

SCHEDULES

SCHEDULE 1

Section 1

THE HOMES AND COMMUNITIES AGENCY

Membership

- 1 (1) The HCA is to consist of such number of members (being not less than six) as the Secretary of State may from time to time appoint.
- (2) The Secretary of State must appoint one of the members as the person with the function of chairing the HCA.
- (3) In appointing a person to be a member, the Secretary of State—
 - (a) must have regard to the desirability of appointing a person who has experience of, and has shown some capacity in, a matter relevant to the exercise of the functions of the HCA, and
 - (b) must be satisfied that the person will have 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 whom the Secretary of State proposes to appoint as a member to provide such information as the Secretary of State considers necessary for the purposes of sub-paragraph (3)(b).

Terms of appointment of members

- 2 (1) Subject as follows, a member of the HCA holds and vacates office in accordance with the member's terms of appointment.
- (2) A member may resign by serving notice on the Secretary of State.
- (3) A person ceases to have the function of chairing the HCA if the person—
 - (a) resigns from exercising that function by serving notice on the Secretary of State, or
 - (b) ceases to be a member.
- (4) A person who—
 - (a) ceases to be a member, or
 - (b) ceases to have the function of chairing the HCA,is eligible for reappointment.
- (5) The Secretary of State may remove a member who—
 - (a) has been absent from meetings of the HCA for a period of more than 6 months without the permission of the HCA,
 - (b) has become bankrupt or has made an arrangement with the member's creditors, or

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- (c) in the opinion of the Secretary of State, has failed to comply with the member's terms of appointment or is otherwise unable, unfit or unsuitable to exercise the member's functions as a member.

Remuneration etc: members

- 3 (1) The HCA may pay to its members such remuneration and such allowances as the Secretary of State may decide.
- (2) The HCA may—
 - (a) pay such pensions, allowances or gratuities as the Secretary of State may decide to or in respect of any member or former member, or
 - (b) pay such sums as the Secretary of State may decide towards the provision for the payment of pensions, allowances or gratuities to or in respect of any member or former member.
- (3) Sub-paragraph (4) applies if—
 - (a) a person ceases to be a member of the HCA, and
 - (b) the Secretary of State considers that there are special circumstances which make it appropriate for the person to receive compensation.
- (4) The Secretary of State may require the HCA to pay the person such amount as the Secretary of State may decide.

Staff

- 4 (1) The HCA must appoint a person to be chief executive but may only appoint a person who has been approved by the Secretary of State.
- (2) The chief executive is a member of staff of the HCA.
- (3) The HCA may appoint such number of other staff as the Secretary of State may approve.
- (4) The staff's terms and conditions of service are to be decided by the HCA with the approval of the Secretary of State.
- (5) The HCA may pay to its staff such remuneration and such allowances as it may, with the approval of the Secretary of State, decide.
- (6) The HCA may—
 - (a) pay such pensions, allowances or gratuities to or in respect of any member of staff or 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 member of staff or former member of staff,as it may, with the approval of the Secretary of State, decide.

Financial provision

- 5 (1) The Secretary of State may make payments to the HCA by way of grant.
- (2) Such payments may be made on such terms and conditions as the Secretary of State considers appropriate.

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Committees

- 6 (1) The HCA may establish one or more committees.
- (2) A committee may establish one or more sub-committees.
- (3) A member, or member of staff, of the HCA may be a member of a committee or sub-committee.
- (4) Other persons may be members of committees or sub-committees but only with the approval, in each case, of the Secretary of State.
- (5) No committee or sub-committee may consist exclusively of other persons.
- (6) The members of a sub-committee of a committee may include persons who are not members of the committee.
- (7) The HCA may pay such remuneration and such allowances as the Secretary of State may decide to any person who—
 - (a) is a member of a committee or sub-committee, but
 - (b) is neither a member nor member of staff of the HCA.
- (8) The HCA may dissolve a committee or sub-committee.

Procedure and members' interests

- 7 (1) The HCA may, subject to any directions given by the Secretary of State, decide—
 - (a) its own procedure, and
 - (b) the procedure of any of its committees or sub-committees.
- (2) Subject to this, a committee may decide the procedure of any of its sub-committees.
- (3) Subject as above, a committee or sub-committee may decide its own procedure.
- (4) In this paragraph “procedure” includes quorum.
- 8 The validity of proceedings of the HCA, or of any of its committees or sub-committees, is not affected by—
 - (a) any vacancy,
 - (b) any defective appointment, or
 - (c) any contravention of—
 - (i) directions given as mentioned in paragraph 7(1), or
 - (ii) paragraph 9.
- 9 (1) A member of the HCA who is directly or indirectly interested in any matter arising at a meeting of the HCA must disclose the nature of that interest to the meeting.
- (2) A member of a committee or sub-committee of the HCA 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) In the case of a matter disclosed under this paragraph by a member of the HCA or of a committee or sub-committee, the member—
 - (a) must not take part in any deliberation or decision about the matter if it is a contract or agreement of any description, but

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- (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 interest disclosed might prejudicially affect the member's consideration of the matter.

Delegation

- 10 (1) The HCA may delegate any of its functions to any of its members, committees, sub-committees or staff.
- (2) Any such committee may delegate any function conferred on it to any sub-committee of the committee or to any staff of the HCA.
- (3) See also section 42 (agency arrangements of the HCA with urban development corporations).

Reports, accounts etc.

- 11 (1) For each financial year, the HCA must—
- (a) prepare an annual report on how it has exercised its functions during the year, and
 - (b) send a copy of the report to the Secretary of State within such period as the Secretary of State may direct.
- (2) The Secretary of State must lay before Parliament a copy of each report received under sub-paragraph (1).
- 12 (1) The HCA must keep proper accounts and proper records in relation to the accounts.
- (2) For each financial year, the HCA must—
- (a) prepare a statement of accounts in respect of that financial year, and
 - (b) send copies of the statement to the Secretary of State and the Comptroller and Auditor General within such period as the Secretary of State may direct.
- (3) The statement must be in such form as the Secretary of State may direct.
- (4) The Comptroller and Auditor General must—
- (a) examine, certify and report on the statement, and
 - (b) send a copy of the certified statement and of the report to the Secretary of State as soon as possible.
- (5) The Secretary of State must lay before Parliament a copy of each statement and report received under sub-paragraph (4).
- 13 (1) The HCA must provide the Secretary of State with such information as the Secretary of State may require relating to the HCA's property or to the exercise or proposed exercise of its functions.
- (2) The HCA must—
- (a) permit any person authorised by the Secretary of State to inspect and make copies of any accounts or other documents of the HCA, and
 - (b) provide such explanation of them as that person or the Secretary of State may require.

Supplementary and transitional provisions

- 14 (1) The application of the seal of the HCA must be authenticated by the signature of—
- (a) a member of the HCA who is authorised (generally or specifically) for that purpose, or
 - (b) a member of staff of the HCA who is so authorised.
- (2) A document purporting to be duly executed under the seal of the HCA, or signed on its behalf, is to be received in evidence and, unless the contrary is proved, is to be treated as so executed or signed.
- 15 The HCA is not to be regarded—
- (a) as a servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown,
- and its property is not to be regarded as property of, or held for or on behalf of, the Crown.
- 16 The HCA is a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916.
- 17 The Secretary of State (instead of the HCA) may—
- (a) appoint the first chief executive, and
 - (b) determine the terms and conditions of service as a member of staff of the HCA which are applicable to the first chief executive on appointment.

SCHEDULE 2

Section 9(6)

ACQUISITION OF LAND

PART 1

COMPULSORY ACQUISITION OF LAND

Application of Acquisition of Land Act 1981 (c. 67)

- 1 (1) The Acquisition of Land Act 1981 applies to the compulsory acquisition of land under section 9 with the following modification.
- (2) The reference in section 17(3) of that Act (local authority and statutory undertakers' land) to statutory undertakers includes a reference to the HCA.
- 2 (1) Schedule 3 to the Act of 1981 applies to the compulsory acquisition of new rights under section 9 with the following modification.
- (2) The reference in paragraph 4(3) of that Schedule to statutory undertakers includes a reference to the HCA.

Extinguishment of private rights of way etc.

- 3 (1) Sub-paragraph (2) applies where the HCA completes the compulsory acquisition of land under this Part of this Act.

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- (2) On completion of the acquisition—
- (a) all private rights of way on, under or over the land are extinguished,
 - (b) all rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land are extinguished, and
 - (c) any such apparatus vests in the HCA.
- (3) Sub-paragraph (2) is subject to paragraphs 4 to 6.
- 4 The HCA may give a direction before the completion of the acquisition that paragraph 3(2) is not to apply to any right or apparatus specified in the direction.
- 5 Paragraph 3(2) is subject to any agreement which may be made (whether before or after the completion of the acquisition) between—
- (a) the HCA, and
 - (b) the person—
 - (i) in whom the right or apparatus concerned is vested, or
 - (ii) to whom it belongs.
- 6 (1) Paragraph 3(2) does not apply to—
- (a) any right vested in statutory undertakers for the purpose of carrying on their undertaking,
 - (b) any apparatus belonging to statutory undertakers for that purpose,
 - (c) any right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network, or
 - (d) any electronic communications apparatus kept installed for the purposes of any such network.
- (2) In sub-paragraph (1) “statutory undertakers” means persons who are, or are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990 (c. 8); and “statutory undertaking” is to be read in accordance with section 262 of that Act (meaning of “statutory undertakers”).
- 7 (1) Any person who suffers loss by the extinguishment of a right, or the vesting of any apparatus, under paragraph 3 is entitled to compensation from the HCA.
- (2) Any compensation payable under this paragraph is to be determined in accordance with the Land Compensation Act 1961 (c. 33).

New rights: Compulsory Purchase Act 1965 (c. 56)

- 8 (1) The Compulsory Purchase Act 1965 applies, with the necessary modifications, to the compulsory acquisition of new rights under section 9 as it applies to the compulsory purchase of land.
- (2) One result is that, in appropriate contexts, references in that Act to land are to be read as referring, or as including references, to—
- (a) the rights acquired or to be acquired, or
 - (b) land over which the rights are, or are to be, exercisable,
- according to the requirements of the particular context.

New rights: specific adaptations of 1965 Act

- 9 (1) Part 1 of the Act of 1965 applies to the compulsory acquisition of new rights under section 9 with the modifications specified in paragraphs 10 to 15.
- (2) Sub-paragraph (1) is without prejudice to the generality of paragraph 8.
- 10 Section 7 (measure of compensation) of the Act of 1965 is to be read as if for that section there were substituted—
- (1) In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is acquired is depreciated by the acquisition but also to the damage (if any) to be sustained by the owner of the land by reason of injurious affection of other land of the owner by the exercise of the right.
- (2) The modifications subject to which subsection (1) of section 44 of the Land Compensation Act 1973 (compensation for injurious affection) is to have effect, as applied by subsection (2) of that section to compensation for injurious affection under this section, are that—
- (a) for “land is acquired or taken” there shall be substituted “a right over land is acquired”; and
- (b) for “acquired or taken from him” there shall be substituted “over which the right is exercisable”.
- 11 Section 8 of the Act of 1965 (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) is to be read as if for that section there were substituted—
- (1) Subsection (3) applies if—
- (a) a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”) has been served on a person in pursuance of section 5 of this Act; and
- (b) as a result—
- (i) a question of disputed compensation in respect of the purchase of the right would, apart from this section, fall to be determined by the Lands Tribunal (“the Tribunal”); and
- (ii) before the Tribunal has determined the question, the person satisfies the Tribunal as mentioned in subsection (2).
- (2) The person satisfies the Tribunal as mentioned in this subsection if the person satisfies the Tribunal that—
- (a) the person has an interest which the person is able and willing to sell in the whole of the relevant land; and
- (b) the right—
- (i) in the case of land consisting of a house, building or manufactory, cannot be purchased without material detriment to the land; or
- (ii) in the case of land consisting of a park or garden belonging to a house, cannot be purchased without seriously affecting the amenity or convenience of the house.

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- (3) The compulsory purchase order to which the notice to treat relates, in relation to the person concerned—
- (a) ceases to authorise the purchase of the right; and
 - (b) is deemed to authorise the purchase of the person’s interest in the whole of the relevant land (including, in the case of land consisting of a park or garden belonging to a house, the house);
- and the notice to treat is deemed to have been served in respect of that interest on such date as the Tribunal directs.
- (4) Any question as to the extent of the land in which a compulsory purchase order is deemed to authorise the purchase of an interest by virtue of subsection (3) is to be determined by the Tribunal.
- (5) Subsection (6) applies if, in consequence of a determination of the Tribunal that it is satisfied as mentioned in subsection (1)(b)(ii), a compulsory purchase order is deemed by virtue of subsection (3) to authorise the purchase of an interest in land.
- (6) The acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made.
- (7) Nothing in subsection (6) prejudices any other power of the authority to withdraw the notice.
- (8) The modifications subject to which subsection (1) of section 58 of the Land Compensation Act 1973 (determination of material detriment) is to have effect, as applied by subsection (2) of that section to the duty of the Tribunal in determining whether it is satisfied as mentioned in subsection (1)(b)(ii) above, are set out in subsection (9).
- (9) They are that—
- (a) at the beginning of paragraphs (a) and (b) there shall be inserted “a right over”;
 - (b) for “severance” there shall be substituted “right on the whole of the house, building or manufactory or of the house and the park or garden”; and
 - (c) for “part proposed” and “part is” there shall be substituted respectively “right proposed” and “right is”.
- 12 (1) The provisions of the Act of 1965 mentioned in sub-paragraph (2) (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land) are to be read as if they were modified in accordance with sub-paragraph (3).
- (2) The provisions are—
- (a) section 9(4) (failure of owners to convey),
 - (b) paragraph 10(3) of Schedule 1 (owners under incapacity),
 - (c) paragraph 2(3) of Schedule 2 (absent and untraced owners), and
 - (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land).
- (3) The provisions are to be read as if they were modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed,

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- the right which is to be acquired compulsorily is vested absolutely in the acquiring authority.
- 13 (1) Section 11 of the Act of 1965 (powers of entry) is to be read as if it were modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, the acquiring authority has power to enter for the purpose of exercising that right.
- (2) For the purposes of sub-paragraph (1)—
- (a) the power to enter is to be exercisable in the same circumstances, and subject to the same conditions, as already contained in that section, and
- (b) the right is deemed to have been created on the date of service of the notice.
- (3) Sections 12 (penalty for unauthorised entry) and 13 (entry on sheriff’s warrant in the event of obstruction) of the Act of 1965 are to be read as if modified correspondingly.
- 14 Section 20 of the Act of 1965 (compensation for short-term tenants) is to be read as if it were modified so as to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory purchase of the interests but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right concerned.
- 15 Section 22 of the Act of 1965 (protection of acquiring authority’s possession of land where by inadvertence an interest in the land has not been purchased) is to be read as if it were modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right concerned, subject to compliance with that section as respects compensation.

New rights: compensation

- 16 (1) The enactments relating to compensation for the compulsory purchase of land apply, with the necessary modifications, in relation to the acquisition of new rights under section 9 as they apply to compensation for the compulsory purchase of land.
- (2) Sub-paragraph (1) is without prejudice to the generality of paragraph 8.

PART 2

ACQUISITION BY AGREEMENT

- 17 (1) The provisions of Part 1 of the Compulsory Purchase Act 1965 (c. 56) (other than section 31) apply, so far as applicable, to the acquisition by the HCA of land by agreement.
- (2) In that Part as so applied “land” has the same meaning as in this Part of this Act.

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SCHEDULE 3

Section 11

MAIN POWERS IN RELATION TO LAND OF THE HCA

PART 1

POWERS TO OVERRIDE EASEMENTS ETC.

Powers to override easements etc. in undertaking works or using land

- 1 (1) The HCA or any other person may undertake any construction or maintenance works on land of the HCA even if undertaking the works involves—
- (a) interference with a relevant right or interest, or
 - (b) a breach of a restriction as to the user of land arising by virtue of a contract.
- (2) But the construction or maintenance works must still be in accordance with planning permission.
- (3) The HCA or any other person may use any land of the HCA even if the use involves—
- (a) interference with a relevant right or interest, or
 - (b) a breach of a restriction as to the user of land arising by virtue of a contract.
- (4) But the use of the land must be in accordance with planning permission.
- (5) Sub-paragraphs (1) to (4) do not authorise interference with—
- (a) any right of way on, under or over land, or
 - (b) any right of laying down, erecting, continuing or maintaining apparatus on, under or over land,
- if the right is a protected right.
- (6) In this paragraph—
- “construction or maintenance works” means the erection, construction, carrying out or maintenance of any building or work,
- “protected right” means—
- (a) a right vested in, or belonging to, statutory undertakers for the purpose of carrying on their undertaking, or
 - (b) a right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network,
- “relevant right or interest” means any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support),
- “statutory undertakers” means persons who are, or are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990 (c. 8); and “statutory undertaking” is to be read in accordance with section 262 of that Act (meaning of “statutory undertakers”).

Compensation for overridden easements etc.

- 2 (1) Compensation is payable under section 7 or 10 of the Compulsory Purchase Act 1965 (c. 56) in respect of any interference or breach made in pursuance of paragraph 1.
- (2) The compensation is to be assessed in the same manner, and subject to the same rules, as in the case of other compensation under those sections in respect of injurious affection where—
- (a) the compensation is to be estimated in connection with a purchase by the HCA, or
 - (b) the injury arises from the execution of works on, or use of, land acquired by the HCA.
- (3) Sub-paragraph (4) applies if a person other than the HCA—
- (a) is liable to pay compensation by virtue of sub-paragraphs (1) and (2), and
 - (b) fails to discharge that liability.
- (4) The liability is enforceable against the HCA.
- (5) But sub-paragraph (4) does not affect any agreement between the HCA and any other person for indemnifying the HCA against any liability under that sub-paragraph.

PART 2

POWERS TO EXTINGUISH PUBLIC RIGHTS OF WAY

Powers of Secretary of State to extinguish public rights of way by order

- 3 The Secretary of State may by order extinguish any public right of way over land of the HCA if the Secretary of State is satisfied that—
- (a) an alternative right of way has been, or will be, provided, or
 - (b) the provision of an alternative right of way is not required.

Notification of proposal to make order

- 4 (1) This paragraph applies if the Secretary of State is proposing to make an order under paragraph 3.
- (2) The Secretary of State must—
- (a) publish a notice stating—
 - (i) the effect of the order,
 - (ii) the time (not less than 28 days starting with the date of publication of the notice) within which objections to the proposal may be made, and
 - (iii) the manner in which objections to the proposal may be made, and
 - (b) serve a copy of the notice on—
 - (i) the local planning authority in whose area the land is situated, and
 - (ii) the relevant highway authority.
- (3) In sub-paragraph (2) “the relevant highway authority” means any authority which is a highway authority in relation to the right of way which is proposed to be extinguished by the order.

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- (4) Publication under sub-paragraph (2) must be in such manner as the Secretary of State considers appropriate.

Duty to consider objections

- 5 (1) The Secretary of State must proceed under paragraph 6 if—
- (a) an objection to a proposal to make an order is properly made and not withdrawn, and
 - (b) the matter is not otherwise dealt with.
- (2) For the purposes of sub-paragraph (1) an objection is properly made if (and only if)—
- (a) it is made—
 - (i) within the time, and
 - (ii) in the manner,stated in the notice under paragraph 4, and
 - (b) a written statement of the grounds of the objection is comprised in, or submitted with, the objection.
- (3) For the purposes of sub-paragraph (1) the matter is otherwise dealt with if (and only if) the Secretary of State—
- (a) decides, irrespective of the objection, not to make the order, or
 - (b) decides to make a modification to the proposal which is agreed to by the objector as meeting the objection.
- 6 (1) The Secretary of State must, before making a final decision, consider the grounds of the objection as set out in the statement comprised in, or submitted with, the objection.
- (2) The Secretary of State may require the objector to submit within a particular period a further written statement as to any of the matters to which the objection relates.

Duty to give opportunity to appear

- 7 (1) The Secretary of State must, before making a final decision, give the objector an opportunity to appear before, and be heard by, a person appointed for the purpose by the Secretary of State.
- (2) Sub-paragraph (3) applies if the objector takes advantage of this opportunity.
- (3) The Secretary of State must give an opportunity of appearing and being heard on the same occasion as the objector to—
- (a) the HCA, and
 - (b) any other persons whom the Secretary of State considers ought to be given the opportunity.
- (4) Sub-paragraphs (1) to (3) do not apply so far as the Secretary of State has the power to proceed under paragraph 8 or 9.

Power to treat objection as irrelevant

- 8 The Secretary of State may treat the objection as irrelevant for the purpose of making a final decision—

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- (a) if the Secretary of State has considered the grounds of the objection as set out in the original statement and in any further statement, and
- (b) so far as the Secretary of State is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation.

Power to curtail decision-making process

- 9 The Secretary of State may make a final decision without further investigation as to the matters to which the objection relates if—
- (a) the Secretary of State—
 - (i) has considered the grounds of the objection as set out in the original statement and in any further statement, and
 - (ii) is satisfied that, for the purpose of making a final decision, sufficient information is available as to the matters to which the objection relates, or
 - (b) a further statement has been required under paragraph 6(2) but is not submitted within the required period.

Power to hold public local inquiry

- 10 (1) The Secretary of State must cause a public local inquiry to be held in relation to an objection to a proposal to make an order under paragraph 3 if the Secretary of State considers that the matters to which the objection relates are such as to require investigation by such an inquiry before the Secretary of State makes a final decision.
- (2) The duty in sub-paragraph (1) is effective despite any other provisions of paragraphs 4 to 9.
- (3) The other provisions of those paragraphs are to be ignored if no effect has been given to them when the Secretary of State decides to cause an inquiry to be held.

Orders relating to electronic communications apparatus: removal or abandonment of apparatus

- 11 Paragraphs 12 and 13 apply if—
- (a) an order under paragraph 3 extinguishing a public right of way is made, and
 - (b) at the time of the publication of the notice required by paragraph 4 any electronic communications apparatus was kept installed for the purposes of an electronic communications code network under, in, on, over, along or across the land over which the right of way subsisted.
- 12 (1) The power of the operator of the network to remove the apparatus is exercisable, despite the order, at any time not later than the end of the period of 3 months beginning with the day on which the right of way is extinguished.
- (2) The power of the operator of the network to remove the whole or any part of the apparatus is exercisable after the end of that period if, before the end of the period, the operator has served notice on the HCA of the operator's intention to remove the apparatus or (as the case may be) part.
- 13 (1) The operator of the network may abandon the electronic communications apparatus, or any part of it, by serving notice to that effect on the HCA not later than the

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end of the period of 3 months beginning with the day on which the right of way is extinguished.

- (2) In the absence of such a notice, the operator of the network is to be treated at the end of the period of 3 months as having abandoned any part of the apparatus which, at that time, the operator has neither—
- (a) removed, nor
 - (b) served notice of intention to remove.
- 14 (1) The operator of the network may recover from the HCA the expense of providing any substitute electronic communications apparatus in such other place as the operator may require.
- (2) In sub-paragraph (1) “substitute electronic communications apparatus” means electronic communications apparatus in substitution for—
- (a) the electronic communications apparatus removed or abandoned, and
 - (b) any other electronic communications apparatus connected with the removed or abandoned apparatus which is made useless in consequence of the removal or abandonment.
- 15 Electronic communications apparatus, or any part of it, abandoned by the operator of an electronic communications code network under paragraph 13—
- (a) vests in the HCA, and
 - (b) is deemed, with its abandonment, to cease to be kept installed for the purposes of an electronic communications code network.

Orders relating to electronic communications apparatus: notice requirements

- 16 (1) The Secretary of State must serve notice on the operator of an electronic communications code network of the making of an order under paragraph 3 if the order extinguishes a public right of way in circumstances in which paragraphs 12 and 13 apply in relation to the operator.
- (2) The notice must be served as soon as practicable after the making of the order.

Supplementary: Part 2

- 17 The power of the Secretary of State to make orders under paragraph 3 includes power to—
- (a) vary or revoke such orders, and
 - (b) make supplementary, incidental, consequential, transitional, transitory or saving provision.
- 18 In this Part of this Schedule, in relation to an order, any reference to making a final decision is a reference to deciding whether to make the order or what modification (if any) ought to be made.

PART 3

POWERS IN RELATION TO BURIAL GROUNDS AND CONSECRATED LAND ETC.

Burial grounds

- 19 (1) This paragraph applies in relation to any land of the HCA which consists in, or forms part of, a burial ground.
- (2) The HCA may use the land in any way which accords with planning permission despite—
- (a) anything in any enactment relating to burial grounds, or
 - (b) any obligation or restriction imposed under ecclesiastical law or otherwise in respect of burial grounds.
- (3) But sub-paragraph (2) does not apply in relation to any land which has been used for the burial of the dead until prescribed requirements about the removal and reinterment of human remains and the disposal of monuments have been complied with in relation to the land.

Consecrated land other than burial grounds

- 20 (1) This paragraph applies in relation to any land of the HCA which—
- (a) is consecrated land (whether or not including a building), and
 - (b) does not consist in, or form part of, a burial ground.
- (2) The HCA or any other person may use the land in any way which accords with planning permission despite any obligation or restriction imposed under ecclesiastical law or otherwise in respect of consecrated land.
- (3) But any such use of the land is subject to—
- (a) prescribed requirements about the disposal of monuments, and
 - (b) prescribed provisions for prohibiting or restricting the use of the land while—
 - (i) any church or other building used, or formerly used, for religious worship remains on the land, or
 - (ii) any part of any such church or other building remains on the land.
- (4) Prohibitions or restrictions prescribed under sub-paragraph (3)(b) may be absolute or until a prescribed consent is obtained.

Other land connected to religious worship

- 21 (1) This paragraph applies in relation to any land of the HCA which—
- (a) is neither consecrated land nor land which consists in, or forms part of, a burial ground, and
 - (b) at the time of acquisition included—
 - (i) a church or other building used, or formerly used, for religious worship, or
 - (ii) the site of such a church or other building.
- (2) Any use of the land is subject to prescribed requirements about the disposal of monuments.

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

Regulations: general

- 22 (1) Regulations under this Part of this Schedule must secure that any use of land which is subject to compliance with the regulations is (so far as possible) subject to an appropriate level of control.
- (2) For the purposes of sub-paragraph (1) an appropriate level of control is the same control—
- (a) as imposed by law in relation to a similar use authorised by an enactment not contained in this Part of this Act,
 - (b) as imposed by a Measure, or
 - (c) as it would be proper to impose on a disposal of the land concerned otherwise than in pursuance of an enactment or Measure.
- (3) Regulations under this Part of this Schedule must impose such requirements in relation to the disposal of the land as the Secretary of State considers appropriate to secure that the requirements and other provisions in the regulations about the use of the land are complied with.
- (4) Regulations made for the purposes of paragraphs 19 to 21 may, in particular, include incidental or consequential provision about the closing of registers.

Regulations about human remains and monuments

- 23 (1) Regulations under this Part of this Schedule about the removal and reinterment of human remains and the disposal of monuments must require the persons in whom the land is vested to publish notice of their intention to carry out the removal and reinterment of any human remains or the disposal of any monuments.
- (2) Regulations under this Part of this Schedule about the removal and reinterment of human remains and the disposal of monuments must make provision for—
- (a) enabling the personal representatives or relatives of any deceased person themselves—
 - (i) to undertake the removal and reinterment of the remains of the deceased, and
 - (ii) the disposal of any monument commemorating the deceased, and
 - (b) requiring the persons in whom the land is vested to meet the expenses of such removal, reinterment and disposal provided that they are not more than such amount as may be prescribed.
- (3) Regulations under this Part of this Schedule about the removal and reinterment of human remains and the disposal of monuments must require compliance with such reasonable conditions (if any) as may be imposed, in the case of consecrated land, by the bishop of the diocese, in relation to—
- (a) the manner of removal of any human remains,
 - (b) the place and manner of reinterment of any human remains, and
 - (c) the disposal of any monuments.
- (4) Regulations under this Part of this Schedule about the removal and reinterment of human remains must require compliance with any directions given in any case by the Secretary of State in relation to the removal and reinterment of any human remains.

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

Disapplication of faculties

- 24 (1) No faculty is required for—
- (a) the removal and reinterment of any human remains, or
 - (b) the removal or disposal of any monuments,
- in accordance with regulations under this Part of this Schedule.
- (2) Sub-paragraph (1) is subject to any provision to the contrary made by regulations under this Part of this Schedule.

Disapplication of section 25 of the Burial Act 1857

- 25 Section 25 of the Burial Act 1857 (c. 81) (which prohibits the removal of human remains without the licence of the Secretary of State except in certain cases) does not apply to a removal of human remains carried out in accordance with regulations under this Part of this Schedule.

Interpretation: Part 3

- 26 (1) In this Part of this Schedule—
- “burial ground” includes any churchyard, cemetery or other ground (whether or not consecrated) which has at any time been set apart for the purposes of interment,
 - “monument” includes a tombstone or other memorial,
 - “prescribed” means prescribed by regulations made by the Secretary of State.
- (2) Any power conferred by paragraph 19(2) or 20(2) to use land is to be read as a power to use the land, whether or not it involves—
- (a) the erection, construction or carrying out of any building or work, or
 - (b) the maintenance of any building or work.

SCHEDULE 4

Section 12

POWERS IN RELATION TO, AND FOR, STATUTORY UNDERTAKERS

PART 1

EXTINGUISHMENT OR REMOVAL POWERS FOR THE HCA

Notice for extinguishment of rights of undertakers or for removal of their apparatus

- 1 (1) Sub-paragraph (2) applies if—
- (a) a protected right subsists over land of the HCA and is vested in, or belongs to, statutory undertakers for the purpose of carrying on their undertaking, or
 - (b) apparatus vested in, or belonging to, statutory undertakers for the purpose of carrying on their undertaking is on, under or over land of the HCA.
- (2) The HCA may serve a notice on the statutory undertakers.

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- (3) The notice may, in the case of a protected right, state that, at the end of the relevant period, the right will be extinguished.
- (4) The notice may, in the case of apparatus, require that, before the end of the relevant period, the apparatus must be removed.
- (5) In this paragraph—
 - “protected right” means—
 - (a) a right of way on, under or over land, or
 - (b) a right of laying down, erecting, continuing or maintaining apparatus on, under or over land,
 - “relevant period” means—
 - (a) the period of 28 days beginning with the date of service of the notice, or
 - (b) any longer period beginning with that date and specified in the notice.

Counter-notices

- 2 (1) Sub-paragraph (2) applies if the HCA serves a notice under paragraph 1 on statutory undertakers.
- (2) The statutory undertakers may, before the end of the period of 28 days beginning with the date of the service of the notice, serve a counter-notice on the HCA.
- (3) The counter-notice is a notice stating that the statutory undertakers object to all or any provisions of the notice under paragraph 1.
- (4) The counter-notice must also specify the grounds of their objection.

Effect of unopposed notice

- 3 (1) This paragraph applies if—
 - (a) a notice is served under paragraph 1, and
 - (b) no counter-notice is served under paragraph 2.
- (2) Any right to which the notice under paragraph 1 relates is extinguished at the end of the period specified for that purpose in the notice.
- (3) The HCA may—
 - (a) remove any apparatus, and
 - (b) dispose of it as it considers appropriate,
 if any requirement of the notice under paragraph 1 as to the removal of the apparatus has not been complied with by the end of the period specified for that purpose in the notice.

Opposed notices and Ministerial orders

- 4 (1) This paragraph applies if—
 - (a) a notice is served under paragraph 1, and
 - (b) a counter-notice is served under paragraph 2.
- (2) The HCA may—
 - (a) withdraw the notice served under paragraph 1, or

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- (b) apply to the Secretary of State and the appropriate Minister for an order under sub-paragraph (3).
- (3) The Secretary of State and the appropriate Minister may make an order embodying, with or without modifications, the provisions of the notice.
- (4) The fact that a notice has been withdrawn under sub-paragraph (2)(a) does not prejudice the service of a further notice.
- 5 (1) Before making an order under paragraph 4(3), the Secretary of State and the appropriate Minister must give the statutory undertakers on whom notice was served an opportunity to object to the application for the order.
- (2) The Secretary of State and the appropriate Minister—
 - (a) must consider any objections made by virtue of sub-paragraph (1), and
 - (b) must give—
 - (i) the statutory undertakers who made the objections, and
 - (ii) the HCA,an opportunity to appear before, and be heard by, a person appointed for this purpose by the Secretary of State and the appropriate Minister.
- (3) The Secretary of State and the appropriate Minister may then—
 - (a) decide not to make an order, or
 - (b) proceed to make an order in accordance with the application (with or without modifications).
- 6 (1) This paragraph applies if an order is made under paragraph 4(3).
- (2) Any right to which the order relates is extinguished at the end of the period specified for that purpose in the order.
- (3) The HCA may—
 - (a) remove any apparatus, and
 - (b) dispose of it as it considers appropriate,if any requirement of the order as to the removal of the apparatus has not been complied with by the end of the period specified for that purpose in the order.

Compensation

- 7 (1) Statutory undertakers are entitled to compensation from the HCA if—
 - (a) any right vested in, or belonging to, the statutory undertakers is extinguished, or
 - (b) any requirement is imposed on the statutory undertakers, by virtue of this Part of this Schedule.
- (2) Sections 280 and 282 of the Town and Country Planning Act 1990 (c. 8) (measure of compensation to statutory undertakers) apply to compensation under this paragraph as they apply to compensation under section 279(4) of that Act.

Electronic communications

- 8 (1) The reference in paragraph 1(1)(a) to a protected right vested in, or belonging to, statutory undertakers for the purpose of carrying on their undertaking includes a reference to a protected right conferred by, or in accordance with, the electronic

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communications code on the operator of an electronic communications code network.

- (2) The reference in paragraph 1(1)(b) to apparatus vested in, or belonging to, statutory undertakers for the purpose of carrying on their undertaking includes a reference to electronic communications apparatus kept installed for the purposes of any such network.
- (3) Sub-paragraphs (1) and (2) do not apply where paragraphs 12 and 13 of Part 2 of Schedule 3 apply (orders under paragraph 3 of that Schedule which relate to electronic communications apparatus).
- (4) Where paragraph 1 has effect as mentioned in sub-paragraphs (1) and (2) above—
 - (a) any reference in this Part of this Schedule to statutory undertakers has effect as a reference to the operator of the electronic communications code network, and
 - (b) any reference in this Part of this Schedule to the appropriate Minister has effect as a reference to the Secretary of State for Business, Enterprise and Regulatory Reform.

PART 2

POWERS FOR UNDERTAKERS TO CARRY OUT WORKS

Notices to carry out works

- 9 (1) Sub-paragraph (2) applies if—
 - (a) apparatus vested in, or belonging to, statutory undertakers is on, under or over land of the HCA, and
 - (b) the statutory undertakers claim that development to be carried out on the land will require, on technical or other grounds connected with carrying on their undertaking, the removal or re-siting of the apparatus affected by the development.
- (2) The statutory undertakers may serve on the HCA a notice claiming the right to—
 - (a) enter on the land, and
 - (b) carry out such works for the removal or re-siting of the apparatus or any part of it as may be specified in the notice.
- (3) No notice may be served under sub-paragraph (2) more than 21 days after the beginning of the development on the land.

Counter-notices

- 10 (1) Sub-paragraph (2) applies if statutory undertakers serve a notice under paragraph 9 on the HCA.
- (2) The HCA may, before the end of the period of 28 days beginning with the date of the service of the notice, serve a counter-notice on the statutory undertakers.
- (3) The counter-notice is a notice stating that the HCA objects to all or any provisions of the notice under paragraph 9.

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- (4) The counter-notice must also specify the grounds of the HCA's objection.

Effect of unopposed notice

- 11 (1) This paragraph applies if—
- (a) a notice is served under paragraph 9,
 - (b) no counter-notice is served under paragraph 10, and
 - (c) the period of 28 days beginning with the date of the service of the notice under paragraph 9 has ended.
- (2) The statutory undertakers have the rights claimed in their notice under paragraph 9.

Opposed notices and Ministerial orders

- 12 (1) This paragraph applies if—
- (a) a notice is served under paragraph 9, and
 - (b) a counter-notice is served under paragraph 10.
- (2) The statutory undertakers may—
- (a) withdraw the notice served under paragraph 9, or
 - (b) apply to the Secretary of State and the appropriate Minister for an order under sub-paragraph (3).
- (3) The Secretary of State and the appropriate Minister may by order confer on the statutory undertakers—
- (a) the rights claimed in the notice under paragraph 9, or
 - (b) such modified rights as the Secretary of State and the appropriate Minister consider it appropriate to confer on the statutory undertakers.
- (4) The fact that a notice has been withdrawn under sub-paragraph (2)(a) does not prejudice the service of a further notice.

Power to arrange for the works to be done by the HCA

- 13 (1) Sub-paragraph (2) applies if statutory undertakers have the right to carry out works for the removal or re-siting of apparatus by virtue of this Part of this Schedule.
- (2) The statutory undertakers may arrange with the HCA for the works to be carried out by the HCA, under the superintendence of the statutory undertakers, instead of by the statutory undertakers themselves.

Compensation

- 14 (1) Statutory undertakers are entitled to compensation from the HCA if works are carried out for the removal or re-siting of their apparatus which they have the right to carry out by virtue of this Part of this Schedule.
- (2) Sections 280 and 282 of the Town and Country Planning Act 1990 (c. 8) (measure of compensation to statutory undertakers) apply to compensation under this paragraph as they apply to compensation under section 279(4) of that Act.

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Electronic communications

- 15 (1) The reference in paragraph 9(1)(a) to apparatus vested in, or belonging to, statutory undertakers includes a reference to electronic communications apparatus kept installed for the purposes of an electronic communications code network.
- (2) Where paragraph 9(1)(a) has effect as mentioned in sub-paragraph (1) above—
- (a) any reference in this Part of this Schedule to statutory undertakers has effect as a reference to the operator of the electronic communications code network, and
 - (b) any reference in this Part of this Schedule to the appropriate Minister has effect as a reference to the Secretary of State for Business, Enterprise and Regulatory Reform.

PART 3

EXTENSION OR MODIFICATION OF FUNCTIONS OF UNDERTAKERS

Ministerial order following representations by statutory undertakers

- 16 (1) The Secretary of State and the appropriate Minister may by order provide for an extension or modification of the functions of particular statutory undertakers if conditions 1 and 2 are met.
- (2) Condition 1 is that the statutory undertakers have made representations on the subject to the Secretary of State and the appropriate Minister.
- (3) Condition 2 is that the Secretary of State and the appropriate Minister consider it appropriate to extend or modify the functions of the statutory undertakers—
- (a) to secure the provision of services which—
 - (i) would not otherwise be provided, or
 - (ii) would not otherwise be satisfactorily provided,
 in relation to relevant land, or
 - (b) to facilitate an adjustment of the carrying on of the undertaking necessitated by any of the acts and events mentioned in sub-paragraph (4).
- (4) The acts and events are—
- (a) the acquisition by the HCA under this Part of this Act of any land—
 - (i) in which an interest was held for the purpose of carrying on the undertaking concerned, or
 - (ii) which was used for that purpose, and
 - (b) the extinguishment of a right, or the imposition of any requirement, by virtue of Part 1 of this Schedule.
- (5) In this Part of this Schedule “relevant land” means land in respect of which any of the functions of the HCA under this Part of this Act are being, or have been, exercised.

Ministerial order following representations by the HCA

- 17 (1) The Secretary of State and the appropriate Minister may by order provide for an extension or modification of the functions of particular statutory undertakers if conditions 1 and 2 are met.

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- (2) Condition 1 is that the HCA has made representations on the subject to the Secretary of State and the appropriate Minister.
- (3) Condition 2 is that the Secretary of State and the appropriate Minister consider it appropriate to extend or modify the functions of the statutory undertakers to secure—
 - (a) the provision of new services in relation to relevant land, or
 - (b) the extension of existing services in relation to such land.

Examples of contents of orders

- 18 (1) An order under paragraph 16 or 17 may, in particular—
 - (a) give power to statutory undertakers—
 - (i) to acquire (whether compulsorily or by agreement) any land specified in the order, or
 - (ii) to erect or construct any buildings or works specified in the order,
 - (b) apply, in relation to the acquisition of any such land or the erection or construction of any such buildings or works, enactments relating to the acquisition of land or the erection or construction of buildings or works.
- (2) An order under paragraph 16 which is for the purposes mentioned in subparagraph (3)(a) of that paragraph or an order under paragraph 17 may, in particular, give effect to any financial arrangements—
 - (a) agreed between the HCA and the statutory undertakers, or
 - (b) in the absence of agreement, decided to be equitable in such manner, and by such tribunal, as may be specified in the order.

Notification of proposal to make order

- 19 (1) Statutory undertakers must, as soon as possible after making representations of the kind mentioned in paragraph 16(2), publish a notice—
 - (a) giving such particulars as the Secretary of State and the appropriate Minister may direct of the matters to which the representations relate,
 - (b) specifying the time within which objections to the making of an order as a result of the representations may be made, and
 - (c) specifying the manner in which objections to the making of such an order may be made.
 - (2) The notice must be published in such form and manner as the Secretary of State and the appropriate Minister may direct.
 - (3) The statutory undertakers must also serve a copy of the notice on such persons, or descriptions of persons, as the Secretary of State and the appropriate Minister may direct if the Secretary of State and the appropriate Minister direct that a copy is to be served.
- 20 (1) The HCA must, as soon as possible after making representations of the kind mentioned in paragraph 17(2), publish a notice—
 - (a) giving such particulars as the Secretary of State and the appropriate Minister may direct of the matters to which the representations relate,
 - (b) specifying the time within which objections to the making of an order as a result of the representations may be made, and

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- (c) specifying the manner in which objections to the making of such an order may be made.
- (2) The notice must be published in such form and manner as the Secretary of State and the appropriate Minister may direct.
- (3) The HCA must also serve a copy of the notice on such persons, or descriptions of persons, as the Secretary of State and the appropriate Minister may direct if the Secretary of State and the appropriate Minister direct that a copy is to be served.

Duty to consider objections

- 21 (1) The Secretary of State and the appropriate Minister must proceed under paragraph 22 if—
- (a) an objection to the making of an order under paragraph 16 or 17 is properly made and not withdrawn, and
 - (b) the matter is not otherwise dealt with.
- (2) For the purposes of sub-paragraph (1) an objection is properly made if (and only if)—
- (a) it is made—
 - (i) within the time, and
 - (ii) in the manner,
 stated in the notice under paragraph 19(1) or (as the case may be) 20(1), and
 - (b) a written statement of the grounds of the objection is comprised in, or submitted with, the objection.
- (3) For the purposes of sub-paragraph (1) the matter is otherwise dealt with if (and only if) the Secretary of State and the appropriate Minister—
- (a) decide, irrespective of the objection, not to make the order, or
 - (b) decide to make a modification which is agreed to by the objector as meeting the objection.
- 22 (1) The Secretary of State and the appropriate Minister must, before making a final decision, consider the grounds of the objection as set out in the statement comprised in, or submitted with, the objection.
- (2) The Secretary of State and the appropriate Minister may require the objector to submit within a specified period a further written statement as to any of the matters to which the objection relates.

Duty to give opportunity to appear

- 23 (1) The Secretary of State and the appropriate Minister must, before making a final decision, give the objector an opportunity to appear before, and be heard by, a person appointed for the purpose by the Secretary of State and the appropriate Minister.
- (2) The Secretary of State and the appropriate Minister must give an opportunity of appearing and being heard on the same occasion to—
- (a) the statutory undertakers or (as the case may be) the HCA as a result of whose representations the order is proposed to be made, and
 - (b) any other persons whom the Secretary of State and the appropriate Minister consider ought to be given the opportunity,
- if the objector takes advantage of the opportunity mentioned in sub-paragraph (1).

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- (3) Sub-paragraphs (1) and (2) do not apply so far as the Secretary of State and the appropriate Minister have the power to proceed under paragraph 24 or 25.

Power to treat objection as irrelevant

- 24 The Secretary of State and the appropriate Minister may treat the objection as irrelevant for the purpose of making a final decision—
- (a) if the Secretary of State and the appropriate Minister have considered the grounds of the objection as set out in the original statement and in any further statement, and
 - (b) so far as the Secretary of State and the appropriate Minister are satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation.

Power to curtail decision-making process

- 25 The Secretary of State and the appropriate Minister may make a final decision without further investigation as to the matters to which the objection relates if—
- (a) the Secretary of State and the appropriate Minister—
 - (i) have considered the grounds of the objection as set out in the original statement and in any further statement, and
 - (ii) are satisfied that, for the purpose of making a final decision, sufficient information is available as to the matters to which the objection relates, or
 - (b) a further statement has been required under paragraph 22(2) but is not submitted within the specified period.

Power to hold public local inquiry

- 26 (1) The Secretary of State and the appropriate Minister must cause a public local inquiry to be held in relation to an objection under this Part of this Schedule if the Secretary of State and the appropriate Minister consider that the matters to which the objection relates are such as to require investigation by such an inquiry before the Secretary of State and the appropriate Minister make a final decision.
- (2) The duty in sub-paragraph (1) is effective despite any other provisions of this Part of this Schedule.
- (3) The other provisions of this Part of this Schedule are to be ignored if, when the Secretary of State and the appropriate Minister decide to cause an inquiry to be held, effect has not been given to them.

Special parliamentary procedure for orders

- 27 Orders under paragraph 16 or 17 are subject to special parliamentary procedure.

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PART 4

RELIEVING UNDERTAKERS OF OBLIGATIONS

Orders to relieve obligations

- 28 (1) The appropriate Minister may by order provide for statutory undertakers to be relieved (whether absolutely or so far as specified in the order) of the need to meet an obligation relating to the carrying on of their undertaking if conditions 1 and 2 are met.
- (2) Condition 1 is that the statutory undertakers have made representations on the subject to the appropriate Minister.
- (3) Condition 2 is that the appropriate Minister is satisfied that meeting some or all of the obligation has been made impracticable by any of the acts and events mentioned in sub-paragraph (4).
- (4) The acts and events are—
- (a) the acquisition by the HCA under this Part of this Act of any land—
 - (i) in which an interest was held for the purpose of carrying on the undertaking concerned, or
 - (ii) which was used for that purpose, and
 - (b) the extinguishment of a right, or the imposition of any requirement, by virtue of Part 1 of this Schedule.

Notification of proposal to make order

- 29 (1) Statutory undertakers must, as soon as possible after making representations of the kind mentioned in paragraph 28(2), proceed as directed by the appropriate Minister.
- (2) The appropriate Minister may direct the statutory undertakers to do either or both of the following—
- (a) publish a notice—
 - (i) giving such particulars as the appropriate Minister may direct of the matters to which the representations relate,
 - (ii) specifying the time within which objections to the making of an order as a result of the representations may be made, and
 - (iii) specifying the manner in which objections to the making of such an order may be made, and
 - (b) serve a corresponding notice on such persons, or descriptions of persons, as the appropriate Minister may direct.
- (3) Publication under sub-paragraph (2) must be in such form and manner as the appropriate Minister may direct.

Duty to consider objections

- 30 (1) The appropriate Minister must proceed under paragraph 31 if—
- (a) an objection to the making of an order is properly made and not withdrawn, and
 - (b) the matter is not otherwise dealt with.

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- (2) For the purposes of sub-paragraph (1) an objection is properly made if (and only if)—
- (a) it is made—
 - (i) within the time, and
 - (ii) in the manner,stated in the notice under paragraph 29(2), and
 - (b) a written statement of the grounds of the objection is comprised in, or submitted with, the objection.
- (3) For the purposes of sub-paragraph (1) the matter is otherwise dealt with if (and only if) the appropriate Minister—
- (a) decides, irrespective of the objection, not to make the order, or
 - (b) decides to make a modification which is agreed to by the objector as meeting the objection.
- 31 (1) The appropriate Minister must, before making a final decision, consider the grounds of the objection as set out in the statement comprised in, or submitted with, the objection.
- (2) The appropriate Minister may require the objector to submit within a specified period a further written statement as to any of the matters to which the objection relates.

Duty to give opportunity to appear

- 32 (1) The appropriate Minister must, before making a final decision, give the objector an opportunity to appear before, and be heard by, a person appointed for the purpose by the appropriate Minister.
- (2) The appropriate Minister must give an opportunity of appearing and being heard on the same occasion to—
- (a) the statutory undertakers as a result of whose representations the order is proposed to be made, and
 - (b) any other persons whom the appropriate Minister considers ought to be given the opportunity,
- if the objector takes advantage of the opportunity mentioned in sub-paragraph (1).
- (3) Sub-paragraphs (1) and (2) do not apply so far as the appropriate Minister has the power to proceed under paragraph 33 or 34.

Power to treat objection as irrelevant

- 33 The appropriate Minister may treat the objection as irrelevant for the purpose of making a final decision—
- (a) if the appropriate Minister has considered the grounds of the objection as set out in the original statement and in any further statement, and
 - (b) so far as the appropriate Minister is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation.

Power to curtail decision-making process

- 34 The appropriate Minister may make a final decision without further investigation as to the matters to which the objection relates if—
- (a) the appropriate Minister—

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- (i) has considered the grounds of the objection as set out in the original statement and in any further statement, and
 - (ii) is satisfied that, for the purpose of making a final decision, sufficient information is available as to the matters to which the objection relates, or
- (b) a further statement has been required under paragraph 31(2) but is not submitted within the specified period.

Power to hold public local inquiry

- 35 (1) The appropriate Minister may cause a public local inquiry to be held in relation to an objection under this Part of this Schedule if the appropriate Minister considers that the matters to which the objection relates are such as to require investigation by such an inquiry before the appropriate Minister makes a final decision.
- (2) The power in sub-paragraph (1) is effective despite any other provisions of this Part of this Schedule.
- (3) The other provisions of this Part of this Schedule are to be ignored if, when the Secretary of State decides to cause an inquiry to be held, effect has not been given to them.

Notification procedure after the making of an order

- 36 (1) The appropriate Minister must, immediately after making an order under paragraph 28, proceed under sub-paragraphs (2) and (3).
- (2) The appropriate Minister must publish a notice stating—
- (a) that the order has been made, and
 - (b) a place where a copy of it may be seen at any reasonable hour.
- (3) The appropriate Minister must serve a copy of the notice on—
- (a) any person who—
 - (i) duly made an objection to the order, and
 - (ii) has sent the appropriate Minister a written request for the notice with an address for service, and
 - (b) any other person whom the appropriate Minister considers appropriate.

Operative date of orders

- 37 (1) An order under paragraph 28 which is not subject to special parliamentary procedure becomes operative on the date on which the notice required by paragraph 36(2) is first published.

Special parliamentary procedure for orders

- 38 (1) An order under paragraph 28 is subject to special parliamentary procedure if any objection to the making of the order is properly made and not withdrawn before the order is made.
- (2) Sub-paragraph (2) of paragraph 30 applies for the purposes of sub-paragraph (1) above as it applies for the purposes of sub-paragraph (1) of that paragraph.

Legal challenges to orders

- 39 (1) Sub-paragraph (2) applies if a person aggrieved by an order under paragraph 28 wishes to question its validity on the ground that—
- (a) it is not within the powers conferred by this Part of this Schedule, or
 - (b) any requirement of this Part of this Schedule has not been complied with in relation to the order.
- (2) The person may, within 6 weeks beginning with the date on which the notice required by paragraph 36(2) is first published, apply to the High Court.
- (3) The High Court may, on an application under sub-paragraph (2), make an interim order suspending (whether wholly or in part) the operation of the order under paragraph 28 until the final determination of the proceedings.
- (4) The operation of the order may be suspended generally or so far as affecting any property of the applicant.
- (5) The High Court may, on an application under sub-paragraph (2), quash (whether wholly or in part) the order under paragraph 28 if satisfied that—
- (a) the order is wholly or to any extent outside the powers conferred by this Part of this Schedule, or
 - (b) the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of this Part of this Schedule.
- (6) The order under paragraph 28 may be quashed generally or so far as affecting any property of the applicant.

PART 5

SUPPLEMENTARY

Orders and directions

- 40 (1) The power of—
- (a) the Secretary of State and the appropriate Minister,
 - (b) the Secretary of State and the Secretary of State for Business, Enterprise and Regulatory Reform, or
 - (c) the appropriate Minister,
- to make orders under this Schedule includes power to vary or revoke such orders and to make supplementary, incidental, consequential, transitional, transitory or saving provision.
- (2) The power of—
- (a) the Secretary of State and the appropriate Minister, or
 - (b) the appropriate Minister,
- to give directions under this Schedule includes power to vary or revoke such directions and to make supplementary, incidental, consequential, transitional, transitory or saving provision.

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

Interpretation

41 (1) In this Schedule—

“the appropriate Minister” is to be read as if contained in Part 11 of the Town and Country Planning Act 1990 (c. 8),

“the Secretary of State and the appropriate Minister” is to be read as if contained in Part 11 of the Town and Country Planning Act 1990 (and any references to the Secretary of State and the appropriate Minister are, in relation to anything done or to be done by them, to be read as references to them acting jointly),

“statutory undertakers” means persons who are or are deemed to be statutory undertakers for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990; and “statutory undertaking” is to be read in accordance with section 262 of that Act (meaning of “statutory undertaker”).

(2) In this Schedule, in relation to an order, any reference to making a final decision is a reference to deciding whether to make the order or what modification (if any) ought to be made.

SCHEDULE 5

Section 50

AMENDMENTS OF THE NEW TOWNS ACT 1981

1 The New Towns Act 1981 (c. 64) is amended as follows.

2 For the heading to Part 2 substitute “Transfers from and dissolution of development corporations etc.”.

3 For the italic heading before section 35 substitute “Functions of Welsh Ministers in relation to certain transferred property”.

4 Omit section 35 (establishment of Commission for the New Towns).

5 (1) Section 36 (functions of Commission) is amended as follows.

(2) For the heading substitute “Functions of Welsh Ministers”.

(3) For subsection (1) substitute—

“(1) The Welsh Ministers may—

(a) take over and, with a view to its eventual disposal, hold, manage and turn to account—

(i) the property of the Commission for the New Towns transferred to them under a scheme made under section 51(1) of the Housing and Regeneration Act 2008;

(ii) the property of development corporations transferred to them under this Act; and

(iii) the property of urban development corporations transferred to them by order under section 165A of the Local Government, Planning and Land Act 1980; and

(b) as soon as they consider it expedient to do so, dispose of property so transferred or any other property arising out of such property.

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

- (1A) In exercising their functions under subsection (1), the Welsh Ministers must have regard to the considerations specified in subsection (2).”
- (4) Omit subsections (3) and (3A).
- (5) In subsection (4)—
- (a) for “Commission”, in the first two places where it appears, substitute “Welsh Ministers”, and
 - (b) omit the words from “; nor shall any” to the end.
- (6) In subsection (4A)(a) for “Commission by order under section 165B” substitute “Welsh Ministers by order under section 165A”.
- 6 Omit sections 37 (restrictions on functions of Commission) and 38 (local authorities and work for the Commission).
- 7 (1) Section 39 (power of development corporations to transfer undertakings) is amended as follows.
- (2) In subsection (1) for “Secretary of State” substitute “appropriate national authority”.
 - (3) In subsection (2) for “Secretary of State” substitute “appropriate national authority”.
 - (4) In subsection (2A) for “in relation to Wales” substitute “in the case of a development corporation established by the Welsh Ministers”.
 - (5) In subsection (3) for “Secretary of State” substitute “appropriate national authority”.
 - (6) In subsection (4)—
 - (a) at the beginning insert “In a case in which the appropriate national authority is the Secretary of State,”, and
 - (b) for “Secretary of State”, where it first appears, substitute “appropriate national authority”.
 - (7) In subsection (5)—
 - (a) for “Secretary of State” substitute “appropriate national authority”, and
 - (b) for “he” substitute “the authority”.
 - (8) For subsection (5A) substitute—

“(5A) No order shall be made under subsection (5) above—

 - (a) by the Secretary of State unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons;
 - (b) by the Welsh Ministers unless a draft of the order has been laid before, and approved by a resolution of, the National Assembly for Wales.”
- 8 (1) Section 41 (transfer of property to Commission and dissolution of corporation) is amended as follows.
- (2) In the heading, omit “to Commission”.
 - (3) In subsection (1)—
 - (a) for “Secretary of State” substitute “appropriate national authority”,
 - (b) for “he” substitute “the authority”, and
 - (c) in paragraph (a), for “Commission” substitute “relevant transferee”.

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

- (4) In subsection (1A) for “in relation to Wales” substitute “in the case of a development corporation established by the Welsh Ministers”.
 - (5) In subsection (2)—
 - (a) for “Commission” substitute “relevant transferee”, and
 - (b) in paragraph (b)—
 - (i) for “Secretary of State” substitute “appropriate national authority”, and
 - (ii) for “him” substitute “the authority”.
 - (6) In subsection (4) for “Secretary of State” substitute “appropriate national authority”.
 - (7) In subsection (5) for “Commission” substitute “relevant transferee”.
- 9 After section 41 insert—

“41A Part 2: interpretation

In this Part—

“the appropriate national authority”—

- (a) in relation to a development corporation established by order made by the Secretary of State, means the Secretary of State; and
- (b) in relation to a development corporation established by order made by the Welsh Ministers, means the Welsh Ministers;

“the relevant transferee”—

- (a) in relation to an order made under section 41 by the Secretary of State, means the Homes and Communities Agency; and
- (b) in relation to an order made under section 41 by the Welsh Ministers, means the Welsh Ministers.”

- 10 (1) Section 58 (advances to development corporations and Commission) is amended as follows.
 - (2) In the heading, omit “and Commission”.
 - (3) Omit subsections (5) and (6).
- 11 (1) Section 58A (grants to development corporations and Commission) is amended as follows.
 - (2) In the heading, omit “and Commission”.
 - (3) Omit subsections (4) and (5).
- 12 (1) Section 59 (other borrowing powers of development corporations and Commission) is amended as follows.
 - (2) In the heading, omit “and Commission”.
 - (3) In subsection (1)—
 - (a) omit “or the Commission”, and
 - (b) for the words from “or the Commission (as the case may be)” to the end substitute “may require for meeting its obligations or performing its functions”.

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

- (4) In subsection (2)—
- (a) omit “or the Commission”, and
 - (b) for “they may require for enabling them” substitute “it may require for enabling it.”
- 13 (1) Section 60 (limit on borrowing by development corporations and Commission) is amended as follows.
- (2) In the heading, omit “and Commission”.
- (3) In subsection (1)—
- (a) at the end of paragraph (b), insert “and”,
 - (b) omit paragraph (c) and the “and” following it,
 - (c) in paragraph (d), for “(whether by development corporations or by the Commission)” substitute “by development corporations”, and
 - (d) for “(2) to (4)” substitute “(2) and (3)”.
- (4) Omit subsection (4).
- 14 (1) Section 61 (provisions supplemental to section 58) is amended as follows.
- (2) In subsection (1) for from the beginning of paragraph (a) to the end of paragraph (b) substitute “to a development corporation under section 58(1) above”.
- (3) In subsection (2) omit “, (5) or (6)”.
- 15 (1) Section 62 (Treasury guarantees) is amended as follows.
- (2) In subsection (1) for “or the Commission borrow” substitute “borrows”.
- (3) In subsection (5) for the words from “or by the Commission” to “(as the case may be)” substitute “, the corporation”.
- 16 Omit section 62B (power to suspend loan obligations of development corporations and Commission).
- 17 (1) Section 63 (Secretary of State’s general power) is amended as follows.
- (2) In subsection (1) omit “or the Commission”.
- (3) In subsection (2) omit “or the Commission, as the case may be”.
- 18 (1) Section 65 (disposal of surplus funds) is amended as follows.
- (2) In subsection (1) for the words from “, and with the Commission” to the end substitute “and any development corporation, that the corporation has a surplus whether on capital or on revenue account after making allowance by way of transfer to reserve or otherwise for its future requirements”.
- (3) In subsection (2) for “The Commission or that corporation, as the case may be,” substitute “That corporation”.
- 19 In section 66(1) (payments under sections 63 and 65 treated as repayments) for paragraph (a) and the “and” following it substitute—
- “(a) as made by way of repayment of such part of the principal of advances under section 58(1) above, and”.
- 20 (1) Section 67 (accounts of Commission and development corporations) is amended as follows.

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

- (2) In the heading, omit “Commission and”.
 - (3) In subsection (1)—
 - (a) omit “The Commission and”,
 - (b) in paragraph (b), omit “respectively”, and
 - (c) omit the words from “being, in the Commission’s case” in paragraph (b) to the end of the subsection.
 - (4) Omit subsection (1A).
 - (5) In subsection (2)—
 - (a) omit “of the Commission and”, and
 - (b) omit “or the Commission” wherever appearing.
 - (6) In subsection (3)—
 - (a) omit “the Commission or”, and
 - (b) in paragraph (a), for “they are” substitute “it is”.
- 21 (1) Section 68 (audit) is amended as follows.
- (2) In subsection (1)—
 - (a) omit the words from “of the Commission” to “and the accounts”, and
 - (b) omit “Commission or”.
 - (3) Omit subsection (2A).
 - (4) In subsection (3)—
 - (a) for “accounts of the Commission or” substitute “accounts of”,
 - (b) for “Commission or corporation, as the case may be,” substitute “corporation”, and
 - (c) for “them” substitute “it”.
- 22 (1) Section 69 (Secretary of State’s accounts) is amended as follows.
- (2) In subsection (1)—
 - (a) omit paragraph (a) and the “and” following it, and
 - (b) omit the words from “and directions under” to the end.
 - (3) In subsection (2), omit paragraph (a) and the “and” following it.
- 23 (1) Section 70 (reports) is amended as follows.
- (2) Omit paragraph (a).
 - (3) Omit “of the Commission or”.
- 24 (1) Section 71 (information) is amended as follows.
- (2) In subsection (1)—
 - (a) for “the Commission and every development corporation shall respectively” substitute “every development corporation shall”, and
 - (b) for “their” substitute “its”.
 - (3) In subsection (2)—
 - (a) omit “the Commission and”, and

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- (b) in paragraph (a), for “Commission or corporation, as the case may be” substitute “corporation”.
- 25 In section 72(1)(a) (application and exclusion of certain enactments: section 12 of the Finance Act 1895 (c. 16)) omit “or from the Commission”.
- 26 In section 74(3) (local inquiries) for “sections 37, 40 and 41” substitute “sections 40 and 41”.
- 27 In section 77(3) (regulations and orders to be made by statutory instrument) omit “and paragraph 7 of Schedule 9 to this Act”.
- 28 In section 80(1) (general interpretation provisions)—
- (a) omit the definition of “the Commission”, and
 - (b) in the definition of “financial year”, omit “or the Commission”.
- 29 In section 82 (short title, extent and commencement)—
- (a) in subsection (2)(c) for “1, 2 and 12” substitute “1 and 2”, and
 - (b) in subsection (3) omit “paragraph 12 of Schedule 11, and”.
- 30 Omit Schedule 9 (additional provisions as to the Commission).
- 31 (1) Schedule 10 (additional provisions as to transfer to Commission of property of development corporation) is amended as follows.
- (2) In the heading, omit “to Commission”.
 - (3) In paragraph 1—
 - (a) for “Commission”, wherever appearing, substitute “relevant transferee”, and
 - (b) in sub-paragraph (2)(c), for “, to the member” to the end substitute “—
 - (i) in a case where the relevant transferee is the Homes and Communities Agency, to the member or member of staff of the Agency who corresponds as nearly as may be to the member or officer in question of the corporation; and
 - (ii) in a case where the relevant transferee is the Welsh Ministers, to the member of staff of the Welsh Ministers who corresponds as mentioned in sub-paragraph (i) above.”
 - (4) In paragraph 2—
 - (a) for “Secretary of State”, wherever appearing, substitute “appropriate national authority”, and
 - (b) for “Commission”, wherever appearing, substitute “relevant transferee”.
 - (5) In paragraph 3—
 - (a) in sub-paragraph (1) for “Commission” substitute “relevant transferee”,
 - (b) in sub-paragraph (3)(a) for “Commission” substitute “relevant transferee”, and
 - (c) in sub-paragraph (3)(c)—
 - (i) for “where the development” substitute “where, in the case of a development corporation established by the Secretary of State, the”, and
 - (ii) for “Commission” substitute “Homes and Communities Agency”.

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- (6) Omit paragraph 4.
 - (7) In paragraph 5—
 - (a) omit sub-paragraph (1), and
 - (b) for sub-paragraph (2) substitute—
 - “(2) Sub-paragraph (3) applies if, in the case of a development corporation established by the Secretary of State, the liabilities of the corporation for—
 - (a) the repayment of advances under section 58(1) above; or
 - (b) the payment of interest on such advances;
 are transferred to the Homes and Communities Agency.
 - (3) The following provisions apply to those advances—
 - (a) section 61(2); and
 - (b) section 66(1) but as if the reference to any payment under section 63 or 65 above were a reference to any sum received by the Secretary of State under section 25(2) of the Housing and Regeneration Act 2008.”
- 32 (1) Schedule 11 (saving and transitional provisions) is amended as follows.
- (2) In the italic heading before paragraph 3, omit “to Commission and”.
 - (3) Omit paragraphs 3 and 5.
 - (4) Omit paragraph 12 and the italic heading before it.

SCHEDULE 6

Sections 51(3) and 65(3)

TRANSFER SCHEMES

Creation and apportionment of property, rights and liabilities etc.

- 1 A scheme may—
 - (a) create for the transferor interests in, or rights over, property transferred by virtue of the scheme,
 - (b) create for a transferee interests in, or rights over, property retained by the transferor or transferred to another transferee,
 - (c) create rights or liabilities between the transferor and a transferee or between transferees.
- 2 (1) A scheme may provide for the transfer of property, rights or liabilities that would not otherwise be capable of being transferred or assigned.
- (2) In particular, it may provide for the transfer to take effect regardless of a contravention, liability or interference with an interest or right that would otherwise exist by reason of a provision having effect in relation to the terms on which the transferor is entitled to the property or right, or subject to the liability, in question.
- (3) It does not matter whether the provision referred to in sub-paragraph (2) has effect under an enactment or an agreement or in any other way.

- 3 A certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence for all purposes of that fact.

Employment contracts

- 4 (1) This paragraph applies if rights and liabilities under a contract of employment are transferred by virtue of a scheme.
- (2) The contract of employment—
- (a) is not terminated by the transfer, and
 - (b) has effect from the transfer date as if made between the employee and the transferee.
- (3) The rights, powers, duties and liabilities of the transferor under or in connection with the contract are transferred to the transferee on the transfer date.
- (4) Anything done before the transfer date by or in relation to the transferor in respect of the contract or the employee is to be treated from that date as having been done by or in relation to the transferee.
- (5) In particular, a period of employment with the transferor is to be treated as a period of employment with the transferee (and the transfer is not to be treated as interrupting the continuity of that employment).
- (6) This paragraph is subject to paragraph 5.
- 5 (1) Rights and liabilities under a contract of employment are not transferred by virtue of a scheme if the employee objects to the transfer and informs the transferor or transferee of that fact.
- (2) If the employee objects to the transfer and informs the transferor or transferee of that fact—
- (a) the employee's contract of employment is terminated immediately before the transfer date, but
 - (b) the employee is not to be treated, for any purpose, as having been dismissed by the transferor.
- 6 If (apart from the change of employer) a substantial detrimental change is made to a person's working conditions, nothing in this Schedule affects any right the person has to terminate the person's contract of employment.

Civil servants treated as employed under a contract of employment etc.

- 7 (1) This Schedule applies with the following modifications in relation to employment in the civil service of the Crown on terms which do not constitute a contract of employment.
- (2) An individual who holds employment in the civil service of the Crown immediately before the transfer date is to be treated as employed by virtue of a contract of employment.
- (3) The terms of the employment in the civil service of the Crown are to be regarded as constituting the terms of the contract of employment.

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

- (4) The reference in paragraph 5 to dismissal by the transferor is to termination of the employment in the civil service of the Crown.

Compensation

- 8 A scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by it.

Continuity

- 9 A transfer by virtue of a scheme does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect.

- 10 Anything which—
- (a) is done by the transferor for the purposes of, or otherwise in connection with, anything transferred by virtue of a scheme, and
 - (b) is in effect immediately before the transfer date,
- is to be treated as done by the transferee.

- 11 There may be continued by or in relation to the transferee anything (including legal proceedings)—
- (a) which relates to anything transferred by virtue of a scheme, and
 - (b) which is in the process of being done by or in relation to the transferor immediately before the transfer date.

- 12 (1) This paragraph applies to any document—
- (a) which relates to anything transferred by virtue of a scheme, and
 - (b) which is in effect immediately before the transfer date.
- (2) Any references in the document to the transferor are to be read as references to the transferee.

Supplementary etc. provision

- 13 A scheme may include supplementary, incidental, transitional and consequential provision.

SCHEDULE 7

Sections 51(5), 65(5)

TRANSFER SCHEMES: TAX

Overview

- 1 This Schedule makes provision about the fiscal effect of transfers under schemes made under sections 51 and 65.

Key concepts

- 2 (1) In this Schedule—
- (a) “transfer scheme” means a scheme under section 51 or 65, and

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- (b) “transfer” means a transfer under a transfer scheme.
- (2) In this Schedule “transfer between bodies” means a transfer—
 - (a) from the Urban Regeneration Agency, the Commission for the New Towns or the Housing Corporation, and
 - (b) to the HCA or the Regulator of Social Housing.
- (3) In this Schedule “transfer to government” means a transfer to—
 - (a) a Minister of the Crown, or
 - (b) the Welsh Ministers.

Other definitions

- 3 (1) In this Schedule—
 - (a) ICTA means the Income and Corporation Taxes Act 1988 (c. 1),
 - (b) TCGA means the Taxation of Chargeable Gains Act 1992 (c. 12),
 - (c) FA 1996 means the Finance Act 1996 (c. 8),
 - (d) FA 2002 means the Finance Act 2002 (c. 23), and
 - (e) HMRC means the Commissioners for Her Majesty’s Revenue and Customs.
- (2) In this Schedule a reference to a trade includes a reference to part of a trade.

Corporation tax: continuity of trade

- 4 (1) This paragraph applies if as the result of a transfer scheme—
 - (a) a transferor ceases a trade, and
 - (b) a transferee commences it.
- (2) In connection with the computation of profits and losses for the purpose of corporation tax in respect of periods wholly or partly after the commencement of the transfer scheme—
 - (a) the transferee shall be treated as having always carried on the trade, and
 - (b) the trade shall be considered separately from any other trade of the transferee (with any necessary apportionment being made).

Corporation tax: capital allowances

- 5 (1) This paragraph applies in respect of property transferred under a transfer scheme from—
 - (a) the Urban Regeneration Agency, or
 - (b) the Commission for the New Towns.
- (2) Where the property was used by the transferor, and is to be used by the transferee, in connection with a trade, section 343(2) of ICTA (company reconstructions: capital allowances) shall apply.
- 6 The following transfers shall be treated as giving rise to neither allowance nor charge for the purposes of capital allowances in respect of a trade (and allowances shall be calculated as if the transferee had always carried on the trade)—
 - (a) a transfer from the Housing Corporation, and
 - (b) a transfer to government.

Corporation tax: capital gains

- 7 (1) This paragraph applies in respect of property transferred under a transfer scheme from—
- (a) the Urban Regeneration Agency,
 - (b) the Commission for the New Towns, or
 - (c) the Housing Corporation.
- (2) Section 17 of TCGA (disposals and acquisitions treated as at market value) shall not apply.
- (3) For the purposes of TCGA the transfer (in relation to the transferor and the transferee) is to be taken as being a disposal for a consideration such that neither gain nor loss accrues.
- 8 A transfer shall be disregarded for the purposes of section 30 of TCGA (value-shifting: tax-free benefits).
- 9 At the end of section 35(3)(d) of TCGA (re-basing to 1982) add—
“(xviii) Schedule 7 to the Housing and Regeneration Act 2008.”

Corporation tax: intangible assets

- 10 (1) This paragraph applies for the purposes of Schedule 29 to FA 2002 (intangible assets).
- (2) Expressions used in this paragraph have the same meaning as in that Schedule.
- (3) A transfer between bodies of a chargeable intangible asset is a tax-neutral transfer.
- (4) An intangible fixed asset which is an existing asset of the transferor at the time of a transfer between bodies is to be treated, on and after the transfer, as an existing asset of the transferee.
- (5) A transfer to government of a chargeable intangible asset is to be treated as not involving a realisation of the asset by the transferor.

Corporation tax: loan relationships

- 11 (1) If as a result of a transfer the transferee replaces the transferor as a party to a loan relationship, paragraph 12(2) of Schedule 9 to FA 1996 (transfer within group: continuity of treatment) shall apply (whether or not the transferor and transferee are bodies corporate).
- (2) Expressions used in this paragraph have the same meaning as in that Schedule.

Stamp duty

- 12 (1) Stamp duty shall not be chargeable on a transfer scheme.
- (2) Stamp duty shall not be chargeable on a document certified by HMRC as connected with a transfer scheme.
- (3) A document which is not chargeable by virtue of this paragraph must be stamped in accordance with section 12 of the Stamp Act 1891 (c. 39) with a stamp denoting that it is not chargeable.

SCHEDULE 8

Section 56

AMENDMENTS OF ENACTMENTS: PART 1

Public Records Act 1958 (c. 51)

- 1 In Schedule 1 to the Public Records Act 1958 (definition of public records), at the end of paragraph 3, in Part 2 of the Table, insert at the appropriate place—
- “The Homes and Communities Agency.”

Land Compensation Act 1961 (c. 33)

- 2 In section 23(3) of the Land Compensation Act 1961 (compensation where planning decision made after acquisition: exclusions) for paragraph (d) and the word “or” before it substitute “or
- (d) under Part 1 of the Housing and Regeneration Act 2008 (acquisition by the Homes and Communities Agency).”

Public Health Act 1961 (c. 64)

- 3 In Schedule 4 to the Public Health Act 1961 (attachment of street lighting equipment to certain buildings), in the first column of the Table, for the words from “Commission” to “1959” substitute “Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008”.

Parliamentary Commissioner Act 1967 (c. 13)

- 4 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation)—
- (a) insert, at the appropriate place, “Homes and Communities Agency”,
- (b) insert, in the Notes after the paragraph relating to the Treasury—

“Homes and Communities Agency

In the case of the Homes and Communities Agency no investigation is to be conducted in respect of any action in connection with functions in relation to town and country planning.”

- (c) omit the entries for the Commission for the New Towns and the Urban Regeneration Agency, and
- (d) omit the Notes relating to the Commission for the New Towns and the Urban Regeneration Agency.

Leasehold Reform Act 1967 (c. 88)

- 5 The Leasehold Reform Act 1967 is amended as follows.
- 6 In section 28(5)(b) (retention or resumption of land required for public purposes) for “Commission for the New Towns” substitute “new towns residuary body”.
- 7 (1) Section 29 (reservation of future right to develop) is amended as follows.

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- (2) In subsection (6)—
- (a) in paragraph (a) for “Commission for the New Towns” substitute “new towns residuary body”, and
 - (b) for “that Commission” substitute “that residuary body”.
- (3) In subsection (7) for “Commission for the New Towns” substitute “Welsh new towns residuary body”.
- 8 In section 30(7)(a) (reservation of right of pre-emption in new town or overspill area) for “Commission for the New Towns” substitute “new towns residuary body”.
- 9 In section 33 (Crown land) after subsection (2) insert—
- “(2A) For the purposes of this Part of this Act, an interest belonging to the Welsh new towns residuary body in a tenancy of land is to be treated as if it were not an interest belonging to the Crown.”
- 10 In section 37(1) (interpretation of Part 1) after paragraph (b) insert—
- “(ba) “new towns residuary body” means—
- (i) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008; and
 - (ii) in relation to Wales, means the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a) (i) to (iii) of the New Towns Act 1981 (and references to the “Welsh new towns residuary body” shall be construed accordingly);”.
- 11 (1) Schedule 4 (re-acquisition for development) is amended as follows.
- (2) In the heading for Part 2 for “NEW TOWNS COMMISSION” substitute “WELSH NEW TOWNS RESIDUARY BODY”.
- (3) In paragraph 4—
- (a) for “Commission for the New Towns” substitute “Welsh new towns residuary body”,
 - (b) for “the Commission, the Commission” substitute “that body, the body”, and
 - (c) omit the words from “be authorised” to “Government to”.
- 12 In paragraph 2(2)(c) of Schedule 4A (exclusion of certain shared ownership leases) for “Commission for the New Towns” substitute “new towns residuary body”.

National Loans Act 1968 (c. 13)

- 13 In Schedule 1 to the National Loans Act 1968 (Government lending and advances) in the entry relating to the New Towns Act 1981 (c. 64)—
- (a) in column 1 omit “(5)(6)”, and
 - (b) in column 2 omit “and the Commission for the New Towns”.

Local Government Act 1972 (c. 70)

- 14 The Local Government Act 1972 is amended as follows.
- 15 (1) Section 100J (application of Part 5A of the Act to new authorities, Common Council, etc.) is amended as follows.
- (2) In subsection (1) after paragraph (f) insert—
- “(g) the Homes and Communities Agency so far as it is exercising functions conferred on it in relation to a designated area by virtue of a designation order.”
- (3) After subsection (2) insert—
- “(2A) In its application by virtue of subsection (1)(g) above in relation to the Homes and Communities Agency, a reference in this Part to the offices of the council (however expressed)—
- (a) is to be treated as a reference to such premises located within the designated area as the Homes and Communities Agency considers appropriate, and
- (b) in the application of section 100A(6)(a) above to a case where the meeting is to be held at premises other than those mentioned in paragraph (a) above, includes a reference to those other premises.”
- (4) After subsection (3) insert—
- “(3ZA) In its application by virtue of subsection (1)(g) above in relation to the Homes and Communities Agency, section 100E above shall have effect as if—
- (a) in subsection (2), paragraph (c) was omitted, and
- (b) in subsection (3), for paragraphs (a) to (c) there were substituted—
- “(a) a committee established under paragraph 6(1) of Schedule 1 to the Housing and Regeneration Act 2008 for the purpose of exercising functions conferred on the Homes and Communities Agency in relation to a designated area by virtue of a designation order; or
- (b) a sub-committee of such a committee established under paragraph 6(2) of that Schedule to that Act for that purpose.”
- (3ZB) In its application by virtue of subsection (1)(g) above in relation to the Homes and Communities Agency, section 100G(1) above shall have effect as if paragraph (a) was omitted.”
- (5) After subsection (4A) insert—
- “(4B) In this section “designated area” and “designation order” have the same meanings as in Part 1 of the Housing and Regeneration Act 2008.”
- 16 In section 100K (interpretation and application of Part 5A) in the definition of “committee or sub-committee of a principal council” at the end insert “(and see section 100J(3ZA)(b) above)”.

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

Land Compensation Act 1973 (c. 26)

- 17 (1) Section 39 of the Land Compensation Act 1973 (duty to rehouse residential occupiers) is amended as follows.
- (2) In subsection (4)(d) for “Commission for the New Towns” substitute “new towns residuary body”.
- (3) In subsection (8)—
- (a) in paragraph (a) for “Commission for the New Towns” substitute “new towns residuary body”, and
 - (b) in paragraph (c) for “Commission for the New Towns, the Commission” substitute “new towns residuary body, that body”.
- (4) In subsection (9)—
- (a) after “section” insert “—
 - (a)
 - (b) at the end insert—
 - (b) “new towns residuary body” means—
 - (i) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008; and
 - (ii) in relation to Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981.”

Local Government Act 1974 (c. 7)

- 18 (1) The Local Government Act 1974 is amended as follows.
- (2) In section 25(1) (authorities subject to investigation)—
- (a) omit paragraph (ba), and
 - (b) in paragraph (bf), for “Urban Regeneration” substitute “Homes and Communities”.
- (3) In section 26(7) (matters subject to investigation)—
- (a) omit paragraph (a), and
 - (b) in paragraph (ba)—
 - (i) for “Urban Regeneration” substitute “Homes and Communities”, and
 - (ii) for “Part III of the Leasehold Reform, Housing and Urban Development Act 1993” substitute “Part 1 of the Housing and Regeneration Act 2008”.
- (4) In paragraph 8 of Schedule 5 (matters not subject to investigation) for “Urban Regeneration” substitute “Homes and Communities”.

House of Commons Disqualification Act 1975 (c. 24)

- 19 (1) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) is amended as follows.
- (2) Insert at the appropriate place—
- “The Homes and Communities Agency.”
- (3) Omit the entries relating to—
- (a) the Commission for the New Towns, and
- (b) the Urban Regeneration Agency.

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 20 (1) Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) is amended as follows.
- (2) Insert at the appropriate place—
- “The Homes and Communities Agency.”
- (3) Omit the entry relating to the Urban Regeneration Agency.

Race Relations Act 1976 (c. 74)

- 21 (1) Schedule 1A to the Race Relations Act 1976 (bodies and other persons subject to general statutory duty) is amended as follows.
- (2) In Part 1, after paragraph 52, insert—
- “52A The Homes and Communities Agency.”
- (3) In Part 2, omit the entry relating to English Partnerships.

Rent (Agriculture) Act 1976 (c. 80)

- 22 (1) Section 5 of the Rent (Agriculture) Act 1976 (no statutory tenancy where landlord’s interest belongs to certain bodies) is amended as follows.
- (2) In subsection (3)(c) for “Commission for the New Towns” substitute “English new towns residuary body”.
- (3) After subsection (3) insert—
- “(3A) In subsection (3)(c) above “English new towns residuary body” means the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1) (a) to (d) of the Housing and Regeneration Act 2008.”

Rent Act 1977 (c. 42)

- 23 (1) Section 14 of the Rent Act 1977 (landlord’s interest belonging to local authority, etc.) is amended as follows.
- (2) At the beginning insert “(1)”.

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

(3) In paragraph (d) for “Commission for the New Towns” substitute “English new towns residuary body”.

(4) At the end insert—

“(2) In subsection (1)(d) “English new towns residuary body” means the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008.”

Protection from Eviction Act 1977 (c. 43)

24 (1) Section 3A of the Protection from Eviction Act 1977 (excluded tenancies and licences) is amended as follows.

(2) In subsection (8)(c) for “Commission for the New Towns” substitute “new towns residuary body”.

(3) After subsection (8) insert—

“(8A) In subsection (8)(c) above “new towns residuary body” means—

- (a) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008; and
- (b) in relation to Wales, means the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981.”

Local Government, Planning and Land Act 1980 (c. 65)

25 The Local Government, Planning and Land Act 1980 is amended as follows.

26 In section 4(4) (power to direct bodies to publish information) omit paragraph (b).

27 In section 93 (public bodies to whom Part 10 applies) after subsection (1) insert—

“(1A) Sections 95 to 96A also apply to the Homes and Communities Agency so far as it is exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008 (and references to a body to which this Part of this Act applies in those sections are to be read accordingly).”

28 In section 99(4)(e) (directions to dispose of land: supplementary) omit “the Commission for the New Towns”.

29 In section 165A(2) (transfer by order of property etc. of urban development corporations to the Secretary of State etc.)—

- (a) in paragraph (a) for the words from “177” to “Agency” substitute “42 of the Housing and Regeneration Act 2008 (agency arrangements with urban development corporations)”, and
- (b) in paragraph (b) for “subsection (2)” substitute “subsections (5) and (6)”.

30 In section 165B(2) (transfer by order of property etc. of urban development corporations to statutory bodies)—

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- (a) in paragraph (a) for the words from “177” to “Agency” substitute “42 of the Housing and Regeneration Act 2008 (agency arrangements with urban development corporations)”, and
- (b) in paragraph (b) for “subsection (2)” substitute “subsections (5) and (6)”.

31 In Schedule 16 (bodies to whom Part 10 applies) omit paragraph 6.

Highways Act 1980 (c. 66)

32 (1) Section 219 of the Highways Act 1980 (payments to be made by owners of new buildings in respect of street works) is amended as follows.

(2) In subsection (4)(i)(iii), for “Commission for the New Towns” substitute “new towns residuary body”.

(3) After subsection (4A) insert—

“(4B) In subsection (4)(i)(iii) “new towns residuary body” means—

- (a) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008; and
- (b) in relation to Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981.”

Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66)

33 (1) The Compulsory Purchase (Vesting Declarations) Act 1981 is amended as follows.

(2) In section 15 (application of Act to orders under section 161(1) of the Leasehold Reform, Housing and Urban Development Act 1993) omit the words from “or under subsection (1)” to “similar provision”.

(3) In Schedule 2 (modifications of Act in certain cases)—

- (a) in paragraph 1 omit the words from “or under subsection (1)” to “contains similar provision”, and
- (b) in paragraph 3 for “the housing action trust or the Urban Regeneration Agency (as the case may be)” substitute “or the housing action trust (as the case may be)”.

Local Government (Miscellaneous Provisions) Act 1982 (c. 30)

34 (1) Paragraph 2 of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (street trading) is amended as follows.

(2) In sub-paragraph (5)(b) for “Commission for the New Towns” substitute “new towns residuary body”.

(3) After sub-paragraph (5) insert—

“(5A) In sub-paragraph (5)(b) above “new towns residuary body” means—

- (a) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or

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to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008; and

- (b) in relation to Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981.”

Housing Act 1985 (c. 68)

- 35 In Schedule 5 to the Housing Act 1985 (exceptions to the right to buy) in paragraph 3, at the end insert “, or

section 19 of the Housing and Regeneration Act 2008 (financial assistance) which was a grant made on condition that the housing association provides social housing (and “provides social housing” has the same meaning as in Part 1 of that Act).”

Landlord and Tenant Act 1985 (c. 70)

- 36 In section 38 (minor definitions) of the Landlord and Tenant Act 1985, in the definition of “new town corporation”, for paragraph (b) (and the word “or” immediately before it) substitute—

- “(b) the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008, or
- (c) the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981;”.

Landlord and Tenant Act 1987 (c. 31)

- 37 The Landlord and Tenant Act 1987 is amended as follows.

- 38 In section 21(3)(a) (tenant’s right to apply to tribunal for appointment of manager)—

- (a) after “by” insert “—
- (i)
- (b) after “resident landlord,” insert “or
- (ii) the Welsh Ministers in their new towns residuary capacity;”.

- 39 In section 29(7)(a) (conditions for making acquisition orders)—

- (a) after “by” insert “—
- (i)
- (b) after “resident landlord,” insert “or
- (ii) the Welsh Ministers in their new towns residuary capacity;”.

- 40 In section 58(1) (exempt landlords and resident landlords)—

- (a) in paragraph (b) omit “the Commission for the New Towns or”, and
- (b) after paragraph (de) insert—
- “(df) the Homes and Communities Agency;”.

- 41 In section 60 (general interpretation) after subsection (1) insert—

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“(1A) In this Act a reference to the Welsh Ministers in their new towns residuary capacity means the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981.”

Income and Corporation Taxes Act 1988 (c. 1)

42 In section 376(4) of the Income and Corporation Taxes Act 1988 (qualifying borrowers and qualifying lenders) for paragraph (j) substitute—
“(j) the Homes and Communities Agency;”.

Local Government Act 1988 (c. 9)

43 In Schedule 2 to the Local Government Act 1988 (public supply or works contracts: public authorities) for “The Commission for the New Towns.” substitute—
“The Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008.”

Housing Act 1988 (c. 50)

44 The Housing Act 1988 is amended as follows.
45 In the italic heading before section 50 omit “: functions of Relevant Authority”.
46 Omit sections 50 (housing association grants) and 51 (revenue deficit grants).
47 (1) Section 52 (recovery etc. of grants) is amended as follows.
(2) For “Relevant Authority”, wherever it appears, substitute “appropriate authority”.
(3) In subsections (1) and (5)(b) for “housing association which is a registered social landlord” substitute “relevant housing association”.
(4) After subsection (9) insert—
“(9A) In this section and sections 53 and 54—
“the appropriate authority”—
(a) in relation to an English relevant housing association, means the Homes and Communities Agency, and
(b) in relation to a Welsh relevant housing association, means the Welsh Ministers,
“relevant housing association” means—
(a) a housing association which is a registered provider of social housing (“an English relevant housing association”), and
(b) a housing association which is a registered social landlord (“a Welsh relevant housing association”).
(9B) In this section a reference to registration as a provider of social housing, so far as the context permits, is to be construed as including, in relation to times, circumstances and purposes before the commencement of section 111 of the Housing and Regeneration Act 2008, a reference to registration under—
(a) Part 1 of the Housing Act 1996,

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- (b) Part 1 of the 1985 Act, or
 - (c) any corresponding earlier enactment.”
- 48 (1) Section 53 (determinations under Part 2) is amended as follows.
- (2) In subsection (2) for “Housing Corporation” substitute “Homes and Communities Agency”.
 - (3) In subsection (3) for “Relevant Authority”, in both places where it appears, substitute “appropriate authority”.
 - (4) In subsection (4) for “any provision of sections 50 to” substitute “section”.
- 49 In section 54(2)(a) (tax relief grants) for “a registered social landlord” substitute “a relevant housing association”.
- 50 In section 59(1A) (interpretation of Part 2 etc.) for “50” substitute “52”.

Local Government and Housing Act 1989 (c. 42)

- 51 In section 172(8) of the Local Government and Housing Act 1989 (transfers of new town housing stock) in the definition of “new town corporation” omit “the Commission for the New Towns or”.

Town and Country Planning Act 1990 (c. 8)

- 52 (1) Section 8A of the Town and Country Planning Act 1990 (the Urban Regeneration Agency) is amended as follows.
- (2) In the heading for “Urban Regeneration” substitute “Homes and Communities”.
 - (3) In subsection (1)—
 - (a) for “section 170 of the Leasehold Reform, Housing and Urban Development Act 1993” substitute “section 13 of the Housing and Regeneration Act 2008”,
 - (b) for “subsection (1) of section 171” substitute “section 14(2)”, and
 - (c) for “Urban Regeneration” substitute “Homes and Communities”.
 - (4) Omit subsection (2).

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

- 53 In Schedule 4 to the Planning (Listed Buildings and Conservation Areas) Act 1990 (further provisions as to exercise of functions by different authorities), in paragraph 2, for “and housing action areas” substitute “, housing action areas and areas for which the Homes and Communities Agency is the local planning authority”.

Planning (Hazardous Substances) Act 1990 (c. 10)

- 54 In section 3 of the Planning (Hazardous Substances) Act 1990 (hazardous substances authorities: special cases) for subsection (5A) substitute—
- “(5A) The power to make a designation order under section 13 of the Housing and Regeneration Act 2008 which contains provision of the kind mentioned in section 14(3) of that Act does not extend to providing for the Homes and Communities Agency to be the hazardous substances authority (whether

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instead of, or concurrently with, a county council) in relation to land to which subsection (1) above applies.

(5B) Subject to this, section 1 and this section are subject to any provision made by such an order.”

Water Industry Act 1991 (c. 56)

- 55 The Water Industry Act 1991 is amended as follows.
- 56 In section 41(2)(d)(i) (power to require the provision of a water main) for “Commission for the New Towns” substitute “new towns residuary body”.
- 57 In section 97(5) (performance of sewerage undertaker’s functions by local authorities etc.)—
- (a) in the definition of “relevant area” for paragraph (b) substitute—
 - “(b) in relation to the English new towns residuary body, means any new town in England;
 - (ba) in relation to the Welsh new towns residuary body, means any new town in Wales;”, and
 - (b) in the definition of “relevant authority” in paragraph (b) for “Commission for the New Towns” substitute “new towns residuary body”.
- 58 In section 98 (power to require the provision of a public sewer etc.)—
- (a) in subsection (2)(d)(i) for “Commission for the New Towns” substitute “new towns residuary body”, and
 - (b) in subsection (2A)(d)(i) for “Commission for the New Towns” substitute “new towns residuary body”.
- 59 In section 219(1) (general interpretation) after the definition of “navigation authority” insert—
- ““new towns residuary body” means—
- (a) in relation to a new town in England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1) (a) or (b) of the Housing and Regeneration Act 2008 (and references to the “English new towns residuary body” are to be read accordingly); and
 - (b) in relation to a new town in Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) or (ii) of the New Towns Act 1981 (and references to the “Welsh new towns residuary body” are to be read accordingly);”.

Water Resources Act 1991 (c. 57)

- 60 (1) Section 72 of the Water Resources Act 1991 (interpretation of Chapter 2 of Part 2) is amended as follows.
- (2) In subsection (2)(a)(iii) for “Commission for the New Towns” substitute “new towns residuary body”.
 - (3) After subsection (2) insert—

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“(2A) In subsection (2)(a)(iii) “new towns residuary body” means—

- (a) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008; and
- (b) in relation to Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981.”

Social Security Administration Act 1992 (c. 5)

61 In section 191 (interpretation: general), in the definition of “new town corporation”, for paragraph (a) (but not the “and” following it) substitute—

- “(a) in relation to England—
 - (i) a development corporation established under the New Towns Act 1981; or
 - (ii) the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008;
- (ab) in relation to Wales—
 - (i) a development corporation established under the New Towns Act 1981; and
 - (ii) the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of that Act;”.

Taxation of Chargeable Gains Act 1992 (c. 12)

62 In section 219(1) of the Taxation of Chargeable Gains Act 1992 (disposals by Housing Corporation etc.)—

- (a) in paragraph (a) before “disposes” insert “or the Homes and Communities Agency”,
- (b) in paragraph (d) at the end insert “or the Homes and Communities Agency”, and
- (c) in the words after paragraph (d)—
 - (i) before “, relevant housing” insert “, the Homes and Communities Agency”, and
 - (ii) before “or, as the case” insert “, the Homes and Communities Agency”.

Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)

63 (1) The Leasehold Reform, Housing and Urban Development Act 1993 is amended as follows.

(2) Omit—

- (a) sections 158 to 173, 175, 177 and 183 to 185, and
- (b) Schedules 17 to 20,

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(provisions about the Urban Regeneration Agency).

(3) In section 188(6) (extent etc.) omit paragraph (b) and the “and” before it.

Finance Act 1996 (c. 8)

64 (1) Section 43A of the Finance Act 1996 (landfill tax in relation to contaminated land) is amended as follows.

(2) In subsection (5) omit paragraph (e).

(3) In subsection (6) omit the definition of “English Partnerships”.

Housing Act 1996 (c. 52)

65 (1) Section 28 of the Housing Act 1996 (grants under sections 50 to 54 of the Housing Act 1988) is amended as follows.

(2) Omit subsections (1), (2) and (6).

(3) In the heading for “ss 50 to 54” substitute “Part 2”.

Regional Development Agencies Act 1998 (c. 45)

66 The Regional Development Agencies Act 1998 is amended as follows.

67 Omit section 36 (transfer of property etc. of Urban Regeneration Agency) and the italic heading before it.

68 Omit section 37 (powers in relation to the Urban Regeneration Agency).

69 In section 38(10) (corporation tax)—

(a) in the definition of “qualifying transfer” omit paragraph (b), and

(b) in the definition of “transfer scheme” for “any of sections 34 to 37” substitute “section 34 or 35”.

70 In section 39(4)(b) (stamp duty) for “any of sections 34 to 37 and” substitute “section 34 or 35 or”.

71 Omit Schedule 9 (the Urban Regeneration Agency: transfer schemes).

Greater London Authority Act 1999 (c. 29)

72 The Greater London Authority Act 1999 is amended as follows.

73 (1) Section 333A (the London housing strategy) is amended as follows.

(2) In subsection (3)—

(a) in paragraph (a) for “Housing Corporation for the purpose of making housing grant” substitute “Homes and Communities Agency”, and

(b) in paragraph (b)—

(i) for “Housing Corporation”, in the first place where it appears, substitute “Homes and Communities Agency”,

(ii) for “making housing grant” substitute “giving housing financial assistance”, and

(iii) omit the words from “(and see also” to the end of the paragraph.

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

- (3) In subsection (4)—
- (a) in paragraph (a)—
 - (i) for “grant”, in both places where it appears, substitute “housing financial assistance”,
 - (ii) for “made” substitute “given”, and
 - (iii) for “payable” substitute “given”, and
 - (b) in paragraph (b) for “grant” substitute “housing financial assistance”.
- (4) In subsection (8)(a) for “Housing Corporation” substitute “Homes and Communities Agency”.
- (5) In subsection (10)—
- (a) for the definition of “housing grant” substitute—

““housing financial assistance” means financial assistance given under section 19 of the Housing and Regeneration Act 2008 in connection with the provision of housing accommodation;”,
 - (b) after the definition of “local housing authority” insert—

““provide”, in relation to houses or housing accommodation, includes—

 - (a) provide by way of acquisition, construction, conversion, improvement or repair; and
 - (b) provide indirectly;”, and
 - (c) omit the words from “and the reference” to the end.
- 74 In section 333D (duty to have regard to the London housing strategy)—
- (a) in the heading for “Housing Corporation” substitute “Homes and Communities Agency”, and
 - (b) in subsection (1) for the words from “under” to “Corporation” substitute “relating to Greater London and conferred by or under Part 1 of the Housing and Regeneration Act 2008 (other than any function conferred by virtue of section 13 or 14 of that Act), the Homes and Communities Agency”.
- 75 (1) Section 408 (transfers of property, rights or liabilities) is amended as follows.
- (2) In subsection (3) omit paragraphs (h) and (i).
 - (3) Omit subsection (6).
- 76 In section 409 (transfer schemes) omit subsection (5).

Freedom of Information Act 2000 (c. 36)

- 77 (1) Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities) is amended as follows.
- (2) Insert at the appropriate place—

“The Homes and Communities Agency.”
 - (3) Omit the entries relating to—
 - (a) the Commission for the New Towns, and
 - (b) the Urban Regeneration Agency.

Finance Act 2003 (c. 14)

- 78 The Finance Act 2003 is amended as follows.
- 79 In section 71(4) (certain acquisitions by registered social landlord exempt from charge to stamp duty land tax) after paragraph (c) insert—
- “(ca) under section 19 of the Housing and Regeneration Act 2008 (financial assistance by the Homes and Communities Agency),”.
- 80 (1) Schedule 9 (stamp duty land tax: right to buy, shared ownership leases etc.) is amended as follows.
- (2) In paragraph 1(3)—
- (a) after “*and development corporations*” insert “*etc.*”, and
- (b) for “Commission for the New Towns” substitute “Homes and Communities Agency”.
- (3) In paragraph 5(2) for paragraph (e) substitute—
- “(e) the Homes and Communities Agency;”.

Planning and Compulsory Purchase Act 2004 (c. 5)

- 81 In section 37 of the Planning and Compulsory Purchase Act 2004 (interpretation of Part 2), after subsection (5), insert—
- “(5A) Subsection (4) must also be construed subject to any designation order under section 13 of the Housing and Regeneration Act 2008 (power to make designation orders) providing that the Homes and Communities Agency is to be the local planning authority—
- (a) for an area specified in the order, and
- (b) for all purposes of this Part or any such purposes so specified.
- (5B) Where such an order makes such provision, the Homes and Communities Agency is the local planning authority for the area and the purposes concerned in place of any authority who would otherwise be the local planning authority for that area and those purposes.”

Finance Act 2004 (c. 12)

- 82 In section 59(1)(f) of the Finance Act 2004 (contractors) for “Commission for the New Towns” substitute “Homes and Communities Agency”.

Local Government and Public Involvement in Health Act 2007 (c. 28)

- 83 In section 104(4) of the Local Government and Public Involvement in Health Act 2007 (partner authorities), after paragraph (e), insert—
- “(ea) the Homes and Communities Agency;”.

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

SCHEDULE 9

Section 277

AMENDMENTS OF ENACTMENTS: PART 2

Public Records Act 1958 (c. 51)

- 1 In Part 2 of the Table at the end of paragraph 3 of Schedule 1 to the Public Records Act 1958 (bodies whose records are public records) insert at the appropriate place—
- “Office for Tenants and Social Landlords.”

Parliamentary Commissioner Act 1967 (c. 13)

- 2 (1) Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation) is amended as follows.
- (2) Insert at the appropriate place—
- “Office for Tenants and Social Landlords”.
- (3) Omit the entry for the Housing Corporation.

House of Commons Disqualification Act 1975 (c. 24)

- 3 (1) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) is amended as follows.
- (2) Insert at the appropriate place—
- “Office for Tenants and Social Landlords.”
- (3) Omit the entry for the Housing Corporation.

Race Relations Act 1976 (c. 74)

- 4 In paragraph 52 of Part 1 of Schedule 1A to the Race Relations Act 1976 (bodies and other persons subject to general statutory duty) for “Housing Corporation” substitute “Office for Tenants and Social Landlords”.

Interpretation Act 1978 (c. 30)

- 5 In Schedule 1 to the Interpretation Act 1978 (defined expressions) at the appropriate place insert—
- ““Registered provider of social housing” has the meaning given by section 80(2) of the Housing and Regeneration Act 2008 (and “non-profit” and “profit-making” in connection with a provider have the meanings given by section 115 of that Act).”

Local Government, Planning and Land Act 1980 (c. 65)

- 6 In Schedule 16 to the Local Government, Planning and Land Act 1980 (bodies to whom Part X applies) for paragraph 9 substitute—
- “9 The Regulator of Social Housing.”

Inheritance Tax Act 1984 (c. 51)

- 7 In section 24A(2) of the Inheritance Tax Act 1984 (gifts to housing associations) before paragraph (a) insert—
“(za) a non-profit registered provider of social housing;”.

Housing Associations Act 1985 (c. 69)

- 8 The Housing Associations Act 1985 is amended as follows.
- 9 (1) Section 9 (control by Corporation of disposals of land by housing associations) is amended as follows.
- (2) In subsection (1A)—
- (a) for “the relevant Corporation”, in both places, substitute “the relevant regulator”, and
- (b) for paragraphs (a) to (c) substitute—
- “(a) if the land is in England, the Regulator of Social Housing,
and
(b) if the land is in Wales, the Welsh Ministers.”
- (3) For subsection (6) substitute—
- “(6) Consent under this section must be in writing.”
- (4) For the heading substitute “Control of disposals by unregistered housing associations”.
- 10 (1) Section 10 (dispositions excepted from section 9) is amended as follows.
- (2) In subsection (1) for paragraphs (a) to (c) substitute—
- “(a) in the case of dispositions of land in England, the Regulator of Social Housing, and
(b) in the case of dispositions of land in Wales, the Welsh Ministers.”
- (3) Omit subsection (2)(e) and the “or” before it.

Income and Corporation Taxes Act 1988 (c. 1)

- 11 The Income and Corporation Taxes Act 1988 is amended as follows.
- 12 In section 376(4) (qualifying borrowers and qualifying lenders) for paragraph (k) substitute—
- “(k) the Regulator of Social Housing;”.
- 13 In section 488(7A) (co-operative housing associations)—
- (a) at the beginning insert “In relation to a housing association which is a registered provider of social housing”, and
- (b) for paragraph (a) substitute “to the Regulator of Social Housing”.
- 14 In section 489(5A) (self-build societies) for “Housing Corporation” substitute “Regulator of Social Housing”.
- 15 In section 506B(9) (transactions with substantial donors: exceptions)—
- (a) for “registered social landlord or housing association”, in both places it appears, substitute “relevant housing provider”, and

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- (b) in paragraph (a) after “body” insert “which is a non-profit registered provider of social housing or which is”.

Taxation of Chargeable Gains Act 1992 (c. 12)

- 16 The Taxation of Chargeable Gains Act 1992 is amended as follows.
- 17 (1) Section 218 (disposals of land between the Housing Corporation, Secretary of State or Scottish Homes and housing associations) is amended as follows.
- (2) For “the Housing Corporation”, wherever appearing, substitute “the Regulator of Social Housing”.
- (3) For “the Corporation”, wherever appearing, substitute “the Regulator”.
- (4) In subsection (1)(a) after “Housing Associations Act 1985” insert “, or in accordance with a requirement imposed under section 253 of the Housing and Regeneration Act 2008,”.
- (5) In the heading to the section, and in the italic heading before it, for “Housing Corporation,” substitute “Regulator of Social Housing,”.
- 18 (1) Section 219 (disposals by Housing Corporation, the Secretary of State, Scottish Homes and certain housing associations) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraphs (a), (c) and (d) for “the Corporation” substitute “a housing regulator”,
- (b) for “relevant housing association” and “association”, wherever appearing, substitute “relevant housing provider”,
- (c) in paragraph (c) after “given under” insert “section 167 of the Housing and Regeneration Act 2008,”, and
- (d) in the words after paragraph (d) for “the Corporation”, wherever appearing, substitute “the housing regulator”.
- (3) In subsection (2)—
- (a) for ““the Corporation” means the Housing Corporation” substitute ““housing regulator” means the Regulator of Social Housing”, and
- (b) for the definition of “relevant housing association” substitute—
- ““relevant housing provider” means—
- (a) a non-profit registered provider of social housing,
- (b) a registered social landlord within the meaning of Part 1 of the Housing Act 1996, or
- (c) a body registered in the register maintained under section 57 of the Housing (Scotland) Act 2001.”
- (4) For the heading substitute “Disposals by housing related bodies”.
- 19 (1) Section 259 (gifts to housing associations) is amended as follows.
- (2) In subsection (1)(a) for “relevant housing association” substitute “relevant housing provider”.
- (3) In subsections (1)(b) and (2) for “association”, wherever appearing, substitute “relevant housing provider”.

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(4) For subsection (3) substitute—

“(3) In this section “relevant housing provider” means—

- (a) a non-profit registered provider of social housing,
- (b) a registered social landlord within the meaning of Part 1 of the Housing Act 1996,
- (c) a body registered in the register maintained under section 57 of the Housing (Scotland) Act 2001, or
- (d) a registered housing association within the meaning of Part 2 of the Housing (Northern Ireland) Order 1992.”

Audit Commission Act 1998 (c. 18)

20 The Audit Commission Act 1998 is amended as follows.

21 For section 40 substitute—

“40 Studies relating to registered providers of social housing

- (1) The Commission may promote or undertake studies designed to improve the economy, efficiency and effectiveness of registered providers of social housing.
- (2) The Commission may charge fees for promoting or undertaking studies under subsection (1) at the request of the Regulator of Social Housing.
- (3) The Commission shall send the Regulator of Social Housing a report on any study under this section.
- (4) The Commission may publish the report.”

22 Omit sections 41 to 41B (functions in relation to registered social landlords).

23 (1) Section 41C (advice and assistance for registered social landlords) is amended as follows.

(2) In subsection (1)—

- (a) for the first “registered social landlord” substitute “registered provider of social housing”, and
- (b) for the second “registered social landlord” substitute “registered provider”.

(3) In the heading for “registered social landlords” substitute “registered providers of social housing”.

24 Omit section 43 (meaning of “registered social landlord”).

25 In section 49(2A) (disclosure of information) for the words from “such information” to “except where” substitute “such information in any circumstances unless”.

26 In Schedule 1 (the Audit Commission) omit—

- (a) paragraph 8(2)(c) and (ca), and
- (b) paragraph 8A.

27 In paragraph 3 of Schedule 2A (interaction with other authorities) omit—

- (a) paragraph (a) of the definition of “Audit Commission inspection”, and
- (b) paragraph (e) of the definition of “national studies functions”.

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Freedom of Information Act 2000 (c. 36)

- 28 (1) Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities) is amended as follows.
- (2) Insert at the appropriate place—
- “Office for Tenants and Social Landlords.”
- (3) Omit the entry for the Housing Corporation.

Finance Act 2003 (c. 14)

- 29 The Finance Act 2003 is amended as follows.
- 30 (1) Section 71 (certain acquisitions by registered social landlord exempt from charge to stamp duty land tax) is amended as follows.
- (2) In subsections (1), (2) and (3) for “registered social landlord”, wherever appearing, substitute “relevant housing provider”.
- (3) After subsection (1) insert—
- “(1A) In this section “relevant housing provider” means—
- (a) a non-profit registered provider of social housing, or
- (b) a registered social landlord.”
- 31 (1) Paragraph 2 of Schedule 3 (stamp duty land tax: transactions exempt from charge) is amended as follows.
- (2) In sub-paragraphs (1) and (2) for “registered social landlord” and “landlord”, wherever appearing, substitute “relevant housing provider”.
- (3) After sub-paragraph (2) insert—
- “(2A) A “relevant housing provider” means—
- (a) a non-profit registered provider of social housing, or
- (b) a registered social landlord.”
- 32 (1) Schedule 9 (stamp duty land tax: right to buy, shared ownership leases etc.) is amended as follows.
- (2) In paragraph 1(3)—
- (a) for “The Housing Corporation” substitute “The Regulator of Social Housing”, and
- (b) after “The Northern Ireland Housing Executive” insert—
- “A non-profit registered provider of social housing”.
- (3) In paragraph 1(5) after “social landlord” insert “or registered provider of social housing”.
- (4) After paragraph 1(5) insert—
- “(6) A grant under section 19 of the Housing and Regeneration Act 2008 which—
- (a) is made by virtue of section 35 of that Act, or

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(b) is otherwise made to a relevant provider of social housing (within the meaning of section 35 of that Act) in respect of discounts given by the provider on disposals of dwellings to tenants, does not count as part of the chargeable consideration for a right to buy transaction to which the vendor is a relevant provider of social housing.”

Finance Act 2004 (c. 12)

33 In section 59(1)(h) of the Finance Act 2004 (contractors) for “Housing Corporation” substitute “Regulator of Social Housing”.

Income Tax Act 2007 (c. 3)

34 In section 555 of the Income Tax Act 2007 (transactions with substantial donors: exceptions)—

- (a) in subsections (2) and (3) for “registered social landlord or housing association” substitute “relevant housing provider”, and
- (b) in subsection (3) after “body” insert “which is a non-profit registered provider of social housing or which is”.

SCHEDULE 10

Section 285(3)

PENALTY CHARGE NOTICES

Contents of notice

- 1 A penalty charge notice given to a person under section 285 by an officer of an enforcement authority must—
 - (a) state the officer’s belief that the person has committed a breach of duty,
 - (b) give such particulars of the circumstances as may be necessary to give reasonable notice of the breach of duty,
 - (c) require the person, within a period specified in the notice—
 - (i) to pay a penalty charge specified in the notice, or
 - (ii) to give notice to the enforcement authority that the person wishes the authority to review the notice,
 - (d) state the effect of paragraph 7,
 - (e) 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, and
 - (f) specify the person to whom, and the address at which, a notice requesting a review may be sent (and to which any representations relating to the review may be addressed).
- 2 The penalty charge specified in the notice shall be of such amount (not exceeding £1,000) as may be prescribed for the time being by regulations made by the appropriate national authority.
- 3 (1) The period specified under paragraph 1(c) must not be less than 28 days beginning with the day after that on which the penalty charge notice was given.

- (2) The enforcement authority may extend the period for complying with the requirement mentioned in paragraph 1(c) in any particular case if it considers it appropriate to do so.

Review and withdrawal of notice

- 4 (1) Sub-paragraph (2) applies if, within the period specified under paragraph 1(c) (or that period as extended under paragraph 3(2)), the recipient of the penalty charge notice gives notice to the enforcement authority requesting a review.
- (2) The enforcement authority must—
- (a) consider any representations made by the recipient and all other circumstances of the case,
 - (b) decide whether to confirm or withdraw the notice, and
 - (c) give notice of its decision to the recipient.
- (3) A notice under sub-paragraph (2)(c) confirming the penalty charge notice must also state the effect of paragraph 6(1) to (4).
- (4) The enforcement authority must withdraw the penalty charge notice if it is not satisfied of one (or more) of the following—
- (a) that the recipient committed the breach of duty specified in the notice,
 - (b) that the notice was given within the time allowed by section 285(2) and complies with the other requirements imposed by virtue of this Schedule, or
 - (c) that, in the circumstances of the case, it was appropriate for a penalty charge notice to be given to the recipient.
- 5 The enforcement authority may give the recipient of a penalty charge notice a notice withdrawing the penalty charge notice if the authority considers that the penalty charge notice ought not to have been given.

Appeals

- 6 (1) The recipient of a penalty charge notice may appeal to the county court against the notice if the notice is confirmed by the enforcement authority after a review.
- (2) The appeal must be made within the period of 28 days beginning with the day after that on which the notice under paragraph 4(2)(c) is given.
- (3) The county court may extend the period for appealing against the notice.
- (4) An appeal must be on one (or more) of the following grounds—
- (a) that the recipient did not commit the breach of duty specified in the penalty charge notice,
 - (b) that the notice was not given within the time allowed by section 285(2) or does not comply with any other requirement imposed by virtue of this Schedule, or
 - (c) that in the circumstances of the case it was inappropriate for the notice to be given to the recipient.
- (5) An appeal is to be by way of a rehearing.
- (6) On an appeal the court is to uphold the notice or quash it.

Recovery of penalty charge

- 7 (1) The amount of the penalty charge is recoverable from the recipient of the penalty charge notice as a debt owed to the enforcement authority unless—
- (a) the notice has been withdrawn or quashed, or
 - (b) the charge has been paid.
- (2) Proceedings for the recovery of the penalty charge may not be started before the end of the period mentioned in paragraph 4(1).
- (3) Sub-paragraph (4) applies if, within that period, the recipient of the penalty charge notice gives notice to the enforcement authority that the recipient wishes the authority to review the penalty charge notice.
- (4) Proceedings for the recovery of the penalty charge may not be started—
- (a) before the end of the period mentioned in paragraph 6(2), and
 - (b) where the recipient appeals against the penalty charge notice, before the end of the period of 28 days beginning with the day on which the appeal is withdrawn or determined.
- 8 In proceedings for the recovery of the penalty charge, 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
 - (b) states that payment of the penalty charge was, or was not, received by a date specified in the certificate,
- is evidence of the facts stated.

Repayments

- 9 The enforcement authority must repay any amount previously paid as a penalty charge in pursuance of a penalty charge notice if the notice is withdrawn or quashed.

Supplementary

- 10 (1) A penalty charge notice and any other notice mentioned in this Schedule may be given by post.
- (2) Any such notice may be given—
- (a) in the case of a body corporate (other than a limited liability partnership), to the secretary or clerk of that body,
 - (b) in the case of a limited liability partnership, to any member or to any person having control or management of the partnership business,
 - (c) in the case of any other partnership, to any partner or to any person having control or management of the partnership business, and
 - (d) in the case of an unincorporated association, to any member or to any person having control or management of the affairs of the association.
- 11 (1) The appropriate national authority may by regulations make provision supplementary or incidental to the preceding provisions of this Schedule.
- (2) Such provision may, in particular, include—
- (a) provision prescribing—
 - (i) the form of penalty charge notices or any other notice mentioned in this Schedule,

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- (ii) circumstances in which penalty charge notices may not be given,
- (iii) the method or methods by which penalty charges may be paid,
- (b) provision about the service of notices.

SCHEDULE 11

Section 299

POSSESSION ORDERS RELATING TO CERTAIN TENANCIES

PART 1

AMENDMENTS TO THE HOUSING ACTS OF 1985, 1988 AND 1996

Housing Act 1985 (c. 68)

- 1 The Housing Act 1985 is amended as follows.
- 2 (1) Section 82 (security of tenure: date on which secure tenancy comes to an end as a result of a possession order etc.) is amended as follows.
 - (2) In subsection (1) for “by obtaining an order” substitute “as”.
 - (3) For subsections (1A) and (2) substitute—
 - “(1A) The tenancy may be brought to an end by the landlord—
 - (a) obtaining—
 - (i) an order of the court for the possession of the dwelling-house, and
 - (ii) the execution of the order,
 - (b) obtaining an order under subsection (3), or
 - (c) obtaining a demotion order under section 82A.
 - (2) In the case mentioned in subsection (1A)(a), the tenancy ends when the order is executed.”
- 3 (1) Section 85 (extended discretion of court in certain proceedings for possession) is amended as follows.
 - (2) In subsection (3)(a) omit the words from “or payments” to “profits,”.
 - (3) For subsection (4) substitute—
 - “(4) The court may discharge or rescind the order for possession if it thinks it appropriate to do so having had regard to—
 - (a) any conditions imposed under subsection (3), and
 - (b) the conduct of the tenant in connection with those conditions.”
 - (4) Omit subsections (5) and (5A).
- 4 In Schedule 3 (grounds for withholding consent to assignment by way of exchange) for Ground 1 substitute—

“Ground 1

The tenant or the proposed assignee is subject to an order of the court for the possession of the dwelling-house of which he is the secure tenant.”

Housing Act 1988 (c. 50)

5 The Housing Act 1988 is amended as follows.

6 (1) Section 5 (security of tenure) is amended as follows.

(2) For subsection (1) substitute—

“(1) An assured tenancy cannot be brought to an end by the landlord except by—

(a) obtaining—

(i) an order of the court for possession of the dwelling-house under section 7 or 21, and

(ii) the execution of the order,

(b) obtaining an order of the court under section 6A (demotion order), or

(c) in the case of a fixed term tenancy which contains power for the landlord to determine the tenancy in certain circumstances, by the exercise of that power,

and, accordingly, the service by the landlord of a notice to quit is of no effect in relation to a periodic assured tenancy.

(1A) Where an order of the court for possession of the dwelling-house is obtained, the tenancy ends when the order is executed.”

(3) In subsection (2)(a) after “court” insert “of the kind mentioned in subsection (1)(a) or (b) or any other order of the court”.

7 In section 7(7) (possession orders in cases of fixed term tenancies which have come to an end) for “on the day on which the order takes effect” substitute “in accordance with section 5(1A)”.

8 (1) Section 9 (extended discretion of court in possession claims) is amended as follows.

(2) In subsection (3) omit the words from “or payments” to “profits”.

(3) For subsection (4) substitute—

“(4) The court may discharge or rescind any such order as is referred to in subsection (2) if it thinks it appropriate to do so having had regard to—

(a) any conditions imposed under subsection (3), and

(b) the conduct of the tenant in connection with those conditions.”

(4) Omit subsections (5) and (5A).

9 (1) Section 21 (recovery of possession on expiry or termination of assured shorthold tenancies) is amended as follows.

(2) In subsection (3) for “on the day on which the order takes effect” substitute “in accordance with section 5(1A)”.

(3) After subsection (4) insert—

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“(4A) Where a court makes an order for possession of a dwelling-house by virtue of subsection (4) above, the assured shorthold tenancy shall end in accordance with section 5(1A).”

Housing Act 1996 (c. 52)

- 10 The Housing Act 1996 is amended as follows.
- 11 (1) Section 127 (introductory tenancies: proceedings for possession) is amended as follows.
- (2) In subsection (1) for the words from “an order” to the end substitute “—
- (a) an order of the court for the possession of the dwelling-house, and
- (b) the execution of the order.”
- (3) After subsection (1) insert—
- “(1A) In such a case, the tenancy ends when the order is executed.”
- (4) In subsection (2) for “such an order” substitute “an order of the kind mentioned in subsection (1)(a)”.
- (5) Omit subsection (3).
- 12 (1) Section 130 (introductory tenancies: effect of beginning proceedings for possession) is amended as follows.
- (2) In subsection (2)(a) for the words from “in pursuance of”, where they first appear, to “of the court” substitute “in accordance with section 127(1A)”.
- (3) In subsection (3)(b) for “127(2) and (3)” substitute “127(1A) and (2)”.
- 13 (1) Section 143D (demoted tenancies: proceedings for possession) is amended as follows.
- (2) In subsection (1) for the words from “an order” to the end substitute “—
- (a) an order of the court for the possession of the dwelling-house, and
- (b) the execution of the order.”
- (3) After subsection (1) insert—
- “(1A) In such a case, the tenancy ends when the order is executed.”
- (4) Omit subsection (3).

Transitional provisions

- 14 (1) Subject as follows, this Part of this Schedule does not apply to any possession order made before the commencement date.
- (2) This Part of this Schedule does apply to a possession order made before the commencement date if the order applies to—
- (a) a new tenancy by virtue of paragraph 20, or
- (b) a tenancy which has not ended pursuant to the order before that date.
- (3) Paragraphs 3(3) and 8(3) apply to any possession order regardless of when it was made.

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- (4) In determining for the purposes of sub-paragraph (2) whether a tenancy has ended, any ending which was temporary because the tenancy was restored in consequence of a court order is to be ignored.
- (5) In this paragraph “the commencement date” means the day on which section 299 comes into force for purposes other than the purposes of the Secretary of State or the Welsh Ministers making orders under Part 2 of this Schedule.

PART 2

REPLACEMENT OF CERTAIN TERMINATED TENANCIES

Circumstances in which replacement tenancies arise

- 15 In this Part of this Schedule “an original tenancy” means any secure tenancy, assured tenancy, introductory tenancy or demoted tenancy—
 - (a) in respect of which a possession order was made before the commencement date, and
 - (b) which ended before that date pursuant to the order but not on the execution of the order.
- 16 (1) A new tenancy of the dwelling-house which was let under the original tenancy is treated as arising on the commencement date between the ex-landlord and the ex-tenant if—
 - (a) on that date—
 - (i) the home condition is met, and
 - (ii) the ex-landlord is entitled to let the dwelling-house, and
 - (b) the ex-landlord and the ex-tenant have not entered into another tenancy after the date on which the original tenancy ended but before the commencement date.
- (2) The home condition is that the dwelling-house which was let under the original tenancy—
 - (a) is, on the commencement date, the only or principal home of the ex-tenant, and
 - (b) has been the only or principal home of the ex-tenant throughout the termination period.
- (3) In this Part of this Schedule “the termination period” means the period—
 - (a) beginning with the end of the original tenancy, and
 - (b) ending with the commencement date.
- (4) For the purposes of sub-paragraph (2)(a) the dwelling-house is the only or principal home of the ex-tenant on the commencement date even though the ex-tenant is then absent from the dwelling-house as a result of having been evicted in pursuance of a warrant if the warrant is subsequently set aside but the possession order under which it was granted remains in force.
- (5) In that case, the new tenancy is treated as arising on the first day (if any) on which the ex-tenant resumes occupation of the dwelling-house as that person’s only or principal home.

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- (6) For the purposes of sub-paragraph (2)(b) any period of time within the termination period is to be ignored if—
- (a) it is a period in which the ex-tenant was absent from the dwelling-house as a result of having been evicted in pursuance of a warrant which was then set aside although the possession order under which it was granted remained in force, and
 - (b) the ex-tenant subsequently resumes occupation of the dwelling-house as the ex-tenant's only or principal home.
- (7) The appropriate national authority may by order provide for particular cases or descriptions of case, or particular circumstances, where the home condition is met where it would not otherwise be met.

Nature of replacement tenancies

- 17 The new tenancy is to be—
- (a) a secure tenancy if—
 - (i) the original tenancy was a secure tenancy, or
 - (ii) the original tenancy was an introductory tenancy but no election by the ex-landlord under section 124 of the Housing Act 1996 (c. 52) is in force on the day on which the new tenancy arises,
 - (b) an assured shorthold tenancy if the original tenancy was an assured shorthold tenancy,
 - (c) an assured tenancy which is not an assured shorthold tenancy if the original tenancy was a tenancy of that kind,
 - (d) an introductory tenancy if the original tenancy was an introductory tenancy and an election by the ex-landlord under section 124 of the Housing Act 1996 is in force on the day on which the new tenancy arises,
 - (e) a demoted tenancy to which section 20B of the Housing Act 1988 (c. 50) applies if the original tenancy was a demoted tenancy of that kind, and
 - (f) a demoted tenancy to which section 143A of the Housing Act 1996 applies if the original tenancy was a demoted tenancy of that kind.
- 18 (1) The new tenancy is, subject as follows, to have effect on the same terms and conditions as those applicable to the original tenancy immediately before it ended.
- (2) The terms and conditions of the new tenancy are to be treated as modified so as to reflect, so far as applicable, any changes made during the termination period to the level of payments for the ex-tenant's occupation of the dwelling-house or to the other terms and conditions of the occupation.
 - (3) The terms and conditions of the new tenancy are to be treated as modified so that any outstanding liabilities owed by the ex-tenant to the ex-landlord in respect of payments for the ex-tenant's occupation of the dwelling-house during the termination period are liabilities in respect of rent under the new tenancy.
 - (4) The appropriate national authority may by order provide for other modifications of the terms and conditions of the new tenancy.
 - (5) Nothing in sub-paragraphs (2) to (4) is to be read as permitting modifications of the new tenancy which would not have been possible if the original tenancy had remained a tenancy throughout the termination period.

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- (6) The terms and conditions of a new secure tenancy which arises by virtue of paragraph 17(a)(ii) are to be treated as modified so far as necessary to reflect the fact that the new tenancy is a secure tenancy and not an introductory tenancy.
- 19 (1) Any provision which is made by or under an enactment and relates to a secure tenancy, assured tenancy, introductory tenancy or demoted tenancy applies, subject as follows, to a new tenancy of a corresponding kind.
- (2) Any such provision which relates to an introductory tenancy applies to a new tenancy which is an introductory tenancy as if the trial period mentioned in section 125(2) of the Housing Act 1996 (c. 52) were the period of one year beginning with the day on which the new tenancy arises.
- (3) Any such provision which relates to a demoted tenancy applies to a new tenancy which is a demoted tenancy as if the demotion period mentioned in section 20B(2) of the Housing Act 1988 (c. 50) or section 143B(1) of the Housing Act 1996 were the period of one year beginning with the day on which the new tenancy arises.
- (4) The appropriate national authority may by order modify any provision made by or under an enactment in its application to a new tenancy.

Status of possession order and other court orders

- 20 (1) The possession order in pursuance of which the original tenancy ended is to be treated, so far as practicable, as if it applies to the new tenancy.
- (2) Any court orders made before the commencement date which—
- (a) are in force on that date,
 - (b) relate to the occupation of the dwelling-house, and
 - (c) were made in contemplation of, in consequence of or otherwise in connection with the possession order,
- are to be treated, so far as practicable, as if they apply to the new tenancy.

Continuity of tenancies

- 21 (1) The new tenancy and the original tenancy are to be treated for the relevant purposes as—
- (a) the same tenancy, and
 - (b) a tenancy which continued uninterrupted throughout the termination period.
- (2) The relevant purposes are—
- (a) determining whether the ex-tenant is a successor in relation to the new tenancy,
 - (b) calculating on or after the commencement date the period qualifying, or the aggregate of such periods, under Schedule 4 to the Housing Act 1985 (c. 68) (qualifying period for right to buy and discount),
 - (c) determining on or after the commencement date whether the condition set out in paragraph (b) of Ground 8 of Schedule 2 to that Act is met, and
 - (d) any other purposes specified by the appropriate national authority by order.
- (3) In proceedings on a relevant claim the court concerned may order that the new tenancy and the original tenancy are to be treated for the purposes of the claim as—
- (a) the same tenancy, and

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- (b) a tenancy which continued uninterrupted throughout the termination period.
- (4) The following are relevant claims—
- (a) a claim by the ex-tenant or the ex-landlord against the other for breach of a term or condition of the original tenancy—
 - (i) in respect of which proceedings are brought on or after the commencement date, or
 - (ii) in respect of which proceedings were brought, but were not finally determined, before that date,
 - (b) a claim by the ex-tenant against the ex-landlord for breach of statutory duty in respect of which proceedings are or were brought as mentioned in paragraph (a)(i) or (ii), and
 - (c) any other claim of a description specified by the appropriate national authority by order.
- (5) For the purposes of sub-paragraph (4)(a) proceedings must be treated as finally determined if—
- (a) they are withdrawn,
 - (b) any appeal is abandoned, or
 - (c) the time for appealing has expired without an appeal being brought.

Compliance with consultation requirements

- 22 (1) The fact that—
- (a) the views of the ex-tenant during the termination period were not sought or taken into account when they should have been sought or taken into account, or
 - (b) the views of the ex-tenant during that period were sought or taken into account when they should not have been sought or taken into account,
- is not to be taken to mean that the consultation requirements were not complied with.
- (2) The consultation requirements are—
- (a) the requirements under—
 - (i) section 105(1) of the Housing Act 1985 (c. 68),
 - (ii) paragraphs 3 and 4 of Schedule 3A to that Act,
 - (iii) regulations made under section 27AB of that Act which relate to arranging for ballots or polls with respect to a proposal to enter into a management agreement, and
 - (iv) section 137(2) of the Housing Act 1996 (c. 52), and
 - (b) any other requirements specified by the appropriate national authority by order.

Joint tenancies

- 23 (1) In the application of this Part of this Schedule in relation to an original tenancy which was a joint tenancy, a reference to the dwelling-house being the only or principal home of the ex-tenant is to be treated as a reference to the dwelling-house being the only or principal home of at least one of the ex-tenants of the joint tenancy.

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

- (2) The appropriate national authority may by order provide for this Part of this Schedule to apply in relation to an original tenancy which was a joint tenancy subject to such additional modifications as may be specified in the order.

Successor landlords

- 24 (1) The appropriate national authority may by order provide for this Part of this Schedule to apply, subject to such modifications as may be specified in the order, to successor landlord cases.
- (2) For the purposes of sub-paragraph (1) a successor landlord case is a case, in relation to an original tenancy, where the interest of the ex-landlord in the dwelling-house—
- (a) has been transferred to another person after the end of the original tenancy and before the commencement date, and
 - (b) on the commencement date, belongs to the person to whom it has been transferred or a subsequent transferee.

Supplementary

- 25 In determining for the purposes of this Part of this Schedule whether a tenancy has ended, any ending which was temporary because the tenancy was restored in consequence of a court order is to be ignored.
- 26 (1) In this Part of this Schedule—
- “appropriate national authority” means—
 - (a) in relation to a dwelling-house in England, the Secretary of State, and
 - (b) in relation to a dwelling-house in Wales, the Welsh Ministers,
 - “assured shorthold tenancy” and “assured tenancy” have the same meanings as in Part 1 of the Housing Act 1988 (c. 50) but do not include a demoted tenancy to which section 20B of that Act applies,
 - “the commencement date” means the day on which section 299 comes into force for purposes other than the purposes of the Secretary of State or the Welsh Ministers making orders under this Part of this Schedule,
 - “demoted tenancy” means a tenancy to which section 20B of the Act of 1988 or section 143A of the Housing Act 1996 (c. 52) applies,
 - “dwelling-house”—
 - (a) in relation to an assured tenancy, or a tenancy to which section 20B of the Act of 1988 applies, has the same meaning as in Part 1 of that Act,
 - (b) in relation to a tenancy to which section 143A of the Act of 1996 applies, has the same meaning as in Chapter 1A of Part 5 of that Act,
 - (c) in relation to an introductory tenancy, has the meaning given by section 139 of the Act of 1996, and
 - (d) in relation to a secure tenancy, has the meaning given by section 112 of the Housing Act 1985 (c. 68),
 - “ex-landlord” means the person who was the landlord under an original tenancy,
 - “ex-tenant” means the person who was the tenant under an original tenancy,
 - “introductory tenancy” has the same meaning as in Chapter 1 of Part 5 of the Act of 1996,

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- “modification” includes omission,
“new tenancy” means a tenancy which is treated as arising by virtue of paragraph 16,
“original tenancy” has the meaning given by paragraph 15,
“possession order”, in relation to a tenancy, means a court order for the possession of the dwelling-house,
“secure tenancy” has the same meaning as in Part 4 of the Act of 1985,
“successor”—
- (a) in relation to a new tenancy which is an assured tenancy or which is a demoted tenancy to which section 20B of the Act of 1988 applies, has the same meaning as in section 17 of that Act,
 - (b) in relation to a new tenancy which is a demoted tenancy to which section 143A of the Act of 1996 applies, has the meaning given by section 143J of that Act,
 - (c) in relation to a new tenancy which is an introductory tenancy, has the same meaning as in section 132 of the Act of 1996, and
 - (d) in relation to a new tenancy which is a secure tenancy, has the same meaning as in section 88 of the Act of 1985.
- “termination period” has the meaning given by paragraph 16(3).
- (2) For the purposes of the definition of “appropriate national authority” in subparagraph (1) a dwelling-house which is partly in England and partly in Wales is to be treated—
- (a) as being in England if it is treated as situated in the area of a billing authority in England by virtue of regulations under section 1(3) of the Local Government Finance Act 1992 (c. 14) (council tax in respect of dwellings), and
 - (b) as being in Wales if it is treated as situated in the area of a billing authority in Wales by virtue of regulations under that section.

SCHEDULE 12

Section 303

SERVICE CHARGES: PROVISION OF INFORMATION AND DESIGNATED ACCOUNTS

Landlord and Tenant Act 1985 (c. 70)

- 1 The Landlord and Tenant Act 1985 is amended as follows.
- 2 For section 21 (as substituted by section 152 of the Commonhold and Leasehold Reform Act 2002 (c. 15)) (regular statements of account) substitute—

“21 Service charge information

- (1) The appropriate national authority may make regulations about the provision, by landlords of dwellings to each tenant by whom service charges are payable, of information about service charges.
- (2) The regulations must, subject to any exceptions provided for in the regulations, require the landlord to provide information about—
 - (a) the service charges of the tenant,

- (b) any associated service charges, and
 - (c) relevant costs relating to service charges falling within paragraph (a) or (b).
- (3) The regulations must, subject to any exceptions provided for in the regulations, require the landlord to provide the tenant with a report by a qualified person on information which the landlord is required to provide by virtue of this section.
- (4) The regulations may make provision about—
 - (a) information to be provided by virtue of subsection (2),
 - (b) other information to be provided (whether in pursuance of a requirement or otherwise),
 - (c) reports of the kind mentioned in subsection (3),
 - (d) the period or periods in relation to which information or reports are to be provided,
 - (e) the times at or by which information or reports are to be provided,
 - (f) the form and manner in which information or reports are to be provided (including in particular whether information is to be contained in a statement of account),
 - (g) the descriptions of persons who are to be qualified persons for the purposes of subsection (3).
- (5) Subsections (2) to (4) do not limit the scope of the power conferred by subsection (1).
- (6) Regulations under this section may—
 - (a) make different provision for different cases or descriptions of case or for different purposes,
 - (b) contain such supplementary, incidental, consequential, transitional, transitory or saving provision as the appropriate national authority considers appropriate.
- (7) Regulations under this section are to be made by statutory instrument which, subject to subsections (8) and (9)—
 - (a) in the case of regulations made by the Secretary of State, is to be subject to annulment in pursuance of a resolution of either House of Parliament, and
 - (b) in the case of regulations made by the Welsh Ministers, is to be subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (8) The Secretary of State may not make a statutory instrument containing the first regulations made by the Secretary of State under this section unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (9) The Welsh Ministers may not make a statutory instrument containing the first regulations made by the Welsh Ministers under this section unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (10) In this section—

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

- “the appropriate national authority”—
- (a) in relation to England, means the Secretary of State, and
- (b) in relation to Wales, means the Welsh Ministers,
- “associated service charges”, in relation to a tenant by whom a contribution to relevant costs is payable as a service charge, means service charges of other tenants so far as relating to the same costs.”
- 3 (1) Section 21A (withholding of service charges) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) A tenant may withhold payment of a service charge if—
- (a) the landlord has not provided him with information or a report—
- (i) at the time at which, or
- (ii) (as the case may be) by the time by which, he is required to provide it by virtue of section 21, or
- (b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.”
- (3) In subsection (2)—
- (a) in paragraph (a) for “accounting period to which the document” substitute “period to which the information or report”, and
- (b) for paragraph (b) substitute—
- “(b) amounts standing to the tenant’s credit in relation to the service charges at the beginning of that period.”
- (4) In subsection (3)—
- (a) in paragraph (a) for “document concerned has been supplied” substitute “information or report concerned has been provided”, and
- (b) for paragraph (b) substitute—
- “(b) in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.”
- 4 (1) Section 22 (as substituted by section 154 of the Commonhold and Leasehold Reform Act 2002 (c. 15)) (inspection etc. of documents) is amended as follows.
- (2) In subsection (1)(a) for the words from “the matters” to “under” substitute “information required to be provided to him by virtue of”.
- (3) In subsection (3) for “supplied with the statement of account under” substitute “provided with the information concerned by virtue of”.
- (4) In subsection (4)—
- (a) for “statement of account”, wherever it appears, substitute “information”,
- (b) for “supplied”, wherever it appears, substitute “provided”, and
- (c) in paragraph (b) for “21(4)” substitute “21”.

- 5 In section 23(1) (as substituted by paragraph 1 of Schedule 10 to the Commonhold and Leasehold Reform Act 2002 (c. 15) (information held by superior landlord))—
- (a) for “a statement of account which the landlord is required to supply under” substitute “information which the landlord is required to provide by virtue of”, and
 - (b) after “of the relevant information” insert “which relates to those matters”.
- 6 In section 23A(4) (effect of change of landlord)—
- (a) in paragraph (a) after “23” insert “and any regulations under section 21”, and
 - (b) after paragraph (b) insert “and
 - (c) any regulations under section 21 apply subject to any modifications contained in the regulations.”
- 7 In section 26(1) (exception: tenants of certain public authorities) for “statements of account” substitute “service charge information, reports on such information”.
- 8 In section 27 (exception: rent registered and not entered as variable) for “statements of account” substitute “service charge information, reports on such information”.
- 9 Omit section 28 (meaning of “qualified accountant”).
- 10 In section 39 (index of defined expressions) omit the entry in the Table for “qualified accountant”.

Landlord and Tenant Act 1987 (c. 31)

- 11 The Landlord and Tenant Act 1987 is amended as follows.
- 12 (1) Section 42A (service charge contributions to be held in designated account) is amended as follows.
- (2) In subsection (2)—
 - (a) for paragraph (b) substitute—
 - “(b) any other sums held in the account are sums standing to the credit of one or more other trust funds,”, and
 - (b) for “Secretary of State” substitute “appropriate national authority”.
 - (3) After subsection (2) insert—

“(2A) The appropriate national authority may by regulations ensure that a payee who holds more than one trust fund in the same designated account cannot move any of those funds to another designated account unless conditions specified in the regulations are met.”
 - (4) In subsection (3)(a)—
 - (a) after “subsection (1) is” insert “, or regulations under subsection (2A) are,”, and
 - (b) for “them” substitute “such documents”.
 - (5) In subsections (5), (6), (7) and (8) for “this section” substitute “subsection (3)”.
 - (6) After subsection (9) insert—

“(9A) Regulations under subsection (2A) may include provision about —

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- (a) the circumstances in which a contributing tenant who has reasonable grounds for believing that the payee has not complied with a duty imposed on him by the regulations may withhold payment of a service charge,
 - (b) the period for which payment may be so withheld,
 - (c) the amount of service charge that may be so withheld;
- and the regulations may provide that any provisions of the contributing tenant’s tenancy relating to non-payment or late payment of service charge do not have effect in relation to the period for which the payment is so withheld.”
- (7) In subsection (10)—
- (a) after “this section” insert “or in regulations under subsection (2A)”, and
 - (b) for “Secretary of State” substitute “appropriate national authority”.
- (8) After subsection (10) insert—
- “(10A) Regulations under this section may—
- (a) make different provision for different cases, including different provision for different areas,
 - (b) contain such supplementary, incidental, consequential, transitional, transitory or saving provision as the appropriate national authority considers appropriate.
- (10B) Regulations under this section are to be made by statutory instrument which—
- (a) in the case of regulations made by the Secretary of State, is to be subject to annulment in pursuance of a resolution of either House of Parliament, and
 - (b) in the case of regulations made by the Welsh Ministers, is to be subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- (9) In subsection (11)—
- (a) after “section—” insert—
 - ““the appropriate national authority”—
 - (a) in relation to England, means the Secretary of State, and
 - (b) in relation to Wales, means the Welsh Ministers,”
 - (b) in the definition of “relevant financial institution” for “Secretary of State” substitute “appropriate national authority”.
- 13 (1) Section 53 (regulations and orders) is amended as follows.
- (2) In subsection (2)(b) omit “or 42A”.
- (3) After subsection (2) insert—
- “(3) This section does not apply to any power to make regulations under section 42A.”

Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)

- 14 The Leasehold Reform, Housing and Urban Development Act 1993 is amended as follows.
- 15 (1) Section 78 (management audits) is amended as follows.
- (2) In subsection (4) for paragraphs (a) and (b), and the “and” following paragraph (b), substitute—
- “*(a)* he is—
- (i) a member of a body which is a recognised supervisory body for the purposes of Part 42 of the Companies Act 2006;
- (ii) a qualified surveyor; or
- (iii) where the landlord is a relevant landlord, a member of the Chartered Institute of Public Finance and Accountancy;
- (b)* he is not any of the following—
- (i) an officer, employee or partner of the landlord or, where the landlord is a company, of an associated company;
- (ii) a person who is a partner or employee of any such officer or employee;
- (iii) an agent of the landlord who is a managing agent for any premises to which the audit in question relates; or
- (iv) an employee or partner of any such agent; and”.
- (3) After subsection (5) insert—
- “(5A) For the purposes of subsection (4)(b)(i) above a company is associated with a landlord company if it is the landlord’s holding company, a subsidiary of the landlord or another subsidiary of the landlord’s holding company.
- (5B) Subsection (4)(b)(i) does not apply where the landlord is a relevant landlord.
- (5C) For the purposes of subsection (4)(b)(iii) above a person is a managing agent for any premises if he has been appointed to discharge any of the landlord’s obligations relating to the management by the landlord of the premises.”
- (4) After subsection (6) insert—
- “(7) In this section—
- “holding company” and “subsidiary” have the meanings given by section 1159 of the Companies Act 2006;
- “relevant landlord” means—
- (a) a local authority (within the meaning of the Landlord and Tenant Act 1985);
- (b) a National Park authority; or
- (c) a new town corporation (within the meaning of the Act of 1985).”
- 16 In section 79(2)(a) (rights exercisable in connection with management audits)—
- (a) for the words from “the matters” to “supplied” substitute “information required to be provided”, and
- (b) for “under” substitute “by virtue of”.

SCHEDULE 13

Section 305

DEMOLITION NOTICES

Final demolition notices

- 1 Schedule 5 to the Housing Act 1985 (c. 68) (exceptions to the right to buy: final demolition notices) is amended as follows.
- 2 (1) Paragraph 13 (final demolition notices) is amended as follows.
- (2) In sub-paragraph (5) (period of validity of final demolition notices)—
- (a) omit the “and” following paragraph (a),
 - (b) in paragraph (b) for “(7)” substitute “(7A)”, and
 - (c) after paragraph (b) insert “, and
(c) the provisions of paragraph 15A”.
- (3) In sub-paragraph (9) (certain references to landlord to include superior landlord) after “15” insert “(other than paragraph 15(7A))”.
- 3 (1) Paragraph 15 (extension or revocation etc. of final demolition notices) is amended as follows.
- (2) After sub-paragraph (7) (revocation notices) insert—
- “(7A) Sub-paragraphs (4) to (7) do not apply if the landlord is selling or otherwise transferring his interest as landlord to another person or is offering it for sale or for other transfer.”
- (3) In sub-paragraph (8) (restrictions on service of further notices)—
- (a) after “final demolition notice”, where it first appears, insert “(“the earlier notice””,
 - (b) after “final demolition notice”, where it appears for a second time, insert “(and no initial demolition notice)”,
 - (c) after “in respect of it” insert “, by the landlord who served the earlier notice or any landlord who served a continuation notice in respect of the earlier notice,”,
 - (d) after “when the” insert “earlier”, and
 - (e) in paragraph (a) for “it” substitute “the further final demolition notice (or, as the case may be, the initial demolition notice)”.
- (4) After sub-paragraph (9) insert—
- “(10) In sub-paragraph (8) “initial demolition notice” has the meaning given by paragraph 1 of Schedule 5A (initial demolition notices).”
- 4 After paragraph 15 insert—
- “15A (1) This paragraph applies if—
- (a) a final demolition notice is in force in respect of a dwelling-house, and
 - (b) the landlord transfers his interest as landlord to another person.
- (2) The final demolition notice (“the original notice”) continues in force but this is subject to—

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

- (a) paragraphs 13(5) and 15, and
 - (b) the following provisions of this paragraph.
- (3) Sub-paragraph (4) applies if the transferee—
- (a) intends to demolish the dwelling-house, but
 - (b) has not—
 - (i) served a continuation notice, and
 - (ii) complied with the conditions in sub-paragraphs (8) and (10),within the period of 2 months beginning with the date of transfer.
- (4) The transferee must proceed under paragraph 15(4) as if the transferee has decided not to demolish the dwelling-house (and paragraph 15(5) to (7) applies on the same basis).
- (5) A continuation notice is a notice—
- (a) stating that the transferee—
 - (i) has acquired the interest concerned, and
 - (ii) intends to demolish the dwelling-house or (as the case may be) the building containing it (“the relevant premises”),
 - (b) setting out the reasons why the transferee intends to demolish the relevant premises,
 - (c) stating that one of conditions A to C in paragraph 14 is satisfied in relation to the original notice (specifying the condition concerned),
 - (d) stating that the original notice is to continue in force, and
 - (e) explaining the continued effect of the original notice.
- (6) A continuation notice may not vary the proposed demolition date in the original notice nor the date when the original notice will cease to be in force.
- (7) Sub-paragraph (8) applies if—
- (a) the dwelling-house is contained in a building which contains one or more other dwelling-houses, and
 - (b) the transferee intends to demolish the whole of the building.
- (8) The transferee must serve a continuation notice on the occupier of each of the dwelling-houses contained in the building (whether addressed to him by name or just as “the occupier”).
- (9) An accidental omission to serve a continuation notice on one or more occupiers does not prevent the condition in sub-paragraph (8) from being satisfied.
- (10) Paragraph 13(7) and (8) apply in relation to the transferee’s intention to demolish so as to impose a condition on the transferee for a notice to appear within the period of 2 months beginning with the date of transfer.
- (11) Sub-paragraphs (7) to (10) above apply instead of paragraph 13(6) to (8) in relation to a final demolition notice so far as continued in force under this paragraph.”

- 5 In paragraph 16(1) (notices under paragraphs 13 and 15) for “or 15” substitute “, 15 or 15A”.

Initial demolition notices

- 6 Schedule 5A to the Housing Act 1985 (c. 68) (initial demolition notices) is amended as follows.
- 7 In paragraph 1(4)(b) (initial demolition notices: maximum specified period to carry out demolition) for “five” substitute “seven”.
- 8 In paragraph 2(1) (period of validity of initial demolition notices) for “paragraph 3” substitute “paragraphs 3 and 3A”.
- 9 In paragraph 3(1) (revocation of initial demolition notices: application of paragraph 15(4) to (7) of Schedule 5 to that Act) for “(7)” substitute “(7A)”.
- 10 After paragraph 3 insert—

“Transfer of initial demolition notices

- 3A (1) This paragraph applies if—
- (a) an initial demolition notice is in force in respect of a dwelling-house, and
 - (b) the landlord transfers his interest as landlord to another person.
- (2) The initial demolition notice (“the original notice”) continues in force but this is subject to—
- (a) paragraphs 2 and 3, and
 - (b) the following provisions of this paragraph.
- (3) Sub-paragraph (4) applies if the transferee—
- (a) intends to demolish the dwelling-house, but
 - (b) has not—
 - (i) served a continuation notice, and
 - (ii) complied with the conditions in sub-paragraphs (8) and (10),
 within the period of 2 months beginning with the date of transfer.
- (4) The transferee must proceed under paragraph 15(4) of Schedule 5 as applied by paragraph 3(1) above as if the transferee has decided not to demolish the dwelling-house (and paragraph 15(5) to (7) of that Schedule as so applied applies on the same basis).
- (5) A continuation notice is a notice—
- (a) stating that the transferee—
 - (i) has acquired the interest concerned, and
 - (ii) intends to demolish the dwelling-house or (as the case may be) the building containing it (“the relevant premises”),
 - (b) setting out the reasons why the transferee intends to demolish the relevant premises,
 - (c) stating that the original notice is to continue in force, and
 - (d) explaining the continued effect of the original notice.

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- (6) A continuation notice may not vary the period specified in the original notice in accordance with paragraph 1(1)(c).
 - (7) Sub-paragraph (8) applies if—
 - (a) the dwelling-house is contained in a building which contains one or more other dwelling-houses, and
 - (b) the transferee intends to demolish the whole of the building.
 - (8) The transferee must serve a continuation notice on the occupier of each of the dwelling-houses contained in the building (whether addressed to him by name or just as “the occupier”).
 - (9) An accidental omission to serve a continuation notice on one or more occupiers does not prevent the condition in sub-paragraph (8) from being satisfied.
 - (10) Paragraph 13(7) of Schedule 5 applies in relation to the transferee’s intention to demolish so as to impose a condition on the transferee for a notice to appear within the period of 2 months beginning with the date of transfer; and paragraph 2(3) above applies for this purpose.
 - (11) Sub-paragraphs (7) to (10) above apply instead of paragraph 2(2) and (3) in relation to an initial demolition notice so far as continued in force under this paragraph.”
- 11 (1) Paragraph 4 (restrictions on service of further notices) is amended as follows.
- (2) In sub-paragraph (2) (further initial demolition notices)—
 - (a) after “dwelling-house” insert “, by the landlord who served the relevant notice or any landlord who served a continuation notice in respect of the relevant notice,”, and
 - (b) in paragraph (a) for “it” substitute “the further notice”.
 - (3) In sub-paragraph (3) (final demolition notices)—
 - (a) after “dwelling-house” insert “, by the landlord who served the relevant notice or any landlord who served a continuation notice in respect of the relevant notice,”, and
 - (b) in paragraph (a) for “it” substitute “the final demolition notice”.
- 12 In paragraph 5 (notices under Schedule 5A) for “or 15” substitute “, 15 or 15A”.
- 13 In paragraph 6(1) (interpretation) after “Schedule” insert “(other than paragraph 3A)”.

Transitional provision

- 14 This Schedule does not apply to notices served before the coming into force of the Schedule.

SCHEDULE 14

Section 311

DISPOSALS OF DWELLING-HOUSES BY LOCAL AUTHORITIES

Housing Act 1985 (c. 68)

- 1 (1) The Housing Act 1985 is amended as follows.
- (2) In section 34 (consents in relation to disposals of land held for housing purposes)—
- (a) in subsection (1) for “Secretary of State's” substitute “appropriate national body's”,
 - (b) in subsection (4A)—
 - (i) for “Secretary of State” substitute “appropriate national body”,
 - (ii) after “disposal;” at the end of paragraph (c), insert—
 - “(ca) in the case of a proposed large scale disposal, the appropriate national body’s estimate of the exchequer costs of the large scale disposal;”, and
 - (iii) in paragraph (d) for “he” substitute “the appropriate national body”, and
 - (c) after subsection (4A) insert—
 - “(4AA) The estimate mentioned in subsection (4A)(ca) is to be based on such assumptions (including as to the period during which housing subsidies may be payable) as the appropriate national body may determine, regardless of whether those assumptions are, or are likely to be, borne out by events.
 - (4AB) In this section—
 - “appropriate national body”—
 - (a) in relation to England, means the Secretary of State; and
 - (b) in relation to Wales, means the Welsh Ministers;
 - “dwelling-house” has the same meaning as in Part 5 of this Act except that it does not include a hostel or any part of a hostel;
 - “the exchequer costs”, in relation to a large scale disposal, means any increase which is or may be attributable to the disposal in the aggregate of any housing subsidies;
 - “housing subsidies” means any subsidies payable under—
 - (a) section 140A of the Social Security Administration Act 1992 (subsidy); or
 - (b) section 79 of the Local Government and Housing Act 1989 (Housing Revenue Account subsidy);
 - “large scale disposal” means a disposal of one or more dwelling-houses by a local authority to a person where—
 - (a) the number of dwelling-houses included in the disposal; and
 - (b) the number of dwelling-houses which, in the relevant period, have previously been disposed of by the authority to that person, or that person and any of the person’s associates taken together,

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exceeds 499 or, if the appropriate national body by order so provides, such other number as may be specified in the order; “long lease” means a lease for a term of years certain exceeding 21 years other than a lease which is terminable before the end of that term by notice given by or to the landlord; “the relevant period”, in relation to a large scale disposal means—

- (a) the period of 5 years ending with the date of the disposal; or
- (b) if the appropriate national body by order so provides, such other period ending with that date as may be specified in the order;

“subsidiary” has the same meaning as in section 61 of the Housing Act 1996 but as if references in subsection (2) of that section and section 60 of that Act to registered social landlords and landlords were references to housing associations (within the meaning of the Housing Associations Act 1985).

(4AC) For the purposes of this section—

- (a) a disposal of any dwelling-house is to be disregarded if at the time of the disposal the local authority’s interest in the dwelling-house is or was subject to a long lease;
- (b) two persons are associates of each other if—
 - (i) one of them is a subsidiary of the other;
 - (ii) they are both subsidiaries of some other person; or
 - (iii) there exists between them such relationship or other connection as may be specified in a determination made by the appropriate national body; and
- (c) a description of an authority may be framed by reference to any circumstances whatever.

(4AD) An order made by the appropriate national body under this section—

- (a) is to be made by statutory instrument which—
 - (i) in the case of an order made by the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament; and
 - (ii) in the case of an order made by the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales;
- (b) may make different provision for different cases or descriptions of case, or for different authorities or descriptions of authority; and
- (c) may contain such transitional and supplementary provisions as appear to the appropriate national body to be necessary or expedient.

(4AE) A determination under this section—

- (a) may make different provision for different cases or descriptions of case, or for different authorities or descriptions of authority; and
- (b) may be varied or revoked by a subsequent determination.”

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

- (3) In section 43 (consent required for certain disposals not within section 32)—
- (a) in subsection (1) for “Secretary of State” substitute “appropriate national body”,
 - (b) in subsection (4A)—
 - (i) for “Secretary of State” substitute “appropriate national body”,
 - (ii) after “disposal;” at the end of paragraph (c), insert—
 - “(ca) in the case of a proposed disposal which is part of a proposed large scale disposal, the appropriate national body’s estimate of the exchequer costs of the large scale disposal;”, and
 - (iii) in paragraph (d) for “he” substitute “the appropriate national body”, and
 - (c) after subsection (4A) insert—
 - “(4AA) The estimate mentioned in subsection (4A)(ca) is to be based on such assumptions (including as to the period during which housing subsidies may be payable) as the appropriate national body may determine, regardless of whether those assumptions are, or are likely to be, borne out by events.
 - (4AB) Subsections (4AB) to (4AE) of section 34 apply for the purposes of this section as they apply for the purposes of that section.”, and
 - (d) in subsection (5A) after “this section” insert “(other than in subsection (4A) (ca) and in subsections (4AB) to (4AE) of section 34 as applied for the purposes of this section)”.

Housing Act 1988 (c. 50)

- 2 In section 133(3) of the Housing Act 1988 (consent required for certain subsequent disposals)—
- (a) in paragraph (a) for “and (3) to (4A)” substitute “, (3), (4) and (4A)(a) to (c) and (d)”,
 - (b) in paragraph (b) for “and (3) to (4A)” substitute “, (3), (4) and (4A)(a) to (c) and (d)”, and
 - (c) in paragraph (c) for “(4A)” substitute “(4A)(a) to (c) and (d)”.

Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)

- 3 (1) The Leasehold Reform, Housing and Urban Development Act 1993 is amended as follows.
- (2) Omit section 135 (programmes for disposals of dwelling-houses by local authorities).
- (3) In section 136 (levy on disposals) for subsection (14) substitute—
- “(14) In this section—
 - “the 1989 Act” means the Local Government and Housing Act 1989;
 - “dwelling-house” has the same meaning as in Part 5 of the 1985 Act except that it does not include a hostel (as defined in section 622 of that Act) or any part of a hostel;

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

“local authority” has the meaning given by section 4 of that Act;
“long lease” means a lease for a term of years certain exceeding 21 years other than a lease which is terminable before the end of that term by notice given by or to the landlord;
“subsidiary” has the same meaning as in section 61 of the Housing Act 1996 but as if references in subsection (2) of that section and section 60 of that Act to registered social landlords and landlords were references to housing associations (within the meaning of the Housing Associations Act 1985).

- (15) For the purposes of this section—
- (a) a disposal of any dwelling-house is to be disregarded if at the time of the disposal the local authority’s interest in the dwelling-house is or was subject to a long lease;
 - (b) two persons are associates of each other if—
 - (i) one of them is a subsidiary of the other;
 - (ii) they are both subsidiaries of some other person; or
 - (iii) there exists between them such relationship or other connection as may be specified in a determination made by the Secretary of State; and
 - (c) a description of authority may be framed by reference to any circumstances whatever.”

(4) Omit section 137(1) to (3) (disposals: transitional provisions in relation to section 135).

(5) The reference to the Secretary of State in subsection (15) of section 136 of the Act of 1993, as inserted by sub-paragraph (3) above, is to be read in the same way as other references to the Secretary of State in that section of that Act.

Housing Act 1996 (c. 52)

- 4 (1) The Housing Act 1996 is amended as follows.
- (2) In section 51(2)(b) (schemes for investigation of complaints) for “a qualifying disposal” substitute “—
- (i) a large scale disposal, within the meaning of section 34 of the Housing Act 1985, for which consent was required under section 32 or 43 of that Act; or
 - (ii) a qualifying disposal that was made”.
- (3) In paragraph 5(1)(b) of Part 2 of Schedule 1 (constitution, change of rules, amalgamation and dissolution: restriction on power of removal in case of registered charity) for “a qualifying disposal” substitute “—
- (i) a large scale disposal, within the meaning of section 34 of the Housing Act 1985, for which consent was required under section 32 or 43 of that Act, or
 - (ii) a qualifying disposal that was made”.
- (4) In paragraph 28(1)(b) of Part 4 of Schedule 1 (inquiry into affairs of registered social landlords: availability of powers in relation to registered charities) for “a qualifying disposal” substitute “—

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

- (i) a large scale disposal, within the meaning of section 34 of the Housing Act 1985, for which consent was required under section 32 or 43 of that Act, or
- (ii) a qualifying disposal that was made”.

SCHEDULE 15

Section 314

INELIGIBLE PERSONS FROM ABROAD: STATUTORY DISREGARDS

PART 1

ENGLAND AND WALES

Housing Act 1996 (c. 52)

- 1 The Housing Act 1996 is amended as follows.
- 2 (1) Section 167 (allocation in accordance with allocation scheme) is amended as follows.
 - (2) In subsection (2) after “scheme shall” insert “, subject to subsection (2ZA),”.
 - (3) After subsection (2) insert—

“(2ZA) People are to be disregarded for the purposes of subsection (2) if they would not have fallen within paragraph (a) or (b) of that subsection without the local housing authority having had regard to a restricted person (within the meaning of Part 7).”
- 3 (1) Section 184 (inquiry into cases of homelessness or threatened homelessness) is amended as follows.
 - (2) After subsection (3) insert—

“(3A) If the authority decide that a duty is owed to the applicant under section 193(2) or 195(2) but would not have done so without having had regard to a restricted person, the notice under subsection (3) must also—

 - (a) inform the applicant that their decision was reached on that basis,
 - (b) include the name of the restricted person,
 - (c) explain why the person is a restricted person, and
 - (d) explain the effect of section 193(7AD) or (as the case may be) section 195(4A).”
 - (3) After subsection (6) insert—

“(7) In this Part “a restricted person” means a person—

 - (a) who is not eligible for assistance under this Part,
 - (b) who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996, and
 - (c) either—
 - (i) who does not have leave to enter or remain in the United Kingdom, or

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

- (ii) whose leave to enter or remain in the United Kingdom is subject to a condition to maintain and accommodate himself, and any dependants, without recourse to public funds.”
- 4 (1) Section 185 (persons from abroad not eligible for certain housing assistance) is amended as follows.
 - (2) In subsection (4) for “another person” substitute “a person falling within subsection (5)”.
 - (3) After subsection (4) insert—
 - “(5) A person falls within this subsection if the person—
 - (a) falls within a class prescribed by regulations made under subsection (2); but
 - (b) is not a national of an EEA State or Switzerland.”
- 5 (1) Section 193 (duty to persons with priority need who are not homeless intentionally) is amended as follows.
 - (2) In subsection (3A) after “this section” insert “in a case which is not a restricted case”.
 - (3) After subsection (3A) insert—
 - “(3B) In this section “a restricted case” means a case where the local housing authority would not be satisfied as mentioned in subsection (1) without having had regard to a restricted person.”
 - (4) After subsection (7A) insert—
 - “(7AA) In a restricted case the authority shall also cease to be subject to the duty under this section if the applicant, having been informed of the matters mentioned in subsection (7AB)—
 - (a) accepts a private accommodation offer, or
 - (b) refuses such an offer.
 - (7AB) The matters are—
 - (a) the possible consequence of refusal of the offer, and
 - (b) that the applicant has the right to request a review of the suitability of the accommodation.
 - (7AC) For the purposes of this section an offer is a private accommodation offer if—
 - (a) it is an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant’s occupation,
 - (b) it is made, with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the authority’s duty under this section to an end, and
 - (c) the tenancy being offered is a fixed term tenancy (within the meaning of Part 1 of the Housing Act 1988) for a period of at least 12 months.
 - (7AD) In a restricted case the authority shall, so far as reasonably practicable, bring their duty under this section to an end as mentioned in subsection (7AA).”

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

- (5) In subsections (7B) and (7C) at the beginning insert “In a case which is not a restricted case,”.
- (6) In subsection (7F) after paragraph (a) (but before the “or” following it) insert—
“(ab) approve a private accommodation offer;”.
- 6 (1) Section 195 (duties in the case of threatened homelessness) is amended as follows.
- (2) In subsection (3A) after “this section” insert “in a case which is not a restricted threatened homelessness case”.
- (3) In subsection (4)—
- (a) after “Where” insert “, in a case which is not a restricted threatened homelessness case,”, and
- (b) at the end insert “in a case which is not a restricted case (within the meaning of that section)”.
- (4) After subsection (4) insert—
- “(4A) Where, in a restricted threatened homelessness case, in pursuance of the duty under subsection (2) the authority secure that accommodation other than that occupied by the applicant when he made his application is available for occupation by him, the provisions of section 193(3) to (9) (period for which duty owed) apply, with any necessary modifications, in relation to the duty under this section as they apply in relation to the duty under section 193 in a restricted case (within the meaning of that section).
- (4B) In subsections (3A) to (4A) “a restricted threatened homelessness case” means a case where the local housing authority would not be satisfied as mentioned in subsection (1) without having had regard to a restricted person.”
- 7 (1) Section 202 (right to request review of decision) is amended as follows.
- (2) In subsection (1) after paragraph (f) insert “, or
- (g) any decision of a local housing authority as to the suitability of accommodation offered to him by way of a private accommodation offer (within the meaning of section 193).”
- (3) In subsection (1A)—
- (a) for “or (7)” substitute “, (7) or (7AA)”, and
- (b) after “(f)” insert “or (as the case may be) (g)”.
- 8 In section 218 (index of defined expressions: Part 7) insert in the Table at the appropriate place—

“restricted person

section 184(7)”.

PART 2

SCOTLAND AND NORTHERN IRELAND

Housing (Scotland) Act 1987 (c. 26)

- 9 The Housing (Scotland) Act 1987 is amended as follows.
- 10 (1) Section 20 (persons having priority on housing list and allocation of housing) is amended as follows.
- (2) In subsection (1)(b) at the beginning insert “subject to subsection (1A),”.
- (3) After subsection (1) insert—
- “(1A) Homeless persons and persons threatened with homelessness (within the meaning of Part 2) are to be disregarded for the purposes of subsection (1) if they would not be such persons without the local authority having had regard to a restricted person (also within the meaning of Part 2).”
- (4) In subsection (2) for “such housing” substitute “housing falling within subsection (1)”.
- 11 (1) Section 30 (notification of decision and reasons) is amended as follows.
- (2) After subsection (3) insert—
- “(3A) If they decide that he is homeless, threatened with homelessness or has a priority need but would not have done so without having had regard to a restricted person, they shall also notify him of—
- (a) the fact that their decision was reached on that basis,
- (b) the name of the restricted person,
- (c) the reason why the person is a restricted person, and
- (d) the effect of section 31(2G) or (as the case may be) 32(2A) and (2B).”
- (3) After subsection (5) insert—
- “(6) In this Part “a restricted person” means a person—
- (a) who is not eligible for assistance under this Part,
- (b) who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996, and
- (c) either—
- (i) who does not have leave to enter or remain in the United Kingdom, or
- (ii) whose leave to enter or remain in the United Kingdom is subject to a condition to maintain and accommodate himself, and any dependants, without recourse to public funds.”
- 12 (1) Section 31 (duties to persons found to be homeless) is amended as follows.
- (2) After subsection (2) insert—

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

“(2A) In a restricted case the local authority shall cease to be subject to the duty under subsection (2) if the applicant, having been informed of the matters mentioned in subsection (2B)—

- (a) accepts a private accommodation offer, or
- (b) refuses such an offer.

(2B) The matters are—

- (a) the possible consequence of refusal of the offer, and
- (b) that the applicant has the right to request a review of the decisions mentioned in section 35A(2)(e).

(2C) In this section “a restricted case” means a case falling within subsection (2) where the local authority would not be satisfied as mentioned in subsections (1) and (2) without having had regard to a restricted person.

(2D) For the purposes of this Part an offer is a private accommodation offer if—

- (a) it is an offer of a short assured tenancy made by a landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant’s occupation,
- (b) it is made, with the approval of the local authority, in pursuance of arrangements made by them with the landlord with a view to bringing their duty under subsection (2) to an end, and
- (c) the tenancy being offered is for a period of at least 12 months.

(2E) The local authority shall not approve a private accommodation offer unless they are satisfied that it is reasonable for the applicant to accept the offer.

(2F) For the purposes of subsection (2E) an applicant may reasonably be expected to accept an offer even though he is under contractual or other obligations in respect of his existing accommodation, provided he is able to bring those obligations to an end before he is required to take up the offer.

(2G) In a restricted case the local authority shall, so far as reasonably practicable, bring their duty under subsection (2) to an end as mentioned in subsection (2A).

(2H) Subsections (2A) to (2G) are without prejudice to any other way in which the local authority can cease to be subject to the duty under subsection (2).”

(3) In subsection (3)—

- (a) for “In any other case, they” substitute “In a case not falling within subsection (2), the local authority”, and
- (b) in paragraph (a) for “his”, in the first place where it appears, substitute “the applicant's”.

13 (1) Section 32 (duties to persons found to be threatened with homelessness) is amended as follows.

(2) After subsection (2) insert—

“(2A) Subsection (2B) applies in a restricted threatened homelessness case where, in pursuance of the duty under subsection (2), the local authority secure that accommodation other than that occupied by the applicant when he made his application is available for occupation by him.

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

- (2B) The provisions of section 31(2A) to (2H) (circumstances in which duty in restricted case ceases) apply, with any necessary modifications, in relation to the duty under subsection (2) as they apply in relation to the duty under section 31(2) in a restricted case (within the meaning of that section).”
- (3) In subsection (3) for “In any other case they shall furnish him” substitute “In a case not falling within subsection (2) the local authority shall furnish the applicant”.
- (4) After subsection (5) insert—
- “(5A) In this section “a restricted threatened homelessness case” means a case falling within subsection (2) where the local authority would not be satisfied as mentioned in subsections (1) and (2) without having had regard to a restricted person.”
- 14 (1) Section 34 (duties to persons whose applications are referred) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) If it is determined that the conditions for referral—
- (a) are satisfied, the notified authority are subject to the duty under section 31(2);
- (b) are not satisfied, the notifying authority are subject to that duty.”
- (3) In subsection (3) for paragraph (a) (but not the “and” after it) substitute—
- “(a) whether they or the notified authority are subject to the duty under section 31(2),”.
- (4) Omit subsection (6).
- 15 In section 35A(2) (right to request review of decision) after paragraph (d) insert—
- “(e) in a case where a private accommodation offer is made to the applicant, any decision—
- (i) that the accommodation offered is not accommodation falling within section 32(5)(a) to (c), or
- (ii) that the authority have discharged their duty to the applicant under section 32(8).”
- 16 In section 43 (minor definitions) at the appropriate places insert—
- (a) ““private accommodation offer” has the meaning assigned to it by section 31(2D);”,
- (b) ““restricted person” has the meaning assigned to it by section 30(6);”, and
- (c) ““short assured tenancy” has the same meaning as in Part 2 of the Housing (Scotland) Act 1988;”.

Housing (Northern Ireland) Order 1988 (S.I. 1988/1990 (N.I. 23))

- 17 Part 2 of the Housing (Northern Ireland) Order 1988 is amended as follows.
- 18 (1) Article 7A (persons not eligible for housing assistance) is amended as follows.
- (2) In paragraph (4) for “another person” substitute “a person falling within paragraph (4A)”.
- (3) After paragraph (4) insert—

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

- “(4A) A person falls within this paragraph if the person—
- (a) falls within a class specified in an order under section 119(1) of the Immigration and Asylum Act 1999; but
 - (b) is not a national of an EEA State or Switzerland.”
- 19 (1) Article 9 (notification of decision and reasons) is amended as follows.
- (2) After paragraph (3) insert—
- “(3A) If the Executive decides that the applicant is homeless, threatened with homelessness or has a priority need but would not have done so without having had regard to a restricted person, it shall also notify him of—
- (a) the fact that its decision was reached on that basis,
 - (b) the name of the restricted person,
 - (c) the reason why the person is a restricted person, and
 - (d) the effect of Article 10(2E) and (2F) or (as the case may be) 11(2A) and (2B).”
- (3) After paragraph (5) insert—
- “(6) In this Article “a restricted person” means a person—
- (a) who is not eligible for assistance under this Part,
 - (b) who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996, and
 - (c) either—
 - (i) who does not have leave to enter or remain in the United Kingdom, or
 - (ii) whose leave to enter or remain in the United Kingdom is subject to a condition to maintain and accommodate himself, and any dependants, without recourse to public funds.”
- 20 (1) Article 10 (duties to persons found to be homeless) is amended as follows.
- (2) After paragraph (2) insert—
- “(2A) In a restricted case the Executive shall cease to be subject to the duty under paragraph (2) if the applicant, having been informed of the possible consequence of refusal—
- (a) accepts a private accommodation offer, or
 - (b) refuses such an offer.
- (2B) For the purposes of this Article an offer is a private accommodation offer if—
- (a) it is an offer of a private tenancy made by a landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant’s occupation,
 - (b) it is made, with the approval of the Executive, in pursuance of arrangements made by the Executive with the landlord with a view to bringing its duty under paragraph (2) to an end, and
 - (c) the tenancy being offered is for a term certain of at least 12 months.

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

- (2C) The Executive shall not approve a private accommodation offer unless it is satisfied that the accommodation is suitable for the applicant and that it is reasonable for him to accept the offer.
- (2D) For the purposes of paragraph (2C) an applicant may reasonably be expected to accept an offer even though he is under contractual or other obligations in respect of his existing accommodation, provided he is able to bring those obligations to an end before he is required to take up the offer.
- (2E) In a restricted case the Executive shall, so far as reasonably practicable, bring its duty under paragraph (2) to an end as mentioned in paragraph (2A).
- (2F) In a restricted case the Executive shall also cease to be subject to the duty under paragraph (2) if the applicant, having been informed of the possible consequence of refusal, refuses a reasonable offer of accommodation under the Housing Selection Scheme.
- (2G) For the purposes of paragraph (2F)—
- (a) “the Housing Selection Scheme” means the scheme for the allocation of housing accommodation held by the Executive approved from time to time under Article 22 of the Order of 1981, and
 - (b) an offer of accommodation is reasonable if it is a reasonable offer within the meaning of that Scheme.
- (2H) Paragraphs (2A) to (2G) are without prejudice to any other way in which the Executive can cease to be subject to the duty under paragraph (2).”

(3) After paragraph (4) insert—

“(5) In this Article—

“a private tenancy” has the same meaning as in the Private Tenancies (Northern Ireland) Order 2006,

“a restricted case” means a case falling within paragraph (2) where the Executive would not be satisfied as mentioned in paragraphs (1) and (2) without having had regard to a restricted person,

“a restricted person” has the same meaning as in Article 9.”

21 (1) Article 11 (duties to persons found to be threatened with homelessness) is amended as follows.

(2) After paragraph (2) insert—

“(2A) Paragraph (2B) applies in a restricted threatened homelessness case where, in pursuance of the duty under paragraph (2), the Executive secures that accommodation other than that occupied by the applicant when he made his application is available for occupation by him.

(2B) The provisions of Article 10(2A) to (2H) (circumstances in which duty in restricted case ceases) apply, with any necessary modifications, in relation to the duty under paragraph (2) as they apply in relation to the duty under Article 10(2) in a restricted case (within the meaning of that Article).”

(3) After paragraph (4) insert—

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

“(4A) In this Article—

“a restricted person” has the same meaning as in Article 9,

“a restricted threatened homelessness case” means a case falling within paragraph (2) where the Executive would not be satisfied as mentioned in paragraphs (1) and (2) without having had regard to a restricted person.”

Immigration and Asylum Act 1999 (c. 33)

22 (1) Section 119 of the Immigration and Asylum Act 1999 (persons subject to immigration control to be disregarded in determining another person’s eligibility for accommodation or assistance) is amended as follows.

(2) In subsection (1)(b) for “another person” substitute “a person falling within subsection (1A)”.

(3) After subsection (1) insert—

“(1A) A person falls within this subsection if the person—

- (a) falls within a class specified in an order under subsection (1); but
- (b) is not a national of an EEA State or Switzerland.”

PART 3

CONSEQUENTIAL AMENDMENTS

Criminal Justice and Immigration Act 2008 (c. 4)

23 The Criminal Justice and Immigration Act 2008 is amended as follows.

24 Omit section 134(6) (support for designated persons: eligibility for certain housing assistance).

25 Omit section 135(7) (power to amend or repeal section 134(6)).

SCHEDULE 16

Section 321(1)

REPEALS AND REVOCATIONS

<i>Title</i>	<i>Extent of repeal or revocation</i>
Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 2, the entry for the Housing Corporation and the entries for, and Notes relating to, the Commission for the New Towns and the Urban Regeneration Agency.
Leasehold Reform Act 1967 (c. 88)	In section 1— (a) in subsections (1)(a) and (1A), the words “at a low rent”, (b) in subsection (3A)(b), the words “, 1AA”.

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

<i>Title</i>	<i>Extent of repeal or revocation</i>
	Section 1A(2).
	Section 1AA.
	Section 4A.
	In section 9(1C), the words “, 1AA”.
	In section 9A(1), the words “, 1AA”.
	In section 32A(1)(b), the words “or if section 1AA above were not in force”.
	In Schedule 3, paragraph 6(1A).
	In Schedule 4, in paragraph 4, the words from “be authorised” to “Government to”.
National Loans Act 1968 (c. 13)	In Schedule 1, in the entry relating to the New Towns Act 1981 (c. 64)— (a) in column 1, the words “(5)(6)”, (b) in column 2, the words “and the Commission for the New Towns”.
Local Government Act 1974 (c. 7)	Section 25(1)(ba). Section 26(7)(a).
Statutory Corporations (Financial Provisions) Act 1974 (c. 8)	In section 4(2), the words “and of the Commission for the New Towns”.
House of Commons Disqualification Act 1975 (c. 24)	In Part 2 of Schedule 1, the entries relating to the Commission for the New Towns, the Housing Corporation and the Urban Regeneration Agency.
Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Part 2 of Schedule 1, the entry relating to the Urban Regeneration Agency.
Race Relations Act 1976 (c. 74)	In Part 2 of Schedule 1A, the entry relating to English Partnerships.
Local Government, Planning and Land Act 1980 (c. 65)	Section 4(4)(b). In section 99(4)(e), the words “the Commission for the New Towns”.
	In Schedule 16, paragraph 6.
New Towns Act 1981 (c. 64)	Section 35. In section 36— (a) subsections (3) and (3A), (b) in subsection (4), the words from “; nor shall any” to the end. Section 37. Section 38. In section 41, in the heading, the words “to Commission”.

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

<i>Title</i>	<i>Extent of repeal or revocation</i>
	In section 58—
	(a) in the heading, the words “and Commission”;
	(b) subsections (5) and (6).
	In section 58A—
	(a) in the heading, the words “and Commission”;
	(b) subsections (4) and (5).
	In section 59—
	(a) in the heading, the words “and Commission”;
	(b) in subsection (1), the words “or the Commission” where they first appear;
	(c) in subsection (2), the words “or the Commission”.
	In section 60—
	(a) in the heading, the words “and Commission”;
	(b) in subsection (1), paragraph (c) and the word “and” following it;
	(c) subsection (4).
	In section 61(2), the words “, (5) or (6)”.
	Section 62B.
	In section 63—
	(a) in subsection (1), the words “or the Commission”;
	(b) in subsection (2), the words “or the Commission, as the case may be”.
	In section 67—
	(a) in the heading, the words “Commission and”;
	(b) in subsection (1), the words “The Commission and”;
	(c) in subsection (1)(b), the word “respectively”;
	(d) also in subsection (1), the words from “being, in the Commission’s case” in paragraph (b) to the end of the subsection;
	(e) subsection (1A);
	(f) in subsection (2), the words “of the Commission and”;
	(g) >in subsection (2), wherever appearing, the words “or the Commission”;
	(h) in subsection (3), the words “the Commission or”.
	In section 68—

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

<i>Title</i>	<i>Extent of repeal or revocation</i>
	(a) in subsection (1), the words from “of the Commission” to “and the accounts”, (b) in subsection (1), the words “Commission or”, (c) subsection (2A).
	In section 69— (a) in subsection (1), paragraph (a) and the word “and” following it, (b) in subsection (1), the words from “and directions under” to the end, (c) in subsection (2), paragraph (a) and the word “and” following it.
	In section 70— (a) paragraph (a), (b) the words “of the Commission or”.
	In section 71(2), the words “the Commission and”.
	In section 72(1)(a), the words “or from the Commission”.
	In section 77(3), the words “and paragraph 7 of Schedule 9 to this Act”.
	In section 80(1)— (a) the definition of “the Commission”, (b) in the definition of “financial year”, the words “or the Commission”.
	In section 82(3), the words “paragraph 12 of Schedule 11, and”.
	Schedule 9.
	In Schedule 10— (a) in the heading, the words “to Commission”, (b) paragraph 4, (c) paragraph 5(1).
	In Schedule 11— (a) in the italic heading before paragraph 3, the words “to Commission and”, (b) paragraphs 3 and 5, (c) paragraph 12 and the italic heading before it.
Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66)	In section 15, the words from “or under subsection (1)” to “similar provision”). In Schedule 2, in paragraph 1, the words from “or under subsection (1)” to “contains similar provision”).

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<i>Title</i>	<i>Extent of repeal or revocation</i>
Mobile Homes Act 1983 (c. 34)	In section 5(1), in the definition of “protected site”, the words from “does not include” to “that”.
Building Act 1984 (c. 55)	In section 35A— (a) in the heading the word “certain”, (b) subsections (2), (3) and (6).
New Towns and Urban Development Corporations Act 1985 (c. 5)	Section 1(3) and (4). Section 2. In Schedule 3, paragraphs 3, 5, 6(b), 8(b), 12(1)(b) and 16.
Housing Act 1985 (c. 68)	In section 85— (a) in subsection (3)(a), the words from “or payments” to “profits”, (b) subsections (5) and (5A). In section 125D(2), the word “and” following paragraph (a). In section 128(2), the words “, or as the case may be re-determined,”. In section 136(2), the word “and” following paragraph (a). Section 156(5) and (6). In Schedule 5, in paragraph 13(5), the word “and” following paragraph (a).
Housing Associations Act 1985 (c. 69)	In section 10(2), paragraph (e) and the word “or” before it. Section 33A.
Landlord and Tenant Act 1985 (c. 70)	Section 28. In section 39, the entry in the Table for “qualified accountant”.
Housing (Scotland) Act 1987 (c. 26)	Section 34(6).
Landlord and Tenant Act 1987 (c. 31)	In section 53(2)(b), the words “or 42A”. In section 58(1)(b), the words “the Commission for the New Towns or”. In Schedule 2, paragraph 9 and the italic heading before it.
Housing Act 1988 (c. 50)	In section 9— (a) in subsection (3), the words from “or payments” to “profits”, (b) subsections (5) and (5A). In the italic heading before section 50, the words “: functions of Relevant Authority”.

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<i>Title</i>	<i>Extent of repeal or revocation</i>
	Sections 50 and 51.
	Section 81(6).
	Section 133(6).
	In Schedule 6, paragraphs 7(3) and 24.
Local Government and Housing Act 1989 (c. 42)	In section 172(8), in the definition of “new town corporation”, the words “the Commission for the New Towns or”.
	Section 173(6).
	In Schedule 11, paragraph 58 and the italic heading before it.
Town and Country Planning Act 1990 (c. 8)	Section 8A(2).
Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991 (S.I. 1991/1997)	In the Schedule, paragraph 60 and the heading before it.
Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)	Section 65.
	Section 135.
	Section 137(1) to (3).
	Sections 158 to 173.
	Section 175.
	Section 177.
	Section 181(1) and (3).
	Sections 183 to 185.
	In section 188(6), paragraph (b) and the “and” before it.
	Schedules 17 to 20.
	In Schedule 21—
	(a) paragraph 3 and the italic heading before it,
	(b) paragraph 32 and the italic heading before it.
New Towns (Amendment) Act 1994 (c. 5)	The whole Act.
Local Government (Wales) Act 1994 (c. 19)	In Schedule 16, paragraphs 63(5) and 104 and the italic heading before paragraph 104.
Criminal Justice and Public Order Act 1994 (c. 33)	In section 80(4), the words from “in the definition” to “1983 or”.
Environment Act 1995 (c. 25)	In Schedule 10, paragraph 25(2).
Finance Act 1996 (c. 8)	In section 43A—
	(a) subsection (5)(e),

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<i>Title</i>	<i>Extent of repeal or revocation</i>
	(b) in subsection (6), the definition of “English Partnerships”.
Family Law Act 1996 (c. 27)	In Schedule 8— (a) paragraph 53, (b) paragraph 59 and the italic heading before it.
Housing Act 1996 (c. 52)	Section 1(1A) and (1B). Section 28(1), (2), (5) and (6). Section 56. Section 105(2). Section 127(3). Section 143D(3). In section 199— (a) subsection (2), (b) in subsection (3), paragraph (a) and the word “or” following it, (c) subsection (4), (d) in subsection (5), the word “other”. In section 202(1), the word “or” after paragraph (e). In Schedule 2, in paragraph 11(4)— (a) the words “or the Housing Corporation”, (b) the words “or, as the case may be, the Housing Corporation”. In Schedule 9, paragraphs 1 and 2(2), (4), (5), (6) and (8). In Schedule 13, paragraph 4 and the italic heading before it. In Schedule 18, paragraph 22(1)(f).
Housing Grants, Construction and Regeneration Act 1996 (c. 53)	Section 129. Section 145.
Housing Act 1996 (Consequential Provisions) Order 1996 (S.I. 1996/2325)	In Schedule 2, paragraphs 15(19), 18(4) to (7), (10)(a) and (12)(a), 19(7)(a) and 21(2).
Housing Act 1996 (Consequential Amendments) Order 1997 (S.I. 1997/74)	In the Schedule, paragraph 9(c).
Audit Commission Act 1998 (c. 18)	Sections 41 to 41B and 43. In Schedule 1— (a) paragraph 8(2)(c) and (ca), (b) paragraph 8A. In Schedule 2A, in paragraph 3—

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<i>Title</i>	<i>Extent of repeal or revocation</i>
	(a) paragraph (a) of the definition of “Audit Commission inspection”, (b) paragraph (e) of the definition of “national studies functions”.
Government of Wales Act 1998 (c. 38)	In Schedule 15, paragraph 13. In Schedule 16, paragraphs 24 to 26, 61(1), 64, 65, 68(a), 83(3), 94 and 97(3).
Regional Development Agencies Act 1998 (c. 45)	Section 36 and the italic heading before it. Section 37. In section 38(10), in the definition of “qualifying transfer”, paragraph (b). Schedule 9.
Urban Development Corporations in England (Transfer of Property, Rights and Liabilities) Commission for the New Towns) Order 1998 (S.I. 1998/85)	Article 3(1), (3), (4) and (5).
Greater London Authority Act 1999 (c. 29)	In section 333A— (a) in subsection (3)(b), the words from “(and see also” to the end of the paragraph, (b) in subsection (10), the words from “and the reference” to the end. In section 408— (a) subsection (3)(h) and (i), (b) subsection (6). Section 409(5).
Freedom of Information Act 2000 (c. 36)	In Part 6 of Schedule 1, the entries relating to the Commission for the New Towns, the Housing Corporation and the Urban Regeneration Agency.
Transport Act 2000 (c. 38)	In Schedule 5, paragraph 17.
Armed Forces Act 2001 (c. 19)	In Schedule 6, paragraph 30 and the italic heading before it.
Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001 (S.I. 2001/1149)	In Schedule 1, paragraph 98 and the italic heading before it.
Commonhold and Leasehold Reform Act 2002 (c. 15)	Section 141. Section 156(2). In Schedule 10, paragraphs 6 and 7 and the italic heading before paragraph 6.

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<i>Title</i>	<i>Extent of repeal or revocation</i>
Deregulation (Disposals of Dwelling-houses by Local Authorities) Order 2002 (S.I. 2002/367)	The whole Order.
Communications Act 2003 (c. 21)	In Schedule 17, paragraph 123 and the italic heading before it.
Local Government Act 2003 (c. 26)	Section 109.
Anti-social Behaviour Act 2003 (c. 38)	Section 14(1)(b).
Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003 (S.I. 2003/1326)	Article 11(2), (3) and (4)(a). Article 18 and the heading before it.
Public Audit (Wales) Act 2004 (c. 23)	In Schedule 2, paragraphs 27 to 30 and 37.
Civil Partnership Act 2004 (c. 33)	In Schedule 9— (a) paragraph 18, (b) paragraph 23 and the italic heading before it.
Charities Act 2006 (c. 50)	In Schedule 8, paragraph 190.
Armed Forces Act 2006 (c. 52)	In Schedule 16, paragraph 139 and the italic heading before it.
Tribunals, Courts and Enforcement Act 2007 (c. 15)	In Schedule 22, paragraph 8 and the italic heading before it.
Local Government and Public Involvement in Health Act 2007 (c. 28)	Section 155(2) and (5).
Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194)	In Schedule 4, paragraph 83 and the heading before it.
Criminal Justice and Immigration Act 2008 (c. 4)	Section 134(6). Section 135(7).
Housing and Regeneration Act 2008 (c. 17)	Section 53(2).
