



Homes &  
Communities  
Agency

The social housing regulator

## **Guidance for private registered providers on how to notify the regulator about the disposal of social housing dwellings**

March 2017  
Homes and Communities Agency



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Homes and Communities Agency – The Social Housing Regulator  
Fry Building  
2 Marsham Street  
London SW1P 4DF  
Telephone: 0300 1234 500

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March 2017

ISBN: 978-1-4098-5025-0

## Version control

What updates have been done and when?

<b>Version number / name</b>	<b>Date issued</b>	<b>Brief summary of changes from previous version</b>
Version 1	March 2017	First version

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## 1 Introduction

- 1.1 The Housing and Regeneration Act 2008, as amended (HRA 2008) requires private registered providers (providers) to notify the social housing regulator (the regulator) when they have disposed of social housing dwellings and additionally requires non-profit providers to notify the regulator of disposal of land that is not a dwelling. The regulator is able to issue directions about the content of those notifications and the period within which notifications must be given. The regulator may also give directions dispensing with any of the statutory notification requirements.
- 1.2 The regulator has published its *Direction of the social housing regulator about notifications of disposal of social housing dwellings and of land other than a dwelling 2017* (the Direction) which covers in what circumstances providers must notify the regulator about disposals, and the content and timing of those notifications. It also sets out in what circumstance the requirement to notify the regulator is dispensed with. That Direction is available on the regulator's website.
- 1.3 This document provides guidance to help providers meet the requirements for notification to the regulator set out in the Direction. This guidance should be read in conjunction with the Direction.
- 1.4 Connected with this guidance the regulator has also set out a form which, if completed correctly, provides for all the required information to be submitted. That form is appended to this guidance and is available for completion and submission in the regulator's data collection system, NROSH+, as a standard form.

## 2 Regulatory expectations

- 2.1 This guidance is concerned with the submission of notification information about disposals. Regulatory expectations in relation to the disposal and use of social housing are set out elsewhere in the Regulatory Framework. However where a provider is disposing of social housing, the regulator's expectations about the following are of particular relevance:
  - protecting social housing from undue risk;
  - adherence to all relevant law and compliance with governing documents;
  - accountability to tenants and proper consultation with tenants when considering a disposal that would mean a change in the tenant's landlord or changes that affect tenant's statutory or contractual rights; and
  - achieving value for money in how social housing is used.
- 2.2 The regulator also expects all data and information, including notifications, to be provided in a timely way and to be properly complete and accurate. The submission of late and incomplete or inaccurate regulatory data may be indicative of a weak control environment. Hence, failure to provide accurate and timely data, including notification of disposals, may be reflected in the regulator's judgement of a provider's compliance with the regulatory standards.

- 2.3 When disposing of social housing dwellings there will be other requirements which impact on a provider's decision to dispose or implications of that disposal. These requirements will vary from provider to provider and by property but may include:
- particular requirements for charities;
  - requirements about any grant associated with the dwelling;
  - restrictions on use of dwellings by way of s106 agreements or restrictive covenants;
  - funder requirements;
  - any legal constraints in relation to social housing, including, for example, a statutory prohibition on providers disposing of their interest in properties with secured tenants other than to another non-profit provider; and
  - the impact of disposal on statutory or contractual rights of tenants.
- 2.4 It is for providers to satisfy themselves that they are meeting all regulatory and legal requirements and are managing any competing interests when planning or completing a disposal of social housing dwellings.
- 2.5 The regulator will use the information provided in disposal notifications alongside other regulatory information and returns it receives in order to perform its functions. Detail of the regulator's approach is set out in *Regulating the Standards*. Information from notifications will inform planned regulatory engagement. However in some circumstances the regulator may seek further explanation and evidence about a particular disposal or type of disposal and its impact on the provider's compliance with either the economic or consumer standards.
- 2.6 In addition to gaining information relevant to individual providers, the regulator may also use the information to monitor sector level trends in disposals and may publish information about that.
- 2.7 The regulator has set different notification requirements for providers based on their size: that is because the regulator receives information about the impact of disposals from large providers in other standard data returns. Where there are different requirements these are flagged in the Direction and within this guidance.

### **3 Relevant Disposals**

- 3.1 The term 'disposal' in HRA 2008 covers a wide variety of transactions that involve the disposal of any interest a provider may have in social housing. The statutory requirement in HRA 2008, to notify the regulator, applies to all types of disposal of a social housing dwelling and (for non-profit providers) land that is not a dwelling. However, the regulator has decided it does not need to be notified of a disposal of any land that is not a dwelling and only requires notification of the disposal of social housing dwellings in certain circumstances. It has therefore set out those disposals that it wants to be informed about in the Direction and calls these Relevant Disposals.

- 3.2 The Direction defines what it means by dwellings. This covers in the main the social housing that is reported in the Statistical data return (SDR) and so includes houses and flats; accommodation whether it is self-contained or not self-contained which is available for rent (i.e. low cost rental accommodation); and/or low cost home ownership property (where the leaseholders part own and part rent the dwelling). It includes dwellings commonly referred to as bed spaces or units particularly in relation to supported or sheltered housing or care homes (that are social housing).
- 3.3 The regulator does not want to know about disposals of non-residential property or appurtenances, gardens, garages or similar that may be associated with a dwelling but are disposed of separately to the dwelling (whether or not these meet the legal definition of social housing).
- 3.4 Relevant Disposals fall into three broad types which are:
- a disposal, the effect of which (taken alone – see paragraph 4.2) is that the provider disposing of the dwelling will not be the landlord of the current residential occupier or any future residential occupier. (Called **Landlord Disposals** in this document);
  - a disposal by a provider of any interest in a dwelling where the purpose is to obtain finance (called **Finance Disposals** in this guidance); and
  - a disposal by a provider of any interest in a dwelling where the purpose is to provide or support a guarantee or other obligation (called **Guarantee Disposals** in this guidance).
- 3.5 Whether a disposal must be notified therefore depends on:
- the circumstances of the disposal;
  - whether the provider who has disposed is large (having 1,000 or more social housing dwellings) or small (having fewer than 1,000 social housing dwellings); and
  - to whom they are disposing.
- 3.6 The type of social housing dwelling does not matter – the dwelling can be for any use or type of social housing; shared ownership, supported housing, temporary or general needs. Also for disposals by way of lease, the length of the lease term does not matter; it must be notified if the nature of the disposal is one that meets the requirements for notification to the regulator.
- 3.7 The regulator has grouped Relevant Disposals into categories (1-8) in the Direction to help providers identify whether the disposal is one that must be notified. A Relevant Disposal may fit into more than one category, but need only be notified once. If a Relevant Disposal fits into more than one category and one of those categories is a 'Priority Notification' (see paragraph 7 below), then it must be dealt with as a Priority Notification.

- 3.8 Categories 1-5 cover the different circumstance in which Landlord Disposals are to be notified; Categories 6 (which applies only to small providers) and 7 (applicable only to large providers) cover those circumstances in which Finance Disposals are to be notified and Category 8 covers the circumstances in which Guarantee Disposals must be notified to the regulator.
- 3.9 The regulator can set requirements about the content of the notifications and these are set out in the Direction. The content of the notification differs for the Relevant Disposal types identified at 3.3 above and is covered in more detail in sections 4, 5 and 6 below.
- 3.10 The Appendix to this guidance includes two flow charts (one for large providers and one for small providers). These are intended to provide a route map to help providers determine whether and if so when they must make a notification about a disposal. The charts are intended to be a helpful overview. However, in the event of any contradiction between the charts, the guidance and the Direction, the Direction takes precedence. If in doubt about whether a notification is required, providers should notify the regulator.

## **4 Landlord Disposals**

- 4.1 The regulator is interested in disposals that mean social housing homes are lost from the sector, whether temporarily or permanently or where residents in social housing have had a change in landlord as a consequence of the disposal. It is also interested in disposals that may affect the financial position of the provider or could (where all social housing has been disposed) impact on the registration status of the provider.
- 4.2 It may be that at the point of disposal the dwelling is vacant (called 'Not Occupied' in the Direction) or occupied. The regulator wants to know about disposals of both vacant and occupied dwellings where they fall within certain categories of Relevant Disposals. The term 'occupied' includes those where the residential occupiers have tenancy agreements, a license to occupy or other similar agreement (as defined in the Direction).
- 4.3 'Landlord Disposals' include those where a provider which is the landlord of the residential occupiers (or would have been the landlord, in cases where the property was vacant at the point of the disposal) disposes of its entire freehold interest or leases the homes to another body so that the provider will no longer be the landlord of the residential occupiers. Where disposals are by way of sub-lease, all sub-leases (regardless of term length) are included for the purpose of notification.
- 4.4 'Landlord Disposals' also include cases where a provider continues to be the landlord following the disposal because the provider has disposed of its freehold or a head-lease interest and has been granted a lease or sub-lease, and so will continue to be the landlord of the residents. When the lease or sub-lease granted to the provider is for a term of less than 7 years then such a disposal must be notified.



- 4.5 Where a provider owns an interest in a dwelling(s) but is not the landlord of the residential occupiers, then the regulator does not require to be notified about a disposal of that dwelling as a Landlord Disposal. For example, a provider has previously let the dwelling to another provider who has therefore become the landlord of the occupiers. If the provider disposes of its superior interest or a new sub-lease this is not a Landlord Disposal and it does not have to be notified to the regulator.
- 4.6 Further guidance on when a provider is required to notify the regulator about Landlord Disposals is contained in Table 1 below.

Table 1: Landlord Disposals

Category and Description	Further guidance
<p><b>Category 1 Out of sector</b> Where the dwelling, whether occupied at the time of disposal or not is disposed to a purchaser that is not a provider</p>	<p>Notification is required whether the property is occupied at the point of disposal or not. However, where the disposal is to the residential occupier or the shared ownership leaseholder (whether new or existing), there is no need to notify the regulator about the disposal.</p> <p>For the avoidance of doubt, disposals 'out of the sector' include those made to a provider's associate, subsidiary, or joint venture where those organisations are not registered with the regulator as well as those made to unrelated persons that are not registered with the regulator.</p>
<p><b>Category 2 Within sector</b> Where the dwelling is disposed to another provider and it is occupied at the point of disposal.</p>	<p>Where a provider disposes by way of freehold or leasehold disposal to another provider and the dwelling is occupied at the point of disposal this must be notified. This includes dwellings that are made available for rent and shared ownership dwellings.</p>
<p><b>Category 3 Last social housing</b> Where the dwelling disposed is (or includes) the provider's last social housing dwelling.</p>	<p>Regardless of to whom it is disposed and whether the dwelling is occupied or not the provider must notify the regulator. Disposing of the last social housing dwelling is likely to lead the regulator to consider the registration status of any provider.</p> <p>The regulator has specific requirements where a provider is considering transferring its social housing dwellings and operations to another body (for example where an unincorporated charity is incorporating or setting up a Charitable Incorporated Organisation) and wishes to register the receiving body. In those cases the regulator expects (and sets out in <i>Regulating the Standards</i> available on the regulator's website) providers to tell it in advance of such a significant potential change in their arrangements. Such a business merger or transfer will also require registration of the receiving body and the approach for that is set out in the regulator's <i>guidance for new entrants on applying for registration as a provider of social housing</i>.</p>

<p><b>Category 4 To a profit making provider</b> Where the dwelling is disposed to a profit making provider whether the dwelling(s) are occupied or unoccupied.</p>	<p>Any Landlord Disposal to a profit making provider must be notified. Notification is required whether the dwelling is occupied or not at the point of disposal. The designation (non-profit or for-profit) of the disposing provider does not matter. The list of registered providers and their designation as non-profit or for-profit are available (and updated monthly) on the regulator’s website.</p>
<p><b>Category 5 More than 5% of stock</b> <u>Small providers only</u> must notify the regulator if they have disposed of 5% or more of their social housing dwellings in a single transaction.</p>	<p>If a small provider (with fewer than 1,000 social housing dwellings) disposes of dwellings in a single transaction that reflects a disposal of 5% or more of its total stock, then it must notify the regulator. Notification is required when this level is reached whether the dwellings are occupied or unoccupied and regardless of to whom the dwellings were disposed. In providing the information to the regulator the small provider must indicate the percentage of stock sold.</p>

### Information that must be provided about Landlord Disposals

4.7 The Direction deals with information requirements at paragraph 5.1.1 - 5.1.7. The following sets out further guidance to help providers comply with those requirements.

#### Identification of the dwellings

4.8 The location of the property (to at least local authority level) must be provided. Where a provider has disposed of multiple properties within a similar area, the individual addresses need not be supplied and the records may be grouped (ONLY if other information required about the disposal is the same). However the dwellings are identified it must be sufficient to ensure that the provider has a record that it has notified the regulator of the disposal. The following provide examples of acceptable responses:

- 1 Smith Street, York or 1 Smith Street, YO14 8BG; or
- for multiple disposals: 1-25 Smith Street, York or 25 properties on the Smith Estate in York

#### Type or use of the dwelling

4.9 The type or use of the dwelling immediately before the disposal (or when it was last occupied) must be provided. The type of social housing dwelling should be consistent with how the dwelling would be identified in other regulatory data returns such as the SDR.

4.10 Applicable types will be:

- general needs;
- supported housing;
- temporary housing;
- housing for older people;
- shared ownership properties; or
- 'other' (if the dwelling does not fit within the previous descriptors).

#### Type of disposal

4.11 Information must be provided about the type of disposal the provider has made. By type of disposal, we mean the extent to which a freehold or leasehold interest has been disposed. Applicable types of disposal will be:

- freehold disposal or leasehold disposal of term >99 years;
- leasehold disposal of term 50-99 years;
- leasehold disposal of a term 22-49 years;
- leasehold disposal of a term of 7-21 years; or
- leasehold disposal of a term less than 7 years.

#### Information about the proceeds: open market value, full consideration

4.12 Providers must submit information about the proceeds from the disposal. The regulator is interested in whether the proceeds of the disposal equate to the open market value of the dwelling at the point of disposal or less than that and whether the proceeds were received at the point of disposal or will be received at some point in the future or over a period of time. Landlord Disposals that are 'out of sector' will usually achieve proceeds which are equivalent to the open market valuation, whereas those disposals within the sector are more likely to be at some other valuation such as existing use value for social housing (EUV-SH). Information must be provided to identify proceeds and timings consistent with:

- disposed at open market value, received at point of disposal;
- disposed at open market value but receipt of proceeds deferred;
- disposed at less than open market value, proceeds received at the point of disposal; or
- disposed at open market value but receipt of proceeds deferred.

#### Identity of recipient

4.13 Providers must identify to whom they have disposed. However, the regulator only wants to know the name of the purchaser in limited circumstances. For Landlord Disposals to another provider or to an organisation that is an associate, subsidiary or parent of the disposing provider, the name of the purchaser must be provided. Otherwise the category of purchaser alone is sufficient.

- 4.14 The identity of the purchaser is therefore required when the provider has disposed to:
- a provider (whether a member of the disposing provider's group or not); or
  - a non-registered organisation that is a member of the same group as the disposing provider.

Otherwise the category of purchaser is sufficient. Applicable categories are:

- local authority (that is a registered provider);
- local authority (that is not a registered provider);
- charity (whether registered with the Charity Commission or not); or
- other.

## 5 Finance Disposals

- 5.1 The regulator is interested in Finance Disposals because it provides information about how social housing is being used to support debt and the extent of indebtedness a provider has taken on. In setting its information requirements, the regulator is most interested in understanding the extent of the debt that is obtained by the disposal rather than detail about the specific dwellings that are disposed. Finance Disposals include the disposal of any interest and therefore whether dwellings are occupied or not, or the provider is the residential landlord or not is not significant for these categories of disposal.
- 5.2 The disposal could be to obtain common forms of financing such as bonds or bank funding (called 'Standard Finance' in the Direction) but also non-standard forms which include for example sale or lease and leaseback arrangements. The type of disposal might usually be by way of granting a security interest in the social housing. However non-standard forms of finance will involve a disposal other than by way of a security charge, for example the disposal of a head-lease with the simultaneous sub-lease to the provider.
- 5.3 Notification requirements for Finance Disposals differ for small and large providers. That is because the regulator already receives detailed and regular information from large providers about standard private finance, where it does not receive similar from small providers. Therefore small providers disposing of social housing dwellings in any way to raise any type of finance (standard and non-standard) are required to notify the regulator of the disposal (category 6 in the Direction).
- 5.4 Large providers need only notify the regulator when they have disposed of dwellings to obtain non-standard types of finance, for example finance achieved through sale and leaseback or lease and leaseback arrangements or other new and novel arrangements (category 7 in the Direction). The regulator acknowledges that these types of finance arrangements may be reflected in the provider's quarterly survey, but is interested in the numbers of properties involved and the emergence of any new type of arrangements. Since the majority of disposals to obtain finance will normally be of the type described as Standard in the Direction, non-standard forms are likely to be exceptional. However if there is doubt about whether a disposal is a Standard or Non-Standard Finance Disposal, providers should notify the regulator.

## **Information that must be provided about Finance Disposals**

5.5 The Direction deals with information requirements at paragraph 5.1.8 - 5.1.11. The following sets out further guidance to help providers comply with those requirements.

### Identification of the dwellings

5.6 Where a provider disposes of dwellings to obtain finance the transactions usually involve a significant portfolio of properties. Therefore information must be provided about the number of social housing dwellings involved in each Finance Disposal and no further information about the identities of the dwellings disposed is required.

### Type of disposal

5.7 Providers must describe what type of interest in the dwelling has been disposed. For many transactions the purpose of which is to obtain finance, the disposal will usually be by way of granting a security interest. However, particularly for those disposals raising non-standard forms of finance, the arrangement may be complicated. Therefore there is no standard response set out in the form and the provider should fully describe the interest being disposed.

### Value of finance and identity of finance provider

5.8 The value of finance obtained as a result of the disposal of the dwelling(s) and the identity (named) of the provider of finance (often called the counterparty) must be given.

## **6 Guarantee Disposals**

6.1 Guarantee Disposals (category 8 in the Direction) will usually include granting of a security interest in a social housing dwelling to a third party to guarantee the performance of an associated company or guarantee a debt or obligation of the provider. The type of disposal will mean that if the guarantee or other obligation is not met, the provider could lose its interest in the dwelling. It therefore does not include the types of disposal that ensure for example contractual rights of access or similar granted to third parties.

6.2 This category of Relevant Disposals excludes any disposals to guarantee a debt or obligation that relates to financing arrangements (which may require notification under categories 6 or 7). It also excludes any disposal that relates to obligations arising as a result of the receipt of grant from a public sector body.

## **Information that must be provided about Guarantee Disposals**

6.3 The Direction deals with information requirements at paragraph 5.1.12-5.1.15. The following sets out further guidance to help providers comply with those requirements.

### Identification of the dwellings

- 6.4 Where a provider has disposed of dwellings to provide a guarantee or similar that is likely to involve a significant portfolio of properties, information must be provided about the number of social housing dwellings involved in each Guarantee Disposal. No further information about the identities of the dwellings disposed is required.

### Type of disposal

- 6.5 Providers must describe what type of interest in the dwelling has been disposed of and the description of the guarantee that the disposal provides. For many transactions for the purpose of providing a guarantee, the disposal might be by way of granting a security interest. However the type of disposal and the nature of the guarantee provided may be complicated. Therefore there is no standard response set out in the form and the provider should fully describe the interest being disposed.

### Value of guarantee and identity of to whom the guarantee or

- 6.6 The value of the extent of the guarantee given must be provided, or, where that is not available, the value of the interest disposed in the dwellings. Additionally information about to whom the guarantee is given must be provided.

## **7 Timing of notifications**

- 7.1 The regulator has decided that the majority of Relevant Disposals made by provider(s) need only be notified to it on a quarterly basis. However there are some disposals that must be reported to the regulator closer to the point when the disposal is completed.

### **Priority Notifications**

- 7.2 For some disposals the regulator wants to know about the disposal soon after it has happened because it might relate to issues which may affect our risk assessment and/or the registration status of a provider. These are called Priority Notifications.
- 7.3 In the Direction the regulator has specified 3 weeks as the time period within which Priority Notifications must be made. The Directions also set out the Relevant Disposals in categories so that those which are Priority Notifications are clearly identified.
- 7.4 Priority Notifications are set out in 4.2 of the Direction and relate to the following Relevant Disposals:
- disposals of dwellings (identified as out of sector above) that are occupied at the point of disposal and the purchaser is not a provider, so the landlord of the existing resident (the residential occupier) has changed;
  - disposal which is or includes the provider's last social housing dwelling;
  - disposals made by small providers where a single disposal transaction involves 5% or more of the provider's total social housing stock; and
  - disposals made by small providers to secure private finance.

## Quarterly notifications

- 7.5 For other disposals described in 4.3 of the Direction, providers must notify the regulator on a quarterly basis. Quarterly notification returns must be made within 3 weeks after the end of the quarter. For the purpose of notifications the quarters are the end of June, September, December and March each year.
- 7.6 If a provider has notified the regulator of a disposal(s) through a Priority Notification, there is no need to include that disposal in the quarterly notification.

## 8 How to notify the regulator

- 8.1 The regulator collects its data through the NROSH+ system. All providers are required to make their returns using this system online at:  
<http://nroshplus.homesandcommunities.co.uk>.
- 8.2 The regulator has developed a standard template which, when completed correctly, will contain all the information required in notifications. The form is split into three tabs which cover information required for Landlord Disposals, Finance Disposals and Guarantee Disposals and includes a front sheet on which contact and other details about the provider must be given.
- 8.3 Where a provider is in a group which includes more than one provider, a representative of all group members may submit a notification form including the information about disposals for all group members. The form allows for identification of the providers whose notification information is included in each form.
- 8.4 Where appropriate the form provides for set options or 'drop-down' responses for the required information. However, there is space on the form for you to provide additional information if, for example, the options presented in the form do not fit entirely the circumstance of the Relevant Disposal.
- 8.5 Providers should use the template provided in the documents and templates section of NROSH+ to submit both priority and quarterly notifications. This template should be completed in line with this guidance and uploaded using the 'upload regulatory documents' feature on NROSH+. Further guidance, outlining the process for uploading disposal notifications, is available in the document and templates section on NROSH+.
- 8.6 Guidance on how to access the NROSH+ system and who to contact if you experience any difficulties are provided on the regulator's website and can be found at <https://www.gov.uk/government/publications/information-required-from-registered-providers>.

## **9 Further guidance: Disposals for which notification is not required**

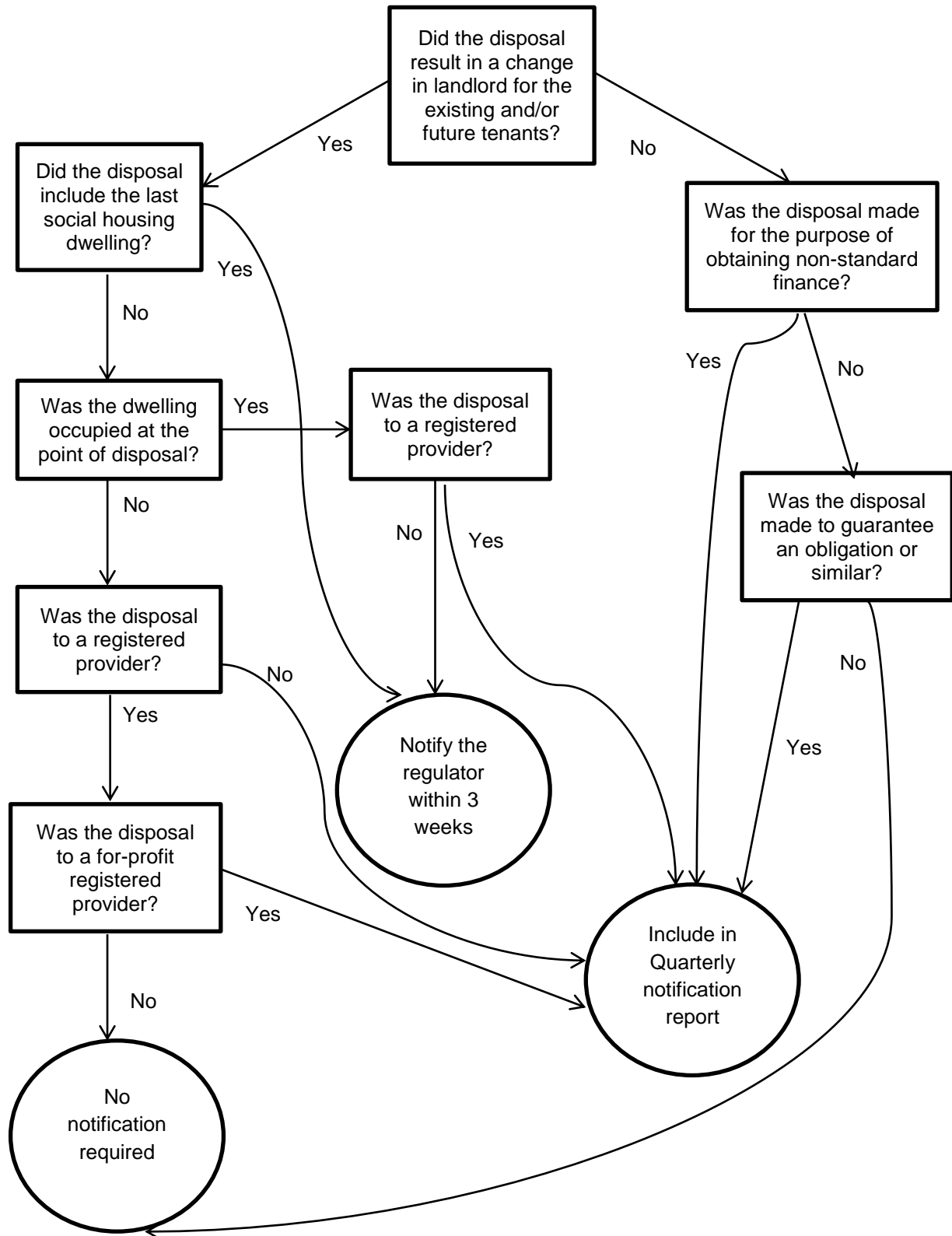
9.1 Since disposal is widely defined within HRA 2008, it is not possible for the regulator to list all the types of disposal that it has decided do not need to be notified. Therefore the Direction sets out that the statutory notification requirements are dispensed with for any disposal other than the Relevant ones listed. However, for illustrative purposes, some common disposals that are not required to be notified include:

- disposal of a not occupied dwelling to another non-profit provider – unless you are a small provider and the disposal transaction represents a disposal of 5% or more of your social housing;
- disposal of land that is not a dwelling – including land where there used to be a dwelling but it has been demolished;
- where a provider leases a property for use as social housing, but the lease expires;
- release of restrictive covenants over land or dwellings;
- granting an option to a third party so that they may purchase the dwelling at some point in the future. However, if the option is taken, then the disposal would need to be notified if it was a Relevant Disposal;
- disposal of parts of dwellings to facilitate communications equipment, solar panels or use of outbuildings;
- disposal of social housing (as defined in HRA 2008) but which is not a dwelling as described in this document and in the Direction including (parts of) garden, garages and rights of access; and
- granting of assured tenancies.



# Appendix: Do you need to notify?

## Large providers



## Small providers

