

**Procedural note**  Version dated:1 April 2015

**Governing documents – companies registered with the regulator before 1 April 2010**

**This procedural note applies to:**

Non-profit private registered providers registered with the regulator before 1st April 2010 that are registered companies.

**Background**

**Amendments to articles**

This procedural note is one referred to in ‘Guidance for Constitutional Consents (sections 212 to 214), Restructuring and Dissolution (sections 160 to 165)’. There is another procedural note for registered providers which were companies registered or which had sought registration as registered providers after 1st April 2010.

This section sets out a summary of the statutory requirements; it is only a guide and you should refer to the Housing and Regeneration Act 2008 if you need to.

An amendment to a company’s articles of association (articles) requires the regulator’s consent if it:

(a) alters the company’s objects

(b) makes provision about the distribution of assets to members, or

(c) enables the society to become, or cease to be, a subsidiary or associate of another body

All other amendments (including changes to name and registered office) do not require the regulator’s consent, but the regulator must be **notified** (see notification section at the end of this note).

An amendment of the articles which requires consent is effective only if the Regulator has first consented.

The regulator may not consent to an amendment which it thinks would turn the company into a profit-making organisation.

Companies House has requirements about amended articles needing to be sent to them (Sections 21 and 30 of the Companies Act 2006. Where an amendment requires the regulator’s consent, the Companies House requirement (which carries a criminal penalty) is only satisfied if a copy of the regulator’s consent is also sent to the registrar of companies. See below for how this works in practice.

**The regulators expectations**

In this section, we set out how we will approach decisions. We will of course consider an application which does not fit the expectations below, on its merits.

The regulator does not expect those registered providers who were in existence as registered social landlords on 31st March 2010 to change their constitutional documents because of the change of regulatory regime. Our expectations for new providers are set out in the Regulatory Framework, and further information about what is expected of organisations registering after 1st April 2010 as registered providers can be found in another procedural note – “governing documents – companies registered as a registered provider or seeking registration with the regulator after 1 April 2010”.

This is because the regulator considers that the articles of a company which became a registered social landlord before 1st April 2010 continue in effect for the purpose of the new Housing and Regeneration Act 2008. That means that there is no need for amendment (see [Schedule 1 paragraph 4 of the Housing and Regeneration Act 2008 (Commencement No. 7 and Transitional and Saving Provisions) Order 2010 No. 862](http://www.uk-legislation.hmso.gov.uk/si/si2010/uksi_20100862_en_2)).

Where the purpose of the amendment to the articles is to convert to charitable status, there are additional requirements; see Annex 1.

Applicants should also refer to the following publications when amending their governing documents:

* Regulator’s Standards and guidance
* Registration requirements and guidance
* The Annex 1 at the end of this procedural note for the regulator’s requirements for charitable conversion
* Where the company is or will become a charity, [Charity Commission requirements](https://www.gov.uk/running-charity/setting-up)

**Process for amendments to articles**

Before applying for formal consent, a registered provider can find out whether their change is likely to be approved. This can be done by applying for “in principle consent”. This provides an opportunity for applicants to submit a draft application and receive feedback, prior to applying for formal consent. Please note that an in principle application does not have to be made prior to a formal application being submitted.

In order to consider whether to give consent to amendments relating to group structures, the regulator requires a business case (see ‘Guidance for Constitutional Consents (sections 212 to 214), Restructuring and Dissolution (sections 160 to 165)’). Applicants should engage with regulatory staff as early as possible to agree a timetable and to clarify our requirements.

Provided the amendments are satisfactory, the regulator will issue sealed consent to the applicant.

**Documentation to be submitted to the regulator**

**In principle applications**

Please submit by email or hard copy a marked up version of the constitution showing the proposed changes.

**Formal applications**

* A partial amendment requires:
  + one original copy of the amendment (resolution which clearly indicates the amendment to the articles) signed in original ink by the company secretary (where the company does not have a secretary then a member of the board, a duly authorised employee or agent or officer as defined by s270 Housing and Regeneration Act 2008); and
  + a marked up version of the articles clearly showing where amendments are taking place.
* Complete amendment requires:
  + one clean copy of the new articles;
  + a copy of the resolution signed in original ink by the company secretary (where the company does not have a secretary then a member of the board, a duly authorised employee or agent or officer as defined by s270 Housing and Regeneration Act 2008) stating the board has agreed to adopt the attached articles or including within the resolution the text of the new articles; and
  + a marked up version of the articles clearly showing where amendments are taking place

If a partial or complete change to the articles incorporates a charitable conversion the registered provider must meet the Charity Commission’s requirements and the regulator’s requirements on charitable conversions (see Annex 1).

**Where applications should be sent**

Email: [constitutionalconsentsteam@hca.gsi.gov.uk](mailto:constitutionalconsentsteam@hca.gsi.gov.uk)

Address: Constitutional Consents Team

Homes and Communities Agency – The Social Housing Regulator

Level 1A, City Tower

Piccadilly Plaza

Manchester

M1 4BT

Telephone: 0300 1234 500 (ask for Constitutional Consents Team)

**How long will it take us to deal with your application**

In principle applications will generally be processed within 10 working days. Formal applications that are complete and have no complicating factors will be reviewed, consent issued within 5 working days in order to enable companies to lodge the amendments with Companies House within 14 days of passing the resolution.

**Notification**

Where the regulator’s consent is not required non-profit private registered providers are required to notify the regulator of any amendments. A schedule of amendments or a marked up copy of the constitution showing the changes, together with a complete unmarked copy of the amended governing document (as lodged at Companies House), with confirmation that the amendment(s) contained therein do not require the regulator’s consent should be sent to:

Email: [public.register@hca.gsi.gov.uk](mailto:public.register@hca.gsi.gov.uk)

Address: The Registry

Homes and Communities Agency – The Social Housing Regulator

Level 1A, City Tower

Piccadilly Plaza

Manchester

M1 4BT

**Annex 1**

**Registered providers converting to charitable status**

**Applications for consent to changes of Articles (section 214)**

**Regulators criteria**

Before the regulator can give its consent under section 214 of the Act to changes to articles which are intended to bring about a conversion to charitable status, a registered provider must meet certain requirements and produce documents, as set out below. The purpose of these requirements is to allow the regulator to make its decision in accordance with ‘Guidance for Constitutional Consents (sections 212 to 214), Restructuring and Dissolution (sections 160 to 165)’; and to help achieve an efficient outcome between the registered provider, the regulator and the other bodies involved.

1 A registered provider must be able to demonstrate that **all or the majority** of its tenants are charitable beneficiaries and that its activities are wholly charitable. We require a declaration by the Chair or Secretary that this is the case.

2 It is for the registered provider to make sure that its proposals fulfil the requirements of the Charity Commission; usually, providers need to take their own legal advice on converting to charitable status and any changes to the status of its residents. The regulator will require a copy of the legal opinion the registered provider has obtained.

3 The minutes of both the board and Special General meetings at which the decision to amend the governing document to adopt charitable status was taken.

4 Evidence that the registered provider’s tenants and leaseholders have been fully informed and properly consultedabout the proposal to adopt a charitable governing document and about any resultant change in their own status, such as loss of any right to buy or right to enfranchisement and lease extension. We will wish to see copies of specific legal advice on this point.

5 Letters from the registered provider’s lenders confirming they are in agreement to the conversion.

6 It is for the registered provider to make sure that it has met [the requirements of HMRC](https://www.gov.uk/charities-and-tax), in particular that the conditions set out in [Schedule 6 of the Finance Act 2010](http://www.legislation.gov.uk/ukpga/2010/13/schedule/6) have been met and therefore that the applicant is likely to be recognised by HMRC as a charity for tax purposes. No document about this issue is required by the regulator.

The registered provider should send the documents to its regulatory contacts and consult with them from an early stage. Regulatory staff will inform the Constitutional Consents Team at Maple House whether the above criteria have been fully met.

Once the Constitutional Consents Team has received this confirmation and is content with the wording of the amendment to the governing document, the regulator will then issue consent to the change.

Where a provider is becoming a registered charity, the provider should inform the Constitutional Consents Team of its registered charity number as soon as registration with the Charity Commission is achieved. The regulator’s register will be amended accordingly.