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PROPERTY LAW BULLETIN

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CASE LAW UPDATE

ADVERSE POSSESSION

In *St Pancras & Humanist Housing Association Ltd v Leonard* [2008] EWCA Civ 1442 the housing association claimed possession of a garage to the rear of a semi-detached house. At trial, Mr Leonard successfully established twelve years of adverse possession. However, the judge found that there was evidence to suggest that Mr Leonard had represented that he considered the garage to be communal property, and that this was sufficient to amount to a misrepresentation. It was not conscionable that he should be allowed to go back on the representation and he was estopped from doing so. The Court of Appeal dismissed the appeal. Despite Mr Leonard's belief that he had a right to possession of the garage, he made prior statements which suggested that the garage was to be considered communal property and on that basis was estopped from asserting adverse possession.

FORFEITURE

In *Osibanjo & anor v Seahive Investments Ltd* [2008] EWCA Civ 1282 the Court of Appeal (Mummery LJ) said that to establish waiver of the right to forfeit by acceptance of rent it is necessary to show that the payment was accepted *as rent* by the landlord. This was not the case where the landlord had petitioned for the tenant's bankruptcy and presented a cheque from the tenant but returned the balance after deduction of the bankruptcy debt. In the absence of full argument Rix LJ and Mummery LJ appeared to disagree as to whether the fact that rent accrued due after the breach, but before knowledge of the breach, prevented its acceptance from operating as a waiver, even though the landlord knew of the breach at the time of the acceptance. Rix LJ took the view that knowledge was the key factor: once there is the necessary knowledge it should not matter whether the rent accrued due before or after that knowledge was acquired.

HOUSING

The House of Lords held that the exclusion of disabled persons without accommodation from disability benefit was a justified discrimination and therefore survived a challenge under Article 14 ECHR. Being 'without accommodation' for the purposes of the disability benefit test meant sleeping rough. It was therefore to be contrasted with the meaning of 'homeless' within the Housing Acts, which can include persons living in overcrowded or unsanitary conditions. **RJM, R (on the application of) v. Secretary of State for Work and Pensions** [2008] UKHL 63.

The Court of Appeal overturned a review of an offer of housing assistance under Part VII Housing Act 1996 (allowing an appeal against the Recorder who had upheld it) because the offer had failed to acknowledge the unsuitability of accommodation without a front door access ramp for a wheel-chair dependent occupant. The review officer had been wrong to conclude that a promise by the house owner to provide such a ramp could save the offer, in the absence of a clear finding that the promise was made prior to the offer. Consequently an offer of suitable accommodation had not been made and Ealing LBC was not discharged from its duty to the Applicant under s.193. Rimer LJ said that proposals to improve could be taken into account provided that they could fairly be regarded as certain, binding and enforceable. However a review officer could not take such proposals into account if they post-dated the housing offer under review. This was especially important given the potential significance of the offer as discharging the local authority's duty. In these sorts of circumstances a fresh offer should be issued including reference to the proposal for improvement. Ward LJ said that the lesson to be learned from the case was that although hard pressed, local authority housing officers should address the real issues in any given case and in particular any simple alteration which is required to render a property suitable. **Boreh v Ealing LBC** [2008] EWCA Civ 1176.

A series of separate proceedings and associated writs for possession on the grounds of arrears of rent could arguably amount to harassment within the meaning of the Protection from Harassment Act 1997. The Court of Appeal allowed an appeal against the striking out of proceedings against Southwark LBC for harassment, after Southwark LBC brought a total of five sets of proceedings which could be variously characterised as groundless and hopeless. In particular the claims appeared to have been based upon an alleged variation of the contract pursuant to s.103 Housing Act 1985 that rent be paid at the Post Office, notice of which had never been served. It was arguable that this amounted to oppressive and unreasonable conduct. **Allen v Southwark LBC** [2008] EWCA Civ 1478.

The review process for homelessness housing decisions under s.202 Housing Act 1996 has survived another challenge under Article 6 ECHR. The Court of Appeal rejected the argument that decisions which involved a simple issue of primary fact, as distinct from an issue of fact where the reviewing officer has to use specialist knowledge or have regard to policy considerations, had to be subject to a full factual appeal. The attempt to distinguish the decision of the House of Lords in **Begum v Tower Hamlets LBC** [2003] 2 AC 430 (in which it was held that appeals on a point of law or conventional judicial review grounds were sufficient) was unsuccessful. The Court of Appeal was particularly persuaded by the practical difficulties which would ensue if the manner of appeal depended upon the distinction the Appellants sought to draw. In addition, the gap between a full right of appeal and judicial review is seldom very wide. The decision of the Strasbourg Court in **Tsfayo v UK** [2006] ECHR 60860/00 [2007] LGR 1 which found the Housing Benefit scheme to be in

breach did not compel a different conclusion, as in that case the review board had plainly not been independent. In any event the Court of Appeal held that only the House of Lords itself could distinguish **Begum** in this way. Leave to appeal was refused. **Ali v Birmingham City Council** [2008] EWCA Civ 1228.

The duty on local authorities to provide accommodation to children under the age of 18 within Part III Children Act 1989 means that they are responsible for providing accommodation for child asylum seekers. The Court of Appeal considered various challenges to the procedure pursuant to which qualification for such accommodation is assessed. First, it held that the applicant's qualifying age and presence in the local authority area are not precedent facts amounting to jurisdictional thresholds, requiring a fuller factual enquiry on appeal. The fundamental question under s.20 of the 1989 Act, whether the applicant is a child in need, is too subjective to amount to a precedent fact. In addition the procedures would be excessively burdensome if each determination on age under the Act, by courts, social workers and police constables (all of whom have occasion to make the assessment under different provisions of the Act) was subject to such an appeal. The situation where a court orders a factual enquiry on a child's age prior to deciding whether to make a care order is quite different. Secondly, the Court of Appeal rejected the claim that the procedure under s.20 breached the Human Rights Act and Article 6 ECHR. Although plainly the social workers entrusted with the decisions were not an 'independent and impartial' tribunal, their status, qualifications and professional standards meant that unlike the Housing Benefit procedure successfully challenged in Strasbourg in **Tsfayo** the procedure under s.20 did not give rise to a public perception of unconscious bias. The court applied **Begum** again, to what they concluded was an indistinguishable procedure requiring skilled and experienced social work judgments, both on the question of age and the question of need, rather than simple decisions of fact. Judicial review was therefore a sufficient appeal remedy. Ward LJ decided obiter that children did have a right to accommodation under the Act, where the qualifying conditions were made out, but that this did not amount to a civil right. Both Sir John Chadwick and Maurice Kay LJ registered doubts about this, whilst preferring not to attempt a reasoned conclusion on the question. **A, R (on the application of) v Croydon LBC** [2008] EWCA Civ 1445.

Where it is decided that a previous decision that an individual is not homeless under the Housing Act 1996 cannot stand because of a change in circumstances, but the local authority is nevertheless minded to conclude that the applicant does not have a priority need, the applicant should be given an opportunity to address that issue first. The Court of Appeal emphasised the importance of the procedural safeguard provided in Regulation 8(2) of the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 (SI 1999/71) whereby a 'minded-to' notice is to be issued to the applicant, giving an opportunity to respond. Although a decision which becomes deficient because of a change in circumstances might not come within regulation 8(2) on a literal reading, on a purposive construction it did. **Banks v Royal Borough of Kingston-upon-Thames** [2008] EWCA Civ 1443.

In **Barry v Southwark LBC** [2008] EWCA Civ 1440 the Court of Appeal considered the test for a 'worker' under European Community law. The eligibility of persons from abroad for social housing assistance pursuant to Part VII Housing Act 1996 was dependent on the definition. The Belgian appellant had suffered an accident after which he was unable to work. In order to qualify as a worker he had to show, pursuant to regulation 6(2)(b)(ii) of the Immigration (European Economic Area) Regulations, that he had been unemployed for no more than six months at that date. It was common ground that if he was a worker when he

had his accident he retained that status until his application for housing assistance. In the six months prior to the accident he had only worked for two weeks as a steward at the Wimbledon tennis championships, earning £789.96 net. The Court of Appeal held that he had been a 'worker' under European law. The term was widely defined to include part-time and short term work, providing it was not marginal or ancillary (for example performing small tasks for one's landlord) and was of genuine and effective economic value. In assessing whether or not someone qualified as a 'worker', previous employment history was relevant. The period of six months was to be assessed as one continuous period running up to the relevant date. Other periods of unemployment preceding that six months could not be aggregated in so as to fail an applicant.

In the first case to consider the scheme of discretionary housing payments ("DHPs"), the Court of Appeal held that local authorities may exercise their power to make DHPs by paying arrears of rent by lump sum where the applicant is in receipt of housing and council tax benefit. The payment of DHP is made at the discretion of the local authority out of an annual budget which must not be exceeded. Payments are made to those in receipt of housing and/or council tax benefit. The limit on the amount of DHP payable is determined in accordance with the Discretionary Financial Assistance Regulations 2001. Guidance was issued by the Department of Work and Pensions in March 2008. The Appellant's landlord increased rent over a period of years and neither the landlord nor the Appellant informed the Respondent that the Appellant did not receive the appropriate amount of housing benefit. The Appellant then applied to the Respondent for a DHP to cover the rent arrears. That application was refused on the basis that she was in receipt of full housing and council tax benefit. On proper construction of the Regulations, the Court of Appeal held that they do not restrict the discretion of a local authority to pay out DHP by way of a lump sum where past rent arrears have accumulated in circumstances where an applicant is in receipt of full housing benefit and council tax benefit. **Gargett, R (on the application of) v Lambeth LBC** [2008] EWCA Civ 1450.

A housing authority's duty under s.193 Housing Act 1996 to provide housing for a homeless person is discharged if the homeless person declines alternative temporary accommodation. Brent LBC had provided Mrs Muse with temporary accommodation with a registered social landlord but as her family grew, the accommodation became overcrowded. Brent LBC offered alternative accommodation but this was refused. At that point, the housing authority's duty was discharged. **Muse v Brent LBC** [2008] EWCA Civ 1447.

In **Truro Diocesan Board of Finance Ltd v Foley** [2008] EWCA Civ 1162 the Court of Appeal considered the scope of the protection for tenant who was a protected or statutory tenant immediately prior to the grant of a new tenancy. It was held that the prior tenancy does not include an 'agreement for a tenancy'. Although s.45(1) Housing Act 1988 provides that 'tenancy in the relevant part of the Act includes an agreement for a tenancy 'except where the context otherwise requires', the context of s.34 and its language, together with a consideration of the equivalent provisions in the legislative predecessor, the Housing Act 1980, do require that agreements for tenancies be excluded from its ambit. 'Immediately before' takes its ordinary meaning, restricting the section to those cases in which the new tenancy takes effect immediately upon expiry of the old. Accordingly a tenant who is in immediately prior occupation pursuant to a mere agreement for a tenancy does not qualify for protection. Applying **Kay v Lambeth LBC** [2006] 2 AC 465 HL to the situation of private landlords, such a reading did not give rise to a breach of Article 8. Any suggestion to the contrary in **McCann v UK** (Application 19009/04) was of doubtful authority. The purpose of s.34(1)(b)

is to prevent those entitled to full Rent Act 1977 protection from losing this on being persuaded to enter into a new tenancy on the same property, not to prevent parties deciding to surrender the old tenancy, together with its protection, before taking on the new lease. In this case it appeared (Sir John Chadwick dissenting) that the parties had plainly intended such a surrender, making an agreement to replicate and with the same consequences as those in ***Bolnore Properties v Cobb*** (1996) 29 HLR 2002.

INSOLVENCY

In exercising its discretion under paragraph 43(6) of Schedule B1 to the Insolvency Act 1986 whether to give a landlord leave to bring proceedings to terminate a licence granted by an insolvent tenant company, the court had to carry out the balancing exercise in accordance with the guidance in ***Re Atlantic Computer Systems Plc*** [1992] Ch 505 between the interests of the landlord and those of the creditors of the tenant company. The fact that the licence had been granted at the behest of the administrators in breach of the lease did not prevent the need for the balancing exercise. In addition the judge had wrongly held that the fact that the tenant company had been sold to the licensee had achieved the purpose of the administration order. In fact an important purpose of the administration was a continued collection of the tenant company's book debts, for which it was essential that the licensee should continue in occupation of the premises. Termination of the licence could be very prejudicial to the creditors. As against this the landlord was only bringing proceedings in order to put pressure on the licensee to vacate and accept a new lease with terms more beneficial to the landlord. If the landlord was unable to terminate the licence he would lose little beyond that bargaining position. It was questionable whether loss of such a bargaining position was a relevant consideration at all (per Stanley Burnton LJ). The judge had failed to conduct the balancing exercise and ask whether the landlord had shown that it was inequitable to prevent it from commencing proceedings, which it plainly had not. Although the landlord had no entitlement to contractual rent and interest as an administration expense it was right that it should receive something. It should be in no better position than it would have been had it wished to forfeit the lease, so payments were limited to the sum of the licence fees and any interest the tenant company had earned on them, payable up until the licensee vacated. ***Innovate Logistics Ltd (in administration) v Sunberry Properties Ltd*** [2008] EWCA Civ 1321.

LEASEHOLD ENFRANCHISEMENT

In ***Earl Cadogan v Pitts & anor*** [2008] UKHL 71 the House of Lords considered whether the landlord was entitled to include hope value (the value attributable to the possibility of realising marriage value by sale to tenants in the future) in the calculation of the price to be paid for enfranchisement in the following instances: (1) leaseholders of houses of a low rateable value obtaining the freehold pursuant to s.9 Leasehold Reform Act 1967, where the tenant was excluded as a potential purchaser in calculating market value, so marriage value was not to be taken into account; (2) leaseholders of higher value houses obtaining the freehold pursuant to s.9(1A) of the 1967 Act, where marriage value was to be taken into account; (3) the individual leaseholder of a flat obtaining a lease extension pursuant to Part I Chapter II and Schedule 13 Leasehold Reform, Housing and Urban Development Act 1993; and (4) collective enfranchisement by which a group of flat leaseholders obtain the freehold of the block pursuant to Part I Chapter I and Schedule 6 of the 1993 Act. The House held

unanimously that in the first three instances hope value was not to be included, either because where marriage value was excluded, its 'shadow form', as Lord Hoffmann described hope value, was also to be excluded, or because where marriage value was included it was, on proper analysis, double-counting to include hope value as well. This accorded with the legislative intention of simplifying the valuation process in these cases. In respect of s.9(1A) LRA 1967 it was said that the valuation of the tenant's interest should also exclude any hope value. In relation to the question of collective enfranchisement the House reversed the Court of Appeal by a majority (Lord Hoffmann dissenting). It was held that although some marriage value was to be included (Schedule 6 para.4(1)) this related to the ability of participating tenants to grant new long leases to themselves via the nominee purchaser and not to the possibility of non-participating tenants wanting to re-negotiate long leases with the landlord. Therefore hope value in respect of such re-negotiation by non-participating tenants, which could not arise in the first three instances, could be included. It was significant that to exclude this value, whilst allowing some marriage value for the participating tenants, would be arbitrary and unfair and that in collective enfranchisement cases this sort of hope value could be substantial. However this only applies only to hope value based on free negotiation and not to the possibility of obtaining new long leases pursuant to statute. An alternative argument of the landlords based on the Human Rights Act 1998 and Article 1 Protocol 1 ECHR was rejected largely due to the wide margin of appreciation accorded to governments in relation to this sort of subject matter.

In determining whether a building was a house '*reasonably so called*' within the meaning of s.2(1) Leasehold Reform Act 1967 (and thus a building of which the freehold can be acquired by the tenant by virtue of Part 1 of the 1967 Act) the fact that 132 Ebury Street had retained its original external and internal appearance as a flat-fronted early Victorian terraced house, was overridden by its predominant office use pursuant to the lease. If a building is designed and adapted for living in, only exceptional circumstances would justify a judge in holding that it could not reasonably be called a house. However all the relevant circumstances must be taken into account. In this case the judge failed to give due weight to the office use, which was overwhelming and decisive. Residential user was restricted to 11.5% of the total floor area. The fact that the lease required the maintenance of the appearance of a private house could simply be attributed to the requirements of the planning authorities in a conservation area (per Smith LJ). **Grosvenor Estates Ltd v Prospect Estates Ltd** [2008] EWCA Civ 1281.

Where a building containing a number of flats was demised for a term of years which ended by effluxion of time, a notice pursuant to s.42 Leasehold Reform, Housing and Urban Development Act 1993 in respect of only one of the flats, served prior to the end of the term of years, did not prevent termination of the lease of the whole. Accordingly the tenants could not enfranchise the freehold by a further notice served after the end date of the lease, as they were no longer tenants of the whole building. The Court of Appeal held that the language of paragraph 5 of Schedule 12 of the 1993 Act clearly provided that the s.42 notice only continued the lease of the flat that was the subject of that particular claim. This was consistent with the purpose of the legislation. Continuation of the whole lease could cause injustice to the landlord. **Malekshad v Howard De Walden Estates Ltd (No.2)** [2003] EWHC 3106 which decided to the contrary in relation to similar provisions of the Leasehold Reform Act 1967 was finely balanced and ripe for reconsideration. In any event the 1993 Act referred to the '*lease of the flat*' continuing whereas the 1967 Act used the phrase '*tenancy in that property*', so **Malekshad (No.2)** was distinguishable. Applying **Howard De Walden Estates Ltd v Aggio & others** [2008] 3 WLR 244 (HL) there should be no difficulty in

severing the continuing lease of one flat from the rest of the demise. **Ackerman & anor v Lay & ors** [2008] EWCA Civ 1428.

POSSESSION PROCEEDINGS

In **Knowsley Housing Trust v White** [2008] UKHL 70 Lord Neuberger gave a 'magisterial' leading opinion summarising the law on residential security of tenure and the right to buy, before addressing important questions on the operation of suspended possession orders. Lord Neuberger, with whom the other members of the committee largely agreed, held that assured tenancies under the 1988 Act subject to suspended possession orders do not come to an end until possession is delivered up. Although this was consistent with the position under the 1977 Act, it contrasted with that under the 1985 Act (**Burrows v Brent LBC** [1996] 1 WLR 1448 HL and **Thompson v Elmbridge BC** [1987] 1 WLR 1425). However, in the face of strong discouragement from the Bar, their Lordships concluded it would be wrong to revisit **Burrows** and **Thompson**. Under the 1985 Act this meant that a tenant could not process a claim under the right to buy whilst in breach of the terms of a suspended possession order. However the tenant was entitled to renew the claim if and when the order was discharged. The House further held that under s.85 HA 1985 it is open to the court to include a proleptic discharge provision and that this need not depend upon strict compliance with all the conditions of the suspension under s.85(3) (for example continuing payments) as opposed to compliance with the conditions of discharge under s.85(4) (for example settlement of all arrears and costs). Thus the terms of discharge could be different from the terms of suspension, although the specific conditions chosen for the proleptic discharge should be clear and are to be strictly construed. The House overruled **Marshall v Bradford Metropolitan DC** [2001] EWCA Civ 594 and **Swindon BC v Aston** [2002] EWCA Civ 1850, holding that where a tenant subject to a suspended possession order without a proleptic discharge provision pays off all rent arrears and costs, thus preventing the landlord from enforcing the possession order, but fails strictly to comply with the terms of the suspension under s.85(3), he may nevertheless apply to vary the terms of the suspension under s.85(2) and achieve a discharge. The cardinal principle in this field was not so much strict application of formal logic but ensuring that the law in this field remained substantively and procedurally clear and simple.

The apparent time limit of six months for any stay of execution of a warrant of possession in s.89(1) Housing Act 1988 does not preclude an appellate court from imposing a stay pending the determination of an appeal. Considering the point for the first time, the Court of Appeal held that appellate courts had an inherent power to grant a stay of execution in connection with the appeal process (**Selwyn Bibby v Sumintra Partap** [1996] 1 WLR 931, PC and **Boylard & Son Ltd v Rand** [2006] EWCA Civ 1860). The language of s.89(1) was insufficiently clear to oust that inherent jurisdiction. To deprive the appellate court of this power to stay would be to risk injustice. The question whether the court which makes the order in the first place can suspend it pending appeal was expressly reserved. However the Court of Appeal did observe that applications for possession, especially those within s.89(1), should be brought on quickly, presumably because this would avoid any question of delay beyond the six month limit arising. **Admiral Taverns (Cygnet Ltd) v Daly & anor** [2008] EWCA Civ 1501.

RIGHTS OF WAY

At trial in *Greatorex v Newman & Newman* [2008] EWCA Civ 1318 the judge found that the proper construction of a right of way over a covered passage running alongside the Respondent's house towards the back of the Appellant's beer garden and bar was restricted by a limitation placed on it when it was created in 1921. The judge found that the limitation was to exclude retail customers of the business carried on at the Appellant's premises from using the passage as a means of access. The judge found as a fact that the use made of the passage by a fishmonger did not include access for retail customers. Rather, it was used as a trades entrance. The Court of Appeal granted permission to appeal on the factual findings alone. They held that they were only entitled to interfere with the judge's factual findings if they were shown to be wrong in that no judge could have arrived at them by a process of reasonable and probable inference from the few facts directly established as to the use made of the passage in 1921. The Court of Appeal refused to interfere with the judge's findings of fact. No other conclusion could realistically have been reached.

OTHER DEVELOPMENTS

COMMONS

The Commons Act 2006 (Commencement No.4 and Savings) (England) Order 2008 SI 1960 brought the following provisions into force on 1st October 2008 in respect of the registration areas which are participating in a pilot implementation of the provisions (Blackburn, Cornwall, Devon, Hertfordshire, Kent and Lancashire):

- ss. 1 to 3, which make provision about the registers and their contents;
- ss. 6 to 13, which make provision about the registration of rights of common;
- s. 14, which makes provision about the statutory disposition of land;
- ss. 18 and 19, which make provision for the conclusiveness and correction of the registers;
- ss. 20 and 21, which make provision for the inspection of and the production of office copies;
- s. 22 and Sch 2, which make provision about non-registration or mistaken registration under the 1965 Act;
- s. 23 and Sch 3, which make transitional provision.

The Order also brings section 46 of the 2006 Act into force in relation to the whole of England. This section confers powers on the Secretary of State to take action to stop unauthorised agricultural activities being carried out on land registered as common land or as a town or village green.

The Commons Registration (England) Regulations 2008 SI 1961 make detailed provision about the registration of common land and town or village greens under Part I of the Commons Act 2006. They came into force on 1st October 2008 and for the time being apply to the registration authorities listed above (Blackburn, Cornwall, Devon, Hertfordshire, Kent and Lancashire) as a pilot scheme.

ESTATE AGENTS

Provisions relating to the National Consumer Council, and complaints handling and redress schemes, are brought into force from 1st October 2008 by the Consumers, Estate Agents and Redress Act 2007 (Commencement No.5 and Savings and Transitional Provisions) Order 2008 SI 2550.

FAMILY INTERVENTION TENANCIES

S.297(1) Housing and Regeneration Act 2008 inserted a new paragraph 4ZA into Schedule 1 to the Housing Act 1985 to create a new type of tenancy, a family intervention tenancy, which can in certain circumstances be offered by local housing authorities. The local housing authority must not serve a notice to quit on a tenant of a family intervention tenancy unless it has served a notice stating the matters set out in s.298(2) HRA 2008. These are (a) that the authority has decided to serve a notice to quit on the tenant; (b) the effect of serving a notice to quit; (c) the reasons for the authority's decision; (d) when the authority is intending to serve the notice to quit; and (e) that the tenant has the right to request, within the period of 14 days beginning with the service of the notice under this subsection, a review of the authority's decision. The Family Intervention Tenancies (Review of Local Authority Decisions) (England) Regulations 2008 SI 3111, coming into force on 5th January 2009, set out the procedure to be followed in connection with such a review.

HOME INFORMATION PACKS

New provisions amending the principal HIP Regulations (SI 1667 of 2007) are brought into force on 1st January 2009 and 6th April 2009 by the Home Information Pack (Amendment) (No.3) Regulations 2008 SI 3107. There are changes to the requirements in relation to various leasehold documents, energy information, search reports, and portfolios of properties (coming into force on 1st January 2009). A property information questionnaire is a required pack document from 6th April 2009.

HOMES AND COMMUNITIES AGENCY

The Homes and Communities Agency is a new body which started operating on 1st December 2008. It has a website at www.homesandcommunities.co.uk and describes itself as "...the national housing and regeneration delivery agency for England. Our role is to create thriving communities and affordable homes..." There are a number of statutory instruments dealing with the creation and functions of this new body.

The Housing and Regeneration Act 2008 (Commencement No.1 and Transitional Provision) Order 2008 SI 2358 brought various provisions relating to the new Homes and Communities Agency into force on 8th September 2008. The provisions commenced were those relating to the establishment, constitution, objects and initial proceedings of the new agency. The Order also brought into force on the same date similar provisions relating to the establishment of a new Office for Tenants and Social Landlords. The Housing and Regeneration Act 2008 (Commencement No.2 and Transitional, Saving and Transitional Provisions) Order 2008 SI 3068 brought further provisions into force on 1st December

2008. These included the main powers of the Homes and Communities Agency, including powers relating to land, planning, financial assistance, and borrowing.

The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 SI 3002 and the Housing and Regeneration Act 2008 (Consequential Provisions) (No.2) Order 2008 SI 2831 make amendments in primary and secondary legislation that make reference to the Urban Regeneration Agency, the Commission for the New Towns, English Partnerships and the Housing Corporation. Most of the amendments are consequential on the establishment of the Homes and Communities Agency, which is a successor to those bodies in relation to a number of functions. The amendments largely came into effect from 1st December 2008. There are transitional and saving provisions the purpose of which is to ensure as far as necessary that anything done by the predecessor bodies is treated as being done by the Homes and Communities Agency. Similarly the Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008 SI 2839 transfers various functions of the Housing Corporation to the Homes and Communities Agency or the Regulator of Social Housing. These changes also came into effect from 1st December 2008.

HOUSING BENEFIT

The Housing Benefit and Council Tax Benefit (Amendment) (No.2) Regulations 2008 SI 2824 amend the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 from 6th April 2009. The amendments change the form in which housing benefit is paid to persons living in caravans or mobile homes on rented sites, and houseboats in some circumstances. The effect is that housing benefit in the form of a rent allowance is payable for caravans, mobile homes or houseboats and also their sites or moorings. Some changes are also made to the rules for gypsies and travellers.

Further amendments are made by the Housing Benefit and Council Tax Benefit (Amendment) (No.3) Regulations 2008 SI 2987, which came into force on 22nd December 2008. Regulation 2 provides that where a claim for housing benefit is made through the DWP, the Secretary of State may request that the claimant provides the relevant authority with the necessary information properly to complete the claim.

LAND REGISTRATION

The Land Registration Act 2002 (Amendment) Order 2008 SI 2872 amends the Land Registration Act 2002 by adding two new events to those that trigger compulsory first registration of title. From 6th April 2009, when the regulations come into force, the requirement of registration will also apply on the transfer of a qualifying estate (a) giving effect to a partition of land subject to trust of land, or (b) on or in consequence of the appointment of a new trustee in the circumstances set out in Article 2 of the order. Where the duty to apply for registration has not been complied with, the transfer of the qualifying estate will be void.

The Land Registration (Proper Office) Order 2008 SI 3201, coming into force on 1st April 2009, designates particular offices of the land registry as the proper office for receipt of

specified descriptions of application under the Land Registration Act 2002. It replaces a 2007 order of the same name.

RIGHT TO MANAGE

The Housing (Right to Manage) (England) Regulations 2008 SI 2361 came into force on 1st October 2008, and revoke the Housing (Right to Manage) Regulations 1994 insofar as they applied to houses and authorities in England. The Regulations are made under ss.27 and 27AB of the Housing Act 1985, and set out the procedure to be followed where a tenant management organisation proposes to enter into a management agreement with a local housing authority under s.27 HA 1985. The Regulations impose an obligation on the authority to enter into a management agreement in specified circumstances.

STAMP DUTY

The Stamp Duty Land Tax (Variation of Part 4 of the Finance Act 2003) Regulations 2008 SI 2338 and the Stamp Duty Land Tax (Exemption of Certain Acquisitions of Residential Property) Regulations 2008 SI 2339 provide for a short term exemption from stamp duty land tax for purchases of residential property where the chargeable consideration is not more than £175,000 (SI 2339). The exemption applies to transactions with an effective date on or after 3rd September 2008 and before 3rd September 2009. The explanatory notes to SI 2339 state that *“At a time of falling house prices and a lower than normal volume of transactions the Government has decided that it is important to demonstrate its support for homebuyers by taking action to reduce the level of stamp duty land tax on property transactions.”* However to prevent avoidance, SI 2338 provides that transactions which are subject to the new exemption are not excepted from the notification requirement.

The Stamp Duty Land Tax (Zero-Carbon Homes Relief) (Amendment) Regulations 2008 SI 1932 amend the principal regulations (SI 2007/3437), which provide relief from stamp duty land tax on the first acquisition of a dwelling which is a zero carbon home. By regulation 2 (amending regulation 6 of the principal regulations) an accredited assessor may charge a reasonable fee for assessing a dwelling and producing a certificate for the purposes of the principal regulations. The Regulations came into force on 13th August 2008.

Note: Where the only case reference given is a universal reference, readers will find a full transcript of the decision available on www.bailii.org. Statutory instruments can be found on www.opsi.gov.uk.

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