



Regulator of
Social Housing

Consultation on ‘Guidance on the regulator's approach to intervention, enforcement and use of powers’

Decision Statement



Contents

1. Introduction	1
2. Overview	1
3. Summary of responses	2
4. Analysis of individual questions	3
5. The Regulator’s response to the consultation feedback – final position on the changes to the revised ‘Guidance on the regulator’s approach to intervention, enforcement and use of powers’	10
Annex 1: List of respondents to the statutory consultation on the revised ‘Guidance on the regulator’s approach to intervention, enforcement and use of powers’	11
Annex 2: ‘Guidance on the regulator’s approach to intervention, enforcement and use of powers’	12
Annex 3: Business engagement assessment.....	13

Consultation on ‘Guidance on the regulator’s approach to intervention, enforcement and use of powers’ – Decision Statement

1. Introduction

- 1.1. The Regulator of Social Housing (the regulator) published a consultation on its ‘Guidance on the regulator’s approach to intervention, enforcement and use of powers’ on 21 June 2019. The consultation ran for eight weeks and closed on 16 August 2019.
- 1.2. This document provides a summary of the key areas of feedback and sets out the regulator’s decision on the final ‘Guidance on the regulator’s approach to intervention, enforcement and use of powers.’
- 1.3. This document is not intended to cover all the responses received (all of which have been considered in reaching the conclusions set out in this Decision Statement), but a summary of the key issues and comments made. A list of respondents is provided in Annex 1.
- 1.4. The final version of the updated ‘Guidance on the regulator’s approach to intervention, enforcement and use of powers’ that reflects the regulator’s decision in relation to the consultation responses can be found at Annex 2.
- 1.5. The Business Engagement Assessment with Equality Analysis has also been reviewed in light of the responses received. The final version is provided in Annex 3.

2. Overview

- 2.1. 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. Where the regulator intends to publish updates to its guidance it is also a requirement that it consults on these changes.
- 2.2. This latest update is not intended to be a wholesale review of the guidance, which the regulator may consider in the future. The guidance is also limited to the regulator’s use of powers; it is not intended to be general guidance on legislation, the regulator’s overarching approach or legal advice to registered providers or other third parties.
- 2.3. In the main, the updates to the guidance consists of wording changes as a result of several legislative changes that occurred since the last update of the guidance and as a result of the regulator becoming a standalone body.

- 2.4. The main legislative changes addressed through the consultation were:
- The Housing and Planning Act 2016 (HPA)
 - The Legislative Reform (Regulator of Social Housing) (England) Order 2018
 - The Co-operative and Community Benefit Societies Act 2014
- 2.5. The key substantive change relates to the introduction of the Housing Administration Regime under the HPA. This has resulted in an additional section being added to Guidance Note 4, which currently covers the regulator's moratorium powers under the Housing and Regeneration Act 2008. The changes brought about by the other legislation affected many of the individual Guidance Notes but were generally only changes as a result of the legislation rather than changes in meaning.
- 2.6. The consultation comprised of seven substantive questions around the guidance document and a further question on our Business Engagement Assessment and Equality Analysis. This document presents the results of that consultation and questions it asked.

3. Summary of responses

- 3.1. Although 70 responses were set up via Survey Monkey only 31 people responded to any of the consultation questions, in part or full. The other 39 responses set up have therefore been counted as null and have been excluded from the analysis. A further 2 responses were received in writing via email making the response sample size a total of 33 responses. A list of the respondents included in the analysis can be found at Annex 1.
- 3.2. Of the 33 responses received and considered in the analysis, there were:
- 18 (55%) responses from private registered providers
 - 8 (24%) responses from local authorities/ALMOs
 - 7 (21%) responses from trade or representative bodies
- 3.3. Of the 33 responses analysed, 21 respondents responded to the questions but did not leave any additional comments. Therefore, the detailed analysis of comments relates to the 12 responses where additional comments were made over and above the answers to each question.
- 3.4. The following section examines the feedback received.

4. Analysis of individual questions

General response to common comments

- 4.1. Many of the comments received related to comments/questions regarding the substance of the legislation, requests for additional guidance or comfort for particular groups or requests for clarification over terms within the various Guidance Notes. Therefore, rather than provide a detailed (or repeated) response to each one they have been combined into a general response within this Decision Statement and included in the introduction to the guidance.
- 4.2. Other comments more directly related to the consultation were addressed in the Decision Statement and where necessary, changes have been made to the guidance notes.
- 4.3. The regulator has not considered changes to the guidance in relation to comments linked to legislative changes that have either happened, or would need to happen, and would require changes to primary legislation. Therefore, the Decision Statement reflects that legislative changes have not been included in the detailed response to each question.
- 4.4. Several responses asked for an amplification of the guidance in one format or another. These included, but were not limited to, interpretation of the legislation, the internal processes the regulator would go through in exercising its powers or an expansion of the guidance to clarify the position for particular third parties. The regulator is clear that the purpose (and requirement) of the guidance notes is to set out how the regulator will use its powers; it is not a guide to the legislation nor legal advice for registered providers or other third parties. It is also not detailed guidance on the processes the regulator would go through in exercising its powers, many of which are set out in legislation and subject to formal court or other legal proceedings so do not require amplification in the Guidance Notes. We do not think it is appropriate to be overly prescriptive in the Guidance Notes as this may restrict the regulator's ability to use its powers and fetter the regulator from considering each situation on a case by case basis to deliver the optimum solution.
- 4.5. It was noted that at various points in the guidance there are references to providers, registered providers and private registered providers which may lead to confusion over which organisations the regulator is referring to. This is particularly true when referring to powers that maybe applicable to one group such as not-for-profit private registered providers (PRPs) but not local authority registered providers (LARP) for example. Therefore, we have added an additional paragraph (paragraph 3) to the introduction to the guidance that clarifies what the regulator means by each term. We have also amended the guidance notes to refer to registered providers rather than providers or be more specific if we mean PRPs or LARPs.
- 4.6. Several comments were received about the fact that the guidance still refers to the Homes and Communities Agency or the HCA which is now known as Homes England. Although the HCA remains the legal entity, we acknowledge that this maybe confusing and therefore we have clarified in the introduction that the HCA is now known as Homes England and referenced this name throughout the guidance notes.

4.7. There were no significant comments received in response to question 8 on equalities impact other than in support so has this has been finalised and is not included in the detailed response to each question in this Decision Statement.

Detailed analysis of individual questions

Question 1

4.8. 33 respondents provided a response to this question. Please note all percentages related to the answers in relation to the number of respondents and do not include blank responses.

Table 1: Overview of responses to Question 1

Question 1 - overview	Yes	Yes%	No	No%	Other	Other %
Do you agree with the changes that we have proposed to part 'a' and 'b' of Guidance Note 4?	27	82%	2	6%	4	12%

Issues raised by the response to Question 1

4.9. The overall response to this question was very positive with only two (6%) respondents disagreeing with the changes made to Guidance Note 4; neither provided any additional comments to explain their objections. Of the four (12%) respondents who answered 'other' to this question responses to their comments are detailed below where appropriate.

4.10. Given the high percentage of yes responses there were limited comments given by respondents in relation to this question and the bulk of these reiterated people's agreement and support of the proposed changes. There were some comments made that the regulator believes are adequately covered in the general response above in that:

- The guidance relates to the regulator's use of powers therefore it is not appropriate to amplify the guidance in order to advise registered providers or third parties on the application or meaning of the legislation.
- It is also not intended to form detailed process guidance that may fetter the regulator in its ability to use its powers or consider things on a case by case basis
- We have amended the guidance to clarify that we mean by registered provider and that where we reference Homes England this refers to the legal entity 'The Homes and Communities Agency or HCA'.

4.11. However, the following comments have resulted in changes to the drafting of Guidance Note 4:

- Guidance Note 4 Paragraph 17 – in relation to notifying the Regulator of an "intention to enforce security" under section 108 of the HPA, there could be concern that providing the Regulator of "early warning of an intention to issue such a notice" could be deemed to be in itself evidence of an "intention to enforce security" which triggers the notification requirement under section 108 and thus triggers a moratorium.

4.12. In response to the comment regarding paragraph 17 in Guidance Note 4 we have amended the wording to make the notice requirements clearer.

Question 2

4.13. 31 respondents answered this question. Please note all percentages related to the answers in relation to the number of respondents and do not include blank responses.

Table 2: Overview of responses to Question 2

Question 2 - overview	Yes	Yes %	No	No %	Other	Other %
Does the proposed new section, part c on housing administration, adequately reflect your understanding of the requirements of the legislation?	27	87%	0	0%	4	13%

Issues raised by the response to Question 2

4.14. The response to this question was very positive with 27/31 (87%) of responses agreeing that part c Housing Administration had adequately reflected the requirements of the legislation. None of the respondents felt the legislation was not adequately reflected in section c and the remaining four respondents answered 'other' to this question.

4.15. There were a limited number of comments made in relation to this question and in line with the responses they were mainly positive and supportive. There were a couple of specific comments that the regulator believes are adequately covered in the general response above in that they were requests for amplification of the legislation.

4.16. There were a small number of minor drafting comments which resulted in changes to the guidance:

- “Guidance Note 4 paragraph 52 – it may be worth expressing that this is "the Regulator's" intention, given the objectives of the housing administrator as set out in the HPA do not extend to all of these, even if a housing administrator may be mindful of them in practice.”
- “In relation to paragraph 54 the square brackets can be removed in sub-paragraph 2. You may want to add "(if available)" to the end of sub-paragraph 2b as an ordinary administration may not be available in relation to some registered providers (e.g. registered societies).”
- “Paragraph 56 – we think it should read "as soon as is practical" (rather than "it") in the third last line.”

4.17. In response to the comment regarding paragraph 52 in Guidance Note 4 we have amended the wording to clarify the respective objectives of the administrator and the regulator.

Question 3

4.18. 32 respondents answered this question. Please note all percentages related to the answers in relation to the number of respondents and do not include blank responses.

Table 3: Overview of responses to Question 3

Question 3 - overview	Yes	Yes %	No	No %	Other	Other %
Do you agree with the proposed regulatory approach to Housing Administration outlined in GN4?	30	94%	0	0%	2	6%

Issues raised by the response to Question 3

- 4.19. The response to this question was very positive with no respondent disagreeing with the proposed regulatory approach to Housing Administration outlined in the revised Guidance Note 4 and only 2/32 (6%) of respondents responding “other”.
- 4.20. Of the two respondents who answered “other”, one did not provide additional comments on question 3 other than to say they were broadly supportive. The other respondent’s comments were seeking clarification of the legislation or a degree of “comfort” from the regulator on its use of powers, neither of which is the purpose of these guidance notes.

Question 4

4.21. 31 respondents answered this question. Please note all percentages related to the answers in relation to the number of respondents and do not include blank responses.

Table 4: Overview of responses to Question 4

Question 4 - overview	Yes	Yes %	No	No %	Other	Other %
Do you agree with the changes that we are proposing to Guidance Note 8?	27	87%	1	3%	3	10%

Issues raised by the response to Question 4

- 4.22. The responses received to question 4 were in the main very positive with only one respondent disagreeing with the changes made to Guidance Note 8 but there were no additional comments to support this objection.
- 4.23. Of the responses marked “other”, two comments related to the regulator’s considerations before it makes a direction to Homes England to withhold financial assistance from a registered provider. The regulator believes this is adequately covered in the guidance notes already and does not require amplification.

4.24. The only other substantive comment is outlined below:

- One respondent suggested that we should be explicit in paragraph 8 where we list the factors that might prompt us to order an inquiry and include reference to questions of business probity, the avoidance of self-dealing, or undue benefits to third parties for example.

4.25. In terms of being explicit in paragraph 8 in relation to the factors that might prompt us to order an inquiry the regulator is not proposing to change Guidance Note 8. This update was only intended to revise the guidance to reflect the introduction of the Housing Administration regime and other legislative changes. The regulator may at some point in the future undertake a more wholesale review of the guidance and consider more substantial revisions to the substance of the guidance notes at this point.

Question 5

4.26. 29 respondents answered this question. Please note all percentages related to the answers in relation to the number of respondents and do not include blank responses.

Table 5: Overview of responses to Question 5

Question 5 - overview	Yes	Yes %	No	No %	Other	Other %
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?	27	93%	0	0%	2	7%

Issues raised by the response to Question 5

4.27. The responses received to this question were in the main very positive with no respondents disagreeing with the changes made as a result of the LRO.

4.28. Again, there were very limited comments made in relation to this question and the only substantive one was that we had asked for comments relating to Guidance Note 9 but respondents could not see any changes. This was an omission on our behalf. Paragraph 9 of Guidance Note 9 was amended by the LRO to include a notification to Homes England when an Enforcement Notice is served. This has been added to the final Guidance.

Question 6

4.29. 30 respondents answered this question. Please note all percentages related to the answers in relation to the number of respondents and do not include blank responses.

Table 6: Overview of responses to Question 6

Question 6 - overview	Yes	Yes %	No	No %	Other	Other %
Do the changes that we are proposing to Guidance Notes 4, 5, 8, 13 and 14 adequately reflect your understanding of the changes made by the Co-operative and Community Benefit Societies Act 2014?	28	93%	0	0%	2	7%

Issues raised by the response to Question 6

- 4.30. The responses received to this question were wholly positive with no respondents disagreeing with the changes made as a result of The Co-operative and Community Benefit Societies Act 2014.
- 4.31. There were no substantive comments in relation to this question save for one respondent pointing out that the Survey Monkey response included Guidance Note 8 in the question, whereas this had been omitted from the question in the consultation document itself. Again, this was an omission on our behalf.

Question 7

4.32. 31 respondents answered this question.

Table 7: Overview of responses to Question 7

Question 7 - overview	Yes	Yes %	No	No %	Other	Other %
Do you have any other comments in relation to the revised 'Guidance on the regulator's approach to intervention, enforcement and use of powers'?	11	35%	20	65%	0	0%

Issues raised by the response to Question 7

- 4.33. 11 respondents provided further comments on 'Guidance on the regulator's approach to intervention, enforcement and use of powers'. However, a number of these were iterating responses to earlier questions and have not been revisited under this section or have been covered by the general response at the beginning of this section.

4.34. The remaining comments, not addressed elsewhere, were observations that further changes to the guidance would likely to be required if the regulator's consumer role changed or when new rent standards came into force. The regulator acknowledges that any future changes to the legislation, covering any area that impacts on its use of powers, will need to be reflected in a future revision to the guidance. However, the guidance must reflect the situation as it is at the date of its publication, not how things might be in the future. As the revised Rent Standard is not yet in operation and changes to consumer regulation are not known no changes to the guidance to reflect these are appropriate at this time.

5. The Regulator's response to the consultation feedback – final position on the changes to the revised 'Guidance on the regulator's approach to intervention, enforcement and use of powers'

- 5.1. The previous sections set out and sought to address the major areas of feedback that we received as a result of the consultation. It also outlines any areas of change to the guidance following the consultation.
- 5.2. Most comments related to areas covered under the general response section. These include requests for legislative changes or amplification of the guidance which the regulator believes are either not appropriate for this guidance or are adequately covered in the guidance notes already.
- 5.3. There have been only a limited number of comments that have resulted in changes to the Guidance that we consulted on. All substantive changes as a result of the consultation are presented as tracked changes in the final revised 'Guidance on the regulator's approach to intervention, enforcement and use of powers' which can be found at Annex 2.
- 5.4. We received a positive response to the Business Equalities Assessment (BEA) and there were no additional relevant issues identified with the equalities analysis. As a result of this, no changes are being proposed to the BEA and the final BEA can be found in Annex 3.

Final position – changes to revised 'Guidance on the regulator's approach to intervention, enforcement and use of powers'

With effect from 18/12/2019, the revised 'Guidance on the regulator's approach to intervention, enforcement and use of powers' will be published on our website at the following address

<https://www.gov.uk/government/publications/guidance-on-the-regulators-approach-to-intervention-enforcement-and-use-of-powers>

Annex 1: List of respondents to the statutory consultation on the revised ‘Guidance on the regulator's approach to intervention, enforcement and use of powers’

The table below shows the respondents to the consultation. Where the response was on behalf of an organisation and the respondent used a corporate email address, the organisation’s name is given rather than the individual officer who completed the response. Those in bold denote statutory consultees.

Addleshaw Goddard LLP	Magenta Living
Aster Group	National Federation of Housing
bpha Ltd	North Kesteven District Council
Catalyst Housing Limited	Optivo
CESSA HA Ltd	Portsmouth City Council
Charnwood Borough Council	R3, Association of Business Recovery Professionals
Chartered Institute of Housing	Radcliffe Housing Society
Cornwall Council	RSM Restructuring Advisory LLP
Exeter City Council	The Wrekin Housing Group Ltd
Great Yarmouth Borough Council	Thrive Homes
Greatwell Homes	UK Finance
Housing Plus Group	United Charities Shepton Mallet
Hyde group	Walsall Housing Group
Incommunities	Watford Community Housing
Johnnie Johnson Housing Ltd	WM Housing Group
KPMG	Wythenshawe Community Housing Group Limited
London Borough of Tower Hamlets	

Annex 2: 'Guidance on the regulator's approach to intervention, enforcement and use of powers'

Please see separate document.

Annex 3: Business engagement assessment

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 consultation@rsh.gov.uk

Date of assessment	August 2019	Stage of assessment	Final
Net cost to business (EANCB)	None	Commencement date	16 December 2019
Which area of the UK would be affected by the change(s)?	England	Price and present value base years	16 December 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 has made changes to its 'Guidance on the regulator's approach to intervention, enforcement and use of powers'. These changes are a direct result of legislative developments, including the creation of the regulator as a standalone body.

The changes we have made 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.

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.

Why is the change proposed?

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.

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 authority registered providers and not-for-profit and for-profit 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 the 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.

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.

Impact on small businesses

Most 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.

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 not identified any specific equalities implications of the changes prior to the consultation or from any consultation feedback received.

As a result of this, we considered if we needed to undertake any further work in relation to the implication for equality and diversity of this revised guidance and we decided, based on the consultation feedback, that further work was not required. Equality and diversity considerations will continue to be considered during the roll out of the guidance and in any future iterations of the guidance.

Although there are no apparent equality impacts arising from the changes to the guidance, 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.



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