



Homes &
Communities
Agency

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Annex 4. Changes to the General Consent

May 2014

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Summary: The Regulator has power to give consent to providers to dispose of social housing and it can give consent generally or specifically. Under provisions in legislation the Regulator has issued a general consent for disposals under a range of differing circumstance and that General Consent was last revised in 2010. The General Consent is designed to allow registered providers a degree of flexibility to manage disposal of their properties effectively, without the need to refer to the Regulator for individual consent for each disposal. Chapter 3 of this document outlines the changes to the General Consent in order to achieve the Regulator's objective of protecting social housing assets. This Annex sets out further changes proposed to the General Consent.

Introduction to the General Consent

- A4.1 Most disposals of social housing dwellings by private registered providers require consent from the Regulator under s172 of the Housing and Regeneration Act 2008. In this context, 'disposals' cover a wide range of transactions including outright sale of a property or the granting of an interest in a property. The General Consent is intended to enable registered providers to carry out particular types of disposals of land and property without reference to the Regulator.
- A4.2 Where specific consent is necessary, this imposes a degree of administrative burden on both Regulator and regulated. Therefore the General Consent is designed to include as broad a range of disposals as possible, whilst reserving the need for specific consent for those disposals that the Regulator is most interested in scrutinising. The regulator recognises that there is a balance to be struck between ensuring the protection of social housing and investment in that and providers having the flexibility to manage their asset base effectively, without recourse to the regulator, in order to maximise their outcomes and to do so without recourse to the Regulator in all cases.
- A4.3 The Regulator is most interested in scrutinising applications for disposals where the balance of benefit against the regulator's overall objectives may be more finely struck. Examples of circumstances in which the Regulator wishes to scrutinise individual proposals include disposals which lead to a change in landlord (therefore disposal of tenanted stock) and disposals out of the sector to ensure social housing assets and tenants' interests are protected. Additionally, the Regulator considers that some disposals by way of granting an interest in a property to raise finance may place undue risk on social housing or risk to the financial viability of a provider and therefore require scrutiny in certain circumstances.
- A4.4 The Regulator therefore has reviewed the existing general consent, against the backdrop of the other changes to the framework set out in this document to ensure it continues to reflect the right balance between protection of social housing and flexibility for providers. At the same time, the Regulator has taken the opportunity to review the General Consent, propose changes to improve its consistency and look to harmonise consent requirements where consent is necessary under different legislative provisions.

General Consent in relation to ex local authority stock

- A4.5 The General Consent does not cover disposals under s 133 of the Housing Act 1988 and therefore landlords have to date relied on an existing DCLG document - "General Housing Consents 2005" when making disposals of vacant former local authority stock. That General Consent 2005 is much more restrictive than the regulator's 2010 General Consent.
- A4.6 The General Consent has therefore been reviewed and harmonised, wherever possible, the requirements under s133 of the Housing Act 1988. The general consent therefore now covers properties requiring consent under s133 in addition to those requiring s172 consent. The detail is set out in the draft General consent. Although most of the categories for disposal within the general consent are available similarly for properties requiring s133 consent and those requiring s172, the regulator is unable, due to legislative differences to open up a similar Category 5 (Disposals in accordance with an approved policy) for those properties requiring s133 consent currently.

Further minor changes

- A4.7 In addition to the two significant areas identified above, the regulator has reviewed the General Consent to ensure it is clear and unambiguous. The regulator has also taken the opportunity to consolidate some categories of the general consent, reducing its number from 39 to 34, without affecting the nature of the disposals covered by the general consent. In addition, where appropriate some categories of the general consent have been opened up to profit making providers (but not for category 6 as above) where the changes proposed on disposal proceeds (chapter 4) sufficiently protect public investment.

The Homes and Communities Agency (HCA), the Regulator of Social Housing

The General Consent 2014 under section 172 of the Housing and Regeneration Act 2008, Section 133 of the Housing Act 1988 and Section 171D of the Housing Act 1985 in respect of Disposals of Social Housing Dwellings and other Social Housing Land by Private Registered Providers

The Homes and Communities Agency, referred to in the Housing and Regeneration Act 2008 ("the Act") as the Regulator of Social Housing and referred to in this General Consent as the Regulator in exercise of its powers under Section 172 of the Act and (as transferee of the Secretary of State's functions pursuant to Section 190 of the Act so far as they relate to disposals by private registered providers of land which is social housing) Section 133 of the Housing Act 1988 and Section 171D of the Housing Act 1985, consents to the disposal of or of any interest in a Social Housing Dwelling or land which comprises Social Housing by a Private Registered Provider under the categories of disposal listed in Part 1 of this General Consent on the specific conditions and General Conditions in Part II of this General Consent and other terms set out in this General Consent.

Note

Pursuant to Section 133(7) of the Housing Act 1988 the consent of the Regulator is not required under Section 172 of the Act for any disposal in respect of which a consent is given under Section 133 of the Housing Act 1988.

Pursuant to Section 133 of the Housing Act 1988 the consent of the Regulator is not required for a disposal which is an exempt disposal within the meaning of Section 81(8) of the Housing Act 1988 (but consent under Section 172 of the Act might still be needed).

Pursuant to Section 172 of the Act the consent of the Regulator is not required for a disposal if it is an exception within the meaning of Section 173 of the Act.

Pursuant to Section 171D the consent of the Regulator is required for a disposal by a landlord of less than his whole interest in a dwelling house which is subject to the preserved right to buy (the landlord having previously acquired the dwelling house from a local authority).

Pursuant to Section 171D the consent of the Regulator is not required for the disposal by a landlord of less than his whole interest in a dwelling house to a qualifying person with the preserved right to buy.

Pursuant to Section 133 of the Housing Act 1988 the consent of the Regulator is only required for the first onward disposal and thereafter the consent of the Regulator will be required under Section 172 of the Act.

This General Consent relates only to the functions of the Secretary of State under Section 133 of the Housing Act 1988 transferred to the Regulator by Section 190 of the Act so far as they relate to a disposal by a Private Registered Provider of land which is Social Housing.

Application, availability, withholding and withdrawal of access to the General Consent

Each of the categories of disposal listed in Part 1 of this General Consent applies to whichever of Section 172 of the Act, Section 133 of the Housing Act 1988 and Section 171D of the Housing Act 1985 are referred to the category heading.

Unless otherwise indicated, this General Consent applies equally to profit-making Private Registered Providers and non-profit Private Registered Providers.

Access to the use of this General Consent may be withheld or withdrawn in whole or in part in accordance with Part III.

Exclusions

This General Consent **does not** apply to:

- former Private Registered Providers de-registered under sections 118 and 119 of the Act on or after 01 April 2010;
- former 'registered social landlords' removed from the register between 1 October 1996 and 31 March 2010; and
- former 'registered housing associations' removed from the register between 1 April 1975 and 30 September 1996.

Citation and Effective Date

This General Consent may be cited as The General Consent 201[].

This General Consent will come into effect on [] 201[] ("the Effective Date").

Superseded consents

This General Consent supersedes the General Consent 2010 made under section 172 of the Act in respect of Disposals of Social Housing Dwellings by Private Registered Providers made on or after the Effective Date.

The General Consent 2010 shall remain in full force and effect in relation to any policy approved under Category 5 or Category 18 of the General Consent 2010 until such policy is superseded by another policy approved by the Regulator under this General Consent.

This General Consent supersedes the General Housing Consents 2005 made under Section 133 of the Housing Act 1988 and Section 171D of the Housing Act 1985 in respect of those functions under those enactments which have been transferred to the Regulator under Section 190 of the Act and in respect of Disposals of land that is Social Housing by a Private Registered Provider made on or after the Effective Date.

Interpretation

Words and expressions used in this General Consent shall, unless the context requires otherwise, have the meanings given in Schedule 1.

Part I

The Categories of Disposal

Private Registered Providers to whom this General Consent is available and from whom access has not been withheld or withdrawn or restricted may make disposals of Social Housing Dwellings and land that is Social Housing described in each of the categories below subject to compliance with (a) the specific conditions described within the relevant category and (b) the General Conditions in Part II of this General Consent (to the extent they are not disapplied or modified for the individual category).

A **Disposals of Unoccupied Social Housing Dwellings**

Category 1

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A non-profit Private Registered Provider may dispose of an Unoccupied Social Housing Dwelling (which does not comprise a Former Dwelling) by way of a transfer or by way of a grant, surrender or assignment of a lease to another non-profit Private Registered Provider.

Specific conditions

- This category of consent excludes a disposal which, on its own or forming part of a larger transaction, reduces the number of Social Housing Dwellings of a Private Registered Provider by more than 50%.
- A transfer or a grant, surrender or assignment of a lease under this Category may be at any consideration agreed between the transferor and transferee (or lessor and lessee) Private Registered Providers so long as it does not exceed Best Consideration and General Condition 3A is varied to that extent.
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.

Category 2

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may renew or extend a lease of an Occupied Social Housing Dwelling granted to another Private Registered Provider.

Specific conditions

- The lease will be granted or will continue to be granted to another Private Registered Provider which is and will remain the landlord of the tenant(s) occupying the Social Housing Dwelling.
- A renewal or extension under this category of consent granted by a non-profit Registered Provider may be at any consideration agreed between the lessor and lessee so long as it does not exceed Best Consideration and General Condition 3A is varied to that extent.
- The lease shall not be renewed or extended for a term which is longer than the original term of the lease.
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.

Category 3

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may dispose of an Unoccupied Social Housing Dwelling by way of a transfer or by way of a grant, surrender or assignment of a lease to a Local Authority which is Registered Provider and which acquires the Social Housing Dwelling under Part II of the Housing Act 1985.

Specific conditions

- This category of consent excludes a disposal which, on its own or forming part of a larger transaction, reduces the number of Social Housing Dwellings of a Private Registered Provider by more than 50%.

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.

Category 4

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may dispose of an Unoccupied Social Housing Dwelling or land that is Social Housing by way of a transfer or by way of a grant, surrender or assignment of a lease to a body with compulsory purchase powers when:

- (a) the body has made a compulsory purchase order for that Social Housing Dwelling but that compulsory purchase order has not yet been confirmed; and
- (b) the Social Housing Dwelling lies within the area covered by the compulsory purchase order; and
- (c) the purpose of the disposal is substantially the same as that of the compulsory purchase order.

Category 5

Application: Disposals under Section 172 of the Act

A Private Registered Provider may dispose of an Unoccupied Social Housing Dwelling by way of a transfer or by way of a grant, surrender or assignment of a lease in accordance with the terms of a policy for disposals submitted by the Private Registered Provider to the Regulator and which is approved by the Regulator after the Effective Date.

In approving a policy for disposals, the Regulator may disapply or modify General Condition 3.

Specific conditions

- In addition to the certification required by General Condition 5, a Private Registered Provider shall certify to the person(s) to whom the disposal is made (or their solicitor) that the disposal is in accordance with the terms of a policy for disposals submitted by the Private Registered Provider to the Regulator and approved by the Regulator.
- The Private Registered Provider must carry out an independent audit (which need not be an external audit) and prepare a report on its use of this category of consent every twelve months from the date of the Regulator's approval of the policy. A copy of the report must be provided to the Regulator on request.

B Charging and other Security Interests

Category 6

Application: Disposals under Section 172 of the Act and Section 171D of the Housing Act 1985

A non-profit Private Registered Provider (excluding a non-profit Private Registered Provider which is a Subsidiary of a person who is not a Private Registered Provider) may grant a Security Interest over a Social Housing Dwelling to a Private Finance Provider which secures, or is given on terms that may in future secure, Private Finance Facilities in favour of the non-profit Private Registered Provider or one or more of its Group Members.

Specific conditions

For the avoidance of doubt, the general conditions in part II of this General Consent do not apply to this category of consent and in substitution for those, these specific conditions apply.

1. This category of consent is not available to a profit-making Private Registered Provider nor to a non-profit Private Registered Provider which is a Subsidiary of a person who is not a Private Registered Provider.
2. This category of consent is available only to a non-profit Private Registered Provider that has received a letter from the Regulator authorising the non-profit Private Registered Provider to use this category of consent.
3. In relation to each grant of a Security Interest, not earlier than two Business Days before the Security Interest is entered into, a non-profit Private Registered Provider shall certify to the Private Finance Provider as follows:
 - (a) That it has a letter from the Regulator (following an application made by the non-profit Private Registered Provider to the Regulator) authorising it to use this category of consent and that the authorisation has not been revoked.
 - (b) That the non-profit Private Registered Provider gave the following undertakings to the Regulator when applying for a letter of authorisation to use this category of consent:
 - (i) It will not grant a Security Interest over a Social Housing Dwelling to a Private Finance Provider which secures, or is given on terms that it may in future secure Private Finance Facilities in favour of a person other than a Group Member.
 - (ii) It will only grant a Security Interest over a Social Housing Dwelling to a Private Finance Provider which secures or is given on terms that it may in future secure Private Finance Facilities in favour of a Group Member who:
 - (aa) is a non-profit Private Registered Provider; or
 - (bb) if not a non-profit Private Registered Provider, will apply the Private Finance Facilities solely in the acquisition,

construction, conversion or refurbishment of Social Housing in England by or on behalf of that Group Member.

- (iii) Before entering into an agreement to advance the whole or part of the Private Finance Facilities to a Group Member who is not a non-profit Private Registered Provider it will obtain independent professional advice that the proposed agreement is on reasonable commercial terms for parties at arm's length.
- (iv) Security Interests granted under this category of consent will have the authority of the grantor's governing body and decisions will be properly minuted. The grantor's governing body may delegate authority to a sub-committee or to two or more Officers, according to an appropriate scheme of delegation.
- (v) Security Interests granted under this category of consent will only be granted within the terms of the grantor's governing instrument (and applicable law including where relevant, charity law).
- (vi) It will not, for the purposes of this category of consent, make any certificate to a Private Finance Provider which is incorrect, incomplete or misleading.
- (vii) It will enter in a register (which is to be the same register as that required by General Condition 6 for recording information about other disposals) the following information:
 - that the grant of the Security Interest accords with the General Consent and that the conditions of the General Consent have been complied with;
 - that this category of the General Consent applies;
 - the interest or title being disposed of;
 - the Social Housing Dwelling(s) which are the subject of the Security Interest;
 - the identity of the Private Finance Provider; and

- the date of the Security Interest

and it will supply or make this information available to the Regulator if requested.

- (viii) The Security Interest will not confer any benefit on any of the non-profit Private Registered Provider's or Group Member's Officers or employees or on any of their relatives or on any business trading for profit in which any such person has an interest.
 - (c) That the provisions of section 172 of the Housing and Regeneration Act 2008 or Section 171D of the Housing Act 1985 have been complied with, that this category of consent applies to the disposal and that the specific conditions of this category of consent have been complied with.
4. This category of consent is not available in respect of the grant of a Security Interest over a Social Housing Dwelling to a Private Finance Provider which secures, or is given on the terms that it may in future secure, Private Finance Facilities the repayment of which in whole or in part is calculated by reference to an index which is a measure of inflation.
 5. If the non-profit Private Registered Provider is in breach of any of the undertakings to the Regulator referred to in specific condition 3(b) or if any of the certificates in specific condition 3(a), (b) or (c) is incorrect the Private Finance Provider can nonetheless rely on certifications in specific condition 3(a), (b) and (c) and the consent given to a particular disposal under this category of consent will remain effective; **but** if the Regulator publishes a notice of revocation of the consent given under this category of consent and/or a notice withdrawing the letter of authorisation referred to in the certification in specific condition 3(a) above then (and until such time as the Regulator issues a further notice to the non-profit Private Registered Provider reinstating its consent or that letter or a further letter of authorisation), the Private Finance Provider will not, after the date of publication, be able to rely on the certifications in specific condition 3(a), (b) and (c) above and any disposal after the date of that publication (and prior to the issue of such further notice) will be void under section 175 of the Act. Such notice may be published on the Regulator's website.
 6. It is a condition under this category of consent that a Dwelling subject to a Security Interest shall continue to be Social Housing and will remain so unless

and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act. The only exception to this condition is that a Dwelling will cease to be Social Housing when a Private Finance Provider exercises a right under the terms of a Security Interest to dispose or procure a disposal of that Dwelling and any period of moratorium in respect of the exercise of such right has expired. An exercise of a right under a Security Interest includes (for the purpose of this Condition) an exercise of such right by the Private Finance Provider or by an insolvency practitioner appointed by it and includes any such exercise which is, under the terms of the Security Interest, treated as made by or on behalf of the non-profit Private Registered Provider.

7. The non-profit Private Registered Provider must carry out an independent audit (which need not be an external audit) and prepare a report on its use of this category of consent every twelve months from the date of the issue by the Regulator of the letter authorising it to use this category of consent. A copy of the report must be provided to the Regulator on request.

Category 7

Application: Disposals under Section 172 of the Act

A Private Registered Provider may grant a Security Interest over an Unoccupied Social Housing Dwelling in favour of:

- (a) a developer of that Social Housing Dwelling taking the Security Interest solely for the duration of the development period; or
- (b) a registered charity with a financial interest in the Social Housing Dwelling.

Specific conditions

- General Condition 3 does not apply, so there is no requirement to obtain Best Consideration or a Valuation.
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.

Category 8

Application: Disposals under Section 172 of the Act

A Private Registered Provider may, to enable the acquisition, construction, conversion or refurbishment of an Unoccupied Social Housing Dwelling, grant a Security Interest over that Social Housing Dwelling in favour of:

- (a) a Minister of the Crown
- (b) a Local Authority but only when the Security Interest secures funding which is not in the form of a loan from the Local Authority
- (c) a government department or agency
- (d) the Homes and Communities Agency
- (e) a public regional or local agency for development or regeneration
- (f) the Big Lottery Fund
- (g) Communities Scotland when financing schemes in England

or any public body succeeding to the functions of a body set out in (a) - (g) above.

Specific conditions

- General condition 3 of part II below does not apply, so there is no requirement to obtain Best Consideration or a Valuation.
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.

Category 9

Application: Disposals under Section 172 of the Act and Section 171D of the Housing Act 1985

A Private Registered Provider may grant a rent charge over a Social Housing Dwelling in order to secure payment of a service charge for management and maintenance services relating to land in favour of a body providing such services.

Specific conditions

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.
- The rent charge under this Category may be at any Consideration agreed between the parties so long as it does not exceed Best Consideration and general Condition 3A is varied to that extent.

C Disposals Incidental to Home Ownership Initiatives

Category 10

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may dispose of a Social Housing Dwelling to an individual where the Private Registered Provider simultaneously enters into an Equity Percentage Arrangement with the individual which is charged against the Social Housing Dwelling so disposed of.

Specific conditions

- The Dwelling was not Occupied at any time during the period of two years prior to the disposal.

Category 11

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may transfer to another Private Registered Provider its interest as mortgagee or chargee in a Social Housing Dwelling subject to Equity Percentage Arrangements.

Specific conditions

- A transfer under this category of the General Consent may be at any consideration agreed between the transferor and transferee Private Registered Providers so long as it does not exceed Best Consideration. General condition 3A is varied to that extent.

Category 12

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may transfer to another Private Registered Provider its residual freehold or leasehold interest in a Social Housing Dwelling subject to Equity Percentage Arrangements.

Specific condition

- A transfer under this category of consent may be at any consideration agreed between the transferor and transferee Private Registered Providers so long as it does not exceed Best Consideration. General condition 3A is varied to that extent.

Category 13

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A non-profit Private Registered Provider may:-

- (a) dispose of a Social Housing Dwelling by grant of a Shared Ownership Lease that is not an Assured Tenancy, including any such grant of a Shared Ownership Lease under the Social HomeBuy Scheme; or
- (b) extend the term of a Shared Ownership Lease that falls within paragraph (a) or grant a new Shared Ownership Lease in place of the original Shared Ownership Lease.

A profit-making Private Registered Provider may:-

- (c) dispose of a Social Housing Dwelling by grant of a Shared Ownership Lease under the Social HomeBuy Scheme; or
- (d) extend the term of a Shared Ownership Lease that falls within paragraph (c).

Specific conditions

- General Condition 3 applies except where the disposal is under the Social HomeBuy Scheme in which case a discount from Best Consideration may be given in accordance with the rules of that scheme and general condition 3A is varied to that extent.

Category 14

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may extend the term of a lease, grant a new lease or transfer its freehold or superior leasehold interest in a Dwelling which comprises Legacy Social Housing to a person who either:

- a) has exercised their right under a Shared Ownership Lease to staircase to full ownership of that Dwelling and thereby end the Shared Ownership Arrangements or
- b) a third party as directed by the person in (a) above under the terms of the lease.

Specific Conditions

- Where the value of the extension of a lease, grant of a new lease or transfer of the freehold is included in the Valuation provided for the staircasing to full ownership, no further valuation is required. General Condition 3B is varied to that extent.

Category 15

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may grant, extend the term of or renew a lease of a Social Housing Dwelling to a person aged 55 or over in a scheme designed for people in that age range.

Category 16

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may dispose of its reversionary interest in a Social Housing Dwelling let on a Shared Ownership Lease following a lender to the lessee of the Shared Ownership Lease enforcing its rights as mortgagee over the Dwelling.

Category 17

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may dispose of a Social Housing Dwelling by way of a transfer or by way of a grant of a lease (other than a Shared Ownership Lease) to a tenant under the Social HomeBuy Scheme.

Category 18

Application: Disposals under Section 172 of the Act

A Private Registered Provider may dispose of a Social Housing Dwelling in accordance with a policy for disposals to tenants (submitted by the Private Registered Provider to the Regulator and which is approved by the Regulator after the Effective Date) by way of a transfer or by way of a lease to a tenant who is in occupation of the Social Housing Dwelling.

Specific Conditions

- In addition to the certification required by General Condition 5, the Private Registered Provider shall certify to the person(s) to whom the disposal is made (or their solicitor) that the disposal is in accordance with the terms of a policy for disposals submitted by the Private Registered Provider to the Regulator and

approved by the Regulator.

- The Private Registered Provider must carry out an independent audit (which need not be an external audit) and prepare a report of its use of this category of consent every twelve months from the date of the Regulator's approval of the policy. A copy of the report must be provided to the Regulator on request.

Category 19

Application: Disposals under Section 133 of the Housing Act 1988

A Private Registered Provider may dispose of a Social Housing Dwelling by way of a transfer or by way of a grant of a lease (other than a Shared Ownership Lease) to a qualifying tenant of that Social Housing Dwelling where the tenancy agreement gives the tenant a right to buy the Social Housing Dwelling.

Specific Conditions

- The disposal is to the tenant of that Social Housing Dwelling or to the tenant jointly with any person who would be qualified under Section 123 of the Housing Act 1985 to share the Preserved Right to Buy with the tenant if the tenant were exercising the Preserved Right to Buy;
- The tenant is a qualifying tenant by virtue of:
 - (i) having succeeded, in accordance with Section 17 of the Housing Act 1988, to the tenancy of a person who had a Secure Tenancy, which was not a joint tenancy, of a house (whether the Social Housing Dwelling or another Dwelling) at the time (being a time before 24 September 1996) it was acquired by the Private Registered Provider from a Local Authority; or
 - (ii) having been granted a tenancy, in accordance with a right of succession for a member of the family (as defined in Section 113 of the Housing Act 1985) contained in the tenancy agreement of a person who had a Secure Tenancy, which was not a joint tenancy, of a house (whether the Social Housing Dwelling or another Dwelling) at the time it was acquired by the Landlord from a Local authority;
- The tenant under the terms of the tenancy agreement has the right to buy the

Dwelling from the landlord and the sale is in compliance with the Private Registered Provider's contractual obligation to the tenant;

- The terms of the sale conform with the terms on which the house would have been sold to the tenant if he were exercising the Preserved Right to Buy; and
- Any discount available under the terms of the right to buy contained in the tenancy agreement will apply and General Condition 3A is varied to that extent.

D Grant of easements; surrender of rights and covenants over Social Housing Dwellings

Category 20

Application: Disposals under Section 172 of the Act and Section 171D of the Housing Act 1985

A Private Registered Provider may grant a right or easement over a Social Housing Dwelling.

Specific conditions

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.
- General Condition 3 shall apply to the consideration for an easement under this category with the following modifications:
 - (a) Where the value is less than £10,000, General Condition 3B does not apply, so there is no requirement to obtain a Valuation. The minuted opinion of the board of the Private Registered Provider shall be conclusive as to whether the value is less than £10,000.
 - (b) an easement may be granted at nil or nominal consideration when it is in

favour of a body corporate or person responsible for supplying gas, water electricity, drainage, telephone and other communication services to the Private Registered Provider's own land or to adjacent land owned by another Private Registered Provider and General Condition 3A is varied to that extent.

- (c) an easement may be granted at nil or nominal consideration when it is in favour of another Private Registered Provider or a Local Authority either of which owns land adjacent to the Social Housing Dwelling or when it is in favour of a person with whom another Private Registered Provider or Local Authority has an agreement jointly to develop for Social Housing land adjacent to the Social Housing Dwelling and the sole purpose of the grant of the easement is the provision of the Social Housing.

Category 21

Application: Disposals under Section 172 of the Act, Section 133 of the Housing Act 1988 and Section 171D of the Housing Act 1985

A Private Registered Provider may dispose of land that forms part of a Social Housing Dwelling by transfer or lease to a person responsible for the supply of gas, water electricity, drainage, telephone or other communication services where the primary purpose is to supply such services to Social Housing Dwellings owned by a Private Registered Provider.

Specific conditions

- Any disposal by a landlord under Section 171D of the Housing Act 1985 must be of less than the whole of the landlord's interest.
- General Condition 3 shall apply to the consideration for a disposal under this category with the following modifications:
 - (a) General Condition 3A does not apply, so the disposal may be at nil or nominal consideration.
 - (b) where the Private Registered Provider disposes of the land at greater than nil or nominal consideration, and the value is less than £10,000, General Condition 3B does not apply, so there is no requirement to obtain a Valuation. The minuted opinion of the board of the Private Registered Provider shall be conclusive as to whether the value is less than £10,000.

Category 22

Application: Disposals under Section 172 of the Act , Section 133 of the Housing Act 1988 and Section 171D of the Housing Act 1985

A Private Registered Provider may surrender a right to light in respect of a Social Housing Dwelling.

Specific conditions

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.
- Where the value is less than £10,000, General Condition 3B does not apply, so there is no requirement to obtain a Valuation. The minuted opinion of the board of the Private Registered Provider shall be conclusive as to whether the value is less than £10,000.

Category 23

Application: Disposals under Section 172 of the Act, Section 133 of the Housing Act 1988 and Section 171D of the Housing Act 1985

A Private Registered Provider may surrender a right or easement over a Social Housing Dwelling owned by another Private Registered Provider and may release another Private Registered Provider from a covenant in respect of a Social Housing Dwelling owned by that other Private Registered Provider.

Specific condition

- Where the value is less than £10,000, General Condition 3B does not apply, so there is no requirement to obtain a Valuation. The minuted opinion of the board of the Private Registered Provider shall be conclusive as to whether the value is less than £10,000.

E Options

Category 24

Application: Disposals Under Section 172 of the Act

A Private Registered Provider (the "Grantor") may grant an option to another Private Registered Provider (the "Grantee") to acquire an Unoccupied Social Housing Dwelling originally transferred or leased from the Grantee to the Grantor to be exercisable by the Grantee if the terms of the transfer or lease are not complied with and the Grantor may following the exercise of the option transfer or surrender the lease of the Unoccupied Social Housing Dwelling to the Grantee.

Specific condition

- General Condition 3 does not apply, so there is no requirement to obtain Best Consideration or a Valuation.

F Leases

Category 25

Application: Disposals under Section 172 of the Act, Section 133 of the Housing Act 1988 and Section 171D of the Housing Act 1985

A Private Registered Provider may surrender its leasehold interest in a Social Housing Dwelling as a pre-condition to acquiring the freehold or a new lease of the Social Housing Dwelling.

Specific condition

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.

Category 26

Application: Disposals Under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may surrender a lease of an Unoccupied Social Housing Dwelling where the remaining term of the lease is less than six months and where no sum is payable by the Private Registered Provider in consideration of the surrender.

Category 27

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may dispose of a freehold or superior leasehold reversionary interest in a Social Housing Dwelling where that reversionary interest is held jointly by the Private Registered Provider and other leaseholder(s) and the transfer is required to replace one leaseholder with another as a joint owner of the reversionary interest.

Specific conditions

- General Condition 3B does not apply, so there is no requirement to obtain a Valuation.
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.

Category 28

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may extend the term of or renew an existing lease or dispose of a freehold or superior leasehold reversionary interest in a lease of a Dwelling which comprises Legacy Social Housing which has been let on a lease which is not a Shared Ownership Lease including:-

- (a) a reversionary interest in a lease which is a former Shared Ownership Lease where the leaseholder's Acquired Percentage under the terms of the Shared Ownership Lease had become 100% before 1 April 2010
- (b) a reversionary interest in a lease of a Dwelling which was granted by the Private Registered Provider to a leaseholder prior to 1 April 2010 pursuant to a statutory or contractual right to acquire or buy or under the Social Home Buy Scheme and
- (c) a reversionary interest in a building to be disposed of to the leaseholders, or to a company of which the shareholders are the leaseholders of the flats in that building

Specific conditions

- This category of the General Consent is not available for leases in schemes designed for people aged 55 or over.
- In relation to paragraph (c) only that the building only contains flats and common parts.

G **Vacant Land, gardens, yards, outhouses and appurtenances**

Category 29

Application: Disposals under Section 133 of the Housing Act 1988

A Private Registered Provider may dispose of Vacant Land which is Social Housing where the value of the interest disposed of, assuming it were paid as a single sum at the time of the disposal, does not exceed:

- (a) if the land is in London, £240,000

- (b) if the land is elsewhere, £120,000

Specific Conditions

- A certificate by a Valuer (given not more than three months before the disposal) that the value does not exceed the limit specified in (a) or (b) above or the minuted opinion of the board of the Private Registered Provider that the value does not exceed £10,000 and the disposal is not part of a larger transaction where the value of the interest disposed of does not exceed £10,000 shall be conclusive for the purposes of this category and General Condition 3B is varied to that extent.

- The Private Registered Provider is not the landlord of any tenancy affecting the land, other than a tenancy where the tenant is the person or one of the persons to whom the disposal is made or, in the case of a joint tenancy, where all the tenants are or are among the persons to which the disposal is made.

Category 30

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may dispose of an appurtenance belonging to, or usually enjoyed with, an Unoccupied Social Housing Dwelling where that appurtenance is a garage.

Specific conditions

- The garage must continue to be used as such following the transfer or lease and the transferor lease will contain a covenant to that effect.
- This category does not apply to land or buildings on the site of a former garage.
- General Condition 3 shall not apply to the consideration under this category and the Private Registered Provider may charge whatever premium and rental it considers appropriate.

Category 31

Application: Disposals under Section 172 of the Act, Section 133 of the Housing Act 1988 and Section 171D of the Housing Act 1985

A Private Registered Provider may dispose by way of transfer or the grant of a lease, of land that forms part of a Social Housing Dwelling to a highways authority or Local Authority for the provision of estate roads, road widening, visibility splays or for the provision of a recycling collection point serving the Private Registered Provider's Social Housing Dwellings either exclusively or jointly with adjacent land.

Specific conditions

- Any disposal under Section 171D of the Housing Act 1985 must be of less than the whole of the landlord's interest

- General Condition 3A does not apply, so the disposal may be at nil or nominal consideration.
- General Condition 3B does not apply, so there is no requirement to obtain a Valuation.

Category 32

Application: Disposals under Section 172 of the Act and Section 133 of the Housing Act 1988

A Private Registered Provider may dispose, by way of a transfer or grant of a lease, of land that forms part of a garden, yard, outhouse or other appurtenance of an Unoccupied Social Housing Dwelling and that it considers surplus to requirements.

Specific conditions

- The disposal should be for a single transaction only, and not be linked with any other disposal made under this General Consent.
- The Valuation required by General Condition 3B below may at the discretion of the Private Registered Provider be replaced by the minuted opinion of the board of the Private Registered Provider that the value is less than £10,000.

H Subsoil

Category 33

Application: Disposals under Section 172 of the Act, Section 133 of the Housing Act 1988 and Section 171D of the Housing Act 1985

A Private Registered Provider may dispose, by way of a transfer or grant of a lease, of subsoil beneath a Social Housing Dwelling, to a railway or tramway undertaking (as those terms are defined in the Transport and Works Act 1992) constructing tunnels beneath the Social Housing Dwelling.

A Private Registered Provider may dispose, by way of a transfer or lease, of subsoil beneath a Social Housing Dwelling to the Secretary of State for Transport where such is required for constructing a railway, tramway or highway (as those terms are defined respectively in the Transport and Works Act 1992 and Highways Act 1980).

Specific conditions

- The minuted opinion of the board of the Private Registered Provider shall be conclusive as to whether all costs are paid by the transferee or lessee or whether the best compensation has been obtained.
- General Condition 3B does not apply, so there is no requirement to obtain a Valuation.
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.

Category 34

Application: Amendments under Section 172 of the Act, Section 133 of the Housing Act 1988 and Section 171D of the Housing Act 1985

A Private Registered Provider may self-certify an amendment to a specific consent granted by the Regulator to a disposal by way of transfer or the grant of a lease as a consequence of:

- (a) an error or omission in a transferee's or lessee's name (but not a change of name or identity of the transferee or lessee) given on the consent
- (b) an error or omission in the Private Registered Provider's name (but not a change of identity) or registered address given on the consent. This does not permit the substitution of another Private Registered Provider, including another Group Member
- (c) inclusion or deletion of the name of a spouse, partner or another family member purchasing with the original purchaser named on the consent or
- (d) an error in the postcode of one or more of the properties disposed of (but not a change of property)

Specific condition

- The payment or other legal consideration must not have altered.

Part II

General conditions applying to disposals

A Private Registered Provider may make a disposal under part I of this General Consent (for this purpose disregarding category 6) if all the relevant conditions below (and, where applicable, those specified in the relevant category, but subject to any disapplication or variation of the following conditions specified in the relevant category) are met.

Conditions

1. The disposal shall be within the powers of the Private Registered Provider under its governing instrument and shall adhere to all relevant legislation, and charity law where applicable.
2. If the disposal is of a Social Housing Dwelling subject to a legal charge or mortgage, the consent of the mortgagee to the disposal should be obtained before exchanging contracts, unless the charge or mortgage will be discharged from the disposal proceeds.
3.
 - A. Every disposal under this General Consent shall be at Best Consideration or in the case of an auction, the reserve price shall be the Best Consideration.
 - B. Every decision to dispose shall be supported by a Valuation carried out by a Valuer.
4. Each disposal shall have governing body authority and decisions shall be properly minuted. Subject to the Private Registered Provider's constitution, governing bodies may delegate authority to a sub-committee or two or more Officers for any of the categories in part I of this General Consent, according to an appropriate scheme of delegation.

5. Before any disposal takes place the Secretary (or equivalent) and one other authorised Officer or employee of the Private Registered Provider shall certify to the disponent in a form specified by the Regulator:
- that the provisions of section 172 of the Act or Section 133 of the Housing Act 1988 or Section 171D of the Housing Act 1985 as appropriate have been complied with, that the disposal accords with the General Consent and that the conditions of the General Consent have been complied with
 - specifying the category of the General Consent that applies;
 - identifying the interest or title being disposed of; and
 - identifying the Social Housing Dwelling(s) which are the subject of the disposal
6. A Private Registered Provider shall maintain a register of disposals made under the authority of the General Consent which contains:
- a copy of the certification to the disponent with the same information as required in the certification to the disponent;
 - the identity of the disponent;
 - the date of the disposal; and
 - if one was required, the valuation obtained in accordance with General Condition 3B
- and supply or make this available to the Regulator if requested.
7. If the disposal is of a Social Housing Dwelling funded by Capital Grant or by Financial Assistance from the Homes and Communities Agency or the Greater London Authority, the Private Registered Provider should consult the Homes and Communities Agency's Affordable Housing Capital Funding Guide and any other terms (including under contractual arrangements) under which grant was given, or the equivalent publication of the Greater London Authority in respect of a disposal in Greater London, to see whether the disposal is one that calls for the repayment or recycling of the Capital Grant or Financial Assistance. If so, the Private Registered Provider shall follow the timetables for reporting and recording

published in the guide or any other relevant requirements.

8. The disposal shall not, in the opinion of the Private Registered Provider's governing body, materially affect the Private Registered Provider's assets that are available as security for its existing financial commitments.
9. Disposals shall not be made to or for the benefit of the Private Registered Provider's officers, employees, and their relatives, or any businesses trading for profit in which those parties have an interest.

Part III

Withholding, withdrawal and restriction of access to the General Consent

The Regulator may withhold or withdraw its consent to a Private Registered Provider using all categories or one or more specific category of disposal permitted under the General Consent or restrict the use of one or more categories.

If the Regulator withholds or withdraws or restricts the use of the General Consent, it will inform the Private Registered Provider in writing. For every further disposal for which but for the withdrawal or withholding or restriction this General Consent could have been used, until informed in writing otherwise, the Private Registered Provider will have to obtain specific prior consent.

Part IV

Validity of General Consent

This General Consent is effective in favour of any person lawfully claiming on behalf of the Private Registered Provider or dealing with the Private Registered Provider.

Part I of this General Consent states that disposals of Social Housing Dwellings and where applicable land that is Social Housing described in the categories above may be made subject to compliance with the specific and General Conditions relevant for that

category. If the Private Registered Provider disposing of a Social Housing Dwelling or land that is Social Housing makes a certification in accordance with General Condition 5 and that certification is incorrect (including, without limitation, by reason of non fulfilment of a condition applicable to the consent), the consent given to that particular disposal will remain effective and a transferee or lessee acting in good faith will be able to rely on the certification; **but** if the Regulator publishes a notice of withdrawal of the ability of the Private Registered Provider to use all or any categories (or part of categories) of this General Consent then (and until such time as the Regulator issues a further notice to the Private Registered Provider reinstating its consent), the transferee or lessee will not, after the date of publication, be able to rely on the certification for such category or categories where the Private Registered Provider's ability to use that category has been withdrawn and any disposal after the date of that publication and prior to the issue of such further notice will be void under section 175 of the Act. Such notice may be published on the Regulator's web site or, if the web site is not available, by such other method as the Regulator puts in place.

Schedule 1

The meaning of terms used in the General Consent

Definitions of capitalised words and terms used within this General Consent unless otherwise stated are as set out below. In this General Consent, references to a particular statute or statutory instrument or part of either of them are to that statutory reference as it may have been extended modified amended re-enacted or replaced at the date upon which its construction is relevant for the purposes of this General Consent and not as originally enacted or as at the date of this General Consent and any statute or statutory instrument which it replaces. References to publications, such as to the Affordable Housing Capital Funding Guide, are to the edition or version at the date upon which its construction is relevant for the purposes of this General Consent.

"The Act" means the Housing and Regeneration Act 2008.

"Acquired Percentage" the percentage interest in a Dwelling which a leaseholder has acquired under the staircasing provisions in a Shared Ownership Lease.

"Assured Tenancy" has the meaning given by Section 1 of the Housing Act 1988.

"Best Consideration" means the best consideration that can reasonably be obtained.

"Business Day" means a day which is not a public holiday in England is not a Saturday or a Sunday.

"Capital Grant" means the grants listed in section 77(3) of the Act and grants under section 27A of the Housing Act 1996.

"Disposal" or "disposal" has the meaning given to it in Section 273 of the Act.

"Dwelling" has the meaning given in section 275 of the Act.

"Effective Date" has the meaning given in the Section of this General Consent headed "Citation and Effective Date".

"Equity Percentage Arrangements" have the meaning given in section 70(5) of the Act.

"Financial Assistance" means that provided by the Homes and Communities Agency under section 19 of the Act.

"Former Dwelling" is land which has ceased to be a Dwelling but for which consent is required under sections 172 to 175 of the Act by virtue of the provisions in section 187 of the Act (disregarding Section 133(7) of the Housing Act 1988).

"General Condition" and "General Conditions" means those conditions set out in Part II of this General Consent.

"General Consent 2010" refers to the General Consent 2010 made on 1st April 2010 under section 172 of the Act in respect of Disposals of Social Housing Dwellings by Private Registered Providers.

"Group Member" in relation to a Private Registered Provider means that body and its subsidiaries and associates (each as defined in section 271 of the Act) and includes those subsidiaries and associates whether or not they are Private Registered Providers.

"Land" includes any estate, interest or easement over land and any buildings or structures erected on the land.

"Legacy Social Housing" means property to which Section 77 of the Act applies.

"Local Authority" has the meaning given to it in Section 275 of the Act.

"Local Housing Authority" has the meaning given to it in Section 1 of the Housing Act 1985.

"Low Cost Rental Accommodation" has the meaning given in section 69 of the Act.

"Low Cost Home Ownership Accommodation" has the meaning given in section 70 of the Act.

"Occupied" means in relation to a Dwelling where that Dwelling is the subject of a tenancy to occupy granted by the Private Registered Provider.

"Officer" has the meaning given in section 270 of the Act.

"Preserved Right to Buy" means those rights conferred by Part V of the Housing Act 1985 as it applies in a case where the right to buy is preserved under Section 171A of the Housing Act 1985 on the disposal of a dwelling-house to a private sector landlord.

"Private Finance Facilities" means arrangements for any of:

(i) lending money, including term loan, standby loan, revolving loan or any other

lending facilities and including overdraft facilities and unsecured facilities;

(ii) interest rate hedging including arrangements embedded within loan agreements or those documented separately;

(iii) issuance of loan notes, loan stock and bonds.

"Private Finance Provider" means each person or persons (and any transferee or assignee of any such person) providing Private Finance Facilities including each original and new lender under a loan facility and any arranger, agent, trustee, security agent or security trustee acting on behalf of such person or persons (and any replacement or successor arranger, agent, trustee, security agent or security trustee) together with each beneficiary at any time under any such agency or trustee arrangements but excluding:

(i) a Private Registered Provider unless that Private Registered Provider is a Group Member of the Private Registered Provider to whom the Private Finance Facilities are provided; and

(ii) a Local Authority.

"Private Registered Provider" has the meaning given in section 80(3) of the Act.

"Profit-making and non-profit Private Registered Providers" are those organisations so designated under section 115 of the Act on the register of the Regulator.

"Secure Tenancy" has the meaning given in Part IV of the Housing Act 1985.

"Security Interest" means any mortgage, pledge, lien, charge, security assignment, hypothecation or other legal or equitable security interest or any other agreement or arrangement having the effect of conferring security (including, for the avoidance of doubt, a floating charge) or any other type of preferential arrangement having a similar effect and includes a Security Interest created over the benefit of another Security Interest.

"Shared Ownership Arrangements" has the meaning given to it in Section 70(4) of the Act.

"Shared Ownership Lease" means a lease of the type described in section 70(4) of the Act and includes such a lease whether granted before, on or after 1 April 2010.

"Social HomeBuy Scheme" is a scheme approved by the Homes and Communities Agency (HCA) and described in the HCA's Affordable Housing Capital Funding Guide under which Private Registered Providers approved by the HCA may dispose of Dwellings to their tenants at a discount funded by Capital Grant or Financial Assistance from the HCA.

"Social Housing" has the meaning given in sections 68 and 77 of the Act.

"Social Housing Dwelling" means a Dwelling which is Social Housing and includes a Former Dwelling.

"Subsidiary" has the meaning given to it in Section 271 of the Act.

"Unoccupied" means in relation to a Dwelling where that Dwelling is not Occupied.

"Vacant" in relation to Land means land on which no Dwellings have been built.

"Valuation" means a valuation carried out by a Valuer exercising their independent judgement on the basis of the Royal Institution of Chartered Surveyors Valuation Standards (the Red Book) using the version current at the date of the Valuation. This valuation needs to be dated three months or less before the contract is exchanged, or completion if earlier, or any such other period as the Regulator may specify.

'Valuer' means:

- (i) a professionally qualified valuer who is a member or fellow of the Royal Institution of Chartered Surveyors or any successor body or bodies thereof; and
- (ii) who is not employed by, or acting on behalf of and is not a member of the family of, the person or organisation disposing of, marketing, auctioning or purchasing the Social Housing Dwelling being valued; save that where the transferee is a

local authority, that authority's District or Borough Valuer may provide the Valuation and the requirement of this paragraph (ii) will not apply.

Consultation question

6. Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

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The Homes and Communities Agency is committed to providing accessible information where possible and we will consider providing information in alternative formats such as large print, audio and Braille upon request.