



# Localism Act 2011

## 2011 CHAPTER 20

### PART 7 **E+W**

#### HOUSING

### CHAPTER 1 **E+W**

#### ALLOCATION AND HOMELESSNESS

##### *Allocation*

#### 145 Allocation of housing accommodation **E+W**

(1) Section 159 of the Housing Act 1996 (allocation of housing accommodation) is amended as follows.

(2) After subsection (4) insert—

“(4A) Subject to subsection (4B), the provisions of this Part do not apply to an allocation of housing accommodation by a local housing authority in England to a person who is already—

- (a) a secure or introductory tenant, or
- (b) an assured tenant of housing accommodation held by a private registered provider of social housing or a registered social landlord.

(4B) The provisions of this Part apply to an allocation of housing accommodation by a local housing authority in England to a person who falls within subsection (4A)(a) or (b) if—

- (a) the allocation involves a transfer of housing accommodation for that person,
- (b) the application for the transfer is made by that person, and
- (c) the authority is satisfied that the person is to be given reasonable preference under section 166A(3).”

*Status: Point in time view as at 09/11/2012. This version of this part contains provisions that are not valid for this point in time.*

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- (3) In subsection (5) after “accommodation” (in the first place it occurs) insert “ by a local housing authority in Wales ”.

**Commencement Information**

- I1** S. 145 in force at 15.1.2012 for specified purposes by S.I. 2012/57, art. 4(1)(j) (with arts. 6, 7, arts. 9-11)
- I2** S. 145 in force at 18.6.2012 in so far as not already in force by S.I. 2012/1463, art. 3

**146 Allocation only to eligible and qualifying persons: England E+W**

- (1) In the Housing Act 1996 before section 160A insert—

**“160ZA Allocation only to eligible and qualifying persons: England**

- (1) A local housing authority in England shall not allocate housing accommodation—
- (a) to a person from abroad who is ineligible for an allocation of housing accommodation by virtue of subsection (2) or (4), or
  - (b) to two or more persons jointly if any of them is a person mentioned in paragraph (a).
- (2) A person subject to immigration control within the meaning of the Asylum and Immigration Act 1996 is ineligible for an allocation of housing accommodation by a local housing authority in England unless he is of a class prescribed by regulations made by the Secretary of State.
- (3) No person who is excluded from entitlement to housing benefit by section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) shall be included in any class prescribed under subsection (2).
- (4) The Secretary of State may by regulations prescribe other classes of persons from abroad who are ineligible to be allocated housing accommodation by local housing authorities in England.
- (5) Nothing in subsection (2) or (4) affects the eligibility of a person who falls within section 159(4B).
- (6) Except as provided by subsection (1), a person may be allocated housing accommodation by a local housing authority in England (whether on his application or otherwise) if that person—
- (a) is a qualifying person within the meaning of subsection (7), or
  - (b) is one of two or more persons who apply for accommodation jointly, and one or more of the other persons is a qualifying person within the meaning of subsection (7).
- (7) Subject to subsections (2) and (4) and any regulations under subsection (8), a local housing authority may decide what classes of persons are, or are not, qualifying persons.
- (8) The Secretary of State may by regulations—

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- (a) prescribe classes of persons who are, or are not, to be treated as qualifying persons by local housing authorities in England, and
  - (b) prescribe criteria that may not be used by local housing authorities in England in deciding what classes of persons are not qualifying persons.
- (9) If a local housing authority in England decide that an applicant for housing accommodation—
- (a) is ineligible for an allocation by them by virtue of subsection (2) or (4), or
  - (b) is not a qualifying person,
- they shall notify the applicant of their decision and the grounds for it.
- (10) That notice shall be given in writing and, if not received by the applicant, shall be treated as having been given if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.
- (11) A person who is not being treated as a qualifying person may (if he considers that he should be treated as a qualifying person) make a fresh application to the authority for an allocation of housing accommodation by them.”
- (2) Section 160A (allocation only to eligible persons) is amended as follows—
- (a) in the heading after “persons” insert “ : Wales ”,
  - (b) in subsection (1) after “authority” insert “ in Wales ”,
  - (c) in subsection (2) after “authority” insert “ in Wales ”,
  - (d) in subsection (3) after “authority” insert “ in Wales ”,
  - (e) in subsection (5)—
    - (i) after “authorities” insert “ in Wales ”,
    - (ii) after “authority” insert “ in Wales ”,
  - (f) in subsection (6) after “authority” insert “ in Wales ”,
  - (g) in subsection (7) after “authority” insert “ in Wales ”,
  - (h) in subsection (9) after “authority” insert “ in Wales ”, and
  - (i) in subsection (11) after “authority” insert “ in Wales ”.

#### Commencement Information

- I3** S. 146 in force at 15.1.2012 for specified purposes by S.I. 2012/57, art. 4(1)(k) (with arts. 6, 7, arts. 9-11)
- I4** S. 146 in force at 18.6.2012 in so far as not already in force by S.I. 2012/1463, art. 3

## 147 Allocation schemes **E+W**

- (1) The Housing Act 1996 is amended as follows.
- (2) In section 166 (applications for housing accommodation)—
- (a) after subsection (1) insert—

“(1A) A local housing authority in England shall secure that an applicant for an allocation of housing accommodation is informed that he has the rights mentioned in section 166A(9).”, and”
  - (b) in subsection (2) after “authority” insert “ in Wales ”.

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- (3) For the heading before section 167 substitute “ Allocation schemes ”.
- (4) Before section 167 insert—

**“166A Allocation in accordance with allocation scheme: England**

- (1) Every local housing authority in England must have a scheme (their “allocation scheme”) for determining priorities, and as to the procedure to be followed, in allocating housing accommodation.

For this purpose “procedure” includes all aspects of the allocation process, including the persons or descriptions of persons by whom decisions are taken.

- (2) The scheme must include a statement of the authority's policy on offering people who are to be allocated housing accommodation—
  - (a) a choice of housing accommodation; or
  - (b) the opportunity to express preferences about the housing accommodation to be allocated to them.
- (3) As regards priorities, the scheme shall, subject to subsection (4), be framed so as to secure that reasonable preference is given to—
  - (a) people who are homeless (within the meaning of Part 7);
  - (b) people who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any such authority under section 192(3);
  - (c) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
  - (d) people who need to move on medical or welfare grounds (including any grounds relating to a disability); and
  - (e) people who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others).

The scheme may also be framed so as to give additional preference to particular descriptions of people within this subsection (being descriptions of people with urgent housing needs).

- (4) People are to be disregarded for the purposes of subsection (3) 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).
- (5) The scheme may contain provision for determining priorities in allocating housing accommodation to people within subsection (3); and the factors which the scheme may allow to be taken into account include—
  - (a) the financial resources available to a person to meet his housing costs;
  - (b) any behaviour of a person (or of a member of his household) which affects his suitability to be a tenant;
  - (c) any local connection (within the meaning of section 199) which exists between a person and the authority's district.

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- (6) Subject to subsection (3), the scheme may contain provision about the allocation of particular housing accommodation—
  - (a) to a person who makes a specific application for that accommodation;
  - (b) to persons of a particular description (whether or not they are within subsection (3)).
- (7) The Secretary of State may by regulations—
  - (a) specify further descriptions of people to whom preference is to be given as mentioned in subsection (3), or
  - (b) amend or repeal any part of subsection (3).
- (8) The Secretary of State may by regulations specify factors which a local housing authority in England must not take into account in allocating housing accommodation.
- (9) The scheme must be framed so as to secure that an applicant for an allocation of housing accommodation—
  - (a) has the right to request such general information as will enable him to assess—
    - (i) how his application is likely to be treated under the scheme (including in particular whether he is likely to be regarded as a member of a group of people who are to be given preference by virtue of subsection (3)); and
    - (ii) whether housing accommodation appropriate to his needs is likely to be made available to him and, if so, how long it is likely to be before such accommodation becomes available for allocation to him;
  - (b) has the right to request the authority to inform him of any decision about the facts of his case which is likely to be, or has been, taken into account in considering whether to allocate housing accommodation to him; and
  - (c) has the right to request a review of a decision mentioned in paragraph (b), or in section 160ZA(9), and to be informed of the decision on the review and the grounds for it.
- (10) As regards the procedure to be followed, the scheme must be framed in accordance with such principles as the Secretary of State may prescribe by regulations.
- (11) Subject to the above provisions, and to any regulations made under them, the authority may decide on what principles the scheme is to be framed.
- (12) A local housing authority in England must, in preparing or modifying their allocation scheme, have regard to—
  - (a) their current homelessness strategy under section 1 of the Homelessness Act 2002,
  - (b) their current tenancy strategy under section 150 of the Localism Act 2011, and
  - (c) in the case of an authority that is a London borough council, the London housing strategy.

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- (13) Before adopting an allocation scheme, or making an alteration to their scheme reflecting a major change of policy, a local housing authority in England must—
- (a) send a copy of the draft scheme, or proposed alteration, to every private registered provider of social housing and registered social landlord with which they have nomination arrangements (see section 159(4)), and
  - (b) afford those persons a reasonable opportunity to comment on the proposals.
- (14) A local housing authority in England shall not allocate housing accommodation except in accordance with their allocation scheme.”
- (5) Section 167 (allocation in accordance with allocation scheme) is amended as follows—
- (a) in the heading after “scheme” insert “ : Wales ”,
  - (b) in subsection (1) after “authority” insert “ in Wales ”,
  - (c) in subsection (4) after “authority” insert “ in Wales ”,
  - (d) in subsection (7) after “authority” insert “ in Wales ”, and
  - (e) in subsection (8) after “authority” insert “ in Wales ”.
- (6) In section 172(2) (regulations) before “167(3)” insert “ 166A(7) or ”.
- (7) In section 174 (index of defined expressions: Part VI) in the entry for “allocation scheme” before “167” insert “ 166A and ”.

#### **Commencement Information**

- 15** S. 147(1)(6) in force at 15.1.2012 by S.I. 2012/57, **art. 4(1)(l)** (with arts. 6, 7, arts. 9-11)
- 16** S. 147(2)(3)(4)(5) in force at 15.1.2012 for specified purposes by S.I. 2012/57, **art. 4(1)(k)** (with arts. 6, 7, arts. 9-11)
- 17** S. 147(2)-(5) in force at 18.6.2012 in so far as not already in force by S.I. 2012/1463, **art. 3**
- 18** S. 147(7) in force at 18.6.2012 by S.I. 2012/1463, **art. 3**

### *Homelessness*

#### **148 Duties to homeless persons** E+W

- (1) Section 193 of the Housing Act 1996 (duty to persons with priority need who are not homeless intentionally) is amended as follows.
- (2) Omit subsection (3A).
- (3) For subsection (5) substitute—
  - “(5) The local housing authority shall cease to be subject to the duty under this section if—
    - (a) the applicant, having been informed by the authority of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant,

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- (b) that offer of accommodation is not an offer of accommodation under Part 6 or a private rented sector offer, and
  - (c) the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section.”
- (4) In subsection (7) after “refusal” insert “ or acceptance ”.
- (5) In subsection (7AA)—
  - (a) omit “In a restricted case”,
  - (b) after “informed” insert “ in writing ”, and
  - (c) in paragraph (a) for “private accommodation offer” substitute “ private rented sector offer ”.
- (6) In subsection (7AB)—
  - (a) in paragraph (a) after “refusal” insert “ or acceptance ”, and
  - (b) at the end of paragraph (b) insert “, and
  - (c) in a case which is not a restricted case, the effect under section 195A of a further application to a local housing authority within two years of acceptance of the offer.”
- (7) In subsection (7AC) for “private accommodation offer” substitute “ private rented sector offer ”.
- (8) Omit subsections (7B) to (7E).
- (9) In subsection (7F)—
  - (a) at the end of paragraph (a) insert “ or ”,
  - (b) in paragraph (ab) for “private accommodation offer” substitute “ private rented sector offer ”,
  - (c) omit paragraph (b), and
  - (d) in the words following that paragraph for “it is reasonable for him to accept the offer” substitute “ subsection (8) does not apply to the applicant. ”
- (10) For subsection (8) substitute—
  - “(8) This subsection applies to an applicant if—
    - (a) the applicant is under contractual or other obligations in respect of the applicant's existing accommodation, and
    - (b) the applicant is not able to bring those obligations to an end before being required to take up the offer.”
- (11) After subsection (9) insert—
  - “(10) The appropriate authority may provide by regulations that subsection (7AC) (c) is to have effect as if it referred to a period of the length specified in the regulations.
- (11) Regulations under subsection (10)—
  - (a) may not specify a period of less than 12 months, and
  - (b) may not apply to restricted cases.
- (12) In subsection (10) “the appropriate authority”—
  - (a) in relation to local housing authorities in England, means the Secretary of State;

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- (b) in relation to local housing authorities in Wales, means the Welsh Ministers.”

#### Commencement Information

**19** S. 148 in force at 9.11.2012 for E. by S.I. 2012/2599, arts. 1(2), 2 (with art. 3)

### 149 Duties to homeless persons: further amendments **E+W**

(1) The Housing Act 1996 is amended as follows.

(2) In section 188 after subsection (1) insert—

“(1A) But if the local housing authority have reason to believe that the duty under section 193(2) may apply in relation to an applicant in the circumstances referred to in section 195A(1), they shall secure that accommodation is available for the applicant's occupation pending a decision of the kind referred to in subsection (1) regardless of whether the applicant has a priority need.”

(3) In section 195—

- (a) omit subsection (3A), and  
(b) in subsection (4B) for “(3A) to” substitute “(4) and”.

(4) After section 195 insert—

#### “195A Re-application after private rented sector offer

(1) If within two years beginning with the date on which an applicant accepts an offer under section 193(7AA) (private rented sector offer), the applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the local housing authority—

- (a) is satisfied that the applicant is homeless and eligible for assistance, and  
(b) is not satisfied that the applicant became homeless intentionally,  
the duty under section 193(2) applies regardless of whether the applicant has a priority need.

(2) For the purpose of subsection (1), an applicant in respect of whom a valid notice under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) has been given is to be treated as homeless from the date on which that notice expires.

(3) If within two years beginning with the date on which an applicant accepts an offer under section 193(7AA), the applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the local housing authority—

- (a) is satisfied that the applicant is threatened with homelessness and eligible for assistance, and  
(b) is not satisfied that the applicant became threatened with homelessness intentionally,

the duty under section 195(2) applies regardless of whether the applicant has a priority need.



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- (4) For the purpose of subsection (3), an applicant in respect of whom a valid notice under section 21 of the Housing Act 1988 has been given is to be treated as threatened with homelessness from the date on which that notice is given.
  - (5) Subsection (1) or (3) does not apply to a case where the local housing authority would not be satisfied as mentioned in that subsection without having regard to a restricted person.
  - (6) Subsection (1) or (3) does not apply to a re-application by an applicant for accommodation, or for assistance in obtaining accommodation, if the immediately preceding application made by that applicant was one to which subsection (1) or (3) applied.”
- (5) Section 198 (referral to another local housing authority) is amended as follows.
- (6) After subsection (2) insert—
- “(2ZA) The conditions for referral of the case to another authority are also met if—
- (a) the application is made within the period of two years beginning with the date on which the applicant accepted an offer from the other authority under section 193(7AA) (private rented sector offer), and
  - (b) neither the applicant nor any person who might reasonably be expected to reside with the applicant will run the risk of domestic violence in the district of the other authority.”
- (7) In subsection (2A) after “(2)” insert “ or (2ZA) ”.
- (8) In subsection (3) after “(2)” insert “ , (2ZA) ”.
- (9) In section 202(1)(g) (right to request review of decision) for “private accommodation offer” substitute “ private rented sector offer ”.

#### Commencement Information

**I10** S. 149 in force at 9.11.2012 for E. by S.I. 2012/2599, arts. 1(2), 2 (with art. 3)

## CHAPTER 2 **E+W**

### SOCIAL HOUSING: TENURE REFORM

#### *Tenancy strategies*

#### **150** Tenancy strategies **E+W**

- (1) A local housing authority in England must prepare and publish a strategy (a “tenancy strategy”) setting out the matters to which the registered providers of social housing for its district are to have regard in formulating policies relating to—
  - (a) the kinds of tenancies they grant,
  - (b) the circumstances in which they will grant a tenancy of a particular kind,
  - (c) where they grant tenancies for a term certain, the lengths of the terms, and

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- (d) the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.
- (2) The tenancy strategy must summarise those policies or explain where they may be found.
- (3) A local housing authority must have regard to its tenancy strategy in exercising its housing management functions.
- (4) A local housing authority must publish its tenancy strategy before the end of the period of 12 months beginning with the day on which this section comes into force.
- (5) A local housing authority must keep its tenancy strategy under review, and may modify or replace it from time to time.
- (6) If a local housing authority modifies its tenancy strategy, it must publish the modifications or the strategy as modified (as it considers appropriate).
- (7) A local housing authority must—
  - (a) make a copy of everything published under this section available at its principal office for inspection at all reasonable hours, without charge, by members of the public, and
  - (b) provide (on payment if required by the authority of a reasonable charge) a copy of anything so published to any member of the public who asks for one.
- (8) In this section and section 151 (preparation of tenancy strategy)—
  - (a) references to a registered provider of social housing for a district are to a registered provider who grants tenancies of dwelling-houses in that district, and
  - (b) “district”, “dwelling-house” and “local housing authority” have the same meaning as in the Housing Act 1985.

#### Commencement Information

**III** S. 150(1)(2)(4)-(8) in force at 15.1.2012 by [S.I. 2012/57](#), [art. 4\(1\)\(m\)](#) (with [arts. 6, 7](#), [arts. 9-11](#))

### 151 Preparation of tenancy strategy **E+W**

- (1) Before adopting a tenancy strategy, or making a modification to it reflecting a major change of policy, the authority must—
  - (a) send a copy of the draft strategy, or proposed modification, to every private registered provider of social housing for its district, and
  - (b) give the private registered provider a reasonable opportunity to comment on those proposals.
- (2) Before adopting a tenancy strategy, or making a modification to it reflecting a major change of policy, the authority must also—
  - (a) consult such other persons as the Secretary of State may by regulations prescribe, and
  - (b) in the case of an authority that is a London borough council, consult the Mayor of London.
- (3) The authority must, in preparing or modifying a tenancy strategy, have regard to—

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- (a) its current allocation scheme under section 166A of the Housing Act 1996,
- (b) its current homelessness strategy under section 1 of the Homelessness Act 2002, and
- (c) in the case of an authority that is a London borough council, the London housing strategy.

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**Commencement Information**

**I12** S. 151 in force at 15.1.2012 by S.I. 2012/57, art. 4(1)(n) (with arts. 6, 7, arts. 9-11)

**152 Standards about tenancies etc** **E+W**

In section 197 of the Housing and Regeneration Act 2008 (power of Secretary of State to give directions to regulator) in subsection (2) after paragraph (a) insert—  
“(aa) tenure,”.

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**Commencement Information**

**I13** S. 152 in force at 15.1.2012 by S.I. 2012/57, art. 4(1)(n) (with arts. 6, 7, arts. 9-11)

**153 Relationship between schemes and strategies** **E+W**

In section 3 of the Homelessness Act 2002 (homelessness strategy) after subsection (7) insert—

- “(7A) In formulating or modifying a homelessness strategy, a local housing authority in England shall have regard to—
- (a) its current allocation scheme under section 166A of the Housing Act 1996,
  - (b) its current tenancy strategy under section 150 of the Localism Act 2011, and
  - (c) in the case of an authority that is a London borough council, the current London housing strategy.”

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**Commencement Information**

**I14** S. 153 in force at 15.1.2012 for specified purposes by S.I. 2012/57, art. 4(1)(o) (with arts. 6, 7, arts. 9-11)

**I15** S. 153 in force at 7.6.2012 in so far as not already in force by S.I. 2012/1463, art. 2(g)

*Flexible tenancies*

**154 Flexible tenancies** **E+W**

After section 106A of the Housing Act 1985 insert—

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### *“Flexible tenancies*

#### **107A Flexible tenancies**

- (1) For the purposes of this Act, a flexible tenancy is a secure tenancy to which any of the following subsections applies.
- (2) This subsection applies to a secure tenancy if—
  - (a) it is granted by a landlord in England for a term certain of not less than two years, and
  - (b) before it was granted the person who became the landlord under the tenancy served a written notice on the person who became the tenant under the tenancy stating that the tenancy would be a flexible tenancy.
- (3) This subsection applies to a secure tenancy if—
  - (a) it becomes a secure tenancy by virtue of a notice under paragraph 4ZA(2) of Schedule 1 (family intervention tenancies becoming secure tenancies),
  - (b) the landlord under the family intervention tenancy in question was a local housing authority in England,
  - (c) the family intervention tenancy was granted to a person on the coming to an end of a flexible tenancy under which the person was a tenant,
  - (d) the notice states that the tenancy is to become a secure tenancy that is a flexible tenancy for a term certain of the length specified in the notice, and sets out the other express terms of the tenancy, and
  - (e) the length of the term specified in the notice is at least two years.
- (4) The length of the term of a flexible tenancy that becomes such a tenancy by virtue of subsection (3) is that specified in the notice under paragraph 4ZA(2) of Schedule 1.
- (5) The other express terms of the flexible tenancy are those set out in the notice, so far as those terms are compatible with the statutory provisions relating to flexible tenancies; and in this subsection “statutory provision” means any provision made by or under an Act.
- (6) This subsection applies to a secure tenancy if—
  - (a) it is created by virtue of section 137A of the Housing Act 1996 (introductory tenancies becoming flexible tenancies), or
  - (b) it arises by virtue of section 143MA of that Act (demoted tenancies becoming flexible tenancies).

#### **107B Review of decisions relating to flexible tenancies**

- (1) This section applies if a person (“the prospective landlord”)—
  - (a) offers to grant a flexible tenancy (whether or not on the coming to an end of an existing tenancy of any kind), or
  - (b) serves a notice under section 137A of the Housing Act 1996 stating that, on the coming to an end of an introductory tenancy, it will become a flexible tenancy.

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- (2) A person to whom the offer is made or on whom the notice is served (“the person concerned”) may request a review of the prospective landlord's decision about the length of the term of the tenancy.
- (3) The review may only be requested on the basis that the length of the term does not accord with a policy of the prospective landlord as to the length of the terms of the flexible tenancies it grants.
- (4) A request for a review must be made before the end of—
  - (a) the period of 21 days beginning with the day on which the person concerned first receives the offer or notice, or
  - (b) such longer period as the prospective landlord may in writing allow.
- (5) On a request being duly made to it, the prospective landlord must review its decision.
- (6) The Secretary of State may by regulations make provision about the procedure to be followed in connection with a review under this section.
- (7) The regulations may, in particular, make provision—
  - (a) requiring the decision on the review to be made by a person of appropriate seniority who was not involved in the original decision, and
  - (b) as to the circumstances in which the person concerned is entitled to an oral hearing, and whether and by whom the person may be represented at such a hearing.
- (8) The prospective landlord must notify the person concerned in writing of the decision on the review.
- (9) If the decision is to confirm the original decision, the prospective landlord must also notify the person of the reasons for the decision.
- (10) Regulations under this section—
  - (a) may contain transitional or saving provision;
  - (b) are to be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

### **107C Termination of flexible tenancy by tenant**

- (1) It is a term of every flexible tenancy that the tenant may terminate the tenancy in accordance with the following provisions of this section.
- (2) The tenant must serve a notice in writing on the landlord stating that the tenancy will be terminated on the date specified in the notice.
- (3) That date must be after the end of the period of four weeks beginning with the date on which the notice is served.
- (4) The landlord may agree with the tenant to dispense with the requirement in subsection (2) or (3).
- (5) The tenancy is terminated on the date specified in the notice or (as the case may be) determined in accordance with arrangements made under subsection (4) only if on that date—
  - (a) no arrears of rent are payable under the tenancy, and

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- (b) the tenant is not otherwise materially in breach of a term of the tenancy.

### **107D Recovery of possession on expiry of flexible tenancy**

- (1) Subject as follows, on or after the coming to an end of a flexible tenancy a court must make an order for possession of the dwelling-house let on the tenancy if it is satisfied that the following conditions are met.
- (2) Condition 1 is that the flexible tenancy has come to an end and no further secure tenancy (whether or not a flexible tenancy) is for the time being in existence, other than a secure tenancy that is a periodic tenancy (whether or not arising by virtue of section 86).
- (3) Condition 2 is that the landlord has given the tenant not less than six months' notice in writing—
  - (a) stating that the landlord does not propose to grant another tenancy on the expiry of the flexible tenancy,
  - (b) setting out the landlord's reasons for not proposing to grant another tenancy, and
  - (c) informing the tenant of the tenant's right to request a review of the landlord's proposal and of the time within which such a request must be made.
- (4) Condition 3 is that the landlord has given the tenant not less than two months' notice in writing stating that the landlord requires possession of the dwelling-house.
- (5) A notice under subsection (4) may be given before or on the day on which the tenancy comes to an end.
- (6) The court may refuse to grant an order for possession under this section if—
  - (a) the tenant has in accordance with section 107E requested a review of the landlord's proposal not to grant another tenancy on the expiry of the flexible tenancy, and
  - (b) the court is satisfied that the landlord has failed to carry out the review in accordance with provision made by or under that section or that the decision on the review is otherwise wrong in law.
- (7) If a court refuses to grant an order for possession by virtue of subsection (6) it may make such directions as to the holding of a review or further review under section 107E as it thinks fit.
- (8) This section has effect notwithstanding that, on the coming to an end of the flexible tenancy, a periodic tenancy arises by virtue of section 86.
- (9) Where a court makes an order for possession of a dwelling-house by virtue of this section, any periodic tenancy arising by virtue of section 86 on the coming to an end of the flexible tenancy comes to an end (without further notice and regardless of the period) in accordance with section 82(2).
- (10) This section is without prejudice to any right of the landlord under a flexible tenancy to recover possession of the dwelling-house let on the tenancy in accordance with this Part.

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### 107E Review of decision to seek possession

- (1) A request for a review of a landlord's decision to seek an order for possession of a dwelling-house let under a flexible tenancy must be made before the end of the period of 21 days beginning with the day on which the notice under section 107D(3) is served.
- (2) On a request being duly made to it, the landlord must review its decision.
- (3) The review must, in particular, consider whether the decision is in accordance with any policy of the landlord as to the circumstances in which it will grant a further tenancy on the coming to an end of an existing flexible tenancy.
- (4) The Secretary of State may by regulations make provision about the procedure to be followed in connection with a review under this section.
- (5) The regulations may, in particular, make provision—
  - (a) requiring the decision on the review to be made by a person of appropriate seniority who was not involved in the original decision, and
  - (b) as to the circumstances in which the person concerned is entitled to an oral hearing, and whether and by whom the person may be represented at such a hearing.
- (6) The landlord must notify the tenant in writing of the decision on the review.
- (7) If the decision is to confirm the original decision, the landlord must also notify the tenant of the reasons for the decision.
- (8) The review must be carried out, and the tenant notified, before the date specified in the notice of proceedings as the date after which proceedings for the possession of the dwelling-house may be begun.
- (9) Regulations under this section—
  - (a) may contain transitional or saving provision;
  - (b) are to be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.”

#### Commencement Information

- I16** S. 154 in force at 15.1.2012 for specified purposes by S.I. 2012/57, art. 4(1)(p) (with arts. 6, 7, arts. 9-11)
- I17** S. 154 in force at 1.4.2012 in so far as not already in force by S.I. 2012/628, art. 6(a) (with arts. 9, 11, 14, 15, 17)

## 155 Flexible tenancies: other amendments **E+W**

- (1) In section 83(1) of the Housing Act 1985 (proceedings for possession of dwelling-house let on a secure tenancy: notice requirements) after “section 82(1A)” insert “, other than proceedings under section 107D (recovery of possession on expiry of flexible tenancy),”.

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- (2) In section 84(1) of that Act (grounds and orders for possession of dwelling-house let on a secure tenancy) at the end insert “ or in accordance with section 107D (recovery of possession on expiry of flexible tenancy) ”.
- (3) In section 97 of that Act (tenant's improvements require consent) after subsection (4) insert—
- “(5) In this section “secure tenancy” does not include a secure tenancy that is a flexible tenancy.”
- (4) In section 99A of that Act (right to compensation for improvement) after subsection (8) insert—
- “(9) In this section—
- (a) “secure tenancy” does not include a secure tenancy that is a flexible tenancy, and
- (b) “secure tenant” does not include a tenant under a secure tenancy that is a flexible tenancy.”
- (5) In section 117 of that Act (index of defined expressions: Part 4) at the appropriate place insert—

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“flexible tenancy

section 107A”.

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- (6) After section 137 of the Housing Act 1996 (introductory tenancies) insert—

*“Introductory tenancies that are to become flexible tenancies*

### **137A Introductory tenancies that are to become flexible tenancies**

- (1) Where this section applies, a tenancy of a dwelling-house in England that ceases to be an introductory tenancy and becomes a secure tenancy in accordance with this Chapter becomes a flexible tenancy for a term certain.
- (2) This section applies if, before entering into or adopting the introductory tenancy, the person who became the landlord under the tenancy served a written notice on the person who was or became the tenant under the tenancy—
- (a) stating that, on ceasing to be an introductory tenancy, the tenancy would become a secure tenancy that would be a flexible tenancy for a term certain of the length specified in the notice,
- (b) specifying a period of at least two years as the length of the term of the tenancy, and
- (c) setting out the other express terms of the tenancy.
- (3) The length of the term of a flexible tenancy that becomes such a tenancy by virtue of this section is that specified in the notice under subsection (2).
- (4) The other express terms of the flexible tenancy are those set out in the notice, so far as those terms are compatible with the statutory provisions relating to flexible tenancies; and in this subsection “statutory provision” means any provision made by or under an Act.”



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(7) After section 143M of that Act (demoted tenancies) insert—

*“Demoted tenancies that are to become flexible tenancies*

**143MA Demoted tenancies that are to become flexible tenancies**

- (1) Subsection (2) applies to a demoted tenancy of a dwelling-house in England that—
  - (a) was created on the termination of a flexible tenancy within the meaning of section 107A of the Housing Act 1985, and
  - (b) ceases to be a demoted tenancy and becomes a secure tenancy in accordance with this Chapter.
- (2) If the landlord has served a notice within subsection (3) on the tenant before the end of the demoted tenancy then, on ceasing to be a demoted tenancy, the tenancy becomes a secure tenancy for a term certain that is a flexible tenancy.
- (3) The notice must—
  - (a) state that, on ceasing to be a demoted tenancy, the tenancy will become a secure tenancy that is a flexible tenancy for a term certain of the length specified in the notice,
  - (b) specify a period of at least two years as the length of the term of the tenancy, and
  - (c) set out the other express terms of the tenancy.
- (4) The length of the term of a flexible tenancy that becomes such a tenancy by virtue of this section is that specified in the notice under subsection (3).
- (5) The other express terms of the flexible tenancy are those set out in the notice, so far as those terms are compatible with the statutory provisions relating to flexible tenancies; and in this subsection “statutory provision” means any provision made by or under an Act.”

**Commencement Information**

**I18** S. 155 in force at 1.4.2012 by [S.I. 2012/628](#), [art. 6\(a\)](#) (with [arts. 9, 11, 14, 15, 17](#))

*Other provisions relating to tenancies of social housing*

**156 Creation of tenancies of social housing** **E+W**

- (1) In section 52 of the Law of Property Act 1925 (requirement that conveyances of land and interests in land be made by deed) in subsection (2) (exceptions) after paragraph (d) insert—
  - “(da) flexible tenancies;
  - (db) assured tenancies of dwelling-houses in England that are granted by private registered providers of social housing and are not long tenancies or shared ownership leases;”.
- (2) After that subsection insert—

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“(3) In this section—

“assured tenancy” has the same meaning as in Part 1 of the Housing Act 1988;

“dwelling-house” has the same meaning as in Part 1 of the Housing Act 1988;

“flexible tenancy” has the meaning given by section 107A of the Housing Act 1985;

“long tenancy” means a tenancy granted for a term certain of more than 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture;

“shared ownership lease” means a lease of a dwelling-house—

- (a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or
- (b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.”

#### Commencement Information

**I19** S. 156 in force at 1.4.2012 by S.I. 2012/628, art. 6(a) (with arts. 9, 11, 14, 15, 17)

### 157 Registration of tenancies of social housing **E+W**

- (1) The Land Registration Act 2002 is amended as follows.
- (2) In section 3 (voluntary registration of title) after subsection (4) insert—
 

“(4A) A person may not make an application under subsection (2) in respect of a leasehold estate in land under a relevant social housing tenancy.”
- (3) In section 4 (compulsory registration of title) after subsection (5) insert—
 

“(5A) Subsection (1) does not apply to the transfer or grant of a leasehold estate in land under a relevant social housing tenancy.”
- (4) In section 27 (dispositions required to be registered) after subsection (5) insert—
 

“(5A) This section does not apply to—

  - (a) the grant of a term of years absolute under a relevant social housing tenancy, or
  - (b) the express grant of an interest falling within section 1(2) of the Law of Property Act 1925, where the interest is created for the benefit of a leasehold estate in land under a relevant social housing tenancy.”
- (5) In section 33 (interests in respect of which notice may not be entered on the register) after paragraph (b) insert—
 

“(ba) an interest under a relevant social housing tenancy.”.
- (6) In section 132(1) (interpretation) at the appropriate places insert—

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““assured tenancy” has the same meaning as in Part 1 of the Housing Act 1988;”;

“ “dwelling-house” has the same meaning as in Part 1 of the Housing Act 1988;”;

“ “flexible tenancy” has the meaning given by section 107A of the Housing Act 1985;”;

“ “long tenancy” means a tenancy granted for a term certain of more than 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture;”;

“ “relevant social housing tenancy” means—

- (a) a flexible tenancy, or
- (b) an assured tenancy of a dwelling-house in England granted by a private registered provider of social housing, other than a long tenancy or a shared ownership lease;”;

“ “shared ownership lease” means a lease of a dwelling-house—

- (a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or
- (b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house;”.

(7) In Schedule 1 (unregistered interests which override first registration) after paragraph 1 insert—

**“Relevant social housing tenancies**

1A A leasehold estate in land under a relevant social housing tenancy.”

(8) In Schedule 3 (unregistered interests which override registered dispositions) after paragraph 1 insert—

**“Relevant social housing tenancies**

1A A leasehold estate in land under a relevant social housing tenancy.”

**Commencement Information**

**I20** S. 157 in force at 1.4.2012 by S.I. 2012/628, art. 6(a) (with arts. 9, 11, 14, 15, 17)

**158 Secure and assured tenancies: transfer of tenancy** **E+W**

(1) This section applies if the tenants (“the relevant tenants”) under two or more tenancies of dwelling-houses in England (“the existing tenancies”) make a request in writing to the landlord under each existing tenancy asking the landlord to—

- (a) permit the relevant tenant or tenants under the existing tenancy to surrender it, and

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- (b) grant a new tenancy of the dwelling-house let under the tenancy to another relevant tenant or other relevant tenants.
- (2) The landlord must comply with the request if the following conditions are met.
- (3) The first condition is that at least one of the existing tenancies is—
- (a) a secure tenancy that is not a flexible tenancy, or
  - (b) an assured tenancy—
    - (i) which is not an assured shorthold tenancy, and
    - (ii) under which the landlord is the Regulator of Social Housing, a private registered provider of social housing or a housing trust which is a charity.
- (4) The second condition is that at least one of the existing tenancies is—
- (a) a secure tenancy that is a flexible tenancy, or
  - (b) an assured shorthold tenancy under which the landlord is the Regulator of Social Housing, a private registered provider of social housing or a housing trust which is a charity.
- (5) The third condition is that the remaining existing tenancies (if any) fall within subsection (3) or (4).
- (6) The fourth condition is that at least one of the existing tenancies to which subsection (3) applies was granted before the day on which this section came into force.
- (7) The fifth condition is that none of the landlords under the existing tenancies has refused to comply with the request (and see further section 159).
- (8) Subsection (9) applies where a relevant tenant's existing tenancy is—
- (a) a secure tenancy that is not a flexible tenancy, or
  - (b) an assured tenancy that is not an assured shorthold tenancy.
- (9) The new tenancy granted to the relevant tenant pursuant to this section must be—
- (a) a secure tenancy that is not a flexible tenancy, or
  - (b) an assured tenancy that is not an assured shorthold tenancy,
- according to the landlord's capacity to grant a tenancy of either kind.
- (10) The Secretary of State may by regulations provide that this section does not apply in relation to an assured shorthold tenancy of a kind specified in the regulations.

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**Modifications etc. (not altering text)**

- C1** S. 158 excluded (E.) (1.4.2012) by [The Transfer of Tenancies and Right to Acquire \(Exclusion\) Regulations 2012 \(S.I. 2012/696\)](#), regs. 1(1), 3

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**Commencement Information**

- I21** S. 158 in force at 15.1.2012 for specified purposes by [S.I. 2012/57](#), [art. 4\(1\)\(q\)](#) (with arts. 6, 7, arts. 9-11)
- I22** S. 158 in force at 1.4.2012 in so far as not already in force by [S.I. 2012/628](#), [art. 6\(a\)](#) (with arts. 9, 11, 14, 15, 17)

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## 159 Further provisions about transfer of tenancy under section 158 **E+W**

- (1) A landlord may refuse to comply with a request under section 158 only on one or more of the grounds set out in Schedule 14 (and in that Schedule references to the new tenancy are to the tenancy that the landlord has been requested to grant under that section).
- (2) If the landlord refuses to comply with the request otherwise than on one of those grounds, the landlord is treated for the purposes of section 158 as not having refused to comply with the request.
- (3) A landlord may not rely on any of the grounds set out in Schedule 14 unless the landlord has, within the period of 42 days beginning with receipt of the relevant tenants' request, given each of the tenants a notice specifying the ground and giving particulars of it.
- (4) The duty imposed on a landlord by section 158 is enforceable by injunction.
- (5) A county court has jurisdiction to entertain any proceedings brought pursuant to subsection (4).
- (6) In section 158, this section and Schedule 14—
  - (a) “secure tenancy” has the meaning given by section 79 of the Housing Act 1985,
  - (b) “flexible tenancy” has the meaning given by section 107A of that Act,
  - (c) “assured tenancy” and “assured shorthold tenancy” have the same meaning as in Part 1 of the Housing Act 1988, and
  - (d) other expressions defined in the Housing Act 1985 or the Housing Act 1988 have the same meaning as in that Act (and, if they are defined in both Acts, have the same meaning as in the Housing Act 1985).
- (7) In section 160(1) of the Housing Act 1996 (cases where provisions about allocations do not apply), for the “or” at the end of paragraph (d) substitute—
  - “(da) is granted in response to a request under section 158 of the Localism Act 2011 (transfer of tenancy), or”.

### Commencement Information

**I23** S. 159 in force at 1.4.2012 by S.I. 2012/628, art. 6(a) (with arts. 9, 11, 14, 15, 17)

## 160 Succession to secure tenancies **E+W**

- (1) Before section 87 of the Housing Act 1985 insert—

### “86A Persons qualified to succeed tenant: England

- (1) A person (“P”) is qualified to succeed the tenant under a secure tenancy of a dwelling-house in England if—
  - (a) P occupies the dwelling-house as P's only or principal home at the time of the tenant's death, and
  - (b) P is the tenant's spouse or civil partner.

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- (2) A person (“P”) is qualified to succeed the tenant under a secure tenancy of a dwelling-house in England if—
- (a) at the time of the tenant's death the dwelling-house is not occupied by a spouse or civil partner of the tenant as his or her only or principal home,
  - (b) an express term of the tenancy makes provision for a person other than such a spouse or civil partner of the tenant to succeed to the tenancy, and
  - (c) P's succession is in accordance with that term.
- (3) Subsection (1) or (2) does not apply if the tenant was a successor as defined in section 88.
- (4) In such a case, a person (“P”) is qualified to succeed the tenant if—
- (a) an express term of the tenancy makes provision for a person to succeed a successor to the tenancy, and
  - (b) P's succession is in accordance with that term.
- (5) For the purposes of this section—
- (a) a person who was living with the tenant as the tenant's wife or husband is to be treated as the tenant's spouse, and
  - (b) a person who was living with the tenant as if they were civil partners is to be treated as the tenant's civil partner.
- (6) Subsection (7) applies if, on the death of the tenant, there is by virtue of subsection (5) more than one person who fulfils the condition in subsection (1) (b).
- (7) Such one of those persons as may be agreed between them or as may, where there is no such agreement, be selected by the landlord is for the purpose of this section to be treated (according to whether that one of them is of the opposite sex to, or of the same sex as, the tenant) as the tenant's spouse or civil partner.”
- (2) In section 87 of that Act (persons qualified to succeed secure tenant)—
- (a) in the section heading at the end insert “ : Wales ”, and
  - (b) after “secure tenancy” insert “ of a dwelling-house in Wales ”.
- (3) Section 89 of that Act (succession to periodic tenancy) is amended as follows.
- (4) After subsection (1) insert—
- “(1A) Where there is a person qualified to succeed the tenant under section 86A, the tenancy vests by virtue of this section—
- (a) in that person, or
  - (b) if there is more than one such person, in such one of them as may be agreed between them or as may, where there is no agreement, be selected by the landlord.”
- (5) In subsection (2) after “tenant” insert “ under section 87 ”.
- (6) The amendments made by this section do not apply in relation to a secure tenancy that—
- (a) was granted before the day on which this section comes into force, or

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- (b) came into being by virtue of section 86 of the Housing Act 1985 (periodic tenancy arising on termination of fixed term) on the coming to an end of a secure tenancy within paragraph (a).

**Commencement Information**

**I24** S. 160 in force at 1.4.2012 by S.I. 2012/628, art. 6(a) (with arts. 9, 11, 14, 15, 17)

**161 Succession to assured tenancies** **E+W**

- (1) Section 17 of the Housing Act 1988 (succession to assured periodic tenancy by spouse) is amended as follows.
- (2) In the heading for “assured periodic tenancy by spouse” substitute “assured tenancy”.
- (3) In subsection (1)—
- (a) at the beginning insert “Subject to subsection (1D), ”, and
- (b) omit paragraph (c).
- (4) After that subsection insert—
- “(1A) Subject to subsection (1D), in any case where—
- (a) there is an assured periodic tenancy of a dwelling-house in England under which—
- (i) the landlord is a private registered provider of social housing, and
- (ii) the tenant is a sole tenant,
- (b) the tenant under the tenancy dies,
- (c) immediately before the death, the dwelling-house was not occupied by a spouse or civil partner of the tenant as his or her only or principal home,
- (d) an express term of the tenancy makes provision for a person other than such a spouse or civil partner of the tenant to succeed to the tenancy, and
- (e) there is a person whose succession is in accordance with that term,
- then, on the death, the tenancy vests by virtue of this section in that person (and, accordingly, does not devolve under the tenant's will or intestacy).
- (1B) Subject to subsection (1D), in any case where—
- (a) there is an assured tenancy of a dwelling-house in England for a fixed term of not less than two years under which—
- (i) the landlord is a private registered provider of social housing, and
- (ii) the tenant is a sole tenant,
- (b) the tenant under the tenancy dies, and
- (c) immediately before the death, the tenant's spouse or civil partner was occupying the dwelling-house as his or her only or principal home,
- then, on the death, the tenancy vests by virtue of this section in the spouse or civil partner (and, accordingly, does not devolve under the tenant's will or intestacy).
- ”

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*Status: Point in time view as at 09/11/2012. This version of this part contains provisions that are not valid for this point in time.*

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- (1C) Subject to subsection (1D), in any case where—
- (a) there is an assured tenancy of a dwelling-house in England for a fixed term of not less than two years under which—
    - (i) the landlord is a private registered provider of social housing, and
    - (ii) the tenant is a sole tenant,
  - (b) the tenant under the tenancy dies,
  - (c) immediately before the death, the dwelling-house was not occupied by a spouse or civil partner of the tenant as his or her only or principal home,
  - (d) an express term of the tenancy makes provision for a person other than such a spouse or civil partner of the tenant to succeed to the tenancy, and
  - (e) there is a person whose succession is in accordance with that term,
- then, on the death, the tenancy vests by virtue of this section in that person (and accordingly does not devolve under the tenant's will or intestacy).
- (1D) Subsection (1), (1A), (1B) or (1C) does not apply if the tenant was himself a successor as defined in subsection (2) or subsection (3).
- (1E) In such a case, on the death, the tenancy vests by virtue of this section in a person (“P”) (and, accordingly, does not devolve under the tenant's will or intestacy) if, and only if—
- (a) (in a case within subsection (1)) the tenancy is of a dwelling-house in England under which the landlord is a private registered provider of social housing,
  - (b) an express term of the tenancy makes provision for a person to succeed a successor to the tenancy, and
  - (c) P's succession is in accordance with that term.”
- (5) In subsection (5) after “(1)(b)” insert “ or (1B)(c) ”.
- (6) After subsection (5) insert—
- “(6) If, on the death of the tenant, there is more than one person in whom the tenancy would otherwise vest by virtue of subsection (1A), (1C) or (1E), the tenancy vests in such one of them as may be agreed between them or, in default of agreement, as is determined by the county court.
- (7) This section does not apply to a fixed term assured tenancy that is a lease of a dwelling-house—
- (a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or
  - (b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.”
- (7) The amendments made by this section do not apply in relation to an assured tenancy that—
- (a) was granted before the day on which this section comes into force, or



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- (b) came into being by virtue of section 5 of the Housing Act 1988 (periodic tenancy arising on termination of fixed term) on the coming to an end of an assured shorthold tenancy within paragraph (a).

**Commencement Information**

**I25** S. 161 in force at 1.4.2012 by S.I. 2012/628, art. 6(a) (with arts. 9, 11, 14, 15, 17)

**162 Secure and assured tenancies: recovery of possession after tenant's death** **E+W**

- (1) In section 90 of the Housing Act 1985 (devolution of fixed term secure tenancy) after subsection (4) insert—

“(5) The following provisions apply where a tenancy that was a secure tenancy of a dwelling-house in England—

- (a) has been vested or otherwise disposed of in the course of the administration of the secure tenant's estate, and  
(b) has ceased to be a secure tenancy by virtue of this section.

(6) Subject as follows, the landlord may apply to the court for an order for possession of the dwelling-house let under the tenancy.

(7) The court may not entertain proceedings for an order for possession under this section unless—

- (a) the landlord has served notice in writing on the tenant—  
(i) stating that the landlord requires possession of the dwelling-house, and  
(ii) specifying a date after which proceedings for an order for possession may be begun, and  
(b) that date has passed without the tenant giving up possession of the dwelling-house.

(8) The date mentioned in subsection (7)(a)(ii) must fall after the end of the period of four weeks beginning with the date on which the notice is served on the tenant.

(9) On an application to the court for an order for possession under this section, the court must make such an order if it is satisfied that subsection (5) applies to the tenancy.

(10) The tenancy ends when the order is executed.”

- (2) In Part 3 of Schedule 2 to that Act (grounds on which court may order possession of dwelling-house let on secure tenancy if reasonable and if alternative accommodation is available) after Ground 15 insert—

“*Ground 15A* The dwelling-house is in England, the accommodation afforded by it is more extensive than is reasonably required by the tenant and—

- (a) the tenancy vested in the tenant by virtue of section 89 (succession to periodic tenancy) or 90 (devolution of term certain) in a case where the tenant was not the previous tenant's spouse or civil partner, and  
(b) notice of the proceedings for possession was served under section 83 (or, where no such notice was served, the proceedings for possession

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were begun) more than six months but less than twelve months after the relevant date.

For this purpose “the relevant date” is—

- (a) the date of the previous tenant's death, or
- (b) if the court so directs, the date on which, in the opinion of the court, the landlord (or, in the case of joint landlords, any one of them) became aware of the previous tenant's death.

The matters to be taken into account by the court in determining whether it is reasonable to make an order on this ground include—

- (a) the age of the tenant,
- (b) the period (if any) during which the tenant has occupied the dwelling-house as the tenant's only or principal home, and
- (c) any financial or other support given by the tenant to the previous tenant.”

(3) In that Part of that Schedule, in Ground 16 (vesting of tenancy in member of previous tenant's family other than his or her spouse or civil partner)—

- (a) at the beginning of the first unnumbered paragraph for “The accommodation afforded by the dwelling-house” substitute “ The dwelling-house is in Wales, the accommodation afforded by it ”,
- (b) in the first unnumbered paragraph—
  - (i) in paragraph (a) after “tenancy)” insert “ or 90 (devolution of term certain) ”, and
  - (ii) in paragraph (b) for “the date of the previous tenant's death” substitute “ the relevant date ”, and
- (c) after the first unnumbered paragraph insert—

“For this purpose “the relevant date” is—

- (a) the date of the previous tenant's death, or
- (b) if the court so directs, the date on which, in the opinion of the court, the landlord (or, in the case of joint landlords, any one of them) became aware of the previous tenant's death.”

(4) In section 7 of the Housing Act 1988 (orders for possession of assured tenancies) after subsection (6) insert—

“(6A) In the case of a dwelling-house in England, subsection (6)(a) has effect as if it also referred to Ground 7 in Part 1 of Schedule 2 to this Act.”

(5) In Part 1 of Schedule 2 to that Act (grounds for possession of dwelling-houses let on assured tenancies: grounds on which court must order possession) in Ground 7 (devolution of tenancy under will or intestacy)—

- (a) in the first unnumbered paragraph, after “tenancy)” insert “ , or a fixed term tenancy of a dwelling-house in England, ”,
- (b) in the second unnumbered paragraph—
  - (i) omit “periodic”, and
  - (ii) after “period” insert “ or length of term ”, and
- (c) after that paragraph insert—

“This ground does not apply to a fixed term tenancy that is a lease of a dwelling-house—

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- (a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or
- (b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.”

#### Commencement Information

**I26** S. 162(1)(2)(3)(a)(4)(5) in force at 1.4.2012 by S.I. 2012/628, art. 6(b) (with arts. 9, 11, 14, 15, 17)

**I27** S. 162(3)(b)(c) in force at 1.4.2012 for W. by S.I. 2012/887, art. 3(b) (with art. 4)

### 163 Assured shorthold tenancy following demoted or family intervention tenancy **E** **+W**

- (1) In section 20B(2) of the Housing Act 1988 (demoted assured shorthold tenancy lasts for one year unless subsection (3) applies) after “subsection (3) applies” insert “, but see section 20C ”.
- (2) After section 20B of the Housing Act 1988 insert—

#### “20C Assured shorthold tenancies following demoted tenancies

- (1) Subsection (2) applies if—
  - (a) section 20B applies to an assured shorthold tenancy of a dwelling-house in England (“the demoted tenancy”),
  - (b) the landlord is a private registered provider of social housing,
  - (c) the demoted tenancy was created by an order under section 6A made after the coming into force of section 163(2) of the Localism Act 2011,
  - (d) the assured tenancy that was terminated by that order was an assured shorthold tenancy that, whether or not it was a fixed term tenancy when terminated by the order, was granted for a term certain of not less than two years,
  - (e) apart from subsection (2), the demoted tenancy would cease to be an assured shorthold tenancy by virtue of section 20B(2) or (4), and
  - (f) the landlord has served a notice within subsection (3) on the tenant before the demoted tenancy ceases to be an assured shorthold tenancy by virtue of section 20B(2) or (4).
- (2) The demoted tenancy does not cease to be an assured shorthold tenancy by virtue of section 20B(2) or (4), and at the time when it would otherwise cease to be an assured shorthold tenancy by virtue of section 20B(2) to (4)—
  - (a) it becomes an assured shorthold tenancy which is a fixed term tenancy for a term certain, and
  - (b) section 20B ceases to apply to it.
- (3) The notice must—

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- (a) state that, on ceasing to be a demoted assured shorthold tenancy, the tenancy will become an assured shorthold tenancy which is a fixed term tenancy for a term certain of the length specified in the notice,
  - (b) specify a period of at least two years as the length of the term of the tenancy, and
  - (c) set out the other express terms of the tenancy.
- (4) Where an assured shorthold tenancy becomes a fixed term tenancy by virtue of subsection (2)—
- (a) the length of its term is that specified in the notice under subsection (3), and
  - (b) its other express terms are those set out in the notice.”
- (3) Before section 21 of the Housing Act 1988 insert—

**“20D Assured shorthold tenancies following family intervention tenancies**

- (1) An assured tenancy that arises by virtue of a notice under paragraph 12ZA(2) of Schedule 1 in respect of a family intervention tenancy is an assured shorthold tenancy if—
- (a) the landlord under the assured tenancy is a private registered provider of social housing,
  - (b) the dwelling-house is in England,
  - (c) the family intervention tenancy was granted to a person on the coming to an end of an assured shorthold tenancy under which the person was a tenant, and
  - (d) the notice states that the family intervention tenancy is to be regarded as an assured shorthold tenancy.
- (2) This section does not apply if the family intervention tenancy was granted before the coming into force of section 163(3) of the Localism Act 2011.”

**Commencement Information**

**I28** S. 163 in force at 1.4.2012 by S.I. 2012/628, art. 6(c) (with arts. 9, 11, 14, 15, 17)

**164 Assured shorthold tenancies: notice requirements** E+W

- (1) In section 21 of the Housing Act 1988 (recovery of possession on expiry or termination of assured shorthold tenancy) after subsection (1) insert—
- “(1A) Subsection (1B) applies to an assured shorthold tenancy of a dwelling-house in England if—
- (a) it is a fixed term tenancy for a term certain of not less than two years, and
  - (b) the landlord is a private registered provider of social housing.
- (1B) The court may not make an order for possession of the dwelling-house let on the tenancy unless the landlord has given to the tenant not less than six months' notice in writing—

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- (a) stating that the landlord does not propose to grant another tenancy on the expiry of the fixed term tenancy, and
  - (b) informing the tenant of how to obtain help or advice about the notice and, in particular, of any obligation of the landlord to provide help or advice.”
- (2) The amendments made by this section do not apply in relation to an assured shorthold tenancy that—
- (a) was granted before the day on which this section comes into force, or
  - (b) came into being by virtue of section 5 of the Housing Act 1988 (periodic tenancy arising on termination of fixed term) on the coming to an end of an assured shorthold tenancy within paragraph (a).

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**Commencement Information**

**I29** S. 164 in force at 1.4.2012 by S.I. 2012/628, art. 6(c) (with arts. 9, 11, 14, 15, 17)

**165 Assured shorthold tenancies: rights to acquire** **E+W**

- (1) Section 180 of the Housing and Regeneration Act 2008 (social housing: right to acquire) is amended as follows.
- (2) In subsection (2)(a) (conditions to be met in relation to tenancies) omit “an assured shorthold tenancy or”.
- (3) After subsection (2) insert—
- “(2A) The Secretary of State may by regulations provide that an assured shorthold tenancy of a description specified in the regulations is not a tenancy within subsection (2).”
- (4) The amendments made by this section do not apply in relation to an assured shorthold tenancy that—
- (a) was granted before the day on which this section comes into force, or
  - (b) came into being by virtue of section 5 of the Housing Act 1988 (periodic tenancy arising on termination of fixed term) on the coming to an end of an assured shorthold tenancy within paragraph (a).

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**Commencement Information**

**I30** S. 165 in force at 15.1.2012 for specified purposes by S.I. 2012/57, art. 4(1)(r) (with arts. 6, 7, arts. 9-11)

**I31** S. 165 in force at 1.4.2012 in so far as not already in force by S.I. 2012/628, art. 6(c) (with arts. 9, 11, 14, 15, 17)

**166 Repairing obligations in leases of seven years or more** **E+W**

In section 13 of the Landlord and Tenant Act 1985 (leases to which the provisions about repairing obligations in section 11 of that Act apply) after subsection (1) insert—

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“(1A) Section 11 also applies to a lease of a dwelling-house in England granted on or after the day on which section 166 of the Localism Act 2011 came into force which is—

- (a) a secure tenancy for a fixed term of seven years or more granted by a person within section 80(1) of the Housing Act 1985 (secure tenancies: the landlord condition), or
- (b) an assured tenancy for a fixed term of seven years or more that—
  - (i) is not a shared ownership lease, and
  - (ii) is granted by a private registered provider of social housing.

(1B) In subsection (1A)—

“assured tenancy” has the same meaning as in Part 1 of the Housing Act 1988;

“secure tenancy” has the meaning given by section 79 of the Housing Act 1985; and

“shared ownership lease” means a lease—

- (a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or
- (b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.”

#### Commencement Information

**I32** S. 166 in force at 1.4.2012 by S.I. 2012/628, art. 6(c) (with arts. 9, 11, 14, 15, 17)

## CHAPTER 3 E+W

### HOUSING FINANCE

VALID FROM 01/10/2013

#### **167 Abolition of Housing Revenue Account subsidy in England** E+W

Schedule 15 (abolition of Housing Revenue Account subsidy in England) has effect.

#### **168 Settlement payments** E+W

- (1) The Secretary of State may make a determination providing for the calculation of the amount of a payment (referred to in this Chapter as a “settlement payment”) in relation to each local housing authority in England that keeps a Housing Revenue Account.
- (2) A determination under this section may, in particular, provide for all or part of the amount to be calculated in accordance with a formula or formulae.

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- (3) In determining a formula for this purpose, the Secretary of State may, in particular, include variables framed by reference to—
  - (a) the amounts (if any) that, during such period and on such assumptions as the Secretary of State may determine, are to be treated as amounts that will be received by the local housing authority in connection with the exercise of its functions relating to houses and other property within its Housing Revenue Account,
  - (b) the amounts (if any) that, during such period and on such assumptions as the Secretary of State may determine, are to be treated as amounts that will be paid by the authority in connection with the exercise of those functions, and
  - (c) the amount (if any) that, at such time and on such assumptions as the Secretary of State may determine, is to be treated as the amount of debt held by the authority in connection with the exercise of those functions.
- (4) A determination under this section may provide for an assumption to be made about an amount whether or not the assumption is, or is likely to be, borne out by events.
- (5) A determination under this section may provide that the effect of the calculation in relation to a local housing authority is that—
  - (a) a settlement payment must be made by the Secretary of State to the local housing authority,
  - (b) a settlement payment must be made by the local housing authority to the Secretary of State, or
  - (c) the amount of a settlement payment in relation to that authority is nil.

#### **169 Further payments** **E+W**

- (1) This section applies if a settlement payment has been made in respect of a local housing authority.
- (2) The Secretary of State may from time to time make a determination that a further payment calculated in accordance with the determination must be made—
  - (a) by the Secretary of State to the local housing authority, or
  - (b) by the local housing authority to the Secretary of State.
- (3) The Secretary of State may make a determination under this section only if there has been a change in any matter that was taken into account in making—
  - (a) the determination relating to the settlement payment or a calculation under that determination, or
  - (b) a previous determination under this section relating to the local housing authority or a calculation under that determination.
- (4) A determination under this section may be varied or revoked by a subsequent determination.

#### **170 Further provisions about payments** **E+W**

- (1) A payment under this Chapter must be made in such instalments, at such times and in accordance with such arrangements as the Secretary of State may determine.
- (2) Arrangements under subsection (1) may include arrangements for payments to be made—

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- (a) by a person or body other than the Secretary of State to a local housing authority, or
  - (b) to a person or body other than the Secretary of State by a local housing authority.
- (3) A payment under this Chapter by a local housing authority must be accompanied by such information as the Secretary of State may require.
- (4) The Secretary of State may charge a local housing authority interest, at such rates and for such periods as the Secretary of State may determine, on any sum payable by the local housing authority under this Chapter that is not paid by a time determined under this section for its payment.
- (5) The Secretary of State may charge a local housing authority an amount equal to any additional costs incurred by the Secretary of State as a result of any sum payable by the local housing authority under this Chapter not being paid by a time determined under this section for its payment.
- (6) A payment under this Chapter other than a payment under subsection (4) or (5)—
- (a) if made by a local housing authority, is to be treated by the authority as capital expenditure for the purposes of Chapter 1 of Part 1 of the Local Government Act 2003;
  - (b) if made to a local housing authority, is to be treated by the authority as a capital receipt for the purposes of that Chapter.
- (7) A determination under this Chapter may require a payment to a local housing authority made under this Chapter to be used by the authority for a purpose specified in the determination.
- (8) A local housing authority to which such a requirement applies must comply with it.
- (9) In Schedule 4 to the Local Government and Housing Act 1989 (the keeping of the housing revenue account) in Part 2 (debts to the account) after item 5 insert— “ *Item 5A: sums payable under section 170 of the Localism Act 2011* Sums payable for the year to the Secretary of State under section 170(4) or (5) of the Localism Act 2011 (interest etc charged as a result of late payment of settlement payments etc). ”

## 171 **Limits on indebtedness** E+W

- (1) The Secretary of State may from time to time make a determination providing for the calculation in relation to each local housing authority in England that keeps a Housing Revenue Account of—
- (a) the amount of housing debt that, at such time and on such assumptions as the Secretary of State may determine, is to be treated as held by the authority, and
  - (b) the maximum amount of such housing debt that the authority may hold.
- (2) A determination under this section may, in particular, provide for all or part of an amount to be calculated in accordance with a formula or formulae.
- (3) A determination under this section may provide for assumptions to be made in making a calculation whether or not those assumption are, or are likely to be, borne out by events.
- (4) A determination under this section may be varied or revoked by a subsequent determination.



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- (5) A local housing authority may not hold debt in contravention of a determination under this section.
- (6) In this section “housing debt”, in relation to a local housing authority, means debt—
  - (a) which is held by the authority in connection with the exercise of its functions relating to houses and other property within its Housing Revenue Account, and
  - (b) interest and other charges in respect of which are required to be carried to the debit of that account.

#### **172 Power to obtain information** **E+W**

- (1) A local housing authority in England must supply the Secretary of State with such information as the Secretary of State may specify for the purposes of enabling the Secretary of State to exercise functions under this Chapter.
- (2) The Secretary of State may exercise the powers under this section either generally or in relation to a particular case.
- (3) If a local housing authority fails to comply with this section before the end of such period as the Secretary of State may specify, the Secretary of State may exercise functions under this Chapter on the basis of such assumptions and estimates as the Secretary of State thinks fit.

#### **173 Determinations under this Chapter** **E+W**

- (1) A determination under this Chapter may make different provision for different cases or descriptions of case, including different provision—
  - (a) for different areas,
  - (b) for different local housing authorities, or
  - (c) for different descriptions of local housing authority.
- (2) Before making a determination under this Chapter that relates to all local housing authorities or a description of local housing authority, the Secretary of State must consult such representatives of local government and relevant professional bodies as the Secretary of State thinks appropriate.
- (3) Before making a determination under this Chapter relating to a particular local housing authority, the Secretary of State must consult that local housing authority.
- (4) As soon as practicable after making a determination under this Chapter, the Secretary of State must send a copy of the determination to the local housing authority or authorities to which it relates.
- (5) Section 87(4) to (7) (electronic communications) of the Local Government and Housing Act 1989 applies to a determination under this Chapter as it applies to a determination under Part 6 of that Act.

#### **174 Capital receipts from disposal of housing land** **E+W**

In section 11 of the Local Government Act 2003 (use of capital receipts by a local authority) after subsection (5) insert—

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“(6) The Secretary of State and a local authority in England may enter into an agreement with the effect that a requirement imposed under subsection (2)(b) does not apply to, or is modified in its application to, capital receipts of the authority that are specified or described in the agreement.”

## 175 Interpretation **E+W**

In this Chapter “local housing authority” has the same meaning as in the Housing Act 1985.

## CHAPTER 4 **E+W**

### HOUSING MOBILITY

## 176 Standards facilitating exchange of tenancies **E+W**

- (1) In section 193 of the Housing and Regeneration Act 2008 (power for regulator to set standards for registered providers) in subsection (2) after paragraph (g) insert—
  - “(ga) methods of assisting tenants to exchange tenancies.”
- (2) In section 197(2) of that Act (power of Secretary of State to give directions to regulator) after paragraph (c) insert “, or
  - (d) methods of assisting tenants to exchange tenancies.”

### Commencement Information

**I33** S. 176 in force at 15.1.2012 by S.I. 2012/57, art. 4(1)(s) (with arts. 6, 7, arts. 9-11)

## 177 Assisting tenants of social landlords to become home owners **E+W**

In section 122 of the Housing and Regeneration Act 2008 (registered providers of social housing in England: restriction on gifts and distributions to members etc) after subsection (5) (the third class of permitted payments) insert—

“(5A) Class 4 is payments which—

- (a) are in accordance with the constitution of the registered provider,
- (b) are paid for the benefit of tenants of the provider, and
- (c) are in any particular case paid to assist the tenant to obtain other accommodation by acquiring a freehold, or long-leasehold, interest in a dwelling.

(5B) For the purposes of subsection (5A)—

“long-leasehold interest”, in relation to a dwelling, means the lessee's interest under a lease of the dwelling granted, for a premium, for a term certain exceeding 21 years;

“acquiring”, in relation to a long-leasehold interest in a dwelling, includes acquiring by grant and acquiring by assignment.”

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## CHAPTER 5 **E+W**

### REGULATION OF SOCIAL HOUSING

#### **178 Transfer of functions from the Office for Tenants and Social Landlords to the Homes and Communities Agency **E+W****

(1) Schedule 16 (transfer of functions from the Office for Tenants and Social Landlords to the Homes and Communities Agency) has effect.

(2) In that Schedule—

Part 1 amends the Housing and Regeneration Act 2008 (regulation of social housing) so as to—

- (a) abolish the Office for Tenants and Social Landlords (“the Office”),
- (b) create the Regulation Committee of the Homes and Communities Agency (“the HCA”), and
- (c) transfer the functions of the Office to the HCA acting through the Committee,

Part 2 makes consequential amendments to other enactments,

Part 3 contains provision transferring property, rights and liabilities of the Office to the HCA, and

Part 4 contains transitional and saving provisions.

#### **Commencement Information**

**I34** S. 178 in force at 15.1.2012 for specified purposes by S.I. 2012/57, art. 4(1)(t) (with arts. 6, 7, arts. 9-11)

**I35** S. 178 in force at 1.4.2012 in so far as not already in force by S.I. 2012/628, art. 6(d) (with arts. 9, 11, 14, 15, 17)

#### **179 Regulation of social housing **E+W****

Schedule 17 (regulation of social housing) has effect.

#### **Commencement Information**

**I36** S. 179 in force at 1.4.2012 by S.I. 2012/628, art. 6(d) (with arts. 9, 11, 14, 15, 17)

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## CHAPTER 6 E+W

### OTHER HOUSING MATTERS

VALID FROM 01/04/2013

#### *Housing ombudsman*

#### 180 **Housing complaints** E+W

- (1) In Schedule 2 to the Housing Act 1996 (social rented sector: housing complaints) after paragraph 7 insert—

**“Complaints must be referred by designated person unless paragraph 7B applies**

- 7A (1) A complaint against a social landlord is not “duly made” to a housing ombudsman under an approved scheme unless it is made in writing to the ombudsman by a designated person by way of referral of a complaint made to the designated person.
- (2) Sub-paragraph (1) is subject to paragraph 7B (complaints that need not be made by way of referral).
- (3) For the purposes of this paragraph “designated person” means—
- (a) a member of the House of Commons,
  - (b) a member of the local housing authority for the district in which the property concerned is located, or
  - (c) a designated tenant panel (see paragraph 7C(1)) for the social landlord.
- (4) Before making a referral under sub-paragraph (1), a designated person must obtain written consent from the complainant or the complainant's representative.
- (5) Sub-paragraphs (6) and (7) apply if under sub-paragraph (1) a designated person refers a complaint to a housing ombudsman.
- (6) If the ombudsman decides—
- (a) not to investigate the complaint, or
  - (b) to discontinue investigation of the complaint,
- the ombudsman must prepare a statement of reasons for that decision and send a copy of the statement to the designated person.
- (7) If the ombudsman completes investigation of the complaint, the ombudsman must inform the designated person of—
- (a) the results of the investigation, and
  - (b) any determination made.
- (8) In sub-paragraph (3)(b) “district” in relation to a local housing authority has the same meaning as in the Housing Act 1985.

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### **Complaints that need not be made by way of referral by designated person**

- 7B (1) Paragraph 7A(1) does not apply in relation to a complaint against a social landlord made to a housing ombudsman under an approved scheme if the ombudsman is satisfied that—
- (a) the social landlord has procedures for considering complaints against the social landlord,
  - (b) the matter that forms the subject of the complaint has been submitted to those procedures,
  - (c) those procedures have been exhausted, and
  - (d) the complaint has been made to the ombudsman after the end of the eight weeks beginning with the day on which those procedures were exhausted.
- (2) Paragraph 7A(1) does not apply in relation to a complaint against a social landlord made to a housing ombudsman under an approved scheme if—
- (a) the ombudsman is satisfied that a designated person—
    - (i) has refused to refer the complaint to a housing ombudsman under an approved scheme, or
    - (ii) has agreed to the complaint being made otherwise than by way of a referral by a designated person, and
  - (b) the refusal, or agreement, is in writing or the ombudsman is satisfied that it has been confirmed in writing.
- (3) Paragraph 7A(3) (meaning of “designated person”) applies also for the purposes of sub-paragraph (2).

### **Designated tenant panels**

- 7C (1) In paragraph 7A(3)(c) “designated tenant panel” means a group of tenants which is recognised by a social landlord for the purpose of referring complaints against the social landlord.
- (2) There may be more than one designated tenant panel for a social landlord.
- (3) Where a social landlord becomes a member of an approved scheme, the social landlord must give to the person administering the scheme contact details for any designated tenant panel for the social landlord.
- (4) Where a group becomes a designated tenant panel for a social landlord, the social landlord must, as respects each approved scheme of which the social landlord is a member, give to the person administering the scheme contact details for the panel.
- (5) Where a group ceases to be a designated tenant panel for a social landlord, the social landlord must inform the person administering each approved scheme of which the social landlord is a member.
- (6) A complaint referred to a housing ombudsman under an approved scheme by a designated tenant panel for a social landlord is not affected by the group concerned ceasing to be a designated tenant panel for the social landlord.

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### **Enforcement of a housing ombudsman's determinations**

- 7D (1) The Secretary of State may by order make provision for, or in connection with, authorising a housing ombudsman under an approved scheme to apply to a court or tribunal for an order that a determination made by the ombudsman may be enforced as if it were an order of a court.
- (2) Before the Secretary of State makes an order under sub-paragraph (1), the Secretary of State must consult—
- (a) one or more bodies appearing to the Secretary of State to represent the interests of social landlords,
  - (b) one or more bodies appearing to the Secretary of State to represent the interests of other members of approved schemes,
  - (c) one or more bodies appearing to the Secretary of State to represent the interests of tenants, and
  - (d) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State's power to make an order under sub-paragraph (1) is exercisable by statutory instrument.
- (4) A statutory instrument containing an order made by the Secretary of State under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) Section 239(2) of the Housing and Regeneration Act 2008 (regulator may award compensation if compensation awarded by housing ombudsman has not been paid) is omitted.
- (3) Subsection (1), so far as it inserts paragraph 7A of Schedule 2 to the Housing Act 1996, applies only in relation to complaints made to a housing ombudsman after the coming into force of that subsection so far as it makes that insertion.
- (4) Subsection (1), so far as it inserts paragraph 7D of that Schedule, applies only in relation to determinations made after the coming into force of that subsection so far as it makes that insertion.
- (5) Subsection (2) applies only in relation to determinations made after the coming into force of that subsection.

### **181 Transfer of functions to housing ombudsman E+W**

- (1) In Schedule 5 to the Local Government Act 1974 (matters not subject to investigation by a Local Commissioner)—
- (a) after paragraph 5 insert—

“5A Action which—

- (a) is taken by or on behalf of a local authority in its capacity as a registered provider of social housing, and
- (b) is action in connection with its housing activities so far as they relate to the provision or management of social housing

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(and here “social housing” has the same meaning as in Part 2 of the Housing and Regeneration Act 2008).

5B

In the case of a local authority which is a registered provider of social housing, action taken by or on behalf of the authority in connection with the management of dwellings owned by the authority and let on a long lease (and here “long lease” has the meaning given by section 59(3) of the Landlord and Tenant Act 1987).”, and

- (b) in paragraph 6 for the words from “not action” to the end substitute “—
- (a) action in connection with functions in relation to social housing (and here “social housing” has the same meaning as in Part 2 of the Housing and Regeneration Act 2008), or
  - (b) action in connection with functions in relation to anything other than housing.”

(2) The Housing Act 1996 is amended as follows.

(3) In section 51(2) (investigation of complaints against social landlords) before paragraph (a) insert—

“(za) a local authority in England which is a registered provider of social housing,”

(4) In Schedule 2 (schemes for the investigation of housing complaints)—

- (a) in paragraph 1(1) after “social landlord” insert “, other than a local housing authority, ”,
- (b) after paragraph 1(1) insert—

“(1A) A social landlord which is a local housing authority must be a member of an approved scheme covering, or more than one scheme which together cover—

- (a) action which—
  - (i) is taken by or on behalf of the authority in its capacity as a registered provider of social housing, and
  - (ii) is action in connection with its housing activities so far as they relate to the provision or management of social housing (and here “social housing” has the same meaning as in Part 2 of the Housing and Regeneration Act 2008), and
- (b) action taken by or on behalf of the authority in connection with the management of dwellings owned by the authority and let on a long lease (and here “long lease” has the meaning given by section 59(3) of the Landlord and Tenant Act 1987).”, and

(c) after paragraph 11(1) insert—

“(1A) If a change in the method of calculation under sub-paragraph (1) would result in a member's subscription being more than it would otherwise be, the change may be made only if the Secretary of State approves it.

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- (1B) An approved scheme's total defrayable expenses for a period may be more than the scheme's total defrayable expenses for the immediately-preceding corresponding period only if the Secretary of State approves the increase.
- (1C) In sub-paragraph (1B) “defrayable expenses”, in relation to a scheme, means expenses of the scheme that are to be defrayed by subscriptions from members of the scheme.”
- (5) The Secretary of State may, in consequence of the amendments made by this section, make a scheme (“a transfer scheme”) transferring property, rights and liabilities of the Commission for Local Administration in England to a person administering a scheme approved under Schedule 2 to the Housing Act 1996.
- (6) The things that may be transferred under a transfer scheme include—
- (a) property, rights and liabilities that could not otherwise be transferred, and
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme.
- (7) A transfer scheme may make consequential, supplementary, incidental or transitional provision and may in particular—
- (a) create rights, or impose liabilities, in relation to property or rights transferred,
  - (b) make provision about the continuing effect of things done by or in relation to the transferor in respect of anything transferred,
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred,
  - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee,
  - (e) make provision for the shared ownership or use of property, and
  - (f) if the TUPE regulations do not apply in relation to the transfer, make provision which is the same or similar.
- (8) A transfer scheme may provide—
- (a) for modification by agreement, and
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (9) In this section—
- “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246),
- references to rights and liabilities include rights and liabilities relating to a contract of employment, and
- references to the transfer of property include the grant of a lease.
- (10) Subsection (1) applies only in relation to complaints made to a Local Commissioner after the coming into force of that subsection.
- (11) Subsection (3) or (4) applies only in relation to complaints made to a housing ombudsman after the coming into force of that subsection.



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## 182 Transfer of functions to housing ombudsman: supplementary **E+W**

- (1) The Local Government Act 1974 is amended in accordance with subsections (2) to (7).
- (2) In section 33 (consultation between Local Commissioners and other Commissioners)
  - (a) in subsection (1) after paragraph (b) insert—

“(bza) by a housing ombudsman under the Housing Act 1996,”
  - (b) in subsection (2) after “Parliamentary Commissioner,” insert “ a housing ombudsman,”
  - (c) after subsection (3) insert—

“(3A) If at any stage in the course of conducting an investigation under the Housing Act 1996, a housing ombudsman forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under this Part of the Act, the ombudsman must consult with the appropriate Local Commissioner about the complaint and, if the ombudsman considers it necessary, inform the person initiating the complaint of the steps necessary to initiate a complaint under this Part of this Act.”
  - (d) in subsection (4) after “subsection (3)” insert “ or (3A) ”, and
  - (e) in that subsection after “1967” insert “ or under the Housing Act 1996 ”.
- (3) Section 33ZA (collaborative working between Local Commissioners and other Commissioners) is amended as follows.
- (4) In subsection (1) (power to conduct joint investigations)—
  - (a) in paragraph (c) for “both” substitute “ a housing ombudsman ”, and
  - (b) for the words from “jointly” to the end substitute “ jointly with any also-involved ombudsman or jointly with any two or more also-involved ombudsmen. ”
- (5) After subsection (1) insert—

“(1A) In subsection (1) “also-involved ombudsman” means a person within subsection (1)(a), (b) or (c) who, in the opinion of the Local Commissioner concerned, has jurisdiction in relation to a matter that is included among the matters which are the subject of the Local Commissioner's investigation.”
- (6) In subsection (3) (power to conduct joint investigations)—
  - (a) in paragraph (c) for “both” substitute “ a housing ombudsman ”, and
  - (b) for the words from “jointly” to the end substitute “ jointly with a person within paragraph (a), (b) or (c) who is investigating the complaint or jointly with any two or more such persons. ”
- (7) In section 34(1) (interpretation of Part 3) insert at the appropriate place—

““housing ombudsman” means a housing ombudsman under a scheme approved under Schedule 2 to the Housing Act 1996,”.
- (8) In Schedule 2 to the Housing Act 1996 (housing ombudsman schemes) after paragraph 10 insert—

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### “Collaborative working with Local Commissioners

- 10A (1) If at any stage in the course of conducting an investigation under this Act a housing ombudsman forms the opinion that the complaint relates partly to a matter within the jurisdiction of a Local Commissioner, the ombudsman may, subject to sub-paragraph (2), conduct an investigation under this Act jointly with that Commissioner.
- (2) A housing ombudsman must obtain the consent of the complainant or the complainant's representative before agreeing to a joint investigation referred to in sub-paragraph (1).
- (3) If a housing ombudsman forms the opinion that a complaint which is being investigated by a Local Commissioner relates partly to a matter within the jurisdiction of the ombudsman, the ombudsman may conduct an investigation jointly with that Commissioner.
- (4) If a housing ombudsman conducts an investigation jointly with a Local Commissioner, the requirements of paragraph 7 may be satisfied by a report made jointly with that person.
- (5) A joint report made under this paragraph must distinguish determinations of a housing ombudsman from other findings or recommendations.”

### *Home information packs*

#### **183 Abolition of home information packs** E+W

- (1) Part 5 of the Housing Act 2004 (home information packs) is repealed.
- (2) Schedule 18 (home information packs: consequential amendments) has effect.

### *Tenants' deposits*

#### **184 Tenancy deposit schemes** E+W

- (1) The Housing Act 2004 is amended as follows.
- (2) In section 213 (requirements relating to tenancy deposits)—
  - (a) in subsection (3) (landlord's requirement to comply with initial requirements within 14 days of receipt of deposit) for “14” substitute “ 30 ”, and
  - (b) in subsection (6)(b) (landlord's requirement to give tenant information within 14 days of receipt of deposit) for “14” substitute “ 30 ”.
- (3) Section 214 (proceedings relating to tenancy deposits) is amended as follows.
- (4) In subsection (1) (grounds for an application to a county court) for paragraph (a) substitute—
  - “(a) that section 213(3) or (6) has not been complied with in relation to the deposit, or”.

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(5) After subsection (1) insert—

“(1A) Subsection (1) also applies in a case where the tenancy has ended, and in such a case the reference in subsection (1) to the tenant is to a person who was a tenant under the tenancy.”

(6) In subsection (2) (conditions for a remedy)—

(a) in the opening words for “if on such an application” substitute “ in the case of an application under subsection (1) if the tenancy has not ended and ”, and

(b) for paragraph (a) substitute—

“(a) is satisfied that section 213(3) or (6) has not been complied with in relation to the deposit, or”.

(7) After subsection (2) insert—

“(2A) Subsections (3A) and (4) apply in the case of an application under subsection (1) if the tenancy has ended (whether before or after the making of the application) and the court—

(a) is satisfied that section 213(3) or (6) has not been complied with in relation to the deposit, or

(b) is not satisfied that the deposit is being held in accordance with an authorised scheme,

as the case may be.”

(8) After subsection (3) insert—

“(3A) The court may order the person who appears to the court to be holding the deposit to repay all or part of it to the applicant within the period of 14 days beginning with the date of the making of the order.”

(9) In subsection (4) (amount of penalty payment)—

(a) omit “also”, and

(b) for “equal to” substitute “ not less than the amount of the deposit and not more than ”.

(10) Section 215 (sanctions for non-compliance) is amended as follows.

(11) In subsection (1) (prevention of service of notice under section 21 of the Housing Act 1988)—

(a) at the beginning insert “ Subject to subsection (2A), ”, and

(b) for paragraph (b) substitute—

“(b) section 213(3) has not been complied with in relation to the deposit.”

(12) In subsection (2) (prevention of service of notice under section 21 of the Housing Act 1988) at the beginning insert “ Subject to subsection (2A), ”.

(13) After subsection (2) insert—

“(2A) Subsections (1) and (2) do not apply in a case where—

(a) the deposit has been returned to the tenant in full or with such deductions as are agreed between the landlord and tenant, or

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- (b) an application to a county court has been made under section 214(1) and has been determined by the court, withdrawn or settled by agreement between the parties.”
- (14) In Schedule 10 (provisions relating to tenancy deposit schemes) in paragraph 5A(9) (b) (modification of section 213(3)) for “14” substitute “ 30 ”.

#### Commencement Information

**I37** S. 184 in force at 6.4.2012 by S.I. 2012/628, art. 8(c) (with arts. 9, 12, 13, 16, arts. 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)

### *Houses in multiple occupation*

#### **185 Exemption from HMO licensing for buildings run by co-operatives** E+W

- (1) In Schedule 14 to the Housing Act 2004 (buildings which are not HMOs for the purposes of that Act (excluding Part 1)) after paragraph 2A insert—

##### “Buildings controlled or managed by a co-operative society

- 2B (1) A building where—
- (a) the person managing or having control of it is a co-operative society whose rules are such as to secure that each of the conditions set out in sub-paragraph (2) is met, and
  - (b) no person who occupies premises in the building does so by virtue of an assured tenancy, a secure tenancy or a protected tenancy.
- (2) The conditions are—
- (a) that membership of the society is restricted to persons who are occupiers or prospective occupiers of buildings managed or controlled by the society,
  - (b) that all management decisions of the society are made by the members (or a specified quorum of members) at a general meeting which all members are entitled to, and invited to, attend,
  - (c) that each member has equal voting rights at such a meeting, and
  - (d) that, if a person occupies premises in the building and is not a member, that person is an occupier of the premises only as a result of sharing occupation of them with a member at the member's invitation.
- (3) For the purposes of sub-paragraph (1) “co-operative society” means a body that—
- (a) is registered—
    - (i) as a co-operative society under section 1 of the 1965 Act, or
    - (ii) is a pre-2010 Act society (as defined by section 4A(1) of the 1965 Act) which meets the condition in section 1(2) of the 1965 Act, and
  - (b) is neither—

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- (i) a non-profit registered provider of social housing, nor
  - (ii) registered as a social landlord under Part 1 of the Housing Act 1996.
- (4) In this paragraph—
- “the 1965 Act” means the Co-operative and Community Benefit Societies and Credit Unions Act 1965;
  - “assured tenancy” has the same meaning as in Part 1 of the Housing Act 1988;
  - “protected tenancy” has the same meaning as in the Rent Act 1977;
  - “secure tenancy” has the same meaning as in Part 4 of the Housing Act 1985.”
- (2) Until the coming into force of section 1 of the 2010 Act, the paragraph 2B inserted by subsection (1) of this section has effect as if for sub-paragraph (3)(a) of that paragraph there were substituted—
- “(a) is a society registered, or treated as registered, under section 1 of the 1965 Act in the case of which the condition in section 1(2)(a) of that Act is fulfilled (bona fide co-operative society),”.
- (3) Until the coming into force of section 2 of the 2010 Act, the paragraph 2B inserted by subsection (1) of this section has effect as if in sub-paragraph (4) of that paragraph “Industrial and Provident Societies Act 1965” were substituted for “Co-operative and Community Benefit Societies and Credit Unions Act 1965”.
- (4) In subsections (2) and (3) “the 2010 Act” means the Co-operative and Community Benefit Societies and Credit Unions Act 2010.

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**Commencement Information**

**I38** S. 185 in force at 1.4.2012 by S.I. 2012/628, art. 6(e) (with arts. 9, 11, 14, 15, 17)

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