

SCHEDULE

Transfer of Functions from the HCA to the Regulator of Social Housing

PART 1

Establishment of the Regulator of Social Housing

1. The Housing and Regeneration Act 2008 is amended as follows.
2. In section 2(1) (the HCA: objects), omit subsection (1A).
3. In section 4(6)(2) (powers of the HCA: general), omit paragraph (aa) (but not the final “and”).
4. In section 19 (financial assistance), after subsection (1), insert—
 - “(1A) But the HCA must not give financial assistance in contravention of a direction given by the Regulator of Social Housing under section 100G.”.
5. In section 31(3) (duties in relation to social housing)—
 - (a) after subsection (8), insert—
 - “(8A) Subsection (8B) applies if the HCA is proposing to give financial assistance on condition that the recipient provides low cost home ownership accommodation.
 - (8B) The HCA must consult the Regulator of Social Housing about the proposals.”,
 - (b) after subsection (11), insert—
 - “(11A) For the purposes of this section, a person provides low cost home ownership accommodation if (and only if) the person acquires, constructs or converts any housing or other land for use as low cost home ownership accommodation or ensures such acquisition, construction or conversion by another.”, and
 - (c) in subsection (12), after “In this section—”, insert—
 - ““low cost home ownership accommodation” has the meaning given by section 70, and”.
6. In section 32(4) (recovery etc of social housing assistance) after subsection (10), insert—
 - “(10A) The HCA must notify the Regulator of Social Housing at least 14 days before exercising, in relation to a registered provider of social housing, any of the powers conferred by subsections (2) to (4).”
7. In section 34(5) (determinations under sections 32 and 33)—
 - (a) omit subsection (2), and
 - (b) before subsection (3), insert—
 - “(2A) Before making such a determination, the HCA must consult—
 - (a) the Regulator of Social Housing, and
 - (b) such other persons as it considers appropriate.”.

(1) Subsection (1A) was inserted by paragraphs 1 and 2 of Schedule 16 to the Localism Act 2011. Section 2 was further amended by section 189 of the Localism Act 2011.

(2) Subsection (6), paragraph (aa), was inserted by paragraph 47 of Schedule 19 to the Localism Act 2011, and section 4 was further amended by paragraph 3 of Schedule 16 to that Act.

(3) Section 31 was amended by paragraph 26 of Schedule 2 to [S.I. 2010/844](#), and various repeals were made by Schedule 16 to the Localism Act 2011.

(4) Subsection (11) was repealed by paragraph 5 of Schedule 16 to the Localism Act 2011.

(5) Subsection (2) was amended by paragraph 6 of Schedule 16 to the Localism Act 2011.

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8. After section 36 insert—

“Co-operation with the Regulator of Social Housing

36A.—(1) The HCA must co-operate with the Regulator of Social Housing.

(2) In particular, the HCA must consult the Regulator of Social Housing on matters likely to interest the Regulator.

(3) The HCA may provide services and other assistance in connection with the operation of the Regulator of Social Housing.

(4) The services or assistance which may be provided pursuant to subsection (3) include, but are not limited to—

- (a) the provision of accommodation or other facilities;
- (b) technical resources; and
- (c) the provision of staff.”.

9. In section 42(6) (agency arrangements with UDCs)—

- (a) in subsection (2)(a), omit “or the functions to which subsection (2A) applies”, and
- (b) omit subsection (2A).

10. In section 46(7) (guidance by the Secretary of State), omit subsection (8).

11. In section 47(8) (directions by the Secretary of State), omit subsection (7).

12. In the Table in section 58(9) (Part 1: index of defined expressions) omit the entry for “Regulator of Social Housing”.

13. In section 60(4)(10) (structural overview of Part 2), in the entry in relation to Chapter 2 in the Table—

- (a) in the second column, for “92A” substitute “92L”, and
- (b) in the final column, omit “and the Regulation Committee”.

14. After the heading for Chapter 2 of Part 2 insert—

“The Regulator

Establishment

80A.—(1) The Regulator of Social Housing is established as a body corporate.

(2) The Regulator of Social Housing is referred to in this Part as “the regulator”.

(3) The regulator (and any member of the regulator)—

- (a) is not the servant or agent of the Crown, and
- (b) does not share any immunity or privilege of the Crown.

(4) No property of the regulator is to be regarded as property of, or held on behalf of, the Crown.

(6) Subsection (2) was amended by, and subsection (2A) inserted by, paragraph 8 of Schedule 16 to the Localism Act 2011.

(7) Subsection (8) was inserted by paragraph 9 of Schedule 16 to the Localism Act 2011.

(8) Subsection (7) was inserted by paragraph 10 of Schedule 16 to the Localism Act 2011.

(9) The table in section 58 was amended by paragraph 11 of Schedule 16 to the Localism Act 2011.

(10) The table in section 60(4) was amended by paragraph 12 of Schedule 16 to the Localism Act 2011, and also by paragraph 1 of Schedule 1 to [S.I. 2010/844](#).

Membership

- 80B.**—(1) The regulator is to consist of—
- (a) a person appointed by the Secretary of State as chair (“the chair”),
 - (b) at least 6 and no more than 10 other members, appointed by the Secretary of State, and
 - (c) the chief executive appointed under section 80D(1).
- (2) The Secretary of State must consult the chair before appointing a member under subsection (1)(b).
- (3) In appointing a person to be an appointed member the Secretary of State must—
- (a) have regard to the desirability of appointing a person who has experience of, and has shown some capacity in, matters relevant to the exercise of the functions of the regulator, and
 - (b) be satisfied that the person has no financial or other interest likely to affect prejudicially the exercise of the person’s functions as a member.
- (4) The Secretary of State may require any person who the Secretary of State proposes to appoint as an appointed member to provide any information the Secretary of State considers necessary for the purposes of subsection (3)(b).
- (5) In this Part “appointed member” means—
- (a) the chair, or
 - (b) a member appointed under subsection (1)(b).

Terms of appointment of members

- 80C.**—(1) An appointed member holds and vacates office in accordance with the appointed member’s terms of appointment (subject to this section).
- (2) An appointed member may resign by notice to the Secretary of State.
- (3) The Secretary of State may dismiss an appointed member who—
- (a) has been absent from meetings of the regulator for a period of more than 6 months without its permission,
 - (b) has become bankrupt or has made an arrangement with the member’s creditors,
 - (c) the Secretary of State thinks has failed to comply with the member’s terms of appointment,
 - (d) the Secretary of State thinks has failed to comply with the member’s obligations under section 92P (members’ interests),
 - (e) the Secretary of State thinks is otherwise unable, unfit or unsuitable to perform the functions of the member.

Staff

- 80D.**—(1) The chair and other appointed members of the regulator must appoint a chief executive.
- (2) But a person may be appointed as chief executive under subsection (1) only if approved by the Secretary of State.
- (3) The regulator may appoint other staff.
- (4) The regulator may pay to its staff such remuneration and allowances as it may decide.

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(5) The regulator may—

- (a) pay such pensions, allowances or gratuities to or in respect of any, or any former, member of staff, or
- (b) pay such sums towards the provision for the payment of pensions, allowances or gratuities to or in respect of any, or any former, member of staff,

as it may decide.”.

15. Omit the heading above section 92A and sections 92A to 92J (regulation functions of the HCA and provisions about its Regulation Committee).

16. After section 92K insert—

“Procedure etc.

Committees

92L.—(1) The regulator may establish committees and sub-committees.

(2) A committee or sub-committee may include non-members (provided that it includes at least one member).

(3) The regulator may, with the consent of the Secretary of State, pay such remuneration and allowances as it thinks fit to any person who—

- (a) is a member of a committee or sub-committee, but
- (b) is not a member of the regulator.

Procedure

92M.—(1) Subject to the provisions of this Part, the regulator may determine its own procedure and the procedure of any committee or sub-committee.

(2) The regulator must make such arrangements as it thinks appropriate for publishing its procedure.

(3) The validity of any proceedings is not affected by—

- (a) any vacancy of the chair, chief executive or any other member,
- (b) any defect in the appointment of the chair, chief executive or any other member, or
- (c) any contravention of section 92P (members’ interests).

(4) In this section “procedure” includes quorum.

Conflict of interest

92N.—(1) The regulator’s procedure under section 92M must include arrangements for dealing with any conflict of interest of—

- (a) members,
- (b) members of staff, or
- (c) members of committees or sub-committees.

(2) The procedure must oblige a person—

- (a) to declare any financial or other personal interest relevant to the exercise of a function of the regulator, and

- (b) to withdraw from the performance of that function unless the regulator directs otherwise, being satisfied that the interest will not influence performance of the function.

Delegation

92O.—(1) The regulator may delegate any of its functions to—

- (a) a committee,
- (b) a sub-committee,
- (c) a member, or
- (d) a member of staff.

(2) A committee may further delegate to a sub-committee, a member of the regulator, or a member of staff.

Members' interests

92P.—(1) A member of the regulator who is directly or indirectly interested in any matter arising at a meeting of the regulator must disclose the nature of that interest to the meeting.

(2) A member of a committee or sub-committee of the regulator who is directly or indirectly interested in any matter arising at a meeting of the committee or sub-committee must disclose the nature of that interest to the meeting.

(3) Where a member has disclosed an interest within subsection (1) or (2)—

- (a) that member must not take part in any deliberation or decision about the matter if it is a contract or agreement of any description, but
- (b) may otherwise take part in any deliberation or decision about the matter unless at least one-third of the other members at the meeting decide that the interests disclosed might prejudicially affect the member's consideration of the matter.

(4) The regulator must prepare and keep up to date a register of members' interests of the interests disclosed under subsection (1) or (2).

(5) The register required by subsection (4) must include the interests of—

- (a) the members of the regulator, and
- (b) all members of committees or sub-committees whether or not falling within paragraph (a).

Seal

92Q.—(1) The application of the regulator's seal must be authenticated by a member of the regulator or by some other person authorised (generally or specially) by the regulator for that purpose.

(2) A document purporting to be duly executed under the seal—

- (a) is to be received in evidence, and
- (b) is to be treated as so executed unless the contrary is shown.”.

17. In section 94(**11**) (studies), omit subsection (3).

18. Before section 100(**12**) insert—

(11) Section 94(3) was inserted by [S.I. 2010/844](#).

(12) Section 100 was amended by paragraph 29 of Schedule 16 to the Localism Act 2011.

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“Remuneration

99A.—(1) The regulator may pay to or in respect of appointed members—

- (a) remuneration, and
- (b) travelling and other allowances.

(2) The Secretary of State must determine rates and eligibility criteria for payments under subsection (1).

(3) If the Secretary of State considers that there are special circumstances that justify the payment of compensation to a person on ceasing to be an appointed member, the regulator may pay such compensation as is determined by the Secretary of State.”.

19. In section 100 (charging), omit subsection (2).

20. After section 100 insert—

“Assistance by Secretary of State

100A.—(1) The Secretary of State may make payments to the regulator by way of grant or loan.

(2) A grant or loan may be subject to conditions (which may include provision for repayment, with or without interest).

Borrowing

100B.—(1) The regulator may borrow—

- (a) by way of overdraft or otherwise, for the purpose of what it considers to be short-term management of its finances, or
- (b) from the Secretary of State.

(2) The regulator may not borrow otherwise.

Accounts

100C.—(1) The regulator must keep proper accounts (and proper records of its accounts).

(2) As soon as is reasonably practicable after the end of each financial year the regulator must prepare a statement of accounts in respect of that financial year.

(3) The statement must be in such form as the Secretary of State may direct.

(4) The regulator must, within such period as the Secretary of State may direct, send a copy of the statement to—

- (a) the Secretary of State, and
- (b) the Comptroller and Auditor General.

(5) The Comptroller and Auditor General must—

- (a) examine, certify and report on the statement, and
- (b) send a copy of the certified statement and the report to the Secretary of State as soon as possible.

(6) The Secretary of State must lay before Parliament a copy of each statement and report received under subsection (5).

Regulator's annual report

100D.—(1) The regulator must, as soon as is reasonably practicable after the end of each financial year, prepare an annual report in relation to how it has exercised its functions during that financial year.

(2) The regulator must, within such period as the Secretary of State may direct, send a copy of the annual report to the Secretary of State.

(3) The Secretary of State must lay a copy of each annual report before Parliament.

Financial year

100E.—(1) The regulator's financial year is each period of 12 months beginning with 1st April.

(2) But the first financial year is the period—

(a) beginning with the day on which section 80A comes into force, and

(b) ending with the next 31st March.

Relationship with the HCA

Cooperation with the HCA

100F.—(1) The regulator must, in the exercise of its functions, cooperate with the HCA.

(2) The regulator must, in particular, consult the HCA on matters related to the HCA's social housing functions.

Direction to the HCA

100G.—(1) The regulator may direct the HCA not to give financial assistance to a specified registered provider—

(a) under section 19, and

(b) in connection with social housing.

(2) A direction may be given if—

(a) the regulator has decided to hold an inquiry into the affairs of the registered provider under section 206 (and the inquiry is not concluded),

(b) the regulator has received notice in respect of the registered provider under section 145(13), or

(c) the regulator has appointed an officer of the registered provider under section 269(14) (and the person appointed has not vacated office).

(3) A direction may prohibit the HCA from giving assistance of a specified kind (whether or not in pursuance of a decision already taken and communicated to the registered provider).

(4) A direction may not prohibit grants to a registered provider in respect of discounts given by the provider on disposals of dwellings to tenants.

(5) A direction has effect until withdrawn.”.

(13) Section 145 was amended by paragraph 38 of Schedule 16 to the Localism Act 2011 and paragraph 29 of Schedule 1 to S.I. 2010/844. Section 145 is substituted by paragraph 3 of Schedule 6 to the Housing and Planning Act 2016 (c. 22), which has not yet been commenced.

(14) Section 269 is amended by paragraphs 36 and 37 of Part 4 of Schedule 4 to the Housing and Planning Act 2016, which has not yet been commenced.

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- 21.** In section 112(4)(15) (duty to consult before setting criteria for voluntary registration), before paragraph (aa) insert—
- “(za) the HCA.”.
- 22.** In section 117(16) (the regulator: fees)—
- (a) in subsection (9) for “HCA’s” substitute “regulator’s”,
- (b) omit subsection (10).
- 23.** In section 146(17) (duration of moratorium), after subsection (7), insert—
- “(7A) The regulator shall also notify the HCA as follows—
- (a) if it extends a moratorium, and
- (b) when a moratorium ends.”.
- 24.** In section 147(18) (further moratorium) in subsection (4), before paragraph (a) insert—
- “(za) the HCA.”.
- 25.** In section 196(19) (consultation on standards and codes of practice) after subsection (1), insert—
- “(1A) Before setting standards, or issuing, revising or withdrawing a code of practice, the regulator must also consult the HCA.”.
- 26.** In section 197(20) (direction by Secretary of State), in subsection (4), before paragraph (a), insert—
- “(za) the HCA.”.
- 27.** In section 202(21) (inspections: supplemental)—
- (a) in subsection (6) after paragraph (b), insert—
- “(ba) the HCA.”,
- (b) omit subsection (8).
- 28.** In section 216(22) (consultation on use of intervention powers), at the end, insert—
- “(f) the HCA.”.
- 29.** In section 222(23) (notifying HCA etc), before paragraph (aa), insert—
- “(za) to the HCA.”.

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- (15) Section 112 was amended by section 26 of the Local Democracy, Economic Development and Construction Act 2009 (c. 20), section 195(1) of the Localism Act 2011 and paragraph 11 of Schedule 1 to [S.I. 2010/844](#).
- (16) Section 117 was amended by paragraph 37 of Schedule 16 to the Localism Act 2011 and paragraph 16 of Schedule 1 to [S.I. 2010/844](#).
- (17) Section 146 was amended by paragraph 39 of Schedule 16 and paragraph 50 of Schedule 19 to the Localism Act. It is also prospectively amended by the Housing and Planning Act 2016.
- (18) Section 147 was amended by paragraph 40 of Schedule 16 and paragraph 51 of Schedule 19 to the Localism Act 2011, and paragraph 30 of Schedule 1 to [S.I. 2010/844](#). It is also prospectively amended by the Housing and Planning Act 2016.
- (19) Section 196 was amended by section 26 of the Local Democracy, Economic Development and Construction Act 2009, paragraph 42 of Schedule 16 and paragraph 55 of Schedule 19 to the Localism Act 2011, and paragraphs 89 and 92 of Schedule 12 to the Local Audit and Accountability Act 2014 (c. 2).
- (20) Section 197 was amended by section 26 of the Local Democracy, Economic Development and Construction Act 2009, paragraph 43 of Schedule 16 and paragraph 56 of Schedule 19 to the Localism Act 2011 and paragraphs 89 and 93 of Schedule 12 to the Local Audit and Accountability Act 2014. Other amendments have been made which are not relevant.
- (21) Section 202 was amended by paragraph 14 of Schedule 16 and paragraph 11 of Schedule 17 to the Localism Act 2011.
- (22) Section 216 was amended by section 26 of the Local Democracy, Economic Development and Construction Act 2009, paragraph 45 of Schedule 16, paragraph 16 of Schedule 17 and paragraph 57 of Schedule 19 to the Localism Act 2011.
- (23) Section 222 was amended by paragraph 46 of Schedule 16 and paragraph 58 of Schedule 19 to the Localism Act 2011 and paragraph 57 of Schedule 1 to [S.I. 2010/844](#).

30. In section 230(24) (penalty notices: warning), in subsection (2), before paragraph (aa), insert—

“(za) the HCA.”

31. After section 231(25) insert—

“Notifying the HCA

231A. If the regulator imposes a penalty on a registered provider it must send a copy of the penalty notice to the HCA.”

32. In section 242(26) (compensation notices: warning), in subsection (3), before paragraph (aa) insert—

“(za) the HCA.”

33. In section 248(27) (management tender: supplemental)—

(a) in subsection (4) before paragraph (aa) insert—

“(za) the HCA,”

(b) in subsection (7) after paragraph (b) insert—

“(ba) the HCA,”

(c) in subsection (8) before paragraph (aa) insert—

“(za) the HCA.”

34. In section 250(28) (management transfer: supplemental)—

(a) in subsection (4), before paragraph (aa) insert—

“(za) the HCA,”

(b) in subsection (7), after paragraph (b) insert—

“(ba) the HCA,”

(c) in subsection (8), before paragraph (aa) insert—

“(za) the HCA.”

35. In section 252(29) (appointment of manager: supplemental)—

(a) in subsection (4) before paragraph (aa) insert—

“(za) the HCA,”

(b) after subsection (6) insert—

“(6A) The regulator must notify the HCA of an appointment or requirement under section 251(2).”

36. In the Table in section 276(30) (index of defined terms)—

(24) Section 230 was amended by paragraph 47 of Schedule 16 and paragraph 59 of Schedule 19 to the Localism Act 2011.

(25) Section 232A was inserted by paragraph 60 of Schedule 19 to the Localism Act 2011.

(26) Section 242 was amended by paragraph 49 of Schedule 16 and paragraph 61 of Schedule 19 to the Localism Act 2011 and paragraph 62 of Schedule 1 to [S.I. 2010/844](#).

(27) Section 248 was amended by paragraphs 50 and 51 of Schedule 16 and paragraph 62 to Schedule 19 to the Localism Act 2011 and paragraph 65 of Schedule 1 to [S.I. 2010/844](#).

(28) Section 250 was amended by paragraph 51 of Schedule 16 and paragraph 63 to Schedule 19 to the Localism Act 2011 and paragraph 66 of Schedule 1 to [S.I. 2010/844](#).

(29) Section 252 was amended by paragraph 52 of Schedule 16 and paragraph 64 of Schedule 19 to the Localism Act 2011 and paragraph 69 of Schedule 1 to [S.I. 2010/844](#).

(30) The Table was amended by paragraph 53 of Schedule 16 to the Localism Act 2011. There are other amendments which are not relevant.

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- (a) before the entry for “Associate” insert “Appointed member” and “Section 80B”,
 - (b) in the entry for “The chair” for “92C” substitute “80B”,
 - (c) before the entry for “Fundamental objectives” insert “Financial Year” and “Section 100E”,
 - (d) in the entry for “The regulator” for “92A” substitute “80A”,
 - (e) in the entry for “The Regulator of Social Housing” for “92A” substitute “80A”,
 - (f) omit the entries for “External member” and “The internal member”.
- 37.** In Schedule 1(**31**) (the Homes and Communities Agency)—
- (a) in paragraph 1, omit sub-paragraph (5).
 - (b) omit paragraph 18.

(31) Schedule 1 was amended by paragraph 54 of Schedule 16 to the Localism Act 2011. There are other amendments which are not relevant.