

HOUSING AND REGENERATION ACT 2008

EXPLANATORY NOTES

STRUCTURE OF THE ACT

Part 2 – Regulation of Social Housing

Chapter 7 – Enforcement powers

Section 218: exercise of enforcement powers

645. This section applies where the regulator is deciding whether to exercise a power under Chapter 7, which contains the regulator’s enforcement powers, which power under Chapter 7 to exercise, or how to exercise a power under Chapter 7. It provides that in all these circumstances, the regulator shall consider:

- (a) the desirability of registered providers being free to choose how to provide services and conduct business;
- (b) whether the failure or other problem concerned is serious or trivial;
- (c) whether the failure or other problem is a recurrent or isolated incident;
- (d) the speed with which the failure or other problem needs to be addressed.

Section 219 - Overview

646. This section describes what an enforcement notice is. It is to require a registered provider to do (or not do, or to stop doing) certain things in order to resolve specified failures or other problems.

Section 220 - Grounds for giving notice

647. This section specifies the grounds on which the regulator may give an enforcement notice. *Subsection (1)* specifies that the regulator must be satisfied that one of the grounds for issuing an enforcement notice applies and that an enforcement notice is the appropriate intervention power to use, whether alone or as a potential precursor to further action. As the regulator must be satisfied that there are grounds to use an enforcement notice, it will have to have established the facts to a degree that justifies it directing a registered provider to act in a specified way.

648. *Subsections (2) to (11)* specify the cases where an enforcement notice is applicable as required by subsection (1)(a) as follows:

- that a registered provider has failed to meet a standard established by the regulator under sections 193 or 194
- that the affairs of a registered provider have been mismanaged
- that the registered provider has failed to comply with an earlier enforcement notice

- that the registered provider has failed to publish information in accordance with a requirement under section 228(3) or 240(3)
 - that it is required to protect the interests of tenants,
 - that it is necessary to protect the assets of a registered provider,
 - that a registered provider has failed to comply with an undertaking that it has given to the regulator as provided for in section 125,
 - that the registered provider has failed to pay an annual fee under section 117(2),
 - that an offence under this Part has been committed by a registered provider
 - that a registered provider has failed to comply with an order made by an ombudsman appointed by virtue of section 124.
649. *Subsection (12)* provides that where the regulator is satisfied that an offence has been committed in respect of a registered provider by an individual (e.g. a member of staff), the regulator may serve an enforcement notice on the individual rather than the provider and, in such cases, references in this Part of the Act to registered provider can be read as references to that person.

Section 221 - Content

650. This section sets out what an enforcement notice must include. It must specify which of the cases in section 220 are the grounds for the enforcement notice, the specific action which the registered provider must take which is the substance of the notice, the date by when the specified action must be taken, and the effect of sections 223 to 225.
651. *Subsection (2)* permits the regulator to specify in an enforcement notice that the notice must be published in a specified manner

Section 222 – Notifying HCA

652. This section requires that, if the regulator gives an enforcement notice, it should send a copy to the HCA.

Section 223 - Appeal

653. This section provides that a registered provider who has been served with an enforcement notice may appeal against it to the High Court.

Section 224 - Withdrawal

654. This section gives the regulator the power to withdraw an enforcement notice at any time by giving written notice to the registered provider on whom the enforcement notice has been served.

Section 225 - Sanction

655. *Subsection (1)* gives the regulator the power to consider the use of its other intervention powers if the registered provider has not complied with the contents of an enforcement notice that the regulator has issued.
656. *Subsection (2)* provides that where the enforcement notice has been served on a person under section 220(12), the regulator may only either use the powers to require the payment of a fine as set out in sections 226 to 235, or take steps to instigate a prosecution in relation to the offence which provided grounds for service of the enforcement notice.

657. *Subsection (3)* provides that a person who has been served with an enforcement notice under Case 9 of section 220 may be prosecuted for the offence which gave grounds for the enforcement notice only if they have not complied with that enforcement notice.

Penalty

Section 226 - Overview

658. This section describes the power to impose fines to penalise failures by registered providers.

Section 227 - Grounds for imposition

659. This section specifies the grounds on which the regulator may decide to require registered providers to pay fines. As well as being satisfied that one of the grounds specified in this section applies, the regulator must also be satisfied that a fine is the appropriate penalty for the identified problem.

660. *Subsections (2) to (7)* of this section specify the cases where the regulator may issue a fine. These cases are where:

- the registered provider has failed to meet a standard established under sections 193 or 194
- the affairs of the registered provider have been mismanaged
- the registered provider has failed to comply with an enforcement notice
- the registered provider has failed to comply with an undertaking that it has given to the regulator
- the registered provider has failed to pay an annual fee under section 117(2), and
- where offences under this Part of the Act have been committed by the registered provider.

661. *Subsection (8)* provides that where the regulator is satisfied that an offence has been committed in respect of a registered provider by an individual, the grounds for imposing a penalty are as in subsection (7), and the regulator may require the individual rather than the provider to pay the fine. This subsection also provides that, in such cases, references in this Part of the Act to a registered provider can be read as references to that person.

662. *Subsection (9)* requires that the regulator must be satisfied beyond reasonable doubt in respect of the grounds at subsection (7).

Section 228 - Imposition

663. This section provides that a penalty is imposed by a written notice being served on a registered provider. *Subsection (2)* requires the notice to specify which of the cases listed in subsections (2) to (7) of section 227 is the basis for the notice, the amount of the penalty that must be paid, how the penalty must be paid, the deadline for the payment of that fine, and any interest or additional penalty payable in the event of late payment.

664. *Subsections (3) and (4)* require that the penalty notice explain the effect of sections 234(1), (3) and (6) and section 235. These state that a penalty is treated as a debt to the regulator; that interest is treated as penalty; that, if an offence is punished with a penalty, it may not also be punished through prosecution; and that the provider can appeal to the High Court.

665. *Subsection (5)* provides for the Secretary of State to make further regulations about the period for payment of fines, the content of the penalty notice and the way in which a penalty notice may be served.

Section 229 - Amount

666. This section provides that the amount of the fine for Case 6 of section 227, where an offence has been committed by a registered provider, may not exceed the maximum amount that the court could impose in those cases. In all other cases the maximum amount of penalty that the regulator may impose is £5,000. The Secretary of State may amend this maximum penalty of £5,000 by affirmative resolution order.

Section 230 - Warning

667. This section sets out a warning procedure which must be followed before a penalty notice can be imposed. The regulator must give a registered provider a notice, called a “pre-penalty warning”, which must specify the grounds on which a penalty could be imposed, warn the provider that the regulator is considering imposing a penalty, include any indication the regulator can give of the likely amount, and explain the effect of sections 231, 234(1), (3) and (6) and 235.
668. *Subsection (2)* requires the regulator to give the HCA, and any other person that it thinks appropriate, a copy of the pre-penalty warning. In doing so, *subsection (3)* sets out that it should particularly take into account, when considering to whom it would be appropriate to send a copy, any person who has provided information as a result of which the regulator is considering making an award of compensation.
669. *Subsection (5)* requires the regulator to refer to section 125 (which permits registered providers to offer, and the regulator to prescribe a procedure for, the use of voluntary undertakings) and indicate in its pre-penalty warning whether the regulator would accept a voluntary undertaking under section 125 instead of or in mitigation of a penalty.
670. *Subsection (6)* provides that the regulator may combine the pre-penalty warning with warnings about the use of its other enforcement powers.

Section 231 - Representations

671. This section allows registered providers issued with a pre-penalty warning to make representations to the regulator.
672. *Subsection (2)* specifies that the minimum period for representations must be at least 28 days, beginning on the date on which the registered provider receives the pre-penalty warning.
673. The representations may pertain to any matter connected with the contents of the warning, but in particular with whether a penalty should be imposed, or the likely amount of any penalty.
674. *Subsection (4)* provides that at the end of the period for representations the regulator must consider any representations that have been made, and decide whether to impose a penalty.

Section 232 – Notifying HCA

675. This section requires that, if the regulator imposes a penalty, it must send a copy of the penalty notice to the HCA.

Section 233 - Destination

676. This section specifies what the regulator must do with money that it receives from fines it has imposed on registered providers. *Subsection (2)* provides for the regulator to

deduct from that money the direct costs of administering the penalty procedure, and a share of its overall expenditure that is proportionate to the effort and resource required for administration of the penalty procedure. *Subsection (3)* provides that any balance remaining will be paid to the HCA to be used, at the HCA's discretion, for investment in social housing.

Section 234 - Enforcement

677. This section specifies how fines will be enforced, and provides for late payment or non-payment of fines. Fines are treated as a debt to the regulator once a penalty notice is issued under section 228.
678. *Subsection (2)* gives the Treasury a power to make regulations permitting the regulator to charge interest on fines that are not paid by the date specified in the penalty notice and to impose additional fines where the original fine is not paid by the specified deadline. In such cases, *subsection (3)* provides that the additional sums are also treated as fines, and that these additional amounts may have the effect of increasing the penalty above the limit set by section 229.
679. *Subsection (4)* provides for how interest rates may be set for interest charges on late payment of penalties as provided for in subsection (2).
680. *Subsection (5)* gives a discretionary power to the regulator to offer an early payment discount if the provider pays the fine in advance of the date specified in the penalty notice.
681. *Subsection (6)* specifies that if the penalty notice is served on a person under section 227 Case (6), he or she may not be prosecuted for the offence which is the ground for requiring the payment of a fine.

Section 235 - Appeal

682. This section gives a provider who has been served with a penalty notice the right to appeal to the High Court against the regulator's imposition of the penalty, or its amount, or both.

Compensation

683. [Sections 236 to 245](#) describe the arrangements for the regulator to exercise a power to require a registered provider to pay compensation to certain classes of people.

Section 236 - Overview

684. This section describes the nature of the power to require a registered provider to pay compensation.

Section 237 - Grounds for award

685. This section specifies the grounds on which the regulator may require a registered provider to pay compensation. The regulator must be satisfied either that the registered provider has failed to meet a standard of social housing established by the regulator under sections 193 or 194 of this Part, or that the registered provider has failed to comply with an undertaking under section 125 that it has given to the regulator.
686. The regulator must also be satisfied that requiring a registered provider to pay compensation is appropriate, whether alone or in combination with the use of one or more of the regulator's other enforcement powers.

Section 238 - Nature

687. This section indicates those circumstances under which compensation may be awarded. *Subsection (1)* provides that it should be awarded to a person or persons who have suffered as a result of the failure that forms the basis for awarding compensation as defined by section 237.
688. *Subsection (2)* restricts the person or persons eligible for compensation to those who are tenants of social housing, but provides that compensation can be made to individual tenants of a registered provider, or to groups of them, or to all of a provider's tenants.

Section 239 - Housing ombudsman compensation

689. This section provides for the regulator's power to require a provider to pay compensation to be co-ordinated with the arrangements for approved ombudsman schemes. All registered providers must be a member of an approved ombudsman scheme under section 124 and those schemes may provide for the ombudsman to determine that one of its members should pay compensation in respect of a case brought by an individual against that member.
690. *Subsection (1)* provides that where this is the case, the regulator may not direct a registered provider to pay compensation to the same person for the same reason.
691. *Subsection (2)* however permits the regulator to direct the provider to pay compensation in such cases where the ombudsman has awarded compensation, but the provider has not paid it.

Section 240 - Award

692. This section specifies the process and content for imposing a direction to a provider to pay compensation. Compensation is awarded by the regulator giving written notice (a "compensation notice") to the registered provider and the person or persons to be compensated.
693. *Subsection (2)* provides that compensation notices must set out:
- the grounds on which compensation is awarded, which must be one or more of the grounds specified in section 237,
 - the amount of the compensation award,
 - the person or persons who are to be compensated,
 - any interest or additional compensation payable in the event of late payment, and
 - the period within which that compensation must be paid.
694. *Subsection (4)* requires that the notice explain the effect of sections 244(1) and (3), and section 245.
695. *Subsection (5)* requires the Secretary of State to make regulations about the period within which compensation must be paid, and gives the Secretary of State the power to make regulations about the form and content of compensation notices and the manner in which a compensation notice may be given

Section 241 – Impact

696. This section requires the regulator to take account of any information available to it about the financial situation of the registered provider when considering awarding compensation and when considering the amount. In particular it must consider the likely impact on the provider's ability to provide services and avoid jeopardising its financial viability, existing financial commitments, and ability to remedy the problem.

Section 242 - Warning

697. This section sets out a procedure which must be followed before compensation can be awarded. The regulator must give a registered provider a notice, called a “pre-compensation warning”, which must specify the grounds on which compensation could be awarded, warn the provider that the regulator is considering awarding compensation, include any indication the regulator can give of the likely amount, and explain the effect of sections 243, 244(1) and (3), and 245.
698. *Subsection (2)* requires that the regulator consult the ombudsman for the scheme to which the registered provider belongs before issuing a pre-compensation warning.
699. *Subsection (3)* requires the regulator to give the HCA, and any other person that it thinks appropriate, a copy of the pre-compensation warning. In doing so, *subsection (4)* sets out that it should particularly take into account, when considering to whom it would be appropriate to send a copy, any person who has provided information as a result of which the regulator is considering making an award of compensation.
700. *Subsection (5)* requires the regulator to refer to section 125 (which permits registered providers to offer, and the regulator to prescribe a procedure for, the use of voluntary undertakings) and indicate in its pre-compensation warning whether the regulator would accept a voluntary undertaking under section 125 instead of or in mitigation of compensation.
701. *Subsection (6)* provides that the regulator may combine the pre-compensation warning with warnings about the use of its other enforcement powers.

Section 243 - Representations

702. This section makes arrangements for providers issued with a warning to make representations to the regulator about its proposed action. The warning issued under section 242 must provide for a minimum period for the provider to make representations to the regulator.
703. *Subsection (2)* specifies that the minimum period must be at least 28 days beginning with the date on which the registered provider receives the pre-compensation warning.
704. The representations may pertain to any matter connected with the contents of the warning, but in particular with whether compensation should be awarded, and the likely amount of the compensation.
705. *Subsection (4)* provides that at the end of the period for representations the regulator must consider any representations that have been made, and then decide whether to direct the registered provider to pay compensation.

Section 244 - Enforcement

706. This section specifies how compensation notices will be enforced, and makes provisions for late payment or non-payment of compensation. Compensation is treated as a debt to the person or persons to whom it has been awarded.
707. *Subsection (2)* gives the Treasury a power to make regulations permitting the regulator to charge interest on compensation that is not paid by the date specified in the compensation notice and to award additional compensation where the original compensation award is not paid by the specified deadline. *Subsection (3)* provides that in such cases, the additional sums are also treated as compensation.
708. *Subsection (4)* provides for how interest rates may be set for interest charges on late payment of penalties as provided for in subsection (2).

Section 245 - Appeal

709. This section gives a provider who has been served with a compensation notice the right to appeal to the High Court against the regulator's award of compensation, or the amount of compensation awarded, or both.

Management etc.

Section 246 - Overview

710. This section introduces sections 247 to 255, which give the regulator powers in relation to the management and constitution of registered providers.

Section 247 - Management tender

711. *Subsection (1)* specifies that the regulator may use this power where it is satisfied that a registered provider has failed to meet standards set under either section 193 or 194, or that its affairs in relation to social housing have been mismanaged, as defined in section 275.
712. If the regulator is satisfied that one of the conditions in subsection (1) is met, *subsections (2) and (3)* gives it the power to require the registered provider to put out to tender the management of its social housing, in whole or in part. The regulator will specify the process that the provider is to follow in putting the services out to tender and making an appointment as a result of that process.
713. The extent of the services to be tendered out may be restricted either by reference to the type of services concerned, or in relation to a specific part or parts of the social housing stock owned by the registered provider.
714. The regulator must specify certain matters when it exercises this power, as follows:
- the constitution of the panel which has the responsibility for selection, which must include provision for ensuring tenants' interests will be represented on that panel,
 - provision for ensuring that the procurement process follows best practice, and
 - the terms and conditions on which the manager is to be appointed, that will include the setting of the required standards, how those standards will be monitored and enforced, and resources.

Section 248 - Section 247: Supplemental

715. *Subsection (1)* requires that before the regulator requires a registered provider to implement the process under section 247(2), it must give that provider a notice which specifies the grounds on which action may be taken, warns the provider that it is considering action under this section, and explains the effect of the section.
716. *Subsections (2) and (3)* provide that the notice must specify a period during which the registered provider may make representations to the regulator, and that the period must be at least 28 days and begin on the date the provider receives the notice.
717. *Subsection (4)* provides that the notice must be copied to the HCA, and to any other person that the regulator thinks appropriate, having regard to any person who has provided information as a result of which the notice is given.
718. *Subsection (5)* provides that the notice served under section 247(1) must advise the registered provider on whom it is served about the provisions for the provider to make voluntary undertakings to the regulator under section 125, and the extent to which it would accept an undertaking instead of using this power under 247(2).

719. *Subsection (6)* allows the regulator to issue the notice in conjunction with warning notices for other enforcement powers under Chapter 7.
720. *Subsection (7)* provides that in deciding whether to use this power, the regulator must have regard to the views of relevant tenants, the registered provider, the HCA and, if appropriate, any relevant local housing authority.
721. *Subsection (8)* requires the regulator to send the HCA notice of its final decision to impose a requirement.
722. *Subsection (9)* states that a registered provider served with a notice by the regulator under this section has a right of appeal to the High Court.

Section 249 - Management transfer

723. The powers set out in these sections are exercisable following an inquiry as provided for under section 206, or an audit under section 210.
724. *Subsections (2) and (3)* provide that the regulator may require a registered provider to transfer the management of some or all of its management functions to another specified person. Transfer of management functions may only be imposed with the Secretary of State's consent (both as to the transfer and the terms).
725. The regulator may use this power where it is satisfied that one of the conditions specified in *subsection (1)* is met, which are that-
- the affairs of the registered provider have been mismanaged, in respect of social housing,
 - some or all of a registered provider's management of its social housing is likely to be improved by the transfer of those management functions.
726. *Subsection (4)* set out the nature of the requirement that will be specified by the regulator and provides that the regulator may determine the scope of the requirement to transfer management.
727. *Subsection (5)* provides that the requirement will specify the terms and conditions of the appointment, including the remuneration of the person to whom the management is to be transferred, and that these will be determined in accordance with the scope of the management functions to be transferred.
728. *Subsection (6)* gives the person to whom the management functions are to be transferred the powers necessary to carry out the activities specified in the requirement. The powers may be specified by the regulator in the requirement. In addition the person to whom management is transferred by the requirement will have any other powers in relation to the registered provider's business that are necessary to give effect to the requirement.

Section 250 - Section 249: supplemental

729. This section specifies the process by which the power in section 249 is exercised. Following a statutory inquiry, and having decided that it should direct the transfer of management, *subsection (1)* requires the regulator to serve the registered provider with a notice specifying-
- which of the grounds set out in section 249(1) applies,
 - that it is considering directing the transfer of the registered provider's management functions as a consequence, and
 - setting out the effects of this section.

730. *Subsections (2) and (3)* provide that the notice must specify a period during which the registered provider may make representations to the regulator. The period must be at least 28 days and begin on the date the provider receives the notice.
731. *Subsection (4)* provides that the regulator must send a copy of that notice to the HCA and to any other person that it thinks appropriate, with particular consideration to any person who has been involved in identifying to the regulator the matters that form the basis for the regulator's use of this power
732. *Subsection (5)* provides that the notice must draw to the registered provider's attention the provisions of section 125 which provide for a registered provider to make a voluntary undertaking to the regulator at any time on any matter, and the notice must also indicate the extent to which the provision of a voluntary undertaking under that provision would be accepted instead of, or in mitigation of, the direction to transfer management which the regulator is considering.
733. *Subsection (6)* provides that the notice may be combined with notices about the use of other enforcement powers available under Chapter 7.
734. *Subsection (7)* provides that the regulator should have regard to the views of (a) relevant tenants, (b) the registered provider, (c) the HCA, and (d) if the regulator thinks it appropriate, any relevant local housing authority, in deciding whether to direct a registered provider, following an inquiry, to transfer management to a specified person.
735. *Subsection (8)* requires the regulator to notify the HCA of any requirement to transfer management functions to a specified person.
736. *Subsection (9)* gives the registered provider subjected to a requirement under section 249(2) the right of appeal to the High Court.

Section 251 - Appointment of manager

737. This section gives the regulator the power either to appoint an individual as manager of the registered provider, or to require the registered provider to appoint an individual as manager as set out in *subsection (2)*.
738. The regulator may do this if it is satisfied that a registered provider has failed to meet a standard set out in either section 193 or 194, or that its affairs have been mismanaged in relation to social housing.
739. *Subsections (3) to (5)* set out the nature of the requirement or the appointment that will be specified by the regulator.
740. *Subsection (3)* provides that the regulator may determine the matters in respect of which the manager is to be appointed.
741. *Subsection (4)* provides that the appointment of a manager, or the requirement to appoint a manager, will specify the terms and conditions of appointment, including the remuneration of the manager, and that these will be determined in accordance with the scope of the appointment of the manager, or the requirement to appoint a manager under subsection (3).
742. *Subsection (5)* gives the appointed manager any powers specified in the requirement or appointment, and any other powers in relation to the registered provider's business that it requires for the purposes specified in the requirement or appointment. These specifically include the power to enter into agreements and take other action on behalf of the registered provider.

Section 252 - Section 251 supplemental

743. Before it imposes a requirement under subsection (2) of section 251 the regulator must serve a notice on the registered provider specifying which of the grounds listed in

subsection (1) of that section apply, warning that it is considering the use of the power set out in section 251, and explaining the provisions of section 252.

744. The effect of *subsections (2) and (3)* are that the notice must specify a period during which the registered provider may make representations to the regulator. The period must be at least 28 days and begin on the date the provider receives the notice.
745. *Subsection (4)* provides that the regulator must send a copy of that notice to the HCA and to any other person that it thinks appropriate, with particular consideration to any person who has been involved in identifying to the regulator the matters that form the basis for the regulator's use of this power.
746. *Subsection (5)* provides that the notice must draw to the registered provider's attention the provisions of section 125 which provide for a registered provider to make a voluntary undertaking to the regulator at any time on any matter, and the notice must also indicate the extent to which the provision of a voluntary undertaking under that provision would be accepted instead of, or in mitigation of, the appointment of a manager or the direction to appoint a manager which the regulator is considering.
747. *Subsection (6)* provides that the notice may be combined with notices about the use of other enforcement powers available under Chapter 7.
748. *Subsection (7)* requires the regulator to notify the HCA if it appoints a manager or imposes a requirement on a registered provider to appoint a manager.
749. *Subsection (8)* gives the regulator the power to require the appointed manager to report to it in relation to matters specified in the manager's appointment.
750. *Subsection (9)* gives the registered provider the right of appeal to the High Court.

Section 253 - Transfer of land

751. **Sections 253 and 254** permit the regulator to transfer the land of a registered provider and broadly replicate paragraph 27 and 29 of Schedule 1 to the 1996 Act.
752. *Subsection (1)* provides that this section applies if as a result of an inquiry under section 206 or an audit under section 210, the regulator is satisfied that the affairs of a provider have been mismanaged in relation to social housing, or that transfer of the land of a provider would be likely to improve the management of that land.
753. *Subsection (2)* gives the regulator power to require that the registered provider should transfer its land either to the regulator or to another specified registered provider.
754. *Subsections (3) and (4)* provide that a requirement may be imposed on a profit-making registered provider only in relation to its social housing and associated land, and that land is considered to be associated if the regulator thinks that it is used in connection with social housing or its management.
755. *Subsection (5)* provides that a requirement must not be imposed on non-profit registered providers to transfer land to profit-making registered providers.
756. *Subsections (6) and (7)* concern charities. They specify that this power may not be imposed on a charity registered with the Charity Commission, and although it may be imposed on an unregistered charity, that charity's land may only be transferred to another charity whose objects the regulator thinks are similar to those of the transferring charity.

Section 254 - Section 253: supplemental

757. *Subsection (1)* provides that a transfer under section 253 shall be on terms specified in or determined in accordance with the regulator's requirement.

758. *Subsection (2)* specifies that the price attached to the transfer shall be at least the amount certified by the district valuer as the amount that the property to be transferred would fetch if sold by a willing seller to another registered provider.
759. *Subsection (3)* provides that the terms of the transfer will include provision for the payment of debts or liabilities in respect of the land to be transferred, whether or not they are secured by a charge on the land.
760. *Subsection (4)* requires that the Secretary of State must consent to a requirement for a transfer of land under section 253, both in respect of the transfer itself, and the terms of that transfer.
761. *Subsection (5)* provides that where land is transferred under 253 (2)(a) to the regulator it may either dispose it to a registered provider or if the land is transferred from a non-profit registered provider then it may only dispose it to a non-profit registered provider.

Section 255 – Amalgamation

762. *Subsection (1)* sets out the cases where this section applies, which are that the affairs of a registered provider which is an industrial and provident society have been mismanaged in relation to social housing, or the amalgamation of an industrial and provident society with another industrial and provident society would be likely to improve the management of its social housing.
763. *Subsection (2)* gives the regulator power to bring about the amalgamation of the society with another industrial and provident society, and *Subsection (3)* provides that the regulator can only do so with the consent of the Secretary of State.
764. *Subsection (4)* specifies that an instrument providing for an amalgamation has the same effect as a resolution by that society under section 50 of the Industrial and Provident Societies Act 1965. *Subsections (5) to (7)* require that a copy of the instrument be sent to and registered by the Financial Services Authority, at which point the instrument takes effect, and require that the copy is sent for registration within 14 days of the date of execution.
765. *Subsection (8)* provides that any body created by virtue of an amalgamation must be registered by the regulator and designated as a non-profit organisation, and must also be treated as one pending registration.

Restrictions on dealings

Section 256 – Restrictions on dealings during inquiry

766. This section allows the regulator to make an order to restrict the transactions which a non-profit registered provider may enter into or the payments it makes, and may order anyone holding money or securities on behalf of the provider not to part with them.
767. This section applies where an inquiry under section 206 is in progress and that one of two Cases applies. Case 1 is that the regulator has reasonable grounds for believing that the provider's affairs have been mismanaged and that the interests of tenants or its assets require protection. Case 2 is that as a result of an interim report from an inquiry, the regulator is satisfied that its affairs have been mismanaged.
768. The restrictions in the order are automatically lifted 6 months after the final report from the inquiry under section 207 is issued. The regulator also has the power to lift the restrictions before that, and the power by order to extend them for a specified period of up to 6 months. This power may only be used in relation to a registered charity if the charity has received public assistance (defined in section 274).

Section 257 – Restrictions on dealings following inquiry

769. This section gives the regulator similar powers to those in section 256, but following rather than during an inquiry. An order under this section has effect until revoked by the regulator.

Section 258 – Restrictions on dealings: supplemental

770. This section is supplemental on sections 256 and 257. It requires the regulator to take all reasonable steps to give at least 14 days' notice to the provider and the person holding money or securities on its behalf. Contravention of an order is an offence punishable by fine.

Suspension and removal of officers

Section 259 – Suspension during inquiry

771. This section applies where an inquiry under section 206 is in progress in respect of a non-profit registered provider, and one of two Cases applies. Case 1 is that the regulator has reasonable grounds for believing that the affairs of a registered provider have been mismanaged and that the interests of tenants or its assets require protection. Case 2 is that as a result of an interim report from an inquiry, the regulator is satisfied that the provider's affairs have been mismanaged.
772. The regulator may suspend an officer, employee or agent of the registered provider who it considers contributed to that failure or mismanagement. The suspension comes to an end 6 months after the final report is made, or the regulator can end it sooner. The regulator may only suspend an officer of a registered charity if it has received public assistance and must notify the Charity Commission.

Section 260 – Removal or suspension following inquiry

773. This section gives the regulator similar powers to those under section 259, but permits permanent removal following (rather than during) an inquiry, and suspension pending a decision on permanent removal. The regulator must take all reasonable steps to give at least 14 days' notice to the person and the provider.

Section 261 – Suspension under section 259 or 260: supplemental

774. This section is supplemental to sections 259 and 260. It allows the regulator to give directions to the registered provider about the performance of the suspended or removed person's functions or any other matter arising from the suspension, and allows the regulator to appoint a person to perform the suspended person's functions.

Section 262 – Disqualification of removed person

775. This section disqualifies anyone from acting as an officer of a registered provider if they have been removed (not suspended) under section 260, or under parts of previous Acts which now only apply to Wales. The regulator may waive a disqualification if the person applies for a waiver. If they do act as an officer while disqualified, their acts are not invalid by reason only of the disqualification – if their acts were automatically void, this could cause problems for the provider.

Section 263 – Register of disqualified persons

776. This section requires the regulator to keep a register of disqualified persons and waivers which is publicly available.

Section 264 – Acting while disqualified: offence

777. This section makes it an offence for a person to act as an officer while disqualified, which can make them liable to imprisonment or a fine.

Section 265 – Acting while disqualified: other consequences

778. This section permits the regulator to require repayment of part or all of any benefits received by a person acting as an officer while disqualified.

Section 266 – Removal of officers

779. The section gives the regulator the power to remove an officer of a non-profit registered regulator in seven specified Cases. These are:

- the officer has been adjudged to be bankrupt,
- the officer has made an arrangement with creditors,
- the officer has been subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 (or the equivalent statutory provision for Northern Ireland),
- the officer has been subject to an order under section 429(2) of the Insolvency Act 1986 (which occurs where a person fails to make a payment under a county court administration order under the County Courts Act 1984),
- the officer is disqualified under section 72 of the Charities Act 1993 from being a charity trustee (whether this is in relation to their position as an officer of the registered provider that is a charity or as an officer of a different charity),
- the officer is incapable of acting by reason of mental disorder,
- the officer is impeding the proper management of the registered provider by reason of absence or failure to act.

Section 267 – Section 266: supplemental

780. *Section 267* is supplemental on section 266. It provides that before making an order under section 266 the regulator must give both the officer concerned and the registered provider at least 14 days' notice. It also specifies that an order under section 266 may only be made in respect of a registered charity if that charity has received public assistance as defined in section 274.

Section 268 – Appeal against removal or suspension

781. This section gives anyone removed or suspended under sections 259, 260 or 266 a right of appeal to the High Court.

Section 269 – Appointment of new officers

782. This section gives the regulator the power to appoint a person as an officer of a non-profit registered provider. *Subsection (1)* specifies that the regulator may do this where:

- a. it is to replace an officer removed under section 266;
- b. the registered provider has no officers; or
- c. the regulator thinks that the additional officer is necessary for the proper management of the registered provider's affairs.

*These notes refer to the Housing and Regeneration Act
2008 (c.17) which received Royal Assent on 22 July 2008*

783. *Subsection (2)* specifies that the regulator may appoint more than a minority of the officers of a registered provider only if the provider has fewer officers than required by its constitution.
784. *Subsection (3)* says that the regulator's power in subsection (1) overrides any restrictions in the registered provider's constitution on the eligibility requirements for officers, or the number of officers that the registered provider may have.
785. *Subsection (4)* requires that an order made by the regulator under subsection (1) must specify the period for which, and the terms on which, the person is appointed as an officer. It also provides that the regulator may renew the appointment when the period specified in the order under subsection (1) expires, and that the new officer appointed by the regulator may resign or retire as allowed in the registered provider's constitution.
786. *Subsection (5)* provides that an officer appointed by the regulator under subsection (1) has the same standing, in terms of rights, powers and responsibilities, as if he or she had been appointed as an officer under the constitution of the provider.
787. *Subsection (6)* provides that the regulator may only make an appointment in relation to a registered charity if one of the conditions in section 274 is fulfilled (which are the conditions that the registered charity has received either homes or financial assistance that are relevant to the functions of the regulator under the specified statutory provisions), and the regulator has consulted the Charity Commission before making the order under subsection (1).