



Regulator of  
Social Housing

# Consultation on changes to the guidance on the Regulator's approach to intervention, enforcement and use of powers

June 2019



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## Foreword

The social housing sector continues to change rapidly. Registered providers are increasingly looking at new opportunities and further developing their organisations to enable them to deliver new homes. Cross subsidy from open market sales programmes has become a more fundamental part of many registered providers' business plans.

The near collapse of Cosmopolitan Housing Group in 2012 made the risks that can accompany this new business model more visible. The subsequent lessons learnt report highlighted that increasing diversification and exposure to the housing market of some registered providers meant that the Regulator's existing suite of powers may not always be sufficient, to allow us to promptly remedy the situation with a struggling provider, especially large and complex providers.

The Housing and Planning Act 2016 provided for the establishment of a special administration regime for housing. This regime came into force in July 2018.

In addition the Tailored Review of the Homes and Communities Agency was published in November 2016 and amongst other things, recommended that the Regulator becomes a standalone body. Following this recommendation The Legislative Reform (Regulator of Social Housing) (England) Order 2018 came into effect on 1 October 2018 and amended the Housing and Regulation Act 2008 (and other legislation) and in doing so, established the standalone Regulator.

As a result of these two legislative changes, we need to make modifications to both our guidance on the use of powers and our regulatory approach. We have also taken the opportunity to further update the document to make changes that arose from the Co-operative and Community Benefit Societies Act 2014.

We are clear about the value of an independent, strong and credible social housing regulator that can maintain the confidence of all the sector's stakeholders. While the changes we are consulting on in this document are consequential on legislative changes, and do not fundamentally alter our approach to intervention and enforcement, we believe that full transparency on when and how the Regulator will use its powers is a vital contribution to maintaining that confidence.

Simon Dow

Interim Chair  
Regulator of Social Housing

## 1. Scope of the consultation

Topic of this consultation	<p>The Regulator is proposing to update its '<i>Guidance on the Regulator's approach to intervention, enforcement and use of powers</i>' document to reflect changes introduced by the Housing and Planning Act 2016 and the Housing Administration (England and Wales) Rules 2018 in relation to Housing Administration, which came into force on 5 July 2018. The Guidance Notes have also been updated to reflect changes needed as a result of the Regulator becoming a standalone body, separate from the Homes and Communities Agency from 1 October 2018 pursuant to The Legislative Reform (Regulator of Social Housing) (England) Order 2018. The document has been further updated to formalise the changes which have been in operation since the enactment of the Co-operative and Community Benefit Societies Act 2014.</p> <p>The Regulator will review the proposed changes to the Guidance Notes and the Regulator's approach to intervention, enforcement and use of powers in light of the responses received to this consultation.</p>
Scope of this consultation	<p>It is a requirement under section 215 of the Housing and Regeneration Act 2008 (the Act) for the Regulator to publish guidance on how it uses and intends to use powers under Chapters 6 and 7 of the Act. It is a further requirement that before giving such guidance the Regulator must consult with the parties set out at section 216 of the Act. This consultation fulfils that requirement. It represents an opportunity for interested persons and organisations to influence the Regulator's approach to intervention, enforcement and use of powers.</p>
Geographical scope	<p>These proposals relate to England only.</p>
Impact assessment	<p>Impacts are considered in our business engagement assessment (Annex 2).</p>

## 2. Basic information

Relevant to	Private registered providers, local authority registered providers, tenants and residents, lenders and other stakeholders who have an interest in social housing.
Body responsible for the consultation	The Regulator of Social Housing (RSH).
Duration	This consultation will last for 8 weeks from 21 June 2019. The closing date is 16 August 2019.

### 3. How to respond

Please respond online via SurveyMonkey<sup>1</sup>:

<https://www.surveymonkey.co.uk/r/ConsultationUseofPowers>

Please be aware that unless you complete the survey and click on the 'submit' button your response will not be registered as complete. However, incomplete responses will be seen by the Regulator and will be reviewed to determine whether they raise any new issues which it would be relevant for the Regulator to consider.

If for any reason you are unable to complete a response on Survey Monkey, you can email your response to the questions in this consultation to: [consultation@rsh.gov.uk](mailto:consultation@rsh.gov.uk) or write to RSH at the address set out below.

Please include “**Use of Powers**” as your subject heading.

Written responses can be sent to:

**Referrals and Regulatory Enquiries team**  
**Regulator of Social Housing**  
**1st Floor – Lateral**  
**8 City Walk**  
**Leeds LS11 9AT**

If you are responding in writing or by email, please make it clear which questions you are responding to. When you reply it would also be very useful if you can confirm whether you are replying as an individual or submitting an official response on behalf of an organisation.

Please include:

- your name
- the name of organisation (if applicable); and
- an email address

Representative groups are asked to give a summary of the people and organisations they represent and (where relevant) who else they have consulted in reaching their conclusions when they respond.

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<sup>1</sup> Survey Monkey is an international company based in the USA and any data entered on their platform is stored and located in the USA and countries in which their affiliates are located and in which their service providers are located or have servers. You can obtain full details of their [Security Statement](#) and [Privacy Policy](#) in relation to the data they hold on their site. <https://www.surveymonkey.co.uk/r/ConsultationUseofPowers>

## Consultation on changes to 'Guidance on the Regulator's approach to intervention, enforcement and use of powers'

We intend to publish an analysis of all formal responses after the closing date of this consultation. This will include a list of all respondents to the consultation and anonymised responses. Individual responses will not be acknowledged unless specifically requested.

### **Equalities statement**

RSH is mindful of its statutory equality duties under section 149 of the Equality Act 2010.

The Regulator will take a proportionate approach to its equality obligations and has identified no equalities implications for this consultation. However, based on responses to this consultation, the Regulator reserves the right to revisit these matters if new information comes to light.

## 4. Introduction

- 4.1. This consultation is the result of a number of legislative changes, set out below, that have occurred since the last update of this document and also as a result of the Regulator becoming a standalone body.
- 4.2. While all these changes were anticipated the Regulator considered it desirable to wait until they were in force before consulting on the consequential updates needed to this guidance.

### **The Housing and Planning Act**

- 4.3. The Housing and Planning Act 2016 (HPA) received Royal Assent on 12 May 2016 and contained a range of housing and planning related reforms.
- 4.4. The special administration regime was developed in response to the lessons learnt report from the near collapse of Cosmopolitan Housing Group and the increasing diversification and exposure to the housing market of registered providers. It was felt that the suite of powers that the Regulator had to step in and rescue a struggling provider, especially a large and complex provider, may not be sufficient in some circumstances.
- 4.5. The main changes this has necessitated are in relation to Guidance Note 4. This note currently covers the Regulator's moratorium powers under the Housing and Regeneration Act 2008. We have now proposed changes to the note to reflect the coming into force of the special Housing Administration regime, to explain the circumstances in which these powers can be exercised and the Regulator's approach to them.

### **The Legislative Reform (Regulator of Social Housing)(England) Order 2018**

- 4.6. [The Legislative Reform \(Regulator of Social Housing\) \(England\) Order 2018](#) (LRO)<sup>2</sup> came into effect on 1 October 2018 and amends the Housing and Regeneration Act 2008 (and other legislation) and in doing so it implements the recommendation in the [Tailored Review](#)<sup>3</sup> of the Homes and Communities Agency (the HCA) (which now refers to itself as Homes England) to establish a standalone regulatory body for social housing.
- 4.7. The rationale in the Tailored Review for creating a standalone social housing regulator was to remove the possibility of a potential conflict by separating out the regulatory function from the HCA, which is responsible for investment in housing, including the social housing sector.
- 4.8. The LRO has the following sections:
  - Part 1 establishes the Regulator and transfers functions from the HCA to the Regulator.

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<sup>2</sup> <https://www.legislation.gov.uk/ukdsi/2018/9780111166475/contents>

<sup>3</sup> <https://www.gov.uk/government/publications/tailored-review-of-the-homes-and-communities-agency>

**Consultation on changes to 'Guidance on the Regulator's approach to intervention, enforcement and use of powers'**

- Part 2 makes amendments to other legislation consequent upon the creation of the Regulator.
- Part 3 provides for the transfer of property, rights and liabilities from the HCA to the Regulator.
- Part 4 provides for transitional and savings provisions consequent upon the transfer of functions.

4.9. A number of the proposed amendments to the guidance notes are in relation to changes brought about by Part 1 of the LRO.

**The Co-operative and Community Benefit Societies Act 2014**

4.10. Before 1 August 2014, all societies registered under the Industrial and Provident Societies Act 1965 (or its predecessors) were legally referred to as 'industrial and provident societies'.

4.11. When the relevant provisions of the Co-operative and Community Benefit Societies Act 2014 came into force on 1 August 2014, all existing Industrial and Provident Societies became 'registered societies'.

4.12. Any new societies registered on or after 1 August 2014 are referred to as:

- a co-operative society, or
- a community benefit society

4.13. In addition to the above change, the Act consolidates previous industrial and provident society legislation including:

- Industrial and Provident Societies Act 1965
- Friendly and Industrial and Provident Societies Act 1968
- Co-operative and Community Benefit Societies Act 2003

4.14. The changes we propose in relation to this legislation are limited to amending terminology and references to legislation to reflect the changes described above.

## 5. Proposed changes to 'Guidance on the Regulator's approach to intervention, enforcement and use of powers'

- 5.1. The proposed revised Guidance on the Regulator's approach to intervention, enforcement and use of powers' can be found at Annex 1.
- 5.2. The following section outlines the changes we propose to make and poses some consultation questions in relation to these proposed changes. These questions can also be found in our [Survey Monkey response form](#)<sup>4</sup>.
- 5.3. The document is large and is split up into 21 individual Guidance Notes. We have tracked the changes we are proposing. To aid understanding of the proposed changes, the Guidance Notes affected by each piece of legislation are identified in the table below:

Legislation	Guidance note containing changes
<b>Housing and Planning Act 2016</b>	<ul style="list-style-type: none"> <li>• Guidance note 4</li> <li>• Guidance note 8</li> </ul>
<b>The Legislative Reform (Regulator of Social Housing)(England) Order 2018</b>	<ul style="list-style-type: none"> <li>• Guidance note 4</li> <li>• Guidance note 7</li> <li>• Guidance note 9</li> <li>• Guidance note 10</li> <li>• Guidance note 11</li> <li>• Guidance note 18</li> <li>• Guidance note 19</li> <li>• Guidance note 20</li> </ul>
<b>The Co-operative and Community Benefit Societies Act 2014</b>	<ul style="list-style-type: none"> <li>• Guidance note 4</li> <li>• Guidance note 5</li> <li>• Guidance note 13</li> <li>• Guidance note 14</li> </ul>

<sup>4</sup> <https://www.surveymonkey.co.uk/r/ConsultationUseofPowers>

5.4. The table below outlines the consultation questions relating to each piece of legislation and the corresponding changes outlined in the Guidance Notes specified in the table on the previous page.

<b>Legislation</b>	<b>Consultation questions</b>
<b>Housing and Planning Act 2016</b>	<p><b>Question 1:</b> Do you agree with the changes that we have proposed to part 'a' and 'b' of Guidance Note 4?</p> <p><b>Question 2:</b> Does the proposed new section, part 'c' on Housing Administration, adequately reflect your understanding of the requirements of the legislation?</p> <p><b>Question 3:</b> Do you agree with the proposed regulatory approach to Housing Administration outlined in Guidance Note 4?</p> <p><b>Question 4:</b> Do you agree with the changes that we are proposing to Guidance Note 8?</p>
<b>The Legislative Reform (Regulator of Social Housing)(England) Order 2018</b>	<p><b>Question 5:</b> Do the changes that we are proposing to Guidance Notes 4, 7, 9, 10, 11, 18, 19 and 20, adequately reflect your understanding of the requirements of the LRO?</p>
<b>The Co-operative and Community Benefit Societies Act 2014</b>	<p><b>Question 6:</b> Do the changes that we are proposing to Guidance Notes 4, 5, 13 and 14 adequately reflect your understanding of the changes made by the Co-operative and Community Benefit Societies Act 2014?</p>

5.5. In addition to the legislation specific questions outlined in the table above, we are also asking the following general questions.

- **Question 7:** Do you have any other comments in relation to the revised 'Guidance on the Regulator's approach to intervention, enforcement and use of powers'?
- **Question 8:** Do you have any comments on our business engagement assessment including in relation to equality and diversity?

## 6. About this consultation

- 6.1. This consultation document and consultation process has been developed to adhere to the Consultation Principles issued by the Cabinet Office.
- 6.2. Representative groups are asked to give a summary of the people and organisations they represent, and where relevant, who else they have consulted in reaching their conclusions, when they respond.
- 6.3. Information provided in response to this consultation may be published or disclosed in accordance with the access to information regimes (the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004, the Data Protection Act 2018 and the General Data Protection Regulation).
- 6.4. If you believe that the information that you are submitting is sensitive, please say so when submitting your consultation response and explain to us why you believe that the information should not be disclosed in response to an information request. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot guarantee that the information will not be disclosed. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Regulator.
- 6.5. The Regulator will process your personal data in accordance with the Data Protection Act 2018 and the General Data Protection Regulation and your personal data will not be disclosed to third parties unless there is a legal requirement to make the disclosure.
- 6.6. Individual responses will not be acknowledged unless specifically requested.
- 6.7. Thank you for taking the time to read this document and respond. Your opinions are valuable to us.

## **Annex 1: Guidance on the Regulator's approach to intervention, enforcement and use of powers**

See separate document, which includes tracked changes to indicate the proposed revisions.

## Annex 2: Business engagement assessment (including Equality Analysis)

Business Engagement Assessment	
Title of proposal	Consultation on changes to 'Guidance on the Regulator's approach to intervention, enforcement and use of powers'
Lead Regulator	Regulator of Social Housing
Contact for enquiries	Referrals and Regulatory Enquiries team 0300 124 5225 <a href="mailto:consultation@rsh.gov.uk">consultation@rsh.gov.uk</a>

Date of assessment	June 2019	Stage of assessment	Draft
Net cost to business (EANCB)	None	Commencement date	1 November 2019
Which area of the UK would be affected by the change(s)?	England	Price and present value base years	1 November 2019
Does this include implementation of Red Tape Challenge commitments?	No	Is this directly applicable EU or other international legislation?	No

### Brief outline of proposed change

The Regulator is making changes to its 'Guidance on the Regulator's approach to intervention, enforcement and use of powers'. These changes are a direct result of a number of legislative developments, including the creation of the Regulator as a standalone body.

The changes we have proposed in the consultation document are intended to ensure that our guidance documents reflect the current legislative position and provide appropriate guidance on our approach to the use of our powers. We believe there to be negligible impact on the regulatory burden because the changes are principally related to wording and do not fundamentally alter existing regulatory expectations in this area.

We acknowledge that the Housing Administration regime, as set out in the Housing and Planning Act 2016 and Housing Administration (England and Wales) Rules 2018, which came into force on 5 July 2018 places new requirements on providers. These requirements would only have an impact if a registered provider of social housing becomes insolvent or if a "step" towards insolvency under insolvency legislation is taken.

## Consultation on changes to 'Guidance on the Regulator's approach to intervention, enforcement and use of powers'

As Housing Administration is legislative in origin, we consider any additional impact on providers is through the enactment of the legislation itself and not through our guidance on the subject. The consultation will provide an opportunity for interested persons and organisations to comment on the Regulator's proposed approach to the use of these powers by the Regulator.

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### **Why is the change proposed? Evidence of the current problem?**

Due to the legislative changes that have taken place and the Regulator becoming a standalone body, the current guidance is no longer accurate in some places. In addition, the guidance at present does not cover Housing Administration and needs to reflect this new insolvency regime.

The Guidance Notes are important documents that explain the Regulator's approach to the use of its powers and it is important that these are correct and reflect recent changes.

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### **Which types of businesses would be affected? How many are affected?**

The Guidance Notes are relevant to all registered providers of social housing, which includes both local authorities and private registered providers.

Only private registered providers are affected by the proposed changes made to the guidance in relation to the enactment of the Co-operative and Community Benefit Societies Act 2014.

Only private registered providers are affected by introduction of guidance in respect of the enactment of the Housing Administration regime under the Housing and Planning Act 2016 and the Housing Administration (England and Wales) Rules 2018.

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### **How would the change impact these businesses?**

The proposed changes should have a positive impact on registered providers as they update our guidance, which should ensure that providers continue to have a clear understanding of how the Regulator will use its powers and the process it will take.

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### **Impact on small businesses**

The majority of private registered providers (around 1200 out of a total of around 1500) are classified by the Regulator as 'small'. This means that they have less than 1000 units of social housing. The Regulator has a statutory duty to exercise its functions in a way that:

- (a) minimises interference, and
- (b) (so far as is possible) is proportionate, consistent, transparent and accountable.

The existence of the updated guidance will assist with transparency. It will help small providers to understand the regulatory framework around the use of our powers.

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## Equality and diversity

The Regulator is mindful of its statutory equality duties under section 149 of the Equality Act 2010. The Regulator will take a proportionate approach to its equality obligations and has at this stage, identified no specific equalities implications of the changes proposed in this consultation.

As a result of this, a full equality analysis has not been completed on the proposed changes; however, equality will continue to be considered during future development of the guidance.

Although there are no apparent impacts arising from the changes, providers are responsible under their own equality duties to ensure that any decisions they may take on the back of the guidance support the requirements of the Equality Act 2010 and meet all aspects of the General Duty.

The Regulator will review its consideration of the impacts on equality and diversity following the consultation and the analysis of stakeholder feedback to the consultation. Should any equalities-related issues arise following the consultation, the Regulator will ensure that these are taken into account when finalising the proposals.

If it becomes apparent that a full equality analysis is needed then this will be undertaken and published with the Decision Statement.



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The Regulator of Social Housing regulates registered providers of social housing to promote a viable, efficient and well-governed social housing sector able to deliver homes that meet a range of needs.