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Localism Act 2011

2011 CHAPTER 20

PART 7

HOUSING

CHAPTER 6

OTHER HOUSING MATTERS

VALID FROM 01/04/2013

Housing ombudsman

180 Housing complaints

- (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,

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- (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.

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).

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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.

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.”

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- (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

- (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 (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)—

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- (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.
 - (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,

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- (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.

182 Transfer of functions to housing ombudsman: supplementary

- (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)
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- (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 ”.

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- (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—

“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.”

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