

Status: Point in time view as at 20/05/2009.

Changes to legislation: Housing Act 1996, SCHEDULE 2 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 51.

SOCIAL RENTED SECTOR: HOUSING COMPLAINTS

Social landlords required to be member of approved scheme

- 1
- (1) A social landlord must be a member of an approved scheme covering, or more than one approved scheme which together cover, all his housing activities.
 - (2) If a social landlord fails to comply with the duty imposed by this paragraph, the Secretary of State may apply to the High Court for an order directing him to comply within a specified period and the High Court may, if it thinks fit, make such an order.
 - (3) Nothing in this Schedule shall be construed as restricting membership of an approved scheme to social landlords.

Commencement Information

- II** Sch. 2 para. 1 wholly in force at 1.4.1997 see s. 232(1)-3) and [S.I. 1997/618](#), [art. 2](#) (subject to the limitation in (2) of that art.)

Matters for which scheme must provide

- 2
- (1) A scheme shall not be approved for the purposes of this Schedule unless it makes provision for—
 - (1) The establishment or appointment of an independent person to administer the scheme.
 - (2) The criteria for membership for—
 - (a) social landlords under a duty to be members of an approved scheme, and
 - (b) other persons.
 - (3) The manner of becoming or ceasing to be a member.
 - (4) The matters about which complaints may be made under the scheme.
 - (5) The grounds on which a matter may be excluded from investigation, including that the matter is the subject of court proceedings or was the subject of court proceedings where judgment on the merits was given.
 - (6) The descriptions of individual who may make a complaint under the scheme.
 - (7) The appointment of an independent individual to be the housing ombudsman under the scheme.
 - (8) The appointment of staff to administer the scheme and to assist the housing ombudsman and the terms upon which they are appointed.

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- (9) A duty of the housing ombudsman to investigate any complaint duly made and not withdrawn, and a power to investigate any complaint duly made but withdrawn, and where he investigates to make a determination.
- (10) A power of the housing ombudsman to propose alternative methods of resolving a dispute.
- (11) The powers of the housing ombudsman for the purposes of his investigations, and the procedure to be followed in the conduct of investigations.
- (12) The powers of the housing ombudsman on making a determination.
- (13) The making and publication of annual reports by the housing ombudsman on the discharge of his functions.
- (14) The manner in which determinations are to be—
 - (a) communicated to the complainant and the person against whom the complaint was made, and
 - (b) published.
- (15) The manner in which the expenses of the scheme are to be defrayed by the members.
- (16) The keeping and auditing of accounts and the submission of accounts to the Secretary of State.
- (17) The making of annual reports on the administration of the scheme.
- (18) The manner of amending the scheme.
 - (2) The Secretary of State may by order amend sub-paragraph (1) by adding to or deleting from it any item or by varying any item for the time being contained in it.
 - (3) An order under sub-paragraph (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement Information

- I2** Sch. 2 para. 2 wholly in force at 1.8.1996 see s. 232(1)-(3) and [S.I. 1996/2048](#), **art. 2** (subject to the limitation in (2) of that art.)

Approval of scheme, or amendment, and withdrawal of approval

- 3 (1) An application to the Secretary of State for approval of a scheme shall be made in such manner as the Secretary of State may determine, and shall be accompanied by such information as the Secretary of State may require.
- (2) If it appears to the Secretary of State that the scheme—
 - (a) provides for the matters specified in paragraph 2, and
 - (b) is a satisfactory scheme for the purposes of this Schedule,
 he shall approve the scheme.
- (3) An amendment of an approved scheme is not effective unless approved by the Secretary of State.

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Sub-paragraph (1) applies in relation to an application for approval of an amendment as it applies to an application for approval of a scheme; and the Secretary of State shall approve the amendment if it appears to him that the scheme as amended meets the conditions in sub-paragraph (2).

- (4) The Secretary of State may withdraw his approval of a scheme.
- (5) If the Secretary of State proposes to withdraw his approval of a scheme, he shall serve on the person administering the scheme and on the housing ombudsman under the scheme, a notice stating—
 - (a) that he proposes to withdraw his approval,
 - (b) the grounds for the proposed withdrawal of his approval, and
 - (c) that the person receiving the notice may make representations with respect to the proposed withdrawal of approval within such period of not less than 14 days as is specified in the notice;and he shall, before reaching a decision on whether to withdraw approval, consider any representations duly made to him.
- (6) The Secretary of State shall give notice of his decision on a proposal to withdraw approval of a scheme, together with his reasons, to every person on whom he served a notice under sub-paragraph (5).
- (7) Withdrawal of approval by the Secretary of State has effect from such date as is specified in the notice of his decision.
- (8) Where the person administering a scheme is given notice of a decision to withdraw approval of the scheme, he shall give notice of the decision to every member of the scheme.

Commencement Information

- I3** Sch. 2 para. 3 wholly in force at 1.8.1996 see s. 232(1)-(3) and [S.I. 1996/2048, art. 2](#) (subject to the limitation in (2) of that art.)

Notice to be given of becoming a member of an approved scheme

- 4 (1) A social landlord who—
 - (a) becomes a member of an approved scheme, or
 - (b) is a member of a scheme which becomes an approved scheme,shall, within the period of 21 days beginning with the date of becoming a member or, as the case may be, of being informed of the Secretary of State's approval of the scheme, give notice of that fact to the [F1Relevant Authority].
- (2) The [F1Relevant Authority], on receiving the notice, shall record his membership of an approved scheme.
- (3) A person who fails to comply with sub-paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- Proceedings for such an offence may be brought only by or with the consent of the [F1Relevant Authority] or the Director of Public Prosecutions.

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Textual Amendments

F1 Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

Commencement Information

I4 Sch. 2 para. 4 wholly in force at 1.8.1996 see s. 232(1)-(3) and S.I. 1996/2048, **art. 2** (subject to the limitation in (2) of that art.)

Withdrawal from approved scheme

- 5 (1) A social landlord wishing to withdraw from membership of an approved scheme shall send notice of his proposed withdrawal to the [^{F2}Relevant Authority].
- (2) The notice shall specify—
- (a) the housing activities in relation to which he is subject to investigation under the scheme,
 - (b) the approved scheme or schemes of which he is also a member or will, on his withdrawal, become a member, and
 - (c) under which scheme or schemes the housing activities mentioned in paragraph (a) will be subject to investigation after his withdrawal.
- (3) If the [^{F2}Relevant Authority] is satisfied that withdrawal by the landlord from the scheme will not result in a failure to comply with his duty under paragraph 1, it shall confirm the landlord's withdrawal from the scheme.
- (4) If the [^{F2}Relevant Authority] is not so satisfied, it shall withhold confirmation of the landlord's withdrawal from the scheme; and the landlord shall continue to be a member of the scheme and bound and entitled under the scheme accordingly.

Textual Amendments

F2 Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

Commencement Information

I5 Sch. 2 para. 5 wholly in force at 1.8.1996 see s. 232(1)-(3) and S.I. 1996/2048, **art. 2** (subject to the limitation in (2) of that art.)

Register of approved schemes

- 6 (1) The [^{F3}Relevant Authority] shall maintain a register of schemes approved by the Secretary of State for the purposes of this Schedule and of the social landlords who are members of those schemes.
- (2) The Secretary of State shall give notice to the [^{F4}Housing Corporation]—
- (a) when he grants or withdraws his approval of a scheme, and
 - (b) when he approves an amendment of a scheme,
- and he shall supply the [^{F4}Housing Corporation] with copies of any approved scheme or any amendment to a scheme.

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- (3) A member of the public shall be entitled, upon payment of such fees as the [F3 Relevant Authority] may determine, to receive a copy of an approved scheme and a list of the social landlords who are members of it.

Textual Amendments

- F3** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.
- F4** Words in Sch. 2 para. 6(2) substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 97(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

Modifications etc. (not altering text)

- C1** Sch. 2 para. 6(2) modified (1.12.2008) by **The Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008** (S.I. 2008/2839), arts. 1(1), 3, **Sch. para. 5** (with art. 6)

Commencement Information

- I6** Sch. 2 para. 6 wholly in force at 1.8.1996 see s. 232(1)-(3) and S.I. 1996/2048, **art. 2** (subject to the limitation in (2) of that art.)

Determinations by housing ombudsman

- 7 (1) A housing ombudsman under an approved scheme shall investigate any complaint duly made to him and not withdrawn, and may investigate any complaint duly made but withdrawn, and where he investigates a complaint he shall determine it by reference to what is, in his opinion, fair in all the circumstances of the case.
- (2) He may in his determination—
- (a) order the member of a scheme against whom the complaint was made to pay compensation to the complainant, and
 - (b) order that the member or the complainant shall not exercise or require the performance of any of the contractual or other obligations or rights existing between them.
- (3) If the member against whom the complaint was made fails to comply with the determination within a reasonable time, the housing ombudsman may order him to publish in such manner as the ombudsman sees fit that he has failed to comply with the determination.
- (4) Where the member is not a social landlord, the housing ombudsman may also order that the member—
- (a) be expelled from the scheme, and
 - (b) publish in such manner as the housing ombudsman sees fit that he has been expelled and the reasons for his expulsion.
- (5) If a person fails to comply with an order under sub-paragraph (3) or (4)(b), the housing ombudsman may take such steps as he thinks appropriate to publish what the member ought to have published and recover from the member the costs of doing so.
- (6) A member who is ordered by the housing ombudsman to pay compensation or take any other steps has power to do so, except that a member which is also a charity shall not do anything contrary to its trusts.

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Commencement Information

- 17** Sch. 2 para. 7 wholly in force at 1.4.1997 see s. 232(1)-(3) and [S.I. 1997/618](#), **art. 2** (subject to the limitation in (2) of that art.)

Publication of determinations, &c.

- 8 (1) A housing ombudsman under an approved scheme may publish—
- (a) his determination on any complaint, and
 - (b) such reports as he thinks fit on the discharge of his functions.
- (2) He may include in any such determination or report statements, communications, reports, papers or other documentary evidence obtained in the exercise of his functions.
- (3) In publishing any determination or report, a housing ombudsman 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
 - (b) any matter which relates specifically to the affairs of a member of an approved scheme, where publication would seriously and prejudicially affect its interests, unless the inclusion of that matter is necessary for the purposes of the determination or report.

Commencement Information

- 18** Sch. 2 para. 8 wholly in force at 1.4.1997 see s. 232(1)-(3) and [S.I. 1997/618](#), **art. 2** (subject to the limitation in (2) of that art.)

Absolute privilege for communications, &c.

- 9 For the purposes of the law of defamation absolute privilege attaches to—
- (a) any communication between a housing ombudsman under an approved scheme and any person by or against whom a complaint is made to him,
 - (b) any determination by such an ombudsman, and
 - (c) the publication of such a determination or any report under paragraph 8.

Commencement Information

- 19** Sch. 2 para. 9 wholly in force at 1.4.1997 see s. 232(1)-(3) and [S.I. 1997/618](#), **art. 2** (subject to the limitation in (2) of that art.)

Appointment and status of housing ombudsman

- 10 (1) Where an approved scheme provides that it shall be administered by a body corporate, that body shall appoint on such terms as it thinks fit the housing ombudsman for the purposes of the scheme and the appointment and its terms shall be subject to the approval of the Secretary of State.

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- (2) Where an approved scheme does not so provide—
- (a) the housing ombudsman for the purposes of the scheme shall be appointed by the Secretary of State on such terms as the Secretary of State thinks fit,
 - (b) the Secretary of State may by order provide that the housing ombudsman for the purposes of the scheme shall be a corporation sole, and
 - (c) the staff to administer the scheme and otherwise assist the ombudsman in the discharge of his functions shall be appointed and employed by him.
- (3) The Secretary of State may at any time remove from office a housing ombudsman (whether appointed by him or otherwise).
- (4) A housing ombudsman appointed by the Secretary of State or otherwise shall not be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown or as exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local, and any property held by him shall not be regarded as property of, or held on behalf of, the Crown.

Commencement Information

- 110** Sch. 2 para. 10 wholly in force at 1.8.1996 see s. 232(1)-(3) and [S.I. 1996/2048, art. 2](#) (subject to the limitation in (2) of that art.)

Subscriptions payable in respect of approved schemes

- 11 (1) Members of an approved scheme shall pay a subscription, calculated as set out in the scheme, to the person administering the scheme.
- (2) If a social landlord fails to comply with his duty under paragraph 1, the Secretary of State may determine—
- (a) which approved scheme or schemes he should have joined, and
 - (b) what sums by way of subscription he should have paid,
- and may require him to pay those amounts to the person administering the scheme or schemes.
- (3) The person administering an approved scheme may recover sums payable under subparagraph (1) or (2) as if they were debts due to him.
- (4) The Secretary of State ^{F5}... may pay grant and provide other financial assistance to—
- (a) a body corporate administering an approved scheme, or
 - (b) in a case where paragraph 10(2) applies, to the housing ombudsman under an approved scheme,
- for such purposes and upon such terms as the Secretary of State ^{F6}... thinks fit.

Textual Amendments

- F5** Words in Sch. 2 para. 11(4) repealed (20.5.2009 for specified purposes, 7.9.2009 for E. for specified purposes, 1.4.2010 in so far as not already in force) by [Housing and Regeneration Act 2008 \(c. 17\), ss. 124\(4\)\(a\), 325\(1\), Sch. 16](#); [S.I. 2009/1261, art. 4](#); [S.I. 2009/2096, art. 2\(2\)\(c\)](#) (with [art. 3\(1\)\(2\)](#)); [S.I. 2010/862, arts. 2, 3](#) (with [Sch.](#))
- F6** Words in Sch. 2 para. 11(4) repealed (20.5.2009 for specified purposes, 7.9.2009 for E. for specified purposes, 1.4.2010 in so far as not already in force) by [Housing and Regeneration Act 2008 \(c. 17\), ss.](#)

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124(4)(b), 325(1), **Sch. 16**; S.I. 2009/1261, art. 4; S.I. 2009/2096, art. 2(2)(c) (with art. 3(1)(2)); S.I. 2010/862, arts. 2, 3 (with Sch.)

Modifications etc. (not altering text)

- C2** Sch. 2 para. 11(4) modified (1.12.2008) by [The Transfer of Housing Corporation Functions \(Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/2839\)](#), arts. 1(1), 3, **Sch. para. 5** (with art. 6)

Commencement Information

- I11** Sch. 2 para. 11 wholly in force 1.4.1997; Sch. 2 para. 11 not in force at Royal Assent see s. 232(1)-(3); Sch. 2 para. 11(1)(3)(4) in force at 1.8.1996 by [S.I. 1996/2048](#), **art. 2** (subject to the limitation in (2) of that art.); Sch. 2 para. 11 in force at 1.4.1997 so far as not already in force by [S.I. 1997/618](#), **art. 2** (subject to the limitation in (2) of that art.)

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