



Homes &
Communities
Agency

Detailed overview of legislative changes

Deregulatory measures for social housing regulation
from 6 April 2017

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Introduction

This note is the regulator's general overview of key provisions in the HPA 2016. It is not legal advice and should not be relied upon as such. Registered providers are expected to consider how these legislative changes will affect their individual circumstances, including by taking their own legal advice where necessary. Registered providers should also be aware that this note does not cover all the changes made by the Housing and Planning Act 2016 (HPA 2016) or all changes that come into effect on 6 April 2017.

This note also focuses on the legislative changes made by the HPA 2016. The regulator intends to publish detailed guidance about how the legislation will be applied in practice in due course. In particular, it will issue directions setting out the scope, timing and content of the new notifications requirements.

The relevant provisions under the HPA 2016

Broadly, these relate to:

- **The removal of the requirement for registered providers to obtain consent for:**
 - Registered society restructures (including amalgamations, transfers of engagements, and conversions of registered societies into companies)
 - Conversions of registered companies into to registered societies
 - Changes to objects and other changes to governing documents for registered companies and registered societies
 - Disposals of social housing
 - Dissolution of registered societies
 - Company arrangements and reconstructions
- **The removal of the requirement for the Charity Commission to consult with the regulator before granting consent to a registered charity's change of objects.**
- **Introduction of a requirement to notify the regulator in relation to the following.**
 - For all providers, disposals of social housing dwellings; in addition, for non-profit providers only, disposals of other land
 - For Registered companies which are non-profit providers
 - Arrangements and reconstructions
 - Conversion into a registered society
 - Change of articles



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(Please note that the current requirement for registered companies to notify the regulator about a change of name or registered office will continue).

- For Registered societies which are non-profit providers
 - Restructuring
 - Dissolution
 - Change of Rules

- For Registered charities: change of objects
A requirement on the regulator pursuant to s.161 and s.163 of the HPA 2016 to make decisions about the eligibility for registration of any “new body” (as defined in HPA 2016) resulting from the restructure of a registered provider, including the conversion of a company into a registered society and vice versa, amalgamations and transfers of engagements under the Co-operative and Community Benefit Societies Act 2014 (CCBSA).

- **Changes in requirements about the Disposal Proceeds Fund**

After 6 April 2017 registered providers will not have to pay new proceeds from relevant disposals into a DPF; but existing DPF funds must be managed and spent in accordance with current requirements for a further period.

- **A new statutory requirement on the regulator about designation of providers on the register**

This requires it to re-designate a non-profit registered provider if it thinks it has become profit-making.

- **Amendment of the power to appoint board members and managers**

Where there has been a breach of any legal requirements, the regulator will have the power to make board member and manager appointments.



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Restructures

The HPA 2016 removes the requirement for non-profit providers to seek the regulator's consent for restructures and introduces a requirement that providers notify the regulator when undertaking certain restructures (e.g. amalgamation, transfer of engagement, company conversion to registered society and vice versa) unless the regulator takes a decision to dispense with that requirement.

The HPA 2016 also gives the regulator the power to issue directions about the timing and content of these notifications.

In addition, the HPA 2016 introduces the requirement for the regulator to make a decision on the eligibility for registration of any new body (as defined by the HPA 2016) which results from a registered provider restructuring of the type described in s.161 or s.163 of the HPA 2016 (which includes):

- i. a company conversion to registered society (under s115 CCBSA)
- ii. a transfer of engagements between registered societies (under s110 CCBSA)
- iii. a registered society conversion to a company (under s112 CCBSA)
- iv. an amalgamation of registered societies (under s109 CCBSA)
- v. an amalgamation of a registered society with a company (under s112 CCBSA)
- vi. a transfer of engagements from a registered society to a company (under s112 CCBSA).

New bodies arising from these restructures are required to be eligible for registration in line with section 112 of the HRA 2008. There will also be registration criteria for those bodies seeking to be designated as non-profit on the register. These requirements are minimal, concerning only the restructured body's governing document and mainly focussed on maintaining the statutory public register.

Under the HPA 2016, any new body arising from a restructure of the type described in s.161 or s.163 will be treated as a non-profit private registered provider until such time as the regulator is able to determine the new body's eligibility to be registered.



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The regulator consulted on these revised criteria in 2016 and the changes will come into effect on 6 April 2017 to coincide with the commencement of the deregulatory measures. [The decision statement setting out the new criteria and response to the consultation is available on the [deregulation webpage](#)].

These changes may have an effect on any restructures in progress. Details of how the regulator intends to manage restructure consent applications in progress up to the commencement of the deregulatory are set out in the document “Managing the Transition”.

Changes to governing documents

The HPA 2016 has amended the Housing and Regeneration Act 2008 (HRA 2008) to introduce a new notification requirement for providers to inform the regulator of specific constitutional changes, namely:

- Registered societies: any change to the Rules (s169A HRA 2008)
- Companies: any amendment to the articles (s169C HRA 2008)
- Registered charities: any amendment to the objects. (s169B HRA 2008)

The regulator can direct on the content and timing of these notifications as well as to dispense with specific requirements.

Changes to company name or registered address

The HPA 2016 restates the current requirement for companies to notify the regulator of a change of name or registered address. Again the regulator can dispense with these notification requirements or direct on their content and timing.



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Company arrangements and reconstructions

The HPA 2016 will remove the requirement for the regulator to consent to company arrangements and reconstructions and introduces requirements for providers to notify the regulator of:

- any voluntary arrangement under Part 1 of Insolvency Act 1986
- any order under s899 of Companies Act 2006 (court sanction for compromise arrangement)
- any order under s900 of the Companies Act 2006 (powers of court to facilitate reconstruction or amalgamation)

Registered Society Dissolutions

The requirement under HRA 2008 for the regulator to consent to statutory dissolutions of registered society providers pursuant to the CCBSA 2014 will be removed and instead the regulator must be notified of such a dissolution before the Financial Conduct Authority (FCA) may take action to register this event.

Directions covering all of the above notifications will be issued in March 2017. These directions will cover the scope, timing and content of the new notification requirements.

Designation on the register

Currently, the regulator must amend the designation on the register of a profit-making registered provider where it thinks that the provider has become a non-profit organisation. The HPA 2016 expands this duty so that the regulator will also have to amend the designation of a non-profit registered provider where it thinks that it has become profit-making.



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Disposals

The HPA 2016 will remove the current requirement for providers to seek consent to dispose of social housing dwellings under the HRA 2008 and earlier legislation. This covers all disposals including those relating to security charging. Instead, in future, all providers must notify the regulator of any disposal of a social housing dwelling, even if it has ceased to be a dwelling; and (for non-profit providers only) must also notify the regulator of any disposal of land which is not a dwelling. The regulator can direct that the requirements do not apply to certain categories of disposal, and can specify the timing and content of any notifications that are required.

Those providers registered with the Charity Commission will need to comply with the statutory requirements relating to disposals, particularly Part 7 of the Charities Act 2011. Registered charities (as opposed to exempt charities) should be aware that where they previously benefited from an exemption from this regime as a result of obtaining the regulator's consent, they will no longer benefit from such an exemption. Providers are expected to take steps to ensure that they understand this regime, including by taking legal advice where necessary.

Regulations will be issued that set out changes to the Land Registry requirements for registered providers.

A direction covering the scope, timing and content of the new notification requirements will be issued in March 2017.

Disposal Proceeds Fund (DPF)

After 6 April 2017 registered providers will not have to pay new proceeds from relevant disposals into a DPF; but existing DPF funds must be managed and spent in accordance with current requirements for a further period. Regulations have been made which contain provisions about this (the Housing and Planning Act 2016 (Commencement No. 4 and Transitional Provisions) Regulations 2017, SI 2017 No.75).

The regulator will issue further guidance in due course.