

THE RECOVERY OF CAPITAL GRANTS FROM UNREGISTERED BODIES GENERAL DETERMINATION 2017

1. The Homes and Communities Agency ("the Agency"), in exercise of the powers conferred on it by sections 32, 33 and 34 of the Housing and Regeneration Act 2008, and all other powers enabling it in that behalf, with the consent of the Secretary of State and after consultation with such persons as it considered appropriate, hereby makes the following General Determination of the events in which it may exercise the powers conferred by section 32 (2)-(4) in relation to an unregistered body who has received social housing assistance and of the principles it must act in accordance with in exercising those powers.

2. This General Determination, which has effect in England excluding Greater London, is made without prejudice to the Agency's power to make specific Determinations under the provisions of the Housing and Regeneration Act 2008.

CITATION AND COMMENCEMENT

3. This General Determination may be cited as the Recovery of Capital Grants from Unregistered Bodies General Determination 2017.

4. This General Determination has effect from 6 April 2017.

INTERPRETATION

5. Words and expressions used in this Determination shall, unless the context requires otherwise, have the following meanings:

"Agency" means The Homes and Communities Agency or its duly appointed agent (which term includes any statutory predecessor or successor to its Capital Grant giving functions).

"Capital Funding Guide" means the "Capital Funding Guide" published on the Agency's website or any successor guide so published subject to such amendments variations or updates to the same as the Agency (or any successor body) may publish on its website from time to time.

"Capital Grant" means Social Housing Assistance paid under section 19 of the Housing and Regeneration Act 2008), to defray all or part of the capital expenditure incurred or to be incurred by an Unregistered Body in its provision of Social Housing including (where applicable) Major Repairs, Miscellaneous Works, and Re-improvements by Unregistered Bodies that are almshouses. It includes any Simple Interest which accompanied payment of the principal Capital Grant.

"Dwelling" has the meaning given by section 275 of the Housing and Regeneration Act 2008.

"Equity Percentage Loan" means an arrangement of the type described in section 70(5) of the Housing and Regeneration Act 2008.

"Equity Mortgage" means a mortgage under which, in consideration for an Equity Percentage Loan, the mortgagor agrees that on the loan becoming repayable he or she shall pay to the Unregistered Body an amount which is equal to the agreed percentage multiplied by the value of the Dwelling, as determined in accordance with the terms of the mortgage, at the date on which the loan becomes repayable.

"Hostel" means a building comprising accommodation for two or more households (whether self-contained or not and whether or not inclusive of communal living space or facilities for the preparation or provision of food) and which is not (at the point at which any Capital Grant is given) intended to be used as permanent accommodation for such households¹.

"Insolvency Event" has the meaning given to it in the Capital Funding Guide

"Local Authority" has the meaning given by section 106(1) of the Housing Associations Act 1985.

"Major Repairs" means those works to a Property that is owned by an Unregistered Body that is an almshouse, which are necessary to ensure the continued habitability of the Property, excluding re-improvements, and which fall into the following categories.

(a) major works which have become necessary since the original development or rehabilitation work was completed, including those works required by subsequent legislation.

(b) replacement of, or major work on, those components of a Property which have come to the end of their useful lives.

"Milestone" means a predefined event during development for which the Agency has requested the Capital Grant holder to forecast a completion date.

"Miscellaneous Works" means remedial work to heating systems in existing Properties, energy conservation works, works for the removal of lead in drinking water, for reducing the risk of exposure to asbestos, to upgrade or install fire precautionary measures recommended by a fire authority (within the meaning of section 6 of the Fire and Rescue Services Act 2004), remedial works to Properties contaminated by radon or structural adaptations for people with physical disabilities, where in each case the Properties are owned by an Unregistered Body that is an almshouse.

"Not for profit Registered Provider" means a body listed on the Register as a non-profit making organisation, as such term is defined in section 115 of the Housing and Regeneration Act 2008.

"Profit-making Registered Provider" means a body listed on the Register as a profit-making organisation, as such term is defined in section 115 of the Housing and Regeneration Act 2008.

"Prohibited Act" has the meaning given to it in the Capital Funding Guide;

"Property" means a Dwelling, Hostel, Supported Housing, or Traveller Pitch funded by Capital Grant.

"Recovery" comprises reduction of any Capital Grant payable, or yet to be paid, by the Agency, suspension or cancellation of any instalment of Capital Grant or the payment to the Agency of such amounts of Capital Grant or Uplift Amount as the

¹ For the avoidance of doubt, where Capital Grant is given by the Agency in respect of such a building, there shall be a presumption that the building is not intended to be used as permanent accommodation.

Agency may specify and **“Recover”**, **“Recoverable”** and **“Recovered”** shall be construed accordingly.

“Register” means the register maintained by the Regulator of Social Housing pursuant to section 111 of the Housing and Regeneration Act 2008.

“Registered Provider” means (as appropriate) a local authority entered onto the Register pursuant to 114 of the Housing and Regeneration Act 2008 or a Not for profit Registered Provider or a Profit-making Registered Provider.

“Regulator of Social Housing” means the Homes and Communities Agency acting through the Regulatory Committee established pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future authority (including statutory successor) carrying on substantially the same regulatory functions.

“Relevant Event” means an event, as referred to in section 32(1) of the Housing and Regeneration Act 2008, and as identified in paragraph 6 of this General Determination, which may give rise to Recovery of Capital Grant.

“Shared Ownership Lease” means a lease of the type described in section 70(4) of the Housing and Regeneration Act 2008.

“Simple Interest” means further amounts of Capital Grant added to a payment of Capital Grant in compensation to an Unregistered Body for delays in payment of the principal Capital Grant. The further amounts of Capital Grant are calculated in the manner of interest accruing according to the length of delay in payment.

“Social Housing” means accommodation of the type described in section 68 of the Housing and Regeneration Act 2008.

“Social Housing Assistance” has the meaning given to it in section 32(13) of the Housing and Regeneration Act 2008.

“Supported Housing” has the meaning given to it in the Capital Funding Guide.

“Traveller Pitch” has the meaning given to it in the Capital Funding Guide.

“Uplift Amount” means an amount calculated by reference to any increase in market value of any housing or other land acquired, constructed, converted, improved or repaired as a result of Capital Grant.

“Unregistered Body” means any person who has received Social Housing Assistance and who is not a Registered Provider.

RELEVANT EVENTS GIVING RISE TO RECOVERY OF GRANT

6. The Agency may exercise its powers of Recovery when any of the following Relevant Events occurs in relation to Property or land located outside of Greater London:

(a) when, during the progress of a project approved for Capital Grant, Capital Grant or any instalment of Capital Grant was claimed or paid in anticipation of a Milestone, and that Milestone either does not take place or takes place later than anticipated;

(b) when, after Capital Grant or any instalment of Capital Grant has been advanced

upon a project approved for Capital Grant, the Agency cancels the approval, or approves the project on revised terms which involve a reduced entitlement to Capital Grant;

(c) discovery, upon an intermediate or final review of the costs of a project approved for Capital Grant, that an instalment or payment on account of Capital Grant had been greater than eventually required;

(d) failure to use Capital Grant for the purpose for which it was paid;

(e) failure to comply with any condition attached to the making of Capital Grant, including failure to complete a project and for the purposes of this sub-paragraph (e) "condition" includes (but is not limited to) the terms of any agreement pursuant to which Capital Grant is advanced by the Agency to an Unregistered Body;

(f) discovery that the Secretary of State or the Agency has received incorrect information or made an error in connection with the calculation of Capital Grant payable or Recoverable;

(g) disposal of Capital Grant funded land acquired for the development of Social Housing, or designated for a further phase or phases of Social Housing, when the development or further phase or phases was, or were, not completed at the time of disposal;

(h) a change of use of land or Property from the purpose for which Social Housing Assistance was given;

(i) cessation of use of Property or land funded by Capital Grant;

(j) demolition of Property or other buildings funded by Capital Grant;

(k) disposal of Property or land funded by Capital Grant except:

(i) to a Registered Provider (taking the property or land subject to liability for the Capital Grant within it pursuant to section 33 of the Housing and Regeneration Act 2008) with the prior approval of the Agency; or

(ii) the sale of the first share of a Dwelling under a Shared Ownership Lease where the Dwelling is specifically provided for sale on shared ownership terms;

(l) a change in the status of an Unregistered Body from unincorporated status to incorporated status by whatever means;

(m) the commission by the Unregistered Body of a Prohibited Act;

(n) the Unregistered Body becomes subject to an Insolvency Event;

(o) the Unregistered Body ceases to operate or to trade;

(p) the redemption or a disposal of Property or land funded by Capital Grant giving rise to the redemption of an Equity Percentage Loan secured by an Equity Mortgage;

7. An Unregistered Body must notify the Agency of the occurrence, or in specified circumstances, anticipated occurrence of a Relevant Event in accordance with a timetable specified by the Agency. When a Relevant Event occurs, an Unregistered Body must notify the Agency according to a timetable specified by the Agency.

PRINCIPLES FOR THE RECOVERY OF CAPITAL GRANT

8. Upon notification of the occurrence or discovery of a Relevant Event to which this Determination applies, the Agency may Recover Capital Grant.

9. When a Relevant Event to which this Determination applies occurs on only part of the Property or land on which Capital Grant was paid, the Agency may Recover a proportionate amount of Capital Grant. The Agency may specify methods of apportionment in accordance with published guidance.

CIRCUMSTANCES IN WHICH UNREGISTERED BODIES WOULD NORMALLY REPAY CAPITAL GRANT TO THE AGENCY

10. The Agency will normally demand repayment of Capital Grant Recoverable, when Recovery arises from any of the Relevant Events (a) to (p) in paragraph 6 above. Unregistered Bodies may not apply or appropriate Capital Grant.

THE METHOD OF CALCULATING THE AMOUNT OF GRANT RECOVERABLE ON RELEVANT EVENTS

11. The Agency will publish, and may amend from time to time, methods for calculating the amount of Capital Grant recoverable should any of the Relevant Events at paragraph 6 occur. These methods will take into account, according to the interpretation of the Agency:

(a) for Capital Grant paid in error or in excess of requirements, an intention to Recover Capital Grant or excess Capital Grant in full; and

(b) for disposals or other Relevant Events, an intention to Recover Capital Grant in full, but with allowance (i) for specified costs, fees and expenses incurred by the Unregistered Body in direct relation to the Relevant Event (ii) for any other circumstances which the Agency may specify in its published procedures and amend from time to time.

12. Where Recovery of Capital Grant calculated in accordance with the provisions of this Determination would place an Unregistered Body in financial difficulty, the Agency may at its discretion:

(a) defer the Recovery to a future date, or

(b) accept Recovery by agreed instalments, or

(c) reduce part or all of the Recovery.

INTEREST ON RECOVERY OF CAPITAL GRANT

13. The Agency may direct an Unregistered Body to add interest to an amount of Capital Grant repayable upon a Relevant Event, if there is a failure or delay by the Unregistered Body in notification of the Relevant Event to the Agency or in grant repayment, or in other circumstances leading to a potential loss to the Agency. The

Agency will publish, and may amend from time to time, details of these circumstances, the rates of interest to be charged, and the mechanism for its application.

THE METHOD OF CALCULATING THE AMOUNT OF UPLIFT AND INTEREST ON RECOVERY

14. The Agency may direct an Unregistered Body to add an Uplift Amount to any amount of Capital Grant Recoverable upon a Relevant Event and such direction will require the Uplift Amount to be repaid to the Agency. The Agency will publish, and may amend from time to time, the method for calculating the Uplift Amount concerned together with the circumstances in which the Uplift Amount will be required to be added.

15. The Agency may direct an Unregistered Body to add interest to the Uplift Amount, described in paragraph 14, if there is failure or delay by an Unregistered Body in the notification of the Relevant Event to the Agency or in grant repayment, or in other circumstances leading to potential loss to the Agency. The Agency will publish, and may amend from time to time, details of these circumstances, the rates of interest to be charged, and the mechanism for its application.

BY ORDER OF the Homes and Communities Agency this 6 April 2017.

NICK WALKLEY

Chief Executive

EXPLANATORY NOTES

1. Legislation provides for the Agency to set out, in a statutory determination, the events when it can exercise its statutory powers to Recover Capital Grants from Unregistered Bodies and the principles with which it must act in accordance when exercising those powers..
2. This Determination makes clear that on the occurrence of a Relevant Event Unregistered Bodies will normally be expected to repay Capital Grant. The option to recycle Capital Grant is not available to Unregistered Bodies.
3. Capital Grant for the performance of Major Repairs or Miscellaneous Works or works of re-improvement is available only to Unregistered Bodies which are almshouses. Membership of the National Association of Almshouses will be treated by the Agency as indicative of almshouse status.
4. Where this Determination states that the Agency will publish or specify detail this will be done within the Capital Funding Guide and within the terms of any grant agreement relating to the provision of Capital Grant.
5. This Determination:
 - (a) covers all property or land funded with Social Housing Assistance only (paid after the date of this Determination), through the Agency.
 - (b) takes effect without prejudice to the terms of any grant agreement between the Agency and any Unregistered Body save that any reference to a particular "Determination" within such agreement shall be deemed to be a reference to:
 - (i) the Determination in force at the time at which the first instalment of Capital Grant was given in relation to Social Housing Assistance paid prior to the date of this Determination.
6. Where grant is paid in instalments, the Determination in force at the time of the payment of the first instalment will be deemed to apply to the whole of the grant paid in relation to project funded by that grant.
7. The Agency will publish from time to time its requirements and operation arrangements for monitoring and reporting in the Capital Funding Guide.