock within a certain risk band, by hazard type (in thousands)**

Risk band	Band A <sup>3</sup>	Band B	Band C	Total
<b>Hazard type</b>				
Falls on stairs	53	73	222	348
Falls on level	5	19	526	550
Falls between levels	23	8	12	43
Falls in baths etc	0	0	2	2
Excess cold	102	73	316	491
Fire	16	18	44	78
Hot surfaces	14	15	37	66
Electrical	20	2	5	27
Fuel gas	0	0	5	5
Carbon monoxide	26	6	9	41
Asbestos etc	14	4	5	23
Lead	0	5	13	18
Structural failure	0	0	1	1
Entrapment/collision	0	0	5	5
Explosions	0	0	5	5
Radiation	37	23	134	194
Damp etc	5	10	51	66
Sanitation	0	0	1	1
Water supply	0	0	1	1
Personal hygiene	0	0	1	1
Food safety	0	0	1	1
Infections	0	0	4	4
Noise	0	5	21	26
Intruder entry	0	0	10	10
Inadequate lighting	0	0	1	1
Crowding/space	0	0	5	5
High temperatures	0	0	1	1
Poor ergonomics	0	0	1	1
<b>Total</b>	<b>315</b>	<b>261</b>	<b>1439</b>	<b>2015</b>
Source: ODPM internal research				
Note: Zero does not imply the eventuality will not occur, but rather a negligible probability.				

3 The range of hazard scores that comprise a Band is different in this Table, and Tables 2 and 3, to the official definition stated in §3. Instead they show estimates derived using Band definitions of >4,600; 2,200 – 4,599; and 1,000 – 2,199.



**Table 2: Estimated number of dwellings inspected annually and found to be within a certain risk band, by hazard type**

Risk band	Band A	Band B	Band C	Total
<b>Hazard type</b>				
Falls on stairs	1330	1850	5610	8790
Falls on level	125	480	13300	13900
Falls between levels	575	200	300	1075
Falls in baths etc	0	0	50	50
Excess cold	2570	1850	8000	12420
Fire	405	450	1100	1955
Hot surfaces	355	380	940	1675
Electrical	500	50	125	675
Fuel gas	0	0	125	125
Carbon monoxide	660	150	230	1040
Asbestos etc	350	100	125	575
Lead	0	130	330	460
Structural failure	0	0	25	25
Entrapment/collision	0	0	125	125
Explosions	0	0	125	125
Radiation	930	580	3400	4910
Damp etc	125	250	1290	1665
Sanitation	0	0	25	25
Water supply	0	0	25	25
Personal hygiene	0	0	25	25
Food safety	0	0	25	25
Infections	0	0	100	100
Noise	0	130	530	660
Intruder entry	0	0	250	250
Inadequate lighting	0	0	25	25
Crowding/space	0	0	125	125
High temperatures	0	0	25	25
Poor ergonomics	0	0	25	25
<b>Note: Figures have been rounded</b>				

**Table 3: Estimated annual cost of implementing HHSRS, by risk band, for each hazard type**






Risk band	Band A	Band B	Band C	Total
<b>Hazard type</b>				
Falls on stairs	£2,125,000	£2,940,000	£8,940,000	£14,015,000
Falls on level	£103,000	£390,000	£10,810,000	£11,300,000
Falls between levels	£151,000	£53,000	£79,000	£282,000
Falls in baths etc	£0	£0	£23,000	£23,000
Excess cold	£22,750,000	£16,300,000	£70,500,000	£110,000,000
Fire	£1,760,000	£1,980,000	£4,850,000	£8,590,000
Hot surfaces	£413,000	£445,000	£1,095,000	£1,950,000
Electrical	£1,515,000	£150,000	£378,000	£2,040,000
Fuel gas	£0	£0	£82,000	£82,000
Carbon monoxide	£307,000	£71,000	£106,000	£485,000
Asbestos etc	£2,800,000	£802,000	£1,000,000	£4,612,000
Lead	£0	£490,000	£1,282,000	£1,775,000
Structural failure	£0	£0	£182,000	£182,000
Entrapment/collision	£0	£0	£205,000	£205,000
Explosions	£0	£0	£82,000	£82,000
Radiation	£365,000	£227,000	£1,320,000	£1,913,000
Damp etc	£1,282,000	£2,564,000	£13,077,000	£16,923,000
Sanitation	£0	£0	£5,000	£5,000
Water supply	£0	£0	£14,000	£14,000
Personal hygiene	£0	£0	£18,000	£18,000
Food safety	£0	£0	£28,000	£28,000
Infections	£0	£0	£66,000	£66,000
Noise	£0	£230,000	£966,000	£1,196,000
Intruder entry	£0	£0	£164,000	£164,000
Inadequate lighting	£0	£0	£8,000	£8,000
Crowding / space	£0	£0	£41,000	£41,000
High temperatures	£0	£0	£11,000	£11,000
Poor ergonomics	£0	£0	£18,000	£18,000
<b>Total</b>	<b>£33,590,000</b>	<b>£26,630,000</b>	<b>£115,335,000</b>	<b>£175,550,000</b>
<p>Note: Individual columns or rows may not sum due to rounding.                      Source: ODPM internal research</p>				

## Appendix B: Comparative example of compliance costs under HFS and HHSRS

1. The five boxes shown below form one of fifty-one worked examples used in estimating the cost of compliance of the HHSRS. The first box provides details of the hazard. This example is excessive cold. It also provides details of the sectors of society that are vulnerable to the hazard.
2. The second box, 'List of Relevant Matters', shows which of the issues that typically lead to the hazard are relevant in this instance. Here there are a combination of defective items – heating and ventilation.
3. The third box, 'Fitness Standard and Internal Arrangement' shows how the dwelling would have fared under the current fitness standard. As the existing system does not lead to the dwelling being declared unfit – merely defective – the cost of compliance is £0. However, the health and safety implications are not considered and there could be negative repercussions were the hazard not to be rectified.
4. The fourth box, 'Health and Safety Rating System Scores', show how the proposed system would evaluate the hazard. Firstly, there is a risk assessment. In this instance the likelihood of suffering from noise is 1 in 10, compared with an overall average for cold buildings of 1 in 18. The decision has to be justified.
5. This is followed by an assessment of outcomes. The classes stated have the following categories of harm, although it must be pointed out that these are merely illustrations and not definitions:
  - Class I: Death or fatal paralysis
  - Class II: Chronic confusion, regular severe fever, serious fractures
  - Class III: Loss of a finger, severe concussion, serious strain
  - Class IV: Skin irritation, benign tumours, moderate cuts, regular colds

For example the box shows there is a 31.6% chance of a harm outcome in Class III. The total score of 6634, putting the property firmly in Band A, is calculated by multiplying each of the harm outcomes by a weighting; 10,000; 1,000; 300; and 10 respectively, and then multiplying these by the likelihood. The sum is then taken of these four figures. The score in this instance is significantly above the threshold for mandatory action of 1,000.

6. The cost of compliance, as given in the justification in the fifth box, 'Rating Scores after Improvement' is calculated as approximately £8,500, in 1996 prices. This assumes retail prices as would be paid by a small-scale landlord or an owner-occupier.
7. The fifth box also illustrates how, after the above improvements, the risk likelihood has been reduced to 1 in 560, and the class of harm outcomes to 5; 10; 32; and 54% respectively, giving a new HHSRS score of 118, which is Band F.

<b>EXCESSIVE COLD</b>		<b>Risk</b>		
<b>Vulnerable group</b>	Elderly persons	<b>High</b>	Med	Low
<b>Related hazards</b>	None	<b>Multiple locations</b>	Yes	No
		<b>Secondary hazards</b>	Yes	No
<b>A) Rear windows</b>	<b>A) Window to kitchen</b>	<b>A) Window to w.c.</b>		
				
<b>B) Living room fire</b>	<b>A) w.c. window - interior</b>			
				
<b>DESCRIPTION OF HAZARDS</b>	<b>Dwelling:</b> Converted flat in 1900s end terraced house			
<p><b>Background:</b> This large three-story Victorian house was converted in the 1950s to provide three self-contained flats, one on each floor. The top floor flat comprises a large living room at the front and a bedroom at the rear of the main part of the house. The bathroom, a separate WC and the kitchen/diner are located in the long back addition. The loft has 100mm of insulation.</p>				
<p><b>A) Windows:</b> All the windows in the back addition, i.e. in the kitchen, bathroom and w.c. compartment, have been replaced with louvered windows. All other windows are single glazed, double hung sashes.</p>				
<p><b>B) Heating:</b> The open fireplaces throughout the flat have been sealed. Radiant bar heaters fitted in the front living/dining room, rear bedroom and in the dining area in the back addition.</p>				

### LIST OF RELEVANT MATTERS

LIKELIHOOD & OUTCOMES		A	f	Maintenance of heating system	0
A	Thermal insulation	2	g	Controls to heating system	0
B	Dampness	0	h	Ventilation controls	3
C	Settling of insulation	3	i	Amount of ventilation	3
D	Type of heating system	3	j	Disrepair to ventilation	0
E	Size of heating system	2	k	Excess ventilation	3

Key 3: Seriously defective; 2: Defective; 1: Not satisfactory; 0: Satisfactory/NA

### FITNESS STANDARD AND INTERNAL ARRANGEMENT

ITEM/S Adequate provision for heating

Justification Under this section 604 requirement, the provision for heating appliances - which is generally adequate - and not the energy efficiency of the dwelling is the primary concern when determining unfitness. However, DOE Circular 17/96 advises that heat loss factors may be considered and consequently the dwelling is judged defective.

FITNESS etc	Unfit	Defective	Just adequate	Satisfactory	Borderline	Yes	No
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### HEALTH AND SAFETY RATING SYSTEM SCORES

LIKELIHOOD

1 in 10

Model

10000	5600	3200	1800	1000	560	320	180	100	56	32	18	10	6	3	1
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Average

Justification With regard to its 9 inch solid brick walls, sash windows in the main part of the block and generally low standard of loft insulation, the dwelling is typical of its age. However, due to the presence of only radiant electric fires throughout the flat and the louvered windows throughout the back addition, the likelihood of the dwelling becoming unhealthily cold is significantly higher than for the average Pre-1919 cold dwelling.

OUTCOMES

Low ---> High

%

Model

Class I	0	0.1	0.2	0.5	1.0	2.2	4.6	10.0	22	32	46	100	4.6
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Average

Model

Class II	0	0.1	0.2	0.5	1.0	2.2	4.6	10	22	32	46	100	10.0
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Average

Model

Class III	0	0.1	0.2	0.5	1.0	2.2	4.6	10.0	22	32	46	100	31.6
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Average

Model

Class IV	0	0.1	0.2	0.5	1.0	2.2	4.6	10.0	22	32	46	54	53.8
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Average

Justification Although the risk of the dwelling falling to unhealthily cold temperatures, that is less than 16, 12 and 9°C, and the consequent risk of serious harm is higher than average, the spread of harms is not increased in terms of its severity.

Model

RATING	A	B	C	D	E	F	G	H	I	J	Score	6634
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Average

<b>RATING SCORES AFTER IMPROVEMENT</b>																					
<b>IMPROVE</b>	<b>Likelihood to</b> 1 in 560 <b>Outcomes to</b> 5   10   32   54 %																				
<b>Justification</b>	Installing an efficient gas fired central heating system and replacing the windows throughout with double glazed units would increase the energy efficiency of the flat substantially and thereby reduce the likelihood of excessive cold to much better than average figures.																				
<b>NEW RATING</b>	<table border="1"><tr><td colspan="10" style="text-align: center;"><b>Improved</b></td></tr><tr><td>A</td><td><b>B</b></td><td>C</td><td>D</td><td>E</td><td>F</td><td>G</td><td>H</td><td>I</td><td>J</td></tr></table> <b>Score 118</b>	<b>Improved</b>										A	<b>B</b>	C	D	E	F	G	H	I	J
<b>Improved</b>																					
A	<b>B</b>	C	D	E	F	G	H	I	J												
	<i>Average</i>																				
<b>Basis of averages:</b>	Population living in cold dwellings and those with defective heating and dampness																				

# Licensing of houses in multiple occupation (HMOs)

## Regulatory Impact Assessment

### INTRODUCTION

1. The Government's 1997 manifesto commitment stated: 'We value a revived private rented sector (PRS). We will provide protection where most needed: for tenants in houses in multiple occupation. There will be a proper system of licensing by local authorities which will benefit tenants and responsible landlords alike.' These proposals take into consideration responses to the public consultation document issued in April 1999 and the wider context of the Housing Green Paper and the National Housing Strategy for Wales.
2. The HMO licensing consultation paper received 579 responses in England and 43 in Wales with almost half from local authorities. Many responses were also received from individual or corporate landlords or organisations representing landlords. Most respondents agreed with the principle of licensing though some reservations centred on the scope of licensing and the way in which physical standards should be assessed and enforced.
3. Although primary legislation on licensing is a matter for the UK Parliament, how the National Assembly for Wales (NAW) exercises its devolved powers under any future primary legislation will not be a matter for discussion in this paper. Housing is devolved and the NAW may develop its own secondary legislation if it so desires.
4. In parallel with HMO reforms, legislative proposals are also under way to re-cast LHAs' powers and duties with respect to house condition generally. The Housing Health and Safety Rating System (HHSRS) will apply to any unit of residential accommodation and to all landlords, and will be the principal tool in assessing physical conditions in HMOs under the licensing system. A separate RIA has been prepared on HHSRS proposals.
5. Licensing will ensure proper enforcement of the HHSRS in the highest risk HMOs. Aside from physical standards in HMOs, the other main elements of reform will focus on the management competency and the 'fitness' of those managing or providing HMO accommodation. Licensing will ensure that those HMOs which present the most significant health and safety risks – whether those risks are related to physical standards or not – come to the attention of the LHA, placing a more direct obligation on landlords to provide acceptable standards.

6. One of the fundamental issues of HMO reform is to address the uncertainty over the current definition of HMO. Doubts remain over authorities' ability to use existing HMO provisions in certain potentially sub-standard properties such as houses shared by students or former hotels operating as hostels. Conversely the definition may apply inadvertently to premises where HMO controls may be inappropriate such as religious conference centres. We therefore intend to provide a revised definition which will deliver greater certainty as to accommodation that will be subject to the HMO regime.

## **PURPOSE AND INTENDED EFFECT**

7. **Issue:** The private rented sector plays an increasingly important role in providing housing options for those unready or not yet able to consider home ownership. At the bottom end of the market HMOs provide affordable housing options for some of the most vulnerable and disadvantaged groups in society including benefit claimants or those on low incomes, students and asylum seekers. For many of these individuals HMOs represent the only housing option available. Unfortunately the rapid turnover of tenants in HMOs also means that poor standards and bad landlords can escape the attention of the LHA.
8. **Scale of the Problem:** The most recent English House Condition Survey (EHCS) in 1996 found that there were approximately 860,000 private rented HMOs in England, and that approximately 20% would be considered poor housing. In Wales house condition surveys reveal that a higher percentage of HMOs are privately rented compared to the stock as a whole and that rates of unfitness are highest within the private rented sector.
9. **Objective:** Licensing will provide a proportionate legislative response to the problems at this end of the market. Licensing should secure a reduction in death and injury from fire and other health and safety hazards, tackle poor management practice and challenge unscrupulous landlords to improve their performance or leave the sector. The objective of licensing should be to raise standards in HMOs, without reducing the supply of this type of accommodation. It is difficult to be more specific or offer targets about improvements in standards due to licensing.

## **RISK ASSESSMENT**

10. The most recent EHCS in 2001 found that 11% of PRS dwellings were unfit dwellings<sup>1</sup>. Similarly in Wales in 1998, 18.4% of privately rented stock was unfit compared to 8.5% of the stock as a whole. Indeed while standards are poorest in the private rented sector generally, the very worst standards can be found in HMOs. The most common problems associated with multiple occupancy relate to poor fire safety standards, overcrowding, inadequate facilities and poor or unscrupulous management.
11. Research indicates that certain types of HMOs present significantly greater health and safety risks to tenants than comparable single occupancy dwellings. Risk assessment carried out by ENTEC2 for the DETR on fire safety in HMOs concluded that in all houses converted into bedsits, the annual risk of death per person is 1 in 50,000 (six times higher than in comparable single occupancy houses). In the case of bedsit houses comprising three

<sup>1</sup> as defined by the Fitness Standard in Section 604 of the Local Government and Housing Act 1989.



or more storeys the risk is 1 in 18,600 (sixteen times higher). The ENTEC report represents the only formal risk assessment available on HMOs.

12. Poor management and the presence of unscrupulous landlords can also increase health and safety risks for tenants even when the HMO is in an acceptable state of repair. Responsible landlords are less likely to exploit vulnerable or disadvantaged tenants and good management practice such as regular inspections can also reduce risks. Health and safety issues can also arise because of the occupancy profiles associated with HMO use. The behaviour of tenants with alcohol or drug dependencies, or mental health problems can increase the risk of death or injury to both themselves and other tenants, accentuating the need for responsible and responsive management.

## OPTIONS AND OUTCOMES

13. Following the consultation on HMO licensing, and in light of the development of the HHSRS, three options have been identified to address the poor standards found in this part of the PRS. The existing regime could be left in place or a system of licensing could be introduced which would target either high-risk privately rented HMOs or all such HMOs.
14. Licensing would require primary legislation and the complete replacement of existing HMO-specific powers, including a new definition of HMO. There would be three main elements under a licensing regime:
  - the principal means of enforcing adequate **physical condition** in all HMOs would be the Housing Health and Safety Rating System,
  - all HMO landlords would be required to maintain an adequate **standard of management**, through compliance with revised HMO Management Regulations and/or compliance with an approved Code of Practice,
  - licensees would also have to prove that they were '**fit and proper**' persons to carry out their duties.
15. All HMO landlords would be required to notify the local authority of any property which they thought might be an HMO.

## OPTION 1 – RELIANCE ON EXISTING POWERS

16. LHAs already have a wide range of powers to deal with problems in HMOs, provisions which have been added to piecemeal over the past five decades. This has resulted in out of date and overly complex statutes which often duplicate and conflict with other legislation. Responses to the licensing consultation paper confirmed the need for rationalisation and simplification of the current regime, which is proving ineffective in addressing the problems in the HMO sector.

2 DETR (1998) "Fire Risk in Houses in Multiple Occupation: Research Report". Stationery Office, London: ISBN 0 11 753443 9.

17. There is a lot of housing case law on what constitutes a ‘household’ for HMO purposes. This uncertainty has led to enforcement difficulties and led to sub standard properties escaping enforcement action. Furthermore current powers are largely discretionary and to date only around a third of local authorities in England and Wales have exercised those powers in the form of HMO registration schemes
18. Selective take up of registration schemes has resulted in a variety of standards being applied to HMO properties across England and Wales. Even those authorities operating registration schemes have the discretion to require higher or lower standards as they see fit. As a result ‘local standards’ have emerged with the result that landlords in different parts of the country have faced different enforcement actions when faced with the same health and safety hazard.
19. LHAs often have great difficulty in identifying and tracking down HMOs, a problem compounded by evasive or absentee landlords. This has resulted in unscrupulous landlords and sub-standard premises escaping enforcement action

### **OUTCOMES OF OPTION 1**

20. Although uptake of HMO registration schemes and voluntary landlord accreditation schemes might be expected to increase, many HMOs (and landlords) not covered by existing provisions would continue to escape or avoid enforcement action. For example some of the highest risk HMOs including hostels, guesthouses or B&B type accommodation housing the homeless can fall outside current provisions. Retention of separate HMO provisions would be incompatible alongside other policy developments such as HHSRS. This scenario would further confuse reputable landlords and tenants and provide greater scope for evasion and abuses.

### **OPTION 2 – MANDATORY LICENSING OF HIGHER-RISK HMOs (PREFERRED OPTION)**

21. LHAs would be under a duty to operate a mandatory licensing scheme, for higher-risk categories of HMO in the PRS including bedsits, hostels, ex-hotels and B&Bs housing the homeless. Mandatory licensing would be targeted at the larger, higher risk HMOs – those properties of three storeys or more **and** accommodating five or more people. Based on this we estimate that at least 120,000 properties would be subject to mandatory licensing. There would also be a discretionary power to include certain other HMOs in the licensing scheme in response to local market and stock conditions such as higher-risk two storey houses and older conversions of houses into self-contained flats.

### **OUTCOMES OF OPTION 2**

22. Under this option those HMOs which present the most significant health and safety risks would come to the attention of the local authority. A broader definition of HMO would allow targeting of the worst standards and the worst landlords through licensing while exempting lower risk HMOs or those subject to other regulatory regimes. This would minimise the burden of regulation on reputable landlords. Discretionary licensing powers

for certain other HMOs would also enable LHAs to respond to particular circumstances in their area such as large concentration of poor quality, poorly managed student houses.

23. Such a regime would benefit responsible landlords and tenants alike since there would be much less scope for evasion. Licensed landlords would be able to signal their good character and status and so limit the opportunities for them to be undercut by less reputable landlords. LHAs would have a duty to operate a licensing system in the way defined in primary legislation and guidance. This would ensure consistency in terms of which HMOs were subject to licensing and the standards applied.
24. Improved management practice would be a key feature of licensing. Reviewed management regulations would be combined with comprehensive, authoritative guidance and an Approved Code of Practice. This would provide LHAs, private landlords and agents, and tenants with greater guidance and direction on what constitutes responsible management, and would help landlords to raise their standards, as well as clarifying the circumstances in which enforcement action should be considered. This should help lessen the impact of HMO usage in the local area and on immediate neighbours.
25. Revocation or refusal of a licence (or the threat of such action) would remain the most important sanctions available to the licensing authority, in combination with closure or removal of management responsibility where serious risks to tenants existed.

### **OPTION 3 – MANDATORY LICENSING OF ALL HMOS**

26. LHAs would be under a duty to operate a licensing scheme for all HMOs – over half a million properties. This would include all higher-risk HMOs mentioned in Option 2, all converted houses, all shared houses and shared flats, houses or flats with lodgers and purpose-built HMOs such as student halls of residence.

### **OUTCOMES OF OPTION 3**

27. This option would ensure consistency in so far that all HMO landlords would have to meet the same duties under licensing and HMO landlords would not be subject to the varying degrees of enforcement across authorities caused by selective take up of discretionary licensing/registration powers. However enforcement of such a regime would be extremely resource intensive, massively bureaucratic and as such may represent an unacceptable threat to the continued supply of this type of accommodation, since even low risk properties would be subject to all licensing conditions on top of any enforcement action via HHSRS. Given the duty on the LHA to operate such a licensing scheme this option would clearly be extremely burdensome to the LHA, landlords and ultimately tenants.

## QUANTIFYING AND VALUING THE OPTIONS

### COMPLIANCE COSTS

28. It has been possible to make some provisional estimates of the costs of the different options. These costs are a mixture of both policy and enforcement costs and estimates are based on analysis of implementation under existing HMO registration schemes. Under options 2 and 3 landlords would incur additional costs relating to physical improvements, taking a more proactive and responsible management role and providing evidence of their character. These would be over and above the cost of the licence fee itself and repairs or safety measures associated with HHSRS; and are highly problematic to quantify particularly given the risk-based regime proposed.
29. LHAs will also incur substantial costs, since officers will need to administer the scheme, usually involving a visit to each property, and enforce the system. Estimates of costs to LHAs are in the region of £100 per unit of accommodation – per bedsit for example – although there would be discretion to charge a range of licence fees up to a maximum depending on the degree of action needed, probably between £55 and £110 per unit. There is no data on the average number of units per property since this varies so widely. Those properties already checked as part an existing registration or voluntary scheme would be ‘passported’ into the new system without a fee. After the initial start-up costs this system of charges would provide for a **self-financing** licensing scheme, a principle accepted by the Local Government Associations for England and Wales.
30. In addition to exemptions for certain landlords and properties such as registered social landlords and university halls of residence, LHAs would also have discretion to charge a nominal licence fee. An example would be HMOs operated by voluntary bodies such as registered charities, or hostels for the homeless which may support the local authority’s housing strategy. Many of these operators are likely to rely on public funding and donations and would find additional costs difficult to bear.
31. Clearly there are a range of benefits across the options but these have proved extremely difficult to quantify. Particularly those which relate to the better functioning of the HMO market, better information on the local HMO market and greater scope for reputable landlords to operate on more equal terms with less scrupulous landlords. However a critical assessment of the study done by ENTEC for the DETR on case studies of HMO fires, has provided estimates of the numbers of deaths and injuries that might be avoided under Options 2 and 3. This analysis excludes injuries that might be avoided because of possible improvements to properties through HHSRS but does include injuries avoided because of better enforcement of regulations.

### OPTION 1 – RELIANCE ON EXISTING POWERS

32. No additional costs in terms of resource allocation from DETR or the NAW to local authorities although it is conceivable that deaths and injuries could result in circumstances preventable under better enforcement of regulations under Options 2 and 3. Over-prescriptive enforcement in some areas through local standards would continue to result in excessive costs for landlords and threaten supply.

## **OPTION 2 – MANDATORY LICENSING OF HIGHER-RISK HMOs (PREFERRED OPTION)**

33. In England an estimated minimum of 120,000 HMOs would be subject to mandatory licensing. It is estimated that around a quarter of these higher-risk HMOs would be passported into licensing, around half of the remaining properties would attract the highest charge and half would attract a lower say 50% charge. On the basis of these assumptions this implies a cost of just under £9m in the first year of inspections in licensing fees combined with other set up costs leading to a total cost of £13m, in the first year of inspections. In reality this would be spread over a number of years. In Wales it is estimated that up to 5,000 HMOs would be subject to mandatory licensing. Extrapolating this from the above example would imply a comparative cost range of £0.5–0.7m.
34. It seems reasonable to assume that a licensing scheme covering the highest risk HMOs would lead to significant benefits, particularly since the HHSRS and the revised HMO Management Regulations would provide a ‘safety net’ to all HMOs, whether licensed or unlicensed. It is estimated by the DETR that the number of deaths saved might be 25% (assuming 53 deaths per year). This would lead to 11 lives being saved per year. It might also be reasonable to assume that around 20% of injuries might be prevented.

## **OPTION 3 – MANDATORY LICENSING OF ALL HMOs**

35. In England approximately 525,000 HMOs would be subject to licensing. Again it might be reasonably assumed that a quarter of those would be passported into licensing. It might also be assumed that 25% of the remaining properties would fall within the highest band of charges and that the remaining 75% would fall into the lower band which implies a 50% charge – this seems reasonable given that Option 3 includes many lower risk dwellings. This implies a cost of around £35m for inspections and £53m set up costs, totalling approximately £88m in the first year of inspections; but again in reality spread over a number of years. In Wales the greatest proportion of HMOs – some 10,000–15,000 – would fall into the discretionary category (see 4.8) implying additional costs of £1m–£2m.
36. It has been estimated by the DETR that this option might avoid around 29% of deaths and could equate to 15 lives a year (assuming 53 deaths per year), and that around 22% of injuries might be prevented.
37. Landlords might be expected to seek to recover additional fees and costs associated with licensing or registration through higher rents. However since the average cost of licensing is estimated at 44 pence per unit per week during a five-year licence or registration period, significant feed-through into higher costs for tenants and Housing Benefit seems unlikely. Some landlords might be tempted to consider reacting by reducing the supply of HMO accommodation, although this impact will be minimised if licensing is confined to the highest-risk properties (Option 2).

## **EQUITY AND FAIRNESS**

38. It may be argued whether it is fair to require certain landlords to become licensed in order to carry out their business. In other areas of business where there are known to be significant health and safety risks – vehicular licensing, export control – and where measures are proportionate to the risks then the principle of licensing would seem acceptable.
39. There is also an issue of fairness concerning tenants – access to housing choice should not be a further reinforcement of social distinctions. The absence of compulsory measures combined on occasion with harassment and intimidation can limit the opportunities to tackle incidences of poor physical standards and management in HMOs. This is particularly true of vulnerable or disadvantaged tenant groups who have low bargaining power.
40. Under the current regime irresponsible landlords have greater scope to evade enforcement action and this can allow them to undercut more reputable landlords. Under licensing revocation or refusal of a licence would remain the ultimate sanction available to the licensing authority. We are considering further who the most appropriate body to hear appeals should be. Although it is conceivable that compulsory licensing would initially lead to a number of appeals this would be offset by fewer appeals on the basis of ambiguous, out-of-date and inconsistent statutes. An obvious example would be the clarification of the definition of HMO.

## **CONSULTATION WITH SMALL BUSINESS**

41. The majority of HMO landlords could be regarded as small businesses. Many own only one or two properties often as a part time business in addition to other business activity or employment. The DETR have consulted a number of small landlord organisations such as the National Federation of Residential Landlords, the Small Landlords Association and the Residential Landlords Association in addition to other representative bodies such as the British Property Federation, (these also cover Wales in the main). Most landlords accept that the current regime is far from satisfactory and inconsistent, and while most oppose licensing many have been keen to contribute to the development of future licensing proposals.
42. Representative bodies such as the Federation of Small Businesses (FSB) and the Forum of Private Business (FPB) welcome any proposals that allow their members to compete ‘on a more even playing field’ without placing additional and unreasonable burdens on responsible landlords. They welcome any proposals which ensure fair and consistent enforcement of regulations and the introduction of national standards. In this context, they favour Option 2, as it would appear to regulate with the lowest burden on responsible landlords.
43. Guidance material on licensing will be made available 12 weeks before the implementation date. This will allow small landlords three months in which to familiarise themselves with the new requirements before compliance. Within the risk based approach favoured in Option 2 there would be greater flexibility in helping landlords raise standards rather than an approach focused on costly and immediate works. The licensing process would also be as streamlined as possible in order not to place unnecessary administrative burdens on landlords.

## SUMMARY AND RECOMMENDATIONS

44. Acceptable quality well-managed HMOs are essential in providing affordable housing for an increasingly mobile workforce and for those people not able to consider home ownership. Although future HMO measures are primarily aimed at addressing the worst standards of physical condition and management, any legislative intervention should not conflict with the need to retain the many good landlords and generally encourage investment in the sector.
45. Few disagree with the underlying principle of HMO licensing or in the belief that current HMO legislation under Option 1 is inadequate. The legislation is failing to deliver better standards and reductions in risk on a consistent basis, and enforcement is variable at best and excessive, costly and impractical at worst. This does not benefit tenants or responsible landlords, but provides a great deal of scope for abuses. Furthermore the retention of existing provisions alongside the development of HHSRS would only serve to further complicate the confusing mass of controls in this area.
46. Licensing HMOs that present the most significant health and safety risks under Option 2 would raise standards without imposing excessive legislation on low risk or well managed HMOs. Combined with the discretionary power to extend licensing in response to local circumstances this option represents the most cost-effective way forward in tackling the problems of poor standards that persist at this end of the market, without threatening supply. In addition aligning HMO licensing with other policy developments such as the HHSRS would ensure that there was less scope for duplication and would provide housing authorities with a simpler more rational regime that would benefit enforcement officers, well-intentioned landlords and tenants alike.
47. Both licensing options would have clear benefits in terms of more effective and consistent enforcement. However the indiscriminate regime under Option 3 would be a massive and costly undertaking and would be likely to represent an unacceptable threat to supply. It is for that reason that we propose to proceed on the basis of Option 2.

## COMPETITION ASSESSMENT

48. Many smaller landlords employ professional agents to manage the property on their behalf. Where agents are employed in this way the requirements to prove a dwelling's health and safety also applies to these companies. The proposed regulation will therefore affect landlords and the management agents employed by them.
49. We do not anticipate that there will be any significant impact on existing levels of competition in the affected market(s), even using the narrowest possible market definition – that is the provision of privately rented HMOs in areas where HMOs are clustered.
50. Although the licence fee and additional paperwork involved in obtaining a licence may have a proportionately greater effect on smaller suppliers we believe that any differential effect would be small in light of the focus on low licence fees and a relatively straightforward licencing requirement. It is unlikely to be sufficient to result in any change in the market structure. The introduction of a licence fee will not result in any additional or ongoing costs for firms seeking to enter the market that will not be faced by existing firms.

51. The introduction of minimum standards with which all suppliers must comply will raise the barriers to entry and will reduce the ability of suppliers to compete on quality. This is likely to result in an increase in prices as most HMOs are concentrated at the low rent end of the market in high demand areas. It is also possible that some small landlords/agents who are either not willing, or not able, to meet the basic standards that will be required may exit the market. However, we consider that these effects are unlikely to be sufficiently great to result in any significant change to existing levels of competition.

### **ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW**

52. There would be a formal monitoring process of the implementation of the licensing system in the form of an evaluation commissioned within a three-year period after implementation. This would enable a proper assessment of the impact and effectiveness and of the new system and allow changes to be made if necessary. Indeed primary legislation would set a broad framework with detailed procedures covered by secondary legislation. This would allow changes to the coverage of the licensing scheme if this were found to be justified for policy reasons, to clarify the original provisions or in response to monitoring and reviews.
53. The duty to apply for a licence will provide LHAs with much more information on the HMO market and aid in monitoring and review of the licensing regime. The effectiveness of the new regime would also be analysed through a range of other data sets:
- English and Welsh House Condition Surveys
  - Annual local authority returns
  - HHSRS survey material



# Selective Licensing of residential accommodation

## I. INTRODUCTION AND RISK ASSESSMENT

1. This assessment estimates the costs and benefits of proposals to introduce powers to license private landlords in England and Wales. These are primarily intended to address the problems associated with poor quality private landlords, and anti-social tenants, in areas of low housing demand. It reflects the response to the public consultation documents, containing the proposals for a new licensing regime, published in October 2001.
2. Although primary legislation on licensing is a matter for the UK Parliament, the National Assembly for Wales will be responsible for the making of secondary legislation in Wales. It is intended that the scope of the regime will be slightly wider in Wales and this was the basis on which consultation took place.
3. There have been no major changes to the proposals as a result of consultations.
4. Areas of low housing demand are found in many towns and cities, particularly in the North of England. There is no one simple definition of what low demand is, however, such areas tend to share a number of characteristics, for example, relatively low property prices and high rates of empty and difficult to sell/let properties.
5. The reasons for the emergence of the symptoms of low demand are complex, and include economic change, greater mobility and obsolete housing. This often results in an increasing private rented sector taking over where homes cannot be sold for owner-occupation with poor quality landlords proliferating. Along with such landlords, anti-social tenants also tend to increase in number. It is the combination of these tenants and landlords that have such an effect on the law-abiding community around them and exacerbates the problems of an area in decline by catalysing its further degradation and frustrates measures for the area's regeneration through measures which the Market Renewal Fund is aimed at supporting.
6. Selective licensing of private rented sector landlords would be one of a number of policy instruments and measures an LHA could adopt in helping tackle problems of decline and anti-social behaviour in a low demand neighbourhood. Licensing on its own would certainly not provide a complete solution. It would be most effective, and its benefits greatest, if combined with a range of other measures in an integrated multi-agency local strategy. The White Paper on anti-social behaviour published in March outlined complementary measures to deal with anti-social behaviour in the social housing sector and in the community generally.
7. The most serious impact the private rented sector can have on the wider community is likely to be in areas of low housing demand. However, there may exceptionally be other

areas where licensing may be justified to deal with similar problems, for example, where an area is on course to becoming low demand or to deal with serious anti-social behaviour problems. In particular, in Wales it is envisaged that licensing would be extended still further to also encompass areas where there is strategic renovation or where Housing Benefit levels are high.

8. On the basis of returns made by LHAs, we estimate that there are around one million dwellings in low demand in parts of five regions in the North and Midlands<sup>1</sup> in England. Of these approximately 640,000 are in the private sector. One in five of these are likely to be privately rented (estimated from 2001 Housing Investment Programme data) giving a total of 128,000 privately rented dwellings subject to low demand. In Wales there are approximately 72,000 properties in the private rented sector as a whole. This assessment focuses on the impact that the measures would have in low demand areas, however, further work is ongoing on its possible wider application. We would therefore welcome any information that may help with the further analysis of the possible costs and benefits associated with the application of licensing beyond low-demand areas, as well as in low-demand areas themselves.
9. Selective licensing has strong links to licensing of houses in multiple occupation (HMOs), on which Government consulted in 1999. The rationale for licensing such properties is that they are often in poor condition and represent a much higher risk to the safety and welfare of the occupants. Many HMOs also house some of the most vulnerable members of society. All, or nearly all, local authority areas will have HMOs subject to mandatory licensing. However, HMOs tend to be concentrated in areas of non-low demand housing and are less prevalent in low demand areas.
10. The licensing framework of the two regimes will be broadly the same. The same requirement to be a 'fit and proper person' would apply to both licensing regimes and the licensing and enforcement mechanisms would be very similar. The main difference would be that selective licensing focuses on the landlord and HMO licensing on the property. It is important to stress that multiply occupied properties in areas subject to selective licensing will be subject to the HMO regime only. This approach will avoid duplication and bureaucracy and therefore minimise costs to landlords and local authorities. Poor conditions in all properties will still be able to be tackled through the powers local authorities will have under the proposed Housing Health and Safety Rating System (HHSRS) regime.

### **Identifying options**

11. Three options have been identified:

*Option 1* – Rely on the existing range of local authority powers relating to management of property and the behaviour of the people in them.

*Option 2* – Give local authorities the power to establish a licensing scheme covering all private sector landlords in those low-demand areas where serious problems in the private rented sector exist, as part of a wider strategy to address the problems of these areas. The power would also be available in special circumstances outside such areas, if compelling reasons were advanced to do so.

<sup>1</sup> The five regions referred to consist of the North East, Yorkshire and the Humber, North West, East Midlands and West Midlands.

Licensing would require the licensee to be a fit and proper person (i.e. no relevant criminal convictions and no record of serious property mismanagement) and comply with minimum management requirements. An LHA will need to use its judgement to determine the fitness of a landlord. For example, a criminal conviction in itself would not necessarily be an indication that the landlord is not fit, but a past housing conviction relating to the carrying out of his landlord duties may raise more significant questions as to their fitness to manage a property. It is intended that conditions relating to the management of the property should not be unduly onerous, but rather, for example, that landlords provide evidence to the local authority, through relevant certificates or declarations, that they meet the appropriate standards in relation to gas, electricity and furniture safety standards in their property.

As part of the licensing regime landlords would also be required to play their part in addressing the impact that their tenants can have on the wider community. They would be expected to take greater responsibility for who they let to and to play their part in addressing any problems that do arise.

*Option 3* – Give LHAs the power to establish a licensing scheme covering all private sector landlords in the areas as for option 2, but based on the same criteria as proposed for licensing HMOs. The proposed HMO licensing regime requires that the physical condition of the property is satisfactory for the number of occupants in the dwelling. In addition, the licensee (who may or may not be the landlord) must also abide by management regulations and be a fit and proper person.

### **Equity and Fairness**

12. As with HMO licensing, it may be argued as to whether it is fair to require landlords to become licensed to carry out their business. Indeed the licensing fee represents an additional cost to both good and bad landlords alike. However, managing a property properly necessarily incurs costs in terms of time and money well beyond that associated with the licensing regime. Reputable landlords already face such costs and often express concern that disreputable landlords are able to achieve greater returns on their investment because of their less responsible approach.
13. Many landlords and owner-occupiers have seen the value of their property decrease as problems in such neighbourhoods have increased and the demand for their properties decreased. Quickly depreciating property prices have led to a reduction in the choices open to property owners as negative equity and minimal demand make many properties practically unsalable. This process is given impetus by the impact on the community of the behaviour of a number of anti-social tenants and of the willingness of some private landlords to countenance such behaviour on the part of their tenants for their own financial gain.

## **II. BENEFITS**

14. It is almost impossible to produce estimates of total benefits from this specific measure for two reasons. First, it is a power not a duty and total benefits will depend on the extent to which LHAs exercise their discretion. Secondly, licensing is conceived as only one ingredient in packages of local actions to tackle the problems of low demand areas, and it will not be possible to distinguish its contribution from that of the other components of these packages. In the future the market renewal Pathfinder projects may deliver a greater

understanding of the type of approach that is most appropriate to deal with a particular range of problems. However, even then it will be difficult to estimate the contribution any particular measure makes in isolation.

### **Option 1**

15. There are no additional benefits from this option as it represents the current situation. However, two proposed parallel measures involving the licensing of HMOs and the replacement of the Housing Fitness Standard with the HHSRS should help improve the management performance of private sector landlords generally and better address the issue of property condition across all tenures. The benefits associated with both of these can be found in separate RIAs for each proposal.

### **Option 2**

16. It must be reiterated that selective licensing will not achieve the potential benefits in isolation. Rather it will form a key part of a package of measures that an LHA, along with other bodies, may wish to put in place to tackle the problems that exist across the board in areas adversely affected by problems in this sector.
17. The major beneficiaries of option 2 would be existing and future tenants in the private rented sector in low demand areas where licensing was in operation.
  - Improved management standards. As explained in paragraph 8, it has been estimated that there were approximately 128,000 households in the private rented sector in low demand areas in England in 2001. Not all of these households would benefit as option 2 is discretionary and it is not anticipated that licensing would be applied across all areas of low demand. However, consultation responses indicated that fifty local authorities were in favour of the scheme in England. There were five local authorities against selective licensing and none of these have significant low demand problems. Making the assumption that selective licensing will be taken up by a majority of affected authorities, we assume for this assessment that the landlords of 75% of low demand dwellings will be required to obtain a licence. This would cover approximately 96,000 dwellings. Work carried out by the National Assembly for Wales has indicated that a further 32,000 – 40,000 properties would be subject to licensing in Wales. These tenants will benefit from the improved management of their dwellings that the option will produce.
  - Improved local environment. Tenants will also benefit, alongside other local residents, from the general improvements in the local environment arising from the package of measures intended to revive low demand areas.
18. Other residents in low demand areas with licensing would benefit, notably owner-occupiers and social housing tenants living in neighbouring properties. These comprise the vast majority of residents in areas afflicted by low demand. Unfortunately there is no reliable data on the number of such residents in areas where the private rented sector is particularly substantial. These other residents should benefit from:
  - Improved behaviour. In the short-term the incidence of anti-social behaviour by problem tenants in the private rented sector should be reduced through landlords playing their part in seeking to tackle the problem – both by addressing problems where they arise and seeking to prevent problems in the first place.

- Improved environment. In the longer-term, the area's decline should be halted or even reversed with corresponding improvements in crime levels and the local environment.
19. Reputable private landlords would benefit in the following ways:
- Landlord support. Not all landlords who currently underperform do so deliberately – many are simply lacking in competence. Central to the idea of selective licensing is that landlords are helped to manage their property effectively. For example, LHAs and other bodies would give advice and practical support where problems, such as anti-social tenants, arise.
  - Income growth. Licensed landlords will be seen as more reputable and, along with other longer-term benefits to the area, may make it easier to attract and retain tenants. Shorter void periods and reduced tenant turnover would lead to greater rental income and lower costs associated with turnover. In an exercise by an LHA with areas of low demand they compared various data from an area suffering from low demand, the authority as a whole, and a more popular area in the same authority. Voids of greater than 6 months stood at 12.7% in the low demand area, compared with 6.4% in the popular area. If the cycle of low demand is broken by the package of measures, including selective licensing, then a subsequent fall in voids could lead to benefits to private landlords of approximately £600,000 a week<sup>2</sup>. If each of these properties would have been void for exactly 6 months of the year then that is approximately £15m a year.
  - Capital growth. In the longer term reputable landlords would benefit by seeing their investment protected. Many landlords in such areas may be experiencing negative equity with the prospect of further decline in the near future and little prospect of being able to sell their property in the future. This risk should be reduced or eliminated as the decline of the neighbourhood is halted and reversed.
20. Social housing landlords with dwellings in the licensing area would also benefit from halting the decline of a neighbourhood.
- Fewer voids. Fewer resources would need devoting to the management and maintenance of void dwellings. A study done by an LHA with areas of low demand, comparing the costs in the low demand area with the local authority average, and a more popular area of the authority is a useful indicator of what might be achieved by the package of measures aimed at low demand areas, such as selective licensing. It found that the average cost of managing a social rented property was 47% higher in the low demand area than in the more popular area.
  - Lower total costs to the LHA. The same study shows that nearly all environmental and crime-related costs were higher in the low demand area. These included street cleaning, grounds maintenance, clearance of fly tipping, and clearing abandoned vehicles.
21. Service providers, such as the police, as well as local businesses would benefit.

2 This represents the 128,000 privately rented low demand dwellings, multiplied by the prospective reduction in voids of 6.3%, multiplied by £73pw – the average private rented sector weekly rent, 2001, of the Northern regions.

- Lower crime. Lower levels of crime and vandalism should lead to resource cost savings. The Home Office estimates the benefit from preventing one burglary to be around £2,300 and for preventing a robbery or mugging around £5,000 (the costs include stolen and damaged property, emotional and physical impact on victims and those to the criminal justice system).
- Reverse declining demand. LHAs will benefit from being able to reduce the resources spent on dealing with the consequences of low demand, such as clearance schemes and compulsory purchase orders. Salford MBC estimate these to be in the region of £3m for an area of 4 to 5 streets.

### **Option 3**

22. All of the benefits highlighted for Option 2 also apply to this option. In addition Option 3 provides further benefits, primarily to tenants in the private sector that occupy non-HMO property, by guaranteeing property condition is satisfactory and free from serious hazards.
23. Option 3 would place a higher priority on the condition of the property. In areas of low housing demand the general condition of the privately rented stock is worse than average. The 2001 EHCS suggests that twice as many private rented sector properties in areas of low demand are likely to be unfit than properties nationally. By placing greater emphasis on this feature housing conditions may be improved more than under option 2. It should be remembered, however, that larger, multiply occupied and higher-risk properties in these areas will already be covered by the HMO licensing regime that specifically targets the physical condition of the property.

## **III(i) POLICY COSTS**

### **Compliance costs for business, charities, and voluntary organisations**

24. The businesses affected would be all those who operate as landlords in the private rented sector in the low demand areas concerned and other areas to which licensing may be extended. As mentioned above, this covers an estimated 128,000 lettings in low demand areas. The average (median) number of lettings<sup>3</sup> per private sector landlord in 2001 was 4. This suggests around 32,000 landlords operating in areas of low demand.
25. This is a maximum estimate as not all areas of low housing demand are likely to be covered by licensing. If, for example, 75% of landlords operated within a licensed area the number affected would be approximately 24,000. However, these figures would be further reduced by landlords whose dwellings in the low demand area are all HMOs, and so would have a licence under the proposed HMO licensing regime (though the number of HMOs in areas of low demand is thought to be relatively small).
26. Work carried out by the NAW on the scheme indicates that between 8,000 and 10,000 landlords will be affected in Wales.

### **Option 1**

27. The current costs of poor management in the private rented sector will continue to be borne by private tenants. Other local residents will continue to bear the costs of associated crime and anti-social behaviour. This would also impose indirect costs on LHAs, the police

<sup>3</sup> EHCS 2001 Private Landlords Survey

and other service providers (for example, through compulsory purchase orders, clearance programmes and criminal investigations).

### **Option 2**

28. Option 2 would involve costs for private landlords and potentially tenants.
29. Landlords will incur costs in proving their suitability to be licensed by the local authority and in meeting management requirements. Such costs would include:
  - Producing evidence to pass the 'fit and proper person' test.
  - Preparation of written statements of tenancy obligations, and inventories, for all new lettings.
  - Provision of gas, fire and furniture safety certificates or declarations for all dwellings.
  - Checking references of prospective tenants.
  - Responding appropriately to complaints of anti-social behaviour by tenants.
30. Some of the above would be annual costs or determined by the number of new lettings and tenants' behaviour. Many are likely to involve little or no additional costs to reputable private landlords who will undertake the activities already. Poorer quality landlords will face greater additional costs, as they will need to provide information and undertake tasks that they previously did not.
31. Landlords would have to pay a fee to the LHA when applying for a licence to cover the running costs of the scheme. The licence would last for a fixed period, probably 5 years. Work carried out with the Local Government Association (LGA) on the costs associated with HMO licensing indicated that the average cost of a license would be approximately £100. As property condition would not be of primary importance under this option, licence fees should be significantly below this figure, therefore, an estimate of £60 per licensee does not seem unreasonable. If 24,000 landlords were licensed the total cost of licensing to landlords would be in the region of £1,440,000, or £288,000 per annum. Working on the same basis, the cost in Wales would be in the region of £480,000 – £600,000 (£96,000 – £120,000 per annum).
32. Landlords may seek to pass their additional costs on to tenants through higher rents. The scope for this should be greatly reduced by targeting licensing schemes on areas where excess supply exists offering tenants choice of home and so exerting downward pressure on rents. Any increases in rents that were passed on to tenants would be an additional cost of the option, but one borne by tenants as opposed to landlords. In view of the relatively low costs associated with licensing any increase in rent levels is likely to be relatively small and is therefore unlikely to be the sole reason for tenants to seek accommodation elsewhere.

### **Option 3**

33. All the costs associated with Option 2 also apply here. Further costs would arise from the potential need to inspect dwellings including the cost of making the dwelling fit or remedying health and safety risks identified in the inspection.

34. The licence fee would need to be substantially greater than under Option 2 to cover the additional costs to the local authority and would probably be at the same level as an HMO licence, approximately £100 based on LGA research. As the licence would be for a specific property, the landlord would incur this additional cost for each of the properties they rent out. Based on the average number of properties and the cost of licensing a low-risk HMO an average landlord would be looking at licensing costs of £400. If 24,000 landlords were licensed this would result in total costs of approximately £9.6m, or £2.4m per annum (£3.2m – £4m in total, or £640,000 – £800,000 per annum, in Wales).
35. To the extent that costs to landlords under this option are significantly greater than under Option 2, there may be more of an incentive for landlords to seek to pass these on to tenants through rent increases rather than absorb them within the properties running costs.

### **III(ii) IMPLEMENTATION COSTS**

36. Option 1 would not involve any additional costs being imposed on LHAs.
37. Option 2 costs to LHAs will include those associated with licensing landlords and enforcing the system. There is likely to be a one-off cost not covered by licence fee income in establishing the scheme and licensing existing landlords. If the costs of establishing the scheme and licensing existing landlords took one full-time equivalent employee a year, the cost could be in the region of £30,000.
38. Start-up costs are likely to vary widely between LHAs, depending on the number of landlords licensed in each area. This might involve licensing new landlords, spot checks on licensed landlords, following up complaints from tenants and providing advice to landlords. The fact that the selective licensing regime will run alongside the mandatory HMO licensing scheme should help minimise the costs of the system to local authorities.
39. Option 3 costs to LHAs are as for Option 2, but with the additional cost of carrying out inspections of individual dwellings and taking enforcement action as appropriate following from the inspections. Because of this, one off set-up costs are likely to be higher than option 2.

### **III(iii) OTHER COSTS**

40. There are potential negative impacts on areas not subject to licensing associated with the proposals. Costs borne by landlords in neighboring areas may increase if the licensing scheme displaces problem landlords and tenants to nearby areas while attracting reputable landlords and tenants to areas where licensing was in place. The costs identified above in association with Option 1, 'Do Nothing', could therefore be displaced into other areas. Careful consideration of these points in designing individual schemes should help minimise this problem. This will entail looking at how the boundaries of schemes are defined to prevent displacement into neighbouring streets and the use of the scheme beyond currently low-demand areas where there is significant evidence that there is the potential for similar decline. It will be important for this aspect of the licensing regime to be one of the features that is closely monitored when assessing the operation of the schemes.



**IV(i) CONSULTATION RESPONSE**

41. ODPM received 134 responses to the consultation paper issued in October 2001. Those in favour of the proposals tended to be metropolitan authorities or Northern borough councils, community groups, housing bodies and tenant groups, although a small number of private landlords agreed it might be necessary to license landlords in certain circumstances. Those opposed to the principle included the majority of private landlords, their associations and property interest groups. Some LHAs, mainly from Southern England or rural districts also expressed concern as to whether the measures would be effective or just added regulation. However, these authorities were not the ones where the problems we are seeking to tackle currently exist. There was broad support for the need for licensing to tackle the serious problems that exist in many towns and cities and generally for the form the proposals took. In particular there was a widespread desire for LHAs to have a power to use their discretion to tackle serious problems that may exist in non-low demand areas. Although we specifically asked for comment on the partial RIA in the consultation paper there was little response.
42. The consultation also showed that there was almost an equal number of respondents that believed that the licensing scheme should also directly address property condition (Option 3). This in some part reflects a belief amongst some LHAs that all private sector landlords should be licensed – although this might be viewed as a disproportionate measure with a potentially significant adverse impact on the amount of accommodation in the private rented sector.
43. The National Assembly for Wales received 28 responses to the consultation process these included comments from LHAs, housing organisations, MPs and councillors. There was widespread support for the principle of the proposals including the broader approach suggested for Wales. Respondents emphasised the importance of selective licensing working comprehensively with HMO licensing.

**IV(ii) CONSULTATION WITH SMALL BUSINESSES: 'THE LITMUS TEST'**

44. Some private landlords in a low demand area could be regarded as small businesses. However, the EHCS 2001 Private Landlord Survey shows that the median number of properties owned by landlords is four. This would imply that if the pattern in low demand areas follows that of the rest of the country, then rental income is a secondary source of revenue for most landlords, and thus they would not be classed as small businesses. They are not taxed as such.
45. The majority of landlords remain opposed to the idea of selective licensing due to the additional burdens it will place on them. However, we believe the significant negative impact some private rented sector landlords have on some communities justifies this additional regulation. We are keen that costs to all landlords are minimised and the additional burden on those landlords already operating responsibly will be relatively small. In the long-run responsible landlords will benefit from the action to tackle the activities of unscrupulous landlords and their tenants, which are driving down rents and capital values and making the area unattractive to tenants.

#### **IV(iii) COMPETITION ASSESSMENT**

46. Many smaller landlords employ professional agents to manage the property on their behalf. Where agents are employed in this way the requirements to prove their fitness also applies to these companies. The proposed regulation will therefore affect landlords and the management agents employed by them.
47. We do not anticipate that there will be any significant impact on existing levels of competition in the affected market(s), even using the narrowest possible market definition – that is the provision of private rented accommodation in areas of low housing demand (with each designated area forming a separate market).
48. Although the licence fee and additional paperwork involved in obtaining a licence may have a proportionately greater effect on smaller suppliers we believe that any differential effect would be small in light of the focus on low licence fees and a relatively straightforward licencing requirement. It is unlikely to be sufficient to result in any change in the market structure. The introduction of a licence fee will not result in any additional or ongoing costs for firms seeking to enter the market that will not be faced by existing firms.
49. The introduction of minimum standards with which all suppliers must comply will raise the barriers to entry and will reduce the ability of suppliers to compete on quality. This is likely to result in an increase in prices at the low rent end of the market. It is also possible that some small landlords/agents who are either not willing, or not able, to meet the basic standards that will be required may exit the market. However, we consider that these effects are unlikely to be sufficiently great to result in any significant change to existing levels of competition.

#### **RECOMMENDATION**

50. The results of the consultations confirm the widespread desire by LHAs and associated bodies to provide greater powers to act against private sector landlords in areas of low housing demand and, where there are compelling reasons to do so, elsewhere.
51. On balance, Option 2 remains the favoured approach. The aim of the proposals is to address the impact bad landlords and tenants have in certain areas – primarily through a lack of proper management or, in extreme cases, an active desire to worsen the problems that already exist. Properties where particularly poor conditions exist and risks are highest will be targeted through the licensing of HMOs. In properties subject to selective licensing certain basic safety standards will still be required to be met and local authorities will still have the powers under the new HHSRS regime (that replaces the existing fitness regime) to combat property condition in any property.

## **ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW**

52. The most important sanction would be refusal or revocation of a licence or the threat of such action – preventing the landlord from letting the property unless the local authority was satisfied that suitable alternative management was put in place. Landlords operating without a licence would be committing a criminal offence and no rent would therefore be payable. As Housing Benefit is only payable where there is a legally enforceable liability to pay rent, no Housing Benefit would be payable in such circumstances.
53. The operation of the new regime would be monitored closely and it is intended that evaluation would be carried out within twelve months of the scheme coming into force. This would seek to evaluate the effectiveness of schemes in improving landlord management and helping reduce anti-social behaviour by tenants.

# Home information packs

## INTRODUCTION AND SUMMARY

1. This partial assessment is concerned with the impact of proposed new legislation to require sellers of residential property to provide a standard pack of information, referred to as a 'home information pack' (formerly 'seller's pack'), before marketing a property for sale and to make it available to prospective buyers. It reflects the result of extensive research and the response to the public consultation document '*The key to easier home buying and selling*', which contained a draft Regulatory Impact Assessment, published in December 1998. A full regulatory impact assessment will be published following consultation on the draft Housing Bill and the outcome of parliamentary scrutiny.
2. The proposal to impose a statutory duty to provide a home information pack would affect most of the professional groups involved in the home buying and selling process. The proposed new legal duty (and associated enforcement regime) will affect estate agents, solicitors acting as estate agents, house builders and any other person, body or company marketing the sale or transfer of residential property in England and Wales. There would be a consequential effect on the surveying profession, solicitors and licensed conveyancers, mortgage lenders, local authorities and companies providing property-related information.
3. The proposals will entail the transference of some responsibilities and their associated costs from home buyers to home sellers. These additional costs (the cost of a local search and home condition report) would be around £480 per transaction. The additional cost to sellers will be offset in many cases by equivalent savings for them as buyers but the proposal to include a condition report would impose an additional cost on the process overall. We believe that the increased costs are justified by the benefits of savings due to reduced transaction failure and a more efficient home buying and selling system.

## PURPOSE AND INTENDED EFFECT

### Issue

4. A feature of the current home buying process in England and Wales is that neither the buyer nor the seller is legally bound to complete the transaction until binding contracts have been exchanged. Many actions, such as providing details of title documents or local searches are not started until an offer has been made and accepted 'subject to contract'. There is often a long gap between an offer being accepted and contracts being exchanged. During this time, neither buyer nor seller can be certain that the deal will go through. This uncertainty is exacerbated by the existence of linked transactions, or 'chains', which ensure that a delay to one transaction has a knock-on effect on all the others. Research shows that although the process is cheap by international standards when things go smoothly, it is often affected by delays and transaction failure, is a cause of great stress and anxiety and a contributory factor in the incidence of problems such as gazumping.

### Objective

5. The goal of the home information pack is to reduce the high rate of transaction failure by making the process more certain and speeding up the critical part of the process between offer acceptance and exchange of contracts. This will be achieved by making the process more transparent through requiring key information to be made available when the property is first put on the market. If potential buyers are provided with the information they need in order to make properly informed decisions earlier, the period of uncertainty between offer acceptance and exchange of contracts could be significantly shortened and deals would stand a much better chance of sticking together.
6. The ODPM is consulting separately on the contents of the home information pack<sup>1</sup>. It is anticipated that the pack will include evidence of title, terms of sale, replies to standard pre-contract enquiries, standard local searches, copies of any planning consents, a home condition report including an energy efficiency assessment, and, where appropriate, copies of the lease and other documents relevant to a leasehold sale.
7. It has been suggested that the home information pack will simply delay marketing. However, the package of measures being proposed is designed to reduce delays, not just to move them from one part of the process to another. We are proposing the following measures to ensure that home information packs can be put together quickly:
  - lenders have agreed to provide title documents quickly – within 5 working days of a request from a solicitor or licensed conveyancer – and to monitor and publish details of their actual performance against this target;
  - we will expect strict observance by local authorities of their adopted target of dealing with standard search enquiries within a maximum of 10 working days. Water companies have agreed to adopt and observe similar targets and the same will apply to other organisations that may provide search information for the home information pack (e.g. the Environment Agency). The increasing use of electronic data provision (via the National Land Information Service (NLIS) for example) will enable search results to be delivered within minutes rather than days or weeks. We are also seeking views on whether commercial search companies could be used as an alternative to local authorities and other ‘official’ providers of search information.
8. There may be cases where, through no fault of the seller or agent, information required for the home information pack cannot be obtained within a reasonable timescale (the period would be defined in secondary legislation but 14 days is proposed). In these circumstances and provided that the person responsible for marketing can show that he or she has made all reasonable efforts to obtain the missing information, it is proposed that homes may be marketed with an incomplete pack.

### RISK ASSESSMENT

9. Our research found that 28 per cent of offers made and accepted failed to proceed to completion. The cost of failed transactions can be high. Although the figures were based on low numbers, and cannot therefore be regarded as a reliable guide, the study found that

<sup>1</sup> Contents of the home information pack – A consultation paper, ODPM 2003

a typical failed transaction cost about £1000 (£680 for buyers and £350 for sellers). This was made up mainly of conveyancing costs, mortgage valuation and survey fees. The research evidence suggests that around 580,000 transactions could fail between offer acceptance and completion each year in England and Wales (*based on 1.5 million successfully completed transactions – Inland Revenue particulars delivered for 2002*). All of these will not necessarily have incurred the same level of costs but we estimate that the total cost of wasted expenditure to consumers is at least £350 million a year (or around £600 per failed transaction). This total does not include additional and abortive costs incurred by marketing agents who normally work on a no sale-no fee basis. A more transparent and speedier process with more information provided up front should significantly reduce this failure rate and the associated wasted costs.

10. The effect of delay should also be taken into account. The research found that it takes on average eight weeks to move from acceptance of offer to exchange of contracts. This is slow by international standards. Although the financial impact of such delays cannot be quantified, they undoubtedly add to the stress surrounding home buying and selling and increase the risk of chains breaking down.

### **OPTIONS**

11. The following options have been considered:
  - i) do nothing;
  - ii) try to achieve the objectives by voluntary means (codes of practice etc);
  - iii) only impose a compulsory system on those marketing homes as a business (e.g. estate agents);
  - iv) impose a compulsory system on everyone, e.g. estate agents, home builders and private individuals marketing their own homes, but exclude the home condition report from the home information pack.
  - v) impose a compulsory system, including a home condition report, on everyone.

### **ISSUES OF EQUITY OR FAIRNESS**

12. The proposals would require sellers of homes or their agents to provide some information that is currently obtained and paid for by buyers. Since most sellers are also buyers, the financial consequences would be broadly neutral in most cases.
13. The potential gainers under the new arrangements would be first time buyers. This group would be provided with information that they would normally commission and pay for themselves under the current system, although the cost may be reflected in the purchase price. The potential losers are sellers who are not buying another property. This group will incur the cost of providing a pack but will receive no equivalent benefit on the purchase of a new home. However, the cost of providing the pack could be added to the purchase price of the property being sold. There will be some people, those on very low incomes or who

need to sell as a result of mortgage arrears for example, who would face difficulties in assembling the home information pack. This could be a particular problem if the pack had to be paid for upfront and costs could not be deferred until completion of the sale.

14. The Government has commissioned independent research into the potential effect of the proposals in areas suffering from low-value and low demand. The research found that buyers and sellers both saw advantages in having a home information pack available when homes are marketed. Although the upfront cost of the home information pack was a matter of concern to sellers and local professionals, it was recognised that the proposals could lead to a better functioning market in these areas. The Government is consulting separately on the findings of the research and on options that would remove or modify the requirement to provide a home information pack in areas of low-value and low demand<sup>2</sup>.
15. Under the proposals, the home information pack will not have a prescribed shelf life. Sellers will be able to re-use the pack if the property is taken off the market for a short period of time. Nevertheless, some properties will be put on the market but will not be sold, for a variety of reasons. In those cases the cost of assembling the home information pack may be wasted, unless and until the property is eventually sold. However, we would expect the market to be flexible enough to meet the problems that might arise – for example through the deferral of fees until sales are completed. This is what happens in voluntary home information pack schemes that are operating successfully now.

## **BENEFITS**

16. **Option (i)** would result in things staying as they are now. There is a view that, left to itself, the market would develop solutions to the problems we have identified. The current problems are very longstanding, however, and the market has failed to come up with solutions so far. Advances in information technology and the introduction of electronic conveyancing would speed up part of the process but would not ensure that key information is made available at the start of the process.
17. Although previous attempts at voluntary reforms have not been successful, **option (ii)** might have some limited effect. If, say, 10 per cent of sellers provided a home information pack voluntarily this could be expected to reduce the annual overall cost of failed transactions by up to £35 million. However, 10 per cent is probably over optimistic. Transactions with home information packs would become caught up in chains with other transactions without packs. Any timesavings attributable to the presence of a home information pack are likely to be lost in these circumstances. In addition, sellers who provided and paid for the home information pack (including a local authority search and home condition report) might find that they were also expected to pay for these items again in their role as buyers.
18. The Law Society's experience with its voluntary 'TransAction' scheme is relevant here. When it was first introduced, sellers were encouraged to pay for a local search at the beginning of the process. This element of the scheme was dropped, however, when it became apparent that sellers were not willing to incur this additional cost voluntarily –

<sup>2</sup> The home information pack in areas of low demand and low value, ODPM 2003

especially where there was a real risk of having to pay for the search twice, once as sellers and then again as buyers.

19. **Option (iii)** would avoid the risk of involving private individuals in legal obligations and potential sanctions but risks creating a two-track system and undoing the benefits identified elsewhere. Currently, less than 5 per cent of people choose sell their home privately, rather than through an estate agent. This proportion might increase substantially if marketing one's own home was a means by which the cost of preparing a home information pack could be avoided. This in turn would affect any linked transactions in the chain and thus cancel out the benefits of the new system by slowing them down and putting them at risk
20. **Option (iv)** would not add any new costs to the process overall. The home condition report is the most contentious part of the home information pack and the only item that, on the face of it, adds to the overall cost of the home buying and selling process. However, removing the condition report from the home information pack would risk cancelling out the benefits we are seeking to achieve. The research found that 43 per cent of failed transactions (12 per cent of all transactions) are due to condition related problems being brought to light in either the buyer's survey or the lender's valuation inspection. In addition, between a quarter and a fifth of buyers who commissioned a survey or had a lender's valuation inspection found problems that led to renegotiations and consequent delays. These problems are compounded because of chains. About 60 per cent of transactions involve chains. Industry estimates suggest the average chain involves 5 properties, or 4 transactions, so the knock-on effects of condition related problems could affect a high proportion of transactions.
21. For these reasons, we see **option (v)** as the best way of achieving the Government's policy objectives. The table at **Annex A** sets out an estimate of the possible costs and benefits to consumers and business of this option. Only a minority of buyers (estimated at 30 per cent) obtain an independent survey at the moment, at a cost of around £370 per survey (the average cost of a *Homebuyers Survey and Valuation (HSV)*). A very small number (less than 2 per cent) obtain the more detailed building survey. Most buyers who are buying with a mortgage rely on their lender's valuation inspection.
22. The potential additional costs to consumers of including a home condition report to the pack would include:
  - the cost of a home condition report in cases where no survey report of any description would have been obtained under the current system;
  - the cost difference between the home condition report and a lender's valuation inspection in cases where this would have been the only survey carried out under the current process;
  - the cost of an additional survey where the buyer wants or needs a more detailed survey or does not trust the home condition report;
  - the cost of a lender's valuation inspection where this is still deemed necessary.



23. The potential cost savings to consumers would include a reduction in the wasted expenditure in transactions that fail because of condition related problems revealed at a later stage. The amount of waste attributable to sales that fail because of condition problems is estimated at over £150 million a year.
24. We believe that mortgage lenders will increasingly make use of the home condition report when assessing the value of the property and in most cases will use this as a reliable guide to condition rather than charge buyers for a separate inspection of the property. Some lenders are already moving away from physical inspections (particularly where the loan to value ratio is low) in favour of credit checks on the borrower backed by 'drive-by' surveys and desk top valuations of properties.
25. Our informal discussions with lenders suggest that this is the way the lending market is developing, regardless of whether the proposals for home information packs are implemented or not. If they are not, one consequence may be an increase in the number of buyers commissioning their own independent surveys. This would also result in an increase in the number of cases where problems revealed by an adverse survey caused transactions to collapse altogether, or be delayed while the parties renegotiate.
26. The average cost of a lender's valuation inspection is £180. The annual cost of lenders' valuation inspections to all *successful* buyers now and thus the maximum potential saving, is in the region of £162 million (reduced to £100 million if lenders charged a fee of £80 to cover the cost of providing a valuation based on the home condition report). Added to this is the cost of mortgage valuation inspections in *failed* transactions: this is estimated to be in the region of £78 million. Despite the presence of a home condition report, lenders may still wish to carry out a separate valuation inspection in some cases, e.g. where the loan to value ratio is high or where the home condition report reveals serious problems with the property. If lenders were to take this view and the threshold chosen was loans of more than 80 per cent of the purchase price, say, this might result in 270,000 valuation surveys per annum at a total cost to consumers of around £48 million.
27. The production of a home condition report will result in more realistic pricing, with prices reflecting the problems and any necessary repairs revealed by the report. According to research carried out by a major firm of estate agents, 18 per cent of buyers who relied on their mortgage lender's valuation faced unexpected repair bills within the first 4 months of moving into their new home. In 48 per cent these cases the repair bills amounted to £500 or more and in 17 per cent of cases the bill was over £1,000. The survey also revealed that one fifth of buyers used their surveys to renegotiate the purchase price and almost half of these saved £1,000 or more.<sup>3</sup>
28. Some home owners with small savings and little equity in their property may be deterred from marketing their properties if the up-front costs are high. It is likely that the industry would respond to this need though. For example, some agents, may offer at least part of the service 'free' in order to attract additional customers, others may incur the costs and defer all fees and charges until the sale is completed. The most successful schemes offering home information packs on a voluntary basis do not charge sellers up front for the service. As noted earlier, first time buyers would be the main beneficiaries under these proposals and this is arguably the group who can least afford to waste money on the repeated costs of searches and surveys in aborted transactions.

3 "Home Valuations & Surveys" A report from BBG Surveyors, October 1999

29. It is understandable, given the high transaction failure rate, that many home buyers are currently reluctant to incur the cost of a survey when this could be wasted if the transaction fails. The main objective of the home information pack is to inject transparency into the process and make failure much less common. Objective information about property condition is particularly important to securing the aim of ensuring that the main factors that cause transactions to slow down or fail are exposed at the beginning of the process. Although we recognise the difficulties, we believe that this can be achieved by including reliable information about the condition of the property in the home information pack. The separate consultation paper on the contents of the home information pack therefore recommends that it should include a home condition report.
30. It is vitally important that buyers, sellers and mortgage lenders can trust the home condition report. Paragraphs 50 to 52 explain how we propose to ensure that this is the case. Research published in 2001<sup>4</sup> on what people thought about sellers surveys (carried out with a group of people who had recently bought a home and commissioned their own survey) revealed that almost two thirds of them would trust a seller's survey. Of those who were doubtful, more than half said they would change their mind if the survey was in plain English, easier to understand and acceptable to mortgage lenders without the need for further inspections.
31. We envisage that the home condition report will:
- give the seller the opportunity to have any defect rectified before marketing the home;
  - assist the seller and the seller's agent to set an asking price which reflects the true condition of the home;
  - enable the seller and buyer to negotiate terms from an informed position;
  - reduce confrontation as both parties will be working from common information about the condition of the home;
  - avoid unwelcome surprises which, if they came to light later on in the process, could delay the transaction or cause it to fail;
  - avoid duplicate surveys of the same property where there is more than one prospective buyer;
  - avoid unexpected expense for the buyer which frequently arises when condition problems only come to light after the buyer has moved in;
  - provide the lender with authoritative information about condition, upon which the lender can rely when carrying out a valuation assessment;
  - assist home owners to make better and more energy efficient use of their home and contribute towards improved maintenance of the nation's housing stock.

4 *Home Valuations and Surveys*, BBG Surveyors, Spring 2001

32. It is proposed that the home condition report will be based on a mid-range inspection, broadly similar to that for the Royal Institution of Chartered Surveyors' (RICS) mid-range survey, the Homebuyers Survey and Valuation (HSV). We believe this would strike the right balance between comprehensiveness and cost and is the appropriate level of survey for a mandatory home information pack. On this basis, the home condition report would be less detailed and comprehensive than the RICS' Building Survey (sometimes referred to as a 'full structural survey'), but would be significantly more extensive than a mortgage lender's valuation inspection.
33. EU Directive 2002/91/EC requires Member States to introduce requirements for energy performance certificates and to ensure that these are made available to prospective buyers when properties are marketed. We intend that, where homes are marketed for sale with a home condition report, the Directive will be implemented by including in the report an energy report that will comply with these requirements. The energy report would provide information on energy efficiency measures that would reduce fuel costs, increase comfort and also help the environment

#### **Effect on the market**

34. There is a view that the proposals will lead to a permanent reduction in the number of properties coming onto the market because of the deterrent effect on sellers. The requirement to provide a home information pack could be a disincentive to those who were not fully committed to selling their home. Others take the view that although there may be an initial drop in the number of properties put up for sale, the market would soon bounce back. There is no way of knowing in advance which of these views is correct. Other countries that have introduced a home information pack, particularly Denmark and New South Wales, Australia, have not noticed a significant impact on the number of completed sales.
35. Research carried out by Countrywide Assured Group PLC found that only 13 per cent of their customers would delay marketing significantly or not try to sell at all if there was a requirement to provide a home information pack. This figure corresponds closely with the 15 per cent of Countrywide's customers who currently withdraw their property from the market. The conclusion was therefore that the introduction of seller's packs would make little difference to the number of properties that were genuinely available to buyers, and that the volume of transactions would remain broadly unchanged.<sup>5</sup> Indeed, it could be argued that the lower fall out rate associated with voluntary home information pack schemes (around 6 per cent, compared to 30 per cent for normal transactions) could result in more transactions being successfully completed each year, even if fewer properties are put on the market.
36. Members of the public will benefit from a more efficient, transparent, certain and speedier selling system that places less stress and anxiety on home buyers and sellers. These benefits will also apply to the professionals involved with home buying and selling. The costs of failed transactions are high (see paragraph 9 above). A more transparent process with more information provided up front should reduce the failure rate considerably as well as the associated costs which might, in turn, result in a reduction in fees.

<sup>5</sup> Countrywide Assured Group plc Press Release 'Seller's Packs unlikely to reduce volume of house sales' (23 Nov 2000).

### **Speeding up transactions**

37. Our research showed that a typical transaction took 10 weeks from offer acceptance to completion, and that of this, it took 8 weeks from offer acceptance to exchange of contracts. Our proposals should shorten this period significantly by ensuring that the buyer and seller have most of the information and documents they need right at the start. This will enable the parties to exchange contracts earlier than is usual under the present system. The extent of the time saving would depend on factors such as whether the transaction is part of a chain but we would expect the period between offer acceptance and exchange to be reduced by around half on average.
38. Under the proposals, marketing cannot start without a home information pack being in place. It should be possible to assemble a complete pack within ten working days in most cases. Some of the measures to ensure that sellers are not subjected to unnecessary delays are outlined in Paragraph 7 above. In cases where a component of the pack cannot be obtained within a reasonable time, sellers will be able to put their property on the market with an incomplete pack, provided they have taken steps to obtain the missing information.

## **COMPLIANCE COST FOR BUSINESS AND CONSUMERS**

### **General**

39. The proposals would apply to residential properties being marketed for sale with vacant possession. Sales of commercial or mixed use properties and tenanted properties (e.g. blocks of flats) are not affected by the proposals. Sales or transfers where no marketing takes place (e.g. sales within the family) will also be unaffected. Most homes are sold through estate agents. These businesses would therefore be most affected by a legal requirement to have a home information pack available before marketing commences. But the requirement would also apply to *anyone* marketing a home, e.g. private individuals, solicitors acting as estate agents and house builders marketing properties for sale.
40. We estimate that the cost of assembling the home information pack might be in the region of £665 for an average sale. This amount includes £200 for local searches, £10 for obtaining evidence of title from the Land Registry, £280 for a home condition report and £125 in legal fees for the assembly and preparation of a draft contract and pack assembly. The total cost of assembling the home information pack would be around £1.33 billion if, as now, 2 million homes were marketed each year. Assuming the requirement to provide a pack deters ten per cent of people from marketing their homes, the number would shrink to 1.8 million and the overall cost of providing packs be reduced to £1.2 billion.
41. It is important to note, however, these are not net additional costs compared with the current system. Apart from the home condition report, all the document in the home information pack have to be provided at some stage now under the current system. The proposals will simply shift responsibility for providing some items from the buyer to the seller and require all the information to be provided at the beginning of the process. The buyer currently meets the cost of local searches and this cost would be transferred to the seller.

42. The only new cost overall is the cost of the home condition report in cases where a survey would not have been commissioned under the present system. This would add around £310 million to the overall cost, assuming 1.8 million homes are put on the market. We expect offsetting savings however. The research indicates that the amount spent by consumers on aborted transactions is at least £350 million a year and that just over £150 million of this is attributable to transactions that fail due to the findings of a buyers survey or lenders valuation inspection. We expect this figure to be substantially reduced under a home information pack system. We also expect offsetting savings from a reduction in the number of lender's valuation inspection surveys. These cost borrowers around £240 million under the current system but should be reduced to less than £50 million if, as we expect, they are only required by lenders in exceptional cases.

#### **Cost implications for estate agents and others marketing property for sale**

43. There are about 12,000 estate agency businesses in England and Wales. In addition, around 150 firms of solicitors are engaged in property selling, as well as conveyancing, and over 15,000 builders or developers market new properties for sale. A home condition report would not be required on new homes being sold for the first time with a designated housing warranty (e.g. a National House Building Council (or similar) warranty). As builders already provide most of the information for the home information pack for marketing purposes now, the extra cost of marketing new homes will be less than for second hand properties.
44. The recurring costs for estate agents and others affected by the requirement are those incurred in respect of any extra staff time in assembling the home information packs, staff training and compliance measures. There may be an increase (of between 10 per cent and 20 per cent) in Professional Indemnity Insurance (PII) to cover the risks of the professionals incurring penalties as a result of mistakes in the assembly of the home information pack. Our advice suggests that the total cost to the average estate agent under the new system could be in the region of £5,000 per year per office or £60 million to the profession as a whole. However, the potential savings offset this. Estimates of the costs to agents of a failed transaction vary between £350 and £500 per transaction and the National Association of Estate Agents (NAEA) estimate that about 30 per cent of agreed sales fall through before completion. The cost to the average office could therefore be in the region of £12,000 or about £144 million for the profession as a whole. Most estate agents work on a 'no sale, no fee' basis. In effect, therefore, the abortive costs of failed transactions are a tax on those whose sales are successful. The saving (£84 million based on these figures) could be passed on to consumers in the form of lower commissions.

#### **Cost implications for mortgage lenders**

45. There may be additional administrative expenses for lenders if they are required to provide copies of deeds for inclusion in the home information pack. These will vary according to the number of documents but could average out at around £50 per case. This requirement will only apply in the case of unregistered properties however, which form a small and diminishing proportion of the market. In any event, these are not net additional costs as they would need to be provided under the current system. Copies of deeds need to be provided only where they are being supplied to an estate agent or other individuals other than a solicitor or licensed conveyancer. We would expect any additional costs to be recovered from consumers.

### **Cost implications for the surveying profession**

46. The Government is working with the RICS and other key players to research and evaluate a new type of survey to be called a home condition report (HCR). The cost of the home condition report will not be fixed and will be determined by market forces. The price charged will depend on the location, size and condition of the property. However, we estimate that the cost of preparing a home condition report for a typical 1930's three bedroom semi-detached house located in a provincial town would around £280. Applying this average cost to the 2 million residential properties marketed each year under the current system; the total revenue would be £560 million. If the number of homes marketed falls to 1.8 million, the figure would be £504 million. This compares to just over £470 million spent on all surveys and valuation inspections (in successful and unsuccessful transactions) under the current system. This figure is comprised of £215.8 million from HSVs commissioned by buyers (assuming that surveys costing £370 each are commissioned in 28 per cent of the 1.5 million completed transactions per annum). There is also £240 million from mortgage valuation surveys and around £15 million from the small proportion of full surveys commissioned by buyers (estimated at 2 per cent of the total).
47. The inclusion of a home condition report in the home information pack will result in increased business for surveying firms and have major consequences for the profession. It is estimated that only 30 per cent of home buyers commission their own survey under the current system. This is a surprisingly low percentage considering that buying a home is the largest single item of expenditure that most people will ever make in their lives. It seems that the majority of purchasers are willing to rely on the more limited valuation inspection carried out by their mortgage lender. The reason may be a reluctance to incur the cost of a survey in a process where almost a third of transactions fail and the expense is wasted.
48. The surveying industry has estimated that between 7,500 and 8,500 home condition inspectors will be required to carry out home condition reports. Around 2,500 chartered surveyors and other professionals currently do the work of carrying out surveys under the present system. Under the proposed new arrangements this work would be opened up to other professional groups and new entrants trained as specialist home condition report inspectors.
49. The training costs for the new job of home inspector will vary and will depend on the individuals prior experience and existing skills. The following examples illustrate three different possible scenarios:
- A *qualified chartered surveyor* doing similar work would require around three days training at £150 a day and would also need to pay for the final test (£100) and assessment (£150). The total cost would be £700 but, as the £450 would also qualify towards the chartered surveyor's CPD (Continuing Professional Development), the only new additional cost would be **£250**.
  - For a *new entrant* (e.g. a school leaver). The costs would be normal degree costs if the training formed part of wider building degree. A shorter two-year course focused on home inspection would cost around £4,000 for a two year course: Alternatively, a two year distance learning course would cost around £3,500. In both cases, two to three days practical experience of completing home inspection reports would also be needed

at £150 a day and the cost of assessment and final test (£250), as above. The total cost for a full time course would therefore be around **£4,700** or **£4,200** for a distance learning course.

- For a **candidate with some experience** (e.g. a member of the Institute of Building Managers with experience of undertaking stock condition surveys providing general overviews of property) a one year further education course costing £2,000 would be sufficient. This would need to be supplemented with two or three days practical experience of home inspection at £150 a day and £250 for the assessment and final test. The total cost of training a candidate with some experience would therefore be around **£2,700**.
50. Under our proposals, all home condition report inspectors will have to be certified by an independent body. This body will have a range of responsibilities for ensuring competence and consumer protection. Responses to the 1998 consultation paper indicated that people's main concern over the inclusion of a home condition report in the home information pack, was that buyers would not rely on a report commissioned by the seller. The establishment of an independent certification body is vital in order to ensure consumer protection and provide consumer confidence and trust in the home condition report.
51. The purpose of the certification scheme would be to ensure that home condition reports are produced to consistent standards, by suitably qualified and independent inspectors carrying appropriate indemnity insurance. Membership of the scheme will be compulsory for any inspector preparing home condition reports. A Home Condition Report Certification Body will be established by the industry to reflect the views of the wide variety of stakeholders with an interest (including consumers and mortgage lenders). The Body will be charged with setting standards and acting as a safety net to ensure consumer protection and will include:

*The Consumers' Association*  
*Association of British Insurers*  
*British Institute of Architects and Technologists*  
*The National Association of Estate Agents*  
*The Law Society*  
*The Council for Licensed Conveyancers*  
*The Council of Mortgage Lenders*  
*The Royal Institution of Chartered Surveyors*  
*The Royal Institute of British Architects*  
*Chartered Institute of Building*  
*Institute of Maintenance & Building Management*  
*Institution of Structural Engineers*  
*Institution of Civil Engineers*  
*Association of Building Engineers*  
*Construction Industry Training Board*  
*Property Services National Training Organisation*

The ODPM and the Office of Fair Trading are also likely to be involved in an observing capacity.

52. The remit of a certification scheme would be to:
- (i) promote the certification scheme and recruit new inspectors;
  - (ii) ensure standards of competence on entry;
  - (iii) monitor and audit of standards of work;
  - (iv) maintain standards through training, assessment and benchmarking;
  - (v) develop and maintain a system of discipline and sanctions;
  - (vi) maintain a central database retaining all completed home condition reports together with a register of Certified Inspectors;
  - (vii) ensure that appropriate levels of insurance are maintained and act as insurer of last resort to protect the public where inspectors fail to insure.
53. The certification scheme will be self-financing (although the Government will be providing financial assistance towards the initial set-up costs). Certified home condition inspectors will be required to pay some initial costs to cover training etc. There will also be an annual fee of around £150/£175 to the certification body. This will be a new and additional expense for members of the RICS and other professional bodies who wish to be certified by the new body and keep their membership of both bodies. Home condition inspectors will also be required to pay for indemnity insurance cover and on-going training costs. This is not a new cost as many professionals, e.g. chartered surveyors, are currently required to have indemnity insurance and to participate in Continuing Professional Development (CPD).
54. Although indemnity insurance premiums are rising steeply, our advice suggests that the home condition report, with surveyors liable for negligence to both the buyer and the seller, is, in itself, unlikely to result in any significant increase in the cost of this cover. Further research is being undertaken into appropriate insurance arrangements to cover all home inspectors, whether new entrants or those currently employed in this area of work.

### **CONSULTATION WITH SMALL BUSINESS: THE LITMUS TEST**

55. The Small Business Service (SBS) in the Department of Trade and Industry have been consulted and are content that the potential impact of the proposals on small businesses has been fully considered. Research has been undertaken with a number of estate agents, conveyancers and surveyors to test the potential impact on small businesses of the proposed reforms. The main findings are summarised as follows:
- Small businesses are divided on their views on the likely impact of the Government's proposed reforms.
  - Those businesses that were against the reforms were also the most concerned about the negative effects that the home information pack will have on their business. Those that supported the reforms tended to see it as an opportunity to increase their business in the sector.



- One of the most common concerns for estate agents was the belief that the introduction of the home information pack will reduce the number of sellers coming to market which will, in turn, lead to a fall in revenue within the industry. However, there was an acknowledgement that any reduced revenue would be offset, at least in part, by savings arising out of lower fall out rates and fewer failed transactions.
- Estate agents are thought likely to be in the best position to control access to clients. The need for conveyancers and surveyors to form links with agents was considered important for all parties.
- The home information pack, coupled with the increasing use of electronic conveyancing, could be a threat to traditional conveyancers. However, the new process also presents many opportunities for conveyancers to increase their business.
- It is strongly believed that all surveyors, regardless of size, will see a substantial increase in their business. The anticipated extra volume of work should mean that the emphasis would be on maximising business rather than protecting market share. This will be particularly so if there is a shortage of qualified surveyors.
- Businesses operating in low value areas expressed concern that the introduction of a home information pack could harm the market. It was felt that estate agents would be unwilling to take on properties that are unlikely to sell quickly if fees were charged on a no sale no fee basis.
- Linkages within and across sectors will be important in the post reform environment but so too will a product or service that differentiates a small business from others in the market.
- The consumer is likely to have some or all of their fees deferred until the property sells but it is thought that some might ultimately pay a higher level of charge.

## **COMPETITION ASSESSMENT**

56. Implementation of the proposals will affect a wide range of markets and sectors involved in the home buying and selling process. These include estate agents, surveyors, solicitors and licensed conveyancers, mortgage lenders, house builders, and firms providing property-related information. However, we have not been able to identify any markets or sectors in which the proposed regulation is considered likely have any significant adverse impact on competition. It is anticipated that the cost implications of the proposals will be broadly neutral for businesses in the affected markets, with any increases being passed on to the eventual consumer. It is not anticipated that there will be any significant differential effects between firms of different sizes.
57. Implementation of the proposals is expected to lead to an overall increase in the number of home surveys that are commissioned. This growth in the total size of the market, combined with the business of supplying of home condition reports being opened up to entrants other than traditional surveying professionals, should allow for an increase in current levels of competition in the surveying market.

## IDENTIFICATION OF ANY OTHER COSTS

### **Local Authority and Water and Environmental Searches**

58. We believe that the demand for searches and search updates will be broadly the same as now if these become a standard component of the home information pack. Although it is not a statutory requirement, it is standard practice for these to be obtained by the buyer at some stage during the current process. Any increase in demand resulting from a requirement to provide a search in every case would be offset by fewer aborted transactions and fewer delays, which can result in multiple searches on the same property. The increasing use of technology in the search process will also help deal with any increased demand, as well as unnecessary delays in marketing due to unreasonable delays by information providers. In this respect, the consultation paper on the contents of the home information pack mentions the possibility of allowing information provided by private search companies to be included in the pack as an alternative to an 'official' search.

### **Trading Standards Service, Office of Fair Trading & The Courts**

59. Civil sanctions for non-compliance, policed by local weights and measures authorities and the Office of fair Trading would impose an additional burden on these organisations and possibly the courts in cases where the civil penalty is contested or not paid. The overall cost to local authorities of enforcing the proposed new duties is estimated at £1.44 million per annum, or around 1/2 an additional person per local authority. The cost of any additional workload for the courts and tribunals is likely to be negligible.

## RESULTS OF CONSULTATION

60. ODPM received 919 responses to the consultation paper '*The key to easier home buying and selling*'. Respondents were largely individual consumers (29 per cent) and professional individuals (solicitors 21 per cent, estate agents 16 per cent, surveyors/valuers 15 per cent). The main representative bodies covering the key interest groups (Consumers Association, Council of Mortgage Lenders (CML), National Association of Estate Agents (NAEA), Law Society, Royal Institution of Chartered Surveyors (RICS), Local Government Association (LGA) etc.) also responded.
61. The majority of all those who responded (78 per cent) agreed with the overall objective of making home buying and selling more efficient and less stressful. Among all respondents 63 per cent agreed that the seller should assemble an information pack. This includes strong support from businesses, professional bodies and consumer's representatives. Although 56 per cent of all respondents were concerned about the inclusion of a home condition report, opinion among professional bodies was more even – the Consumers Association, CML, NAEA and LGA were in favour of the inclusion of a report; the Law Society was against; RICS had some reservations. Opposition to the inclusion of a report was largely based on issues of practicality – in particular that buyers and lenders will not trust a report commissioned by a seller; and that reports will have only a limited shelf life. An important point to bear in mind here is that only 27 per cent of respondents have based their responses on the full consultation paper which sets out detailed arguments both for and against the inclusion of home condition report. The majority based their responses on a summary of the proposals that was widely circulated.

62. There was strong support for the home information pack to be made compulsory – 61 per cent of all responses, including all the key professional bodies. The Consumers Association was one of the bodies that agreed that voluntary arrangements would not work.

### **BRISTOL PILOT STUDY**

63. In December 1999, the Government launched a pilot scheme in Bristol to test the practical operation of home information packs. The pilot sought to test:
- how easily home information packs can be assembled;
  - how helpful they were to buyers, sellers and professionals;
  - the extent to which home information packs brought about greater certainty to the transaction process; and
  - the extent to which home information packs brought about increased transparency (i.e. better information at the start of the process about the property being marketed for sale).
64. The pilot period lasted until the end of July 2000. To encourage take-up, free home information packs were offered to sellers who sold their home in the Bristol area through estate agents that were members of the voluntary Ombudsman Scheme. The contents of the home information pack included all the main items listed under the Government's proposals as well as a mining search. The main findings from the pilot were as follows:
- the home information pack increased transparency by giving buyers a clearer understanding of the property they were purchasing, and helped to draw out any potential problems with the sale much earlier in the process. There was more transparency in relation to information about the condition of the property compared to the legal documentation in the home information pack, the content and significance of which generally requires legal advice.
  - The home information pack increases certainty because transaction threatening problems are exposed earlier in the process, there is more confidence that the transaction will proceed successfully to completion, and there is a reduction in the overall wastage in the system caused by abortive sales.
  - Approval for the system of selling with a home information pack was high amongst consumers, particularly with buyers. Previous research in 1998 (Randolph, Wagstaff, Kendall and Robinson, DETR 1998) showed that two in five buyers were dissatisfied with the transaction process. In the Bristol pilot, however, only around one in 20 were dissatisfied.
  - Conveyancers believed the process of assembling legal information was more efficient under a home information pack system. This is because much of the crucial preparatory legal work takes place in a matter of days, rather than being spread out over several weeks with time being wasted waiting for someone else to do something before progress can be made. Packs were typically assembled in nine working days.

- Estate agents had mixed views about the home information pack. The agents who saw clear benefits had invested greater time in understanding the potential advantages for the consumer and consequently spent more time advising clients about the purpose and nature of the home information pack. Other agents believed the home information pack delayed the marketing of the property and could result in clients missing out on prospective buyers, particularly in a fast moving market.
- Surveyors' main concern was about the level of reporting in the home condition report and they were particularly concerned with being exposed to professional indemnity claims arising out of the new report. The view of both surveyors and estate agents was that the report format used in the pilot was insufficiently detailed, especially when compared to a HSV.
- Whilst the pilot showed that the home information pack delivers a range of benefits for both consumers and professionals, it is clear the potential benefits could be improved further. In particular, the home condition and associated energy efficiency reports, although warmly received by consumers, were felt to need further work on layout and content. Conveyancers also believed their role could be extended to include summarising and decoding the legal elements of the home information pack in a consumer friendly format.

## FOREIGN COMPARISONS

65. In the lead up to the publication of the consultation paper '*The key to easier home buying and selling*', DETR commissioned a desk study of the home buying and selling process in ten other countries. This revealed the conveyancing system here is cheaper (but not so cheap when the cost of the high rate of failed transactions is factored in) but slower by comparison. This was followed up by a more detailed study into the systems used in Denmark and New South Wales.
66. The Danish System has evolved to incorporate the assembly of a home information pack of standard information, including a survey report on the condition of the property, before the property is put on the market. The survey report is prepared by a state-approved surveyor and costs between £300 and £500 depending on the age and size of the property. Danish officials and practitioners believe the new system has been a success. Whilst there was some initial scepticism amongst buyers about the independence of the report, the regulatory framework backing up the new system has now made this an accepted part of the home buying and selling process.
67. Fundamental changes to the New South Wales conveyancing system were introduced in the late 1980s. The system used to be the same as the one currently used in England and Wales and the new laws (known as the 'anti-gazumping' laws), were aimed at improving the conveyancing process and achieving an earlier exchange of contracts. The new system is based on *caveat vendor* and requires sellers to assemble a home information pack of legal and other documents before marketing. The home information pack does not include a condition report at the moment but there is support from agents for the addition of building inspection and pest reports. There is widespread agreement in the property professions that average transaction times have been reduced following the introduction of the new system (one estimate suggests by 30 per cent) and that it has been a success.

## **SUMMARY AND RECOMMENDATION**

68. The Government's research, which tracked over 900 home sales in England, Wales and Scotland and compared the system in England and Wales with those in a number of other countries, endorses the case for sellers packs as best way to deal with delays and uncertainties. The majority of sales take place through estate agents. The initial administrative costs to agents of assembling the home information pack would not be significant and there would be compensating savings from a lower fall out rate. Costs to individual sellers in around 70 per cent or more of sales would increase if it were agreed that a home condition report should form part of the home information pack. This is the only additional cost that would be imposed on the process as a whole. In our view, the additional costs are balanced by the savings resulting from the anticipated reduction in the number of failed transactions, changes in lenders' procedures and associated benefits of a more efficient home buying and selling system.

## **ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW**

69. The objective of any legislation would be to make the marketing of homes with home information packs a statutory requirement. A failure to comply with such a requirement would be made a civil offence. This would enable cost recovery action to be taken through the courts where, for example, the seller or his or her agent failed to provide a home information pack. It could be argued that the relatively small amounts involved and the cost and uncertainty of going to court make this unlikely in most cases. A fixed penalty system is therefore being proposed in addition, to be policed by local trading standards officers. This would provide a more realistic incentive for sellers to provide a home information pack and reduce the risk of unsuspecting home owners being caught up in unnecessary proceedings.
70. The effect of the legislation will be reviewed 18 months after implementation to see whether:
- the expected improvements in the marketing and sale of residential property – in terms of speed, quality and transparency of the process, are being delivered;
  - to monitor the overall benefits of the home condition report, and
  - to assess the impact on business and the housing market.

## Annex A

<b>Costs of proposed new system</b>	<b>£ (rounded)</b>
Extra costs to estate agents	£60m per annum
Extra costs to existing surveyors (2,500 x £250)	£1m
One -off initial training costs for new home inspectors (assumes 6,000 needed, cost will depend on experience of new entrants)	£14m to £28m
Costs of running certification scheme (@£175 annual fee)	£1.5m per annum
Extra local authority enforcement costs	£1.5m per annum
Home condition report (1.65m @ £280)	£462m per annum
Ongoing training costs for home inspectors (6,000 @ £450)	£2.5 m
<b>Total</b>	<b>£542.5m to £556.5 in year 1</b>
<b>Other costs (to be quantified in final draft) include:</b>	
<ul style="list-style-type: none"> <li>• One-off set up costs for a new independent certification body</li> <li>• Indemnity insurance for new home inspectors</li> </ul>	
<b>Current costs (potential savings)</b>	
2% of 2 million transactions with a full survey (@ £500 each)	£20m
28% of 2 million transactions with a mid range survey (@ £370 each)	£207m
60% of 2 million transactions with a valuation inspection (@ £180 each)	£216m
Estate agents' abortive costs associated with failed transactions resulting from survey information	£96m
Conveyancing fees associated with failed transactions resulting from survey information @ £300 per transaction	£72m
<b>Total</b>	<b>£611m</b>
<b>Benefits (Assumed savings compared to current practice)</b>	
Assumed reduction in number of full building surveys (Reduction from 2% to 1% of transactions)	£10m
Assumed reduction in surveys (if 3% to 5% of 1.8m transactions require a survey after the introduction of the home condition report) (£207m – 1.8 x 0.5 x £370 to £207 m – 1.8 x 0.03 x £370)	£174m to £200
Assumed reduction in cost of valuation inspection reports (If 270,000 of 1.8m requiring valuation @ £80 = £22m)	£196m
Abortive estate agent costs (@ £400 per failure)	£94m
Abortive conveyancing fees (@ £300 per transaction failure)	£72m
<b>Other unquantified benefits</b>	
<ul style="list-style-type: none"> <li>• Savings from a quicker less stressful process</li> <li>• Savings from a greater awareness of energy efficiency matters (fuel economies etc)</li> </ul>	
<b>Total potential savings</b>	<b>£546m to £572M</b>

## **ASSUMPTIONS**

Assumes 2.0 m transactions per annum currently

Assumes 1.8m transactions per annum after the new measures are introduced and that 150,000 will be brand new homes that will not require a home condition report

Assumes a current failure rate of 28% of which 43% are due to a survey or valuation inspection finding. And that failures attributed to this reason will no longer occur after the new measures are introduced.

Assumes that 50% of surveys are used in cases where a mortgage is needed. So, that of the 30% of transactions that currently involve a survey, 15% are related to homes that require a mortgage.

Assumes that 75% of transactions involve a mortgage and that the 15% obtaining an independent survey and buying with a mortgage do not need a lenders valuation survey as well. The remaining 60% involve a mortgage valuation inspection.

Assumes that £400 is the average cost to estate agents of a failed transaction.

Assumes that £300 is an average cost (for both parties) of abortive legal fees associated with failed transactions.

Assumes that after the new measures are introduced only loans of more than 80 per cent of the purchase price require a valuation in addition to the home inspection report, resulting in around 270,000 valuation inspections per annum.

# Other Provisions about housing

## Right to Buy Provisions

### PURPOSE

#### Objective

1. To update the Right to Buy (RTB) scheme to discourage profiteering by tenants and by companies and, by mitigating the impact of sales on the longer-term availability of affordable housing, help social landlords (local authorities and some housing associations) to meet their housing responsibilities.

#### Background

2. The statutory basis for the RTB scheme is Part V of the Housing Act 1985. Local authority secure tenants (and tenants of housing associations who have been transferred with their homes from local authorities) who have been public sector tenants for at least two years may buy their rented homes (houses, maisonettes or flats) at a discount. If they resell within three years, some or all of the discount is repayable on demand by the landlord.
3. The RTB has brought significant benefits. It has helped more than 1.5 million tenants to realise their aspiration to own their home, and to create sustainable, diverse communities. But housing market conditions have changed significantly since it was introduced in 1980. The stock of council homes has been reduced to 2.7 million and annual RTB sales exceed 50,000. Rising property prices are encouraging early resales – evidence suggests that these may be equivalent to as much as 20% of annual sales (ie, 10,000 resales per year). Because ex-RTB homes are often popular, such resales are putting upward pressure on prices in some areas, affecting the availability of affordable housing and penalising those in housing need.
4. Also, recent research by Heriot-Watt University has shown that, in London, some companies (the ‘incentive’ companies referred to below) are encouraging buyers to agree to resell to them after three years (‘deferred resale’), thereby avoiding having to repay discount. The companies may let the properties on tenants’ behalf during the three-year period, and on their own behalf thereafter. These lettings are at market rents (on some properties, up to £1,000 per month in Inner London) whereas the social rents for the same properties were £260-£300 per month. This impacts on the availability of affordable housing and penalises those in housing need.
5. As part of its Action Programme *Sustainable communities: building for the future*, published on 5 February 2003, the Government has decided to modernise the Right to Buy. As a first step, on 6 March 2003 it laid before Parliament a Statutory Instrument made under Section 131 (2) and (3) of the Housing Act 1985 lowering to £16,000 the maximum discount available to tenants in 41 local authority areas in England where there is pressure on the housing market (as evidenced by high prices and a high level of homelessness).



6. The Government has also decided to change the rules on qualification and repayment of discount on early resale. Its proposals, *which are the subject of this Regulatory Impact Assessment*, are in Part 6 of the draft Housing Bill (clauses 153-156). These changes will apply across England and Wales, and have been agreed in principle with the National Assembly for Wales.

### **Risk assessment**

7. The risk of not changing the RTB rules is that shortages of affordable housing are exacerbated and that many people remain in sub-optimal accommodation. Under the present system the RTB is open to profiteering whenever and wherever there is a sustained rise in property prices. Properties become investments rather than homes, and the returns from buoyant housing markets are channelled to those who own a property (including those who bought under the RTB – ie, at subsidised prices), while making it difficult for other people, including key workers, to afford a decent home.
8. The Heriot-Watt University research, published on 6 March 2003, confirms that the RTB rules are being exploited in inner London. Of the 40,600 council homes sold in London between 1998 and 2001, more than 2,000 (five per cent) in Inner London were acquired by companies making deals with tenants. Earlier research suggests that, on resale, ex-RTB homes command prices that are not affordable by average-income families.

### **OPTIONS**

9. There are three main options:
  - a. do nothing
  - b. make the changes contained in the draft Housing Bill; ie:
    - i. extend the RTB qualifying period from two years to five years, while ensuring that tenants still qualify for as much discount after five years as they do now
    - ii. extend the period within which discount must be repaid from three years to five years, while:
      - making it clear that landlords have discretion to waive repayment
      - changing the taper from 100%/66%/33% to 100%/80%/60%/40%/20%
    - iii. change repayment from being based on the amount that the tenant received to a percentage of the resale value of the property, less the value of any improvements made by the owner since exercising their RTB
  - c. make different changes, either as well as those at (b) above or on their own.

### **Do nothing**

10. It could be argued that no further changes are needed. Much of the most desirable stock has already been sold. Capped lower discounts, coupled with rising prices, make council homes in parts of the country hard to afford (for example, buyers in London and the South East who qualify for the maximum £38,000 discount still often need to borrow a further £100,000 or more). It is estimated that the reduction of the maximum discount to £16,000

in 41 local authority areas at the end of March (mentioned above; the areas are listed in the Annex to this Assessment) will result in around 9,000 fewer sales in those areas.

11. But RTB sales in 2000/01 and 2001/02 were more than 50,000 per year, a higher annual rate than at any time since the early 1990s. Owners are reselling earlier than in the past, and the Heriot-Watt University research has found evidence of significant acquisitions of ex-RTB properties by companies in Inner London. By not changing the rules, the current opportunities for exploitation would still be available to those not deterred or affected by the new lower maximum discounts, leading to avoidable pressures on affordable housing.

#### **Make the changes proposed in the draft Housing Bill**

12. The proposed changes are designed to discourage early resales while not making it more difficult for tenants to exercise the RTB, striking a reasonable balance between meeting those objectives and ensuring fair treatment for tenants.
13. Lengthening the qualification period to five years (as it was between 1980 and 1984) would increase the incentive to commit to an area rather than to treat a property merely as an investment, in line with the Government's policy of encouraging sustainable communities. Lengthening the discount repayment period to five years (as it was between 1980 and 1986) would reduce the financial incentive to resell quickly, and the financial attractiveness to companies of 'deferred resale' deals.
14. Changing to discount repayment on a percentage basis would recoup for the public purse a reasonable proportion of the profit attributable to price rises, while allowing for owner improvements would avoid discouraging such improvements. The difference from the present requirement would be as follows. If the tenant receives discount of £30,000, the RTB sale value of the property is £100,000, and is resold within a year for £120,000 (ie, the value has risen by £20,000):

- **under present rules:** the owner paid £70,000 and receives £90,000 on resale – ie, £120,000 minus £30,000
- **under proposed rules:**
  - (a) the owner paid £70,000 and receives £84,000 on resale – ie, £120,000 minus (30% of £120,000 = £36,000)
  - (b) if £5,000 of the appreciation is attributable to post-sale improvements by the owner, they receive £85,500 – ie, £120,000 minus (30% of £115,000 = £34,500)

#### **Make more changes or make other changes**

15. There are two problems other than those identified in paragraphs 3 and 4 above:
  - a. buying to let at market rents
  - b. regeneration schemes involving demolition and new-build can be damaged financially by tenants buying under the RTB at a discount and then being entitled to full market value plus home loss compensation when the property has to be purchased compulsorily.

16. Ways of addressing these issues are under consideration. But they present problems of definition and of timing and raise Human Rights Act issues (because the RTB is deemed to be a 'possession' for HRA purposes and may not be taken away arbitrarily). Also:
- the Law Commission is expected to recommend soon that a single form of social tenancy should be introduced. This would mean ending the 'secure' and 'assured' forms of tenancy on which local authority tenants' RTB and housing association tenants' Right to Acquire (RTA) are based in statute
  - the new Home Ownership Task Force is to examine all programmes designed to help people into home ownership, including the RTB.
17. It would be premature to introduce far-reaching changes before the outcome of these exercises is known. However, the changes proposed in the Bill address problems of concern to landlords without changing the nature of the RTB significantly.

## **COSTS AND BENEFITS**

### **Business sectors affected**

18. The proposals would reduce the returns available to RTB incentive companies – ie, those seeking to acquire properties by means of 'deferred resale' deals. This would be a positive outcome, as such companies are subverting the aim of the scheme – to help tenants buy their homes – for profit, and in doing so put pressure on the availability of affordable housing. Research has confirmed that such firms are operating in London; most of them have been set up recently, the earliest in 1998. The nature of such activities precludes an accurate assessment of the number of companies involved, but it is estimated that such companies have acquired around 2,000 properties in London.
19. RTB services companies that simply assist tenants to buy their homes may also be affected if fewer tenants apply for the RTB. Amongst other things, they provide advice, help with filling out forms, negotiate with landlords over issues such as valuation, obtain the services of solicitors, and provide mortgage finance. There could also be a knock-on effect on solicitors and small mortgage lenders/ brokers who work with such companies.
20. The Small Business Service has been consulted about the possible impact that the proposals will have on small businesses. It agrees that these proposals will have an insignificant impact on those firms that are operating within the spirit of the RTB regulations. The proposals are designed to impact on those firms whose practises are either contrary to the spirit of the RTB or potentially exploiting tenants under the guise of helping them.

### **Benefits**

21. The policy goal is to reduce the impact of the RTB on the availability of affordable housing by restricting the returns on early resales and on 'deferred resale' deals. Doing nothing would allow the present problems to continue. The proposed changes strike a balance between proportionate action and unreasonable curtailment of the RTB. They emphasise that RTB is something to be earned and make early resale and 'deferred resale' deals less attractive.

### **Costs**

22. It is not easy to quantify the financial impact of these measures on companies that offer services or seek to acquire properties themselves, given that the evidence base assembled by the Heriot-Watt University research was of necessity not comprehensive. There may be less demand for the services of the former, but it is unlikely that any of the latter rely solely on this business. We will endeavour, through the course of consultation on the draft Bill, to obtain advice from RTB ‘service’ companies on the scale of expected impact on that sector, to inform a fuller RIA to accompany the Bill on introduction.

### **EQUITY AND FAIRNESS**

23. The measures proposed (a) will impact adversely on RTB incentive companies, and (b) may do so on RTB services companies. Of these, (a) is a positive effect and a major reason for making the changes. They will also affect tenants, but only to the extent of encouraging different behaviours.

### **COMPETITION ASSESSMENT**

24. The proposed changes will not affect any one firm substantially more than another within any of the affected markets or sectors. They may encourage some companies to move out of the RTB services sector as a result of a decrease in RTB sales, but are unlikely to force any out of business. Companies that offer RTB incentives as their sole or primary activity may exit the market, but this is unlikely to affect the structure of competition in any remaining markets.

### **ENFORCEMENT AND SANCTIONS**

25. It will be a matter for the landlords – local authorities and housing associations – to ensure that the changes are adhered to.