



Homes &
Communities
Agency

CONSULTATION ON

- 1. CHANGES TO THE REGISTRATION CRITERIA FOR ENTRY ONTO THE REGISTER OF PROVIDERS OF SOCIAL HOUSING**
- 2. NEW REGISTRATION CRITERIA FOR BODIES ARISING OUT OF RESTRUCTURES**
- 3. CHANGES TO THE GUIDANCE ON THE USE OF POWERS**

May 2016

Chair's foreword

Two Acts: The Welfare Reform and Work Act 2016 and the Housing and Planning Act 2016 have introduced a range of changes to the regulator's duties and powers that have led us to reconsider our criteria for registration with the regulator; and the guidance we issue on the use of our powers.

The proposed changes to the registration criteria outlined in section 1 of this consultation are in response to amendments in the Housing and Regeneration Act 2008 introduced by the Housing and Planning Act 2016. As a result, we are proposing some limited changes to our existing registration criteria for new entrants to reflect the removal of the regulator's consent regime. We are also proposing criteria for the new bodies arising out of restructures which now trigger a registration event under the Act – these are a subset of the criteria for new entrants. These criteria apply only to certain types of restructure.

The proposed changes to our guidance on our use of powers outlined at section 2 of this consultation document are in response to the changes introduced in the Welfare Reform and Work Act 2016 and the Housing and Planning Act 2016.

Our intention is to do only what is necessary to transpose the recent legislation into the regulatory framework and so the changes proposed are limited in scope. We are confident that the proposals outlined in this consultation document are appropriate and in keeping with the deregulatory nature of the Housing and Planning Act 2016.

A handwritten signature in black ink, appearing to read 'Julian Ashby', written in a cursive style.

Julian Ashby

Chair, Regulation Committee

Consultation statement

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| <p>Please respond by</p> | <p>Friday 22 July 2016 5pm</p> |
| <p>Please respond to</p> | <p>Referrals and Regulatory Enquiries Homes and Communities Agency – The Social Housing Regulator Fry Building 2 Marsham Street London SW1P 4DF</p> <p>Email: consultation@hca.gsi.gov.uk</p> <p>Please include “Registration Criteria & Use of Powers Consultation” as your subject heading.</p> <p>If you would like to discuss any issue raised in this document before sending your response, please contact our Referrals and Regulatory Enquiries Team on 0300 1234 500 (option 2) who will be pleased to help.</p> |
| <p>Why we are asking for views</p> | <p>The environment in which registered providers are operating continues to change. Both the Housing and Planning Act 2016 and the Welfare Reform and Work Act 2016 make changes to the regulator’s powers and as a result the regulator needs to change parts of its regulatory framework. Section 1 of this consultation deals with proposed minor changes to the registration criteria for new entrants applying for registration with the social housing regulator. In addition, it proposes new registration criteria for those existing providers who are restructuring their business where the Housing and Planning Act 2016 requires the regulator to take a decision to register the new body that results from the restructure. Section 2 of this consultation deals with minor amendments to our guidance in relation to our use of powers. These changes have been brought about through provisions introduced in both the Welfare Reform and Work Act 2016 and the Housing and Planning Act 2016. The regulator is required to consult on such changes.</p> |
| <p>What it means for you</p> | <p>For landlords, tenants, lenders and other stakeholders who have an interest in the social housing sector, this consultation is an opportunity to influence how the regulator will amend its registration criteria for new entrants to the sector and to influence the new registration criteria for current registered providers who are going through a restructure. It also gives the opportunity to comment on how</p> |

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| | the regulator is addressing issues relating to its use of powers in its published guidance. |
| Who is being consulted | Views are welcome from everyone who has an interest in the social housing sector in England. The regulator is required to consult certain organisations, which are listed in Annex 6. |
| How we are consulting | Alongside the publication of this consultation document, the regulator will engage in discussions with stakeholders. |
| Taking account of your views and what happens next | Once the consultation has closed, the regulator will review its proposals in light of the responses received. The regulator will then publish a decision statement before implementing the proposed changes. The date on which the changes will come into effect is yet to be determined. |
| Publication of responses | We intend to publish all formal written responses within 2-3 weeks after the closing date of this consultation. |
| Freedom of Information Act 2000/Environmental Information Regulations 2004 Data Protection Act 1998 | <p>The Homes and Communities Agency (HCA) is subject to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). Therefore, information provided in response to this consultation may be made available in accordance with either statute.</p> <p>The HCA has a statutory obligation to respond to all requests for information. To inform our responses, we consult with third parties where applicable and appropriate. Additionally, you should indicate any areas of information that you believe are particularly sensitive when submitting your consultation response.</p> <p>Confidentiality agreements are not binding under FOIA or EIR.</p> <p>The HCA will process your personal data in accordance with the Data Protection Act 1998</p> |
| Equalities statement | <p>The HCA is mindful of its statutory equality duties under section 149 of the Equality Act 2010. The HCA has published its equalities strategy which sets out 9 equality objectives that we are working on to deliver. This includes work to ensure that we pay due regard to equality when undertaking our regulatory functions.</p> <p>The regulator will take a proportionate approach to its equality obligations and has identified no specific equalities implications for this consultation. Further details are at Annex 4.</p> |

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1. Executive summary

- 1.1 This consultation document is split into two sections:
- Section 1 – Changes to our Registration Criteria
 - Section 2 – Changes to the ‘Guidance on the Regulator’s Approach to Intervention, Enforcement and Use of Powers’
- 1.2 In section 1, the regulator is consulting on changes to its registration criteria as a consequence of the provisions in the Housing and Planning Act 2016 (HPA 2016) at Chapter 4 ‘Reducing Regulation of Social Housing etc.’ The provisions affect the current registration criteria used when considering an applicant for registration (called a ‘new entrant’ in this document). The provisions of the HPA 2016 also introduce a registration decision for the regulator when a new body is created following a conversion or restructure of the business of an existing registered provider (called a ‘restructured body’ in this paper).
- 1.3 The regulator considers that Chapter 4 of the HPA 2016 (i) necessitates changes to the registration criteria for new entrants and (ii) consideration of new registration criteria that should apply to restructured bodies:
- i. minimal changes are proposed to the existing criteria for new entrants to reflect the removal of the consents regime.
 - ii. the regulator is proposing proportionate registration criteria for restructured bodies with requirements focusing on ensuring these bodies remain on the register and maintain their designation as non-profit bodies, where appropriate.
- 1.4 Section 2 of this consultation deals with proposed amendments to our Guidance Notes set out in the ‘Guidance on the Regulator’s Approach to Intervention, Enforcement and Use of Powers’. These amendments reflect the provisions in both the Welfare Reform and Work Act 2016 (WRWA 2016) and the HPA 2016 relating to the regulator’s ability to use its powers where a provider fails to comply with the requirements of the WRWA 2016 and/or the HRA 2008. The amendments also reflect the changes to the definition of “mismanagement” and the appointment of managers, the appointment of new officers and the use of other powers in the HRA 2008.
- 1.5 The HRA 2008 states that the regulator must perform its functions with a view to achieving (so far as is possible), the economic regulation objective and the consumer regulation objective. It is to do so in a way that minimises interference and (so far as is possible) is proportionate, consistent, transparent and accountable. The regulator is satisfied that the proposals contained in this document are in keeping with these requirements.
- 1.6 The regulator intends to implement the changes when the relevant provisions of the HPA 2016 come into force, the date of commencement is yet to be determined. This consultation will run for 8 weeks from publication. The shorter consultation period here reflects the fact that the changes are limited in scope and are de-regulatory.

- 1.7 Following the consultation and prior to implementation, the regulator will publish a summary of the consultation responses.

Section 1 – Registration Criteria

2. Introduction

- 2.1 The deregulatory measures in the HPA 2016 amend the HRA 2008 by removing the requirement for private registered providers to seek the regulator’s consent to constitutional changes. It also provides for the registration of certain ‘new bodies’ (the terminology of the HPA 2016) created as a result of specified restructures.
- 2.2 The removal of the consent regime for constitutional changes has led the regulator to propose changes to the existing registration criteria for new entrants to the regulated housing sector. The introduction of a registration event for new bodies has also led the regulator to consider what criteria should apply to registrations arising out of restructures.
- 2.3 The regulator is required to consult on any changes to the registration criteria.
- 2.4 Chapter 3 sets out proposed changes to the registration criteria for new entrants to the regulated sector and Chapter 4 sets out proposed new registration criteria for restructured bodies.

3. Changes to the Registration Criteria for new entrants

Overview

3.1 Under the HRA 2008, the regulator is responsible for registering and regulating providers of social housing. Any eligible provider or intending provider of social housing can be registered with the regulator (subject to meeting the registration criteria) and only registered providers are subject to regulation. Local authorities that provide social housing are subject to compulsory registration and as such the registration criteria do not apply to them.

Conditions for registration

3.2 Section 112 of the HRA 2008 sets out eligibility conditions that applicants for voluntary registration must meet and provide for registration criteria to be set by the regulator. The registration criteria can cover:

- the applicant's financial situation
- its constitution
- other arrangements for its management.

3.3 Where an application for registration by a new entrant meets the eligibility requirements and meets the regulator's registration criteria, the applicant must be registered by the regulator.

3.4 It is the regulator's registration criteria which are the subject of this part of the consultation.

Proposed changes to the existing registration criteria

3.5 The majority of changes proposed to the current registration criteria for new entrants to the sector are those that the regulator considers necessary as a consequence of the removal of the consents regime.

3.6 In addition, the regulator is seeking to ensure that it understands a registered provider's position in any group structure and that a change to the constitution of a new entrant once it is on the register will trigger a notification to the regulator. Therefore, proposals include a clarification to the existing requirement to identify the subsidiary status of any applicant.

3.7 The current criteria include specific requirements for Charitable Incorporated Organisations (CIOs) which were introduced in 2015 to reflect that CIOs were not covered by the consent requirements in the HRA 2008. The proposed changes to the registration criteria include removal of those requirements relating to consent provisions. In addition, the regulator proposes removing current requirements relating to wrongful payments and the distribution of assets to members since the regulator recognises the obligations on CIOs as registered charities and wishes to minimise the administrative burden upon such bodies.

Proposed new criteria

- 3.8 The proposed revised criteria showing tracked changes from the current criteria for new entrants are set out in Annex 1.

Consultation question

Are the proposed changes to the registration criteria for new entrants:

- a) clear and succinct?
- b) reasonable and proportionate?

4. New registration criteria for restructured bodies

Overview

- 4.1 Sections 161 and 163 of the HRA 2008 (prior to its amendment by the HPA 2016) required the regulator to consider whether it would give consent to restructuring by a registered provider and consent having been given, to register any new body which resulted from the restructuring. The HRA 2008 (as amended by the HPA) removes the requirement for the regulator to give consent to the restructuring decisions of a registered provider and requires the regulator to make a decision on the eligibility for registration of any new body which results from the restructuring process.
- 4.2 The amended legislation describes a body arising from such a restructure as a 'new body'. In this document, this is referred to as a 'restructured body'.
- 4.3 The regulator considers that a registration decision by the regulator:
- a. **will** be required in the following situations:
 - i. a company conversion to registered society
 - ii. a transfer of engagement between a registered society where the receiving registered society is not a registered provider
 - iii. a registered society conversion to a company
 - iv. a partial transfer of engagement from a registered society to a company where the receiving company is not a registered provider
 - b. **may be required in the following situations (depending upon the individual circumstances):**
 - i. an amalgamation of registered societies
 - ii. an amalgamation of companies
 - iii. an amalgamation of a registered society with a company
 - c. **would not be required in the following situations:**
 - i. a transfer of engagement between registered societies which are existing registered providers
 - ii. a partial transfer of engagement between a registered society and a company where both are existing registered providers
- 4.4 The regulator considers that new criteria are necessary to support its registration decision and ensure appropriate designation of restructured bodies on the register.
- 4.5 The regulator will need to consider whether a restructured body resulting from one of the specified restructures is eligible for registration under Section 112 of the HRA 2008 and meets the regulator's registration criteria; it must notify the provider if it decides not to register it. If the restructured body is eligible for registration and meets the registration criteria, it must be registered as a non-profit organisation – although if

the regulator thinks that it has become a profit making organisation, it will then be obliged to re-designate it as profit making. Pending the regulator's decision on registration, the restructured body is to be treated as if it were registered and designated as a non-profit organisation.

- 4.6 The regulator considers it disproportionate for restructured bodies to have to comply with the same registration criteria as new entrants given that the restructures involve bodies already on its register. Therefore, it is proposing simplified registration criteria for the restructured bodies and a simple registration process.

The Regulator's approach

- 4.7 For those decisions on registration that relate to restructured bodies, the regulator's main aim is to ensure that the requirements for continuing registration are straightforward and proportionate. A further aim is to ensure that any provider remaining on the register with a non-profit designation continues to meet the requirements for that designation.

Proposed criteria

- 4.8 Existing registered providers are required, by virtue of their registration, to meet the regulator's standards. Therefore, the regulator has taken the view that it does not need to specify criteria in relation to compliance with the standards (as it does for new entrants) since providers will be obliged to continue to meet standards through any restructure and in the resulting restructured body.
- 4.9 The proposed registration criteria for restructured bodies that wish to be registered as non-profit are, therefore, limited to the same requirements relating to their constitution required of new entrants who seek designation as a non-profit provider.
- 4.10 The regulator does not propose any criteria for restructures where the restructured body is profit making. Due to the wording in the HRA 2008 (as amended by the HPA 2016), it must register such bodies as non-profit but will immediately amend the designation on the register.

Impact of new criteria

- 4.11 The impact of the new criteria on registered providers should be minimal and the proposed process supporting this registration will be simple and enable the regulator to take prompt decisions on registration of the restructured body.

Equality

- 4.12 The regulator is mindful that it must comply with the public sector equality duty when taking decisions. Accordingly, the regulator will expect restructured bodies to demonstrate compliance with the Equality Act 2010 in addition to meeting the registration criteria. The regulator will test this by posing the same equality questions to a restructured body as are currently posed to a new entrant seeking registration but it will manage the outcome once that body is on the register. Further details on

how the regulator is complying with its public sector equality duty are set out in the Preliminary Equality Analysis in Annex 4.

Registration criteria for restructured bodies

4.13 The proposed new criteria for restructured bodies are set out in Annex 1.

Consultation question

Are the proposed registration criteria for restructured bodies:

- a) clear and succinct?
- b) reasonable and proportionate?

Section 2 – Changes to guidance on the use of powers

5. Introduction

- 5.1 The WRWA and the HPA 2016 have introduced changes to the regulator's enforcement powers that have led the regulator to consider revising the guidance published on the use of the regulator's powers, 'Guidance on the Regulator's Approach to Intervention, Enforcement and Use of Powers'.
- 5.2 The deregulatory measures in the HPA 2016 amend the HRA 2008 by introducing a revised definition of "mismanagement" (in s.275 HRA 2008) which clarifies the circumstances in which the regulator can apply some of its enforcement powers. The amendments to the HRA 2008 also change one of the three specific circumstances in which the regulator might use its enforcement power to appoint new officers.
- 5.4 The WRWA introduced requirements for the setting and charging of rent for social housing. It also introduced a new ground for the exercise of some of the regulator's enforcement powers where a registered provider fails to comply with the WRWA.
- 5.5 The regulator is proposing changes to the guidance on the use of its powers to clarify the circumstances in which it will exercise its powers to take account of all the legislative changes outlined above.
- 5.6 The regulator is required to consult on changes to its guidance under Chapter 7 HRA 2008 and this statutory consultation sets out the regulator's proposals for its revised guidance. The revised Guidance Notes are included at Annex 2 and show the existing Guidance Notes with the proposed amendments.
- 5.7 While the revised definition of "mismanagement" applies to a number of the regulator's enforcement powers, it is only necessary to update the guidance on the appointments of managers and officers and the power to require a management tender. The regulator's approach has been to keep any changes to a minimum and to only reflect the actual changes in legislation. The regulator's enforcement approach has not altered significantly as a result of these changes.

6 Summary of the changes to the guidance on the use of powers

Overview

6.1 This section provides a summary of the changes to some of the Guidance Notes included in the 'Guidance on the Regulator's Approach to Intervention, Enforcement and Use of Powers'. The changes proposed are minimal and reflect only what the regulator considers is required to transpose the new legislation.

The proposed changes

6.2 The table below highlights the guidance note in question and what the proposed change is.

| Guidance Note No. | Subject of Guidance Note | Proposed Change |
|-------------------|--------------------------|---|
| 10 | Enforcement notices | The proposed changes comprise the addition of a new ground for the use of enforcement notices by the regulator, i.e. the regulator may issue an enforcement notice to a registered provider or local authority where the registered provider or local authority fails to comply with the requirements of the WRWA. No change to the regulator's approach to the exercise of the power is proposed |
| 11 | Penalties | The proposed changes comprise the addition of a new ground for the imposition of penalties by the regulator upon a registered provider, i.e. the regulator may impose a penalty on a registered provider where the registered provider fails to comply with the requirements of the WRWA. No change to the regulator's approach to the exercise of the power is proposed |
| 12 | Compensation | The proposed changes comprise the addition of a new ground for the award of compensation by the regulator to a victim of a failure by a registered provider, i.e. the regulator may direct an award of compensation to a victim payable by the registered provider where the registered provider fails to comply with the requirements of the WRWA. No change to the regulator's approach to the application of the power is proposed |
| 13 | Appointment of Manager | The proposed changes comprise: <ul style="list-style-type: none"> inclusion of a reference to the revised definition of "mismanagement" in the second ground for the regulator's exercise of the power of appointing a manager (and thereby clarifying that this relates to where the registered provider managed its affairs in breach of legal requirements) |

| | | |
|----|------------------------|---|
| | | <ul style="list-style-type: none"> • the addition of a new ground for the regulator’s appointment of a manager, i.e. the regulator may appoint a manager where the registered provider fails to comply with the WRWA • inclusion of a clarification as to when the regulator is most likely to exercise the power, i.e. when the registered provider has failed to meet a standard or has mismanaged its affairs (and removing the reference to where the registered provider may require additional leadership and/or staffing resources to deliver essential change) |
| 18 | Appointment of Officer | <p>The proposed changes comprise:</p> <ul style="list-style-type: none"> • the inclusion of a reference to the revised definition of “mismanagement” • inclusion of a clarification as to when the regulator intends to exercise the power, i.e. where there has been a failure against a standard or mismanagement • an amendment to the ground for the replacement of an officer under s.266 of the HRA 2008 so that the replacement can be made only in specified circumstances • an amendment to the ground for the appointment of an officer where the registered provider has mismanaged its affairs, i.e. an officer may be appointed in a situation where the registered provider has not been managed in accordance with legal requirements • removal of the indication that the regulator is likely to exercise its powers of appointment when it is necessary to do so for the proper management of the registered provider’s affairs and replacing it with the reference to where it has mismanaged its affairs (as per the revised definition of mismanagement) • removal of a further 6 grounds when the regulator may appoint an officer to reinforce the restriction of the exercise of the power to where there has been a failure in standards or mismanagement • inclusion of clarification on when the regulator may replace an officer under s.266 HRA 2008 which is where the governing body does not have the required capability, expertise and skills • inclusion of clarification on: who can be appointed as an officer; amendments to the information to be provided by the regulator to the appointee; the officer’s deregulated duties owed by the officer towards the regulator; the regulator’s deregulated duties owed to the officer; and the deregulated expectations of an officer in its appointment |

| | | |
|----|-------------------|---|
| 19 | Management tender | <p>The proposed changes comprise:</p> <ul style="list-style-type: none"> • inclusion of a reference to the revised definition of “mismanagement” in the second ground for the regulator’s exercise of the power of requiring a registered provider to tender some or all of its management functions (and thereby restricting this ground to where the registered provider managed its affairs in breach of legal requirements) • inclusion of a new ground for use of this power to require a management tender, i.e. the regulator may do so where the registered provider fails to comply with the WRWA • inclusion of clarification as to when the regulator intends to exercise the power, i.e. where there has been a failure against a standard or mismanagement • restriction of one of the triggers for the regulator’s likely exercise of this power to where there has been poor performance or serious detriment to tenants, and the removal of the trigger which refers to failure to deal with previous relevant regulatory interventions |
|----|-------------------|---|

Consultation Question

Are the proposed changes to the Guidance Notes:

- a) clear and succinct?
- b) reasonable and proportionate?

Annex 1

Proposed registration requirements

The text below shows the proposed changes to the original text of the preamble and the registration criteria. Insertions in the registration criteria are highlighted in red and deletions have been shown struck through.

Registration requirements

These registration requirements do not apply to local authorities.

As well as new entrants to the sector, some of these registration requirements apply where there is a new body to be registered following the restructure of a registered provider in the following circumstances:

- a registered provider which has converted into a registered society pursuant to the section 115 of the Co-operative and Community Benefit Societies Act 2014;
- an amalgamation or re-construction pursuant to sections 109 (amalgamation of societies), 110 (transfer of engagements between societies) and 112 (conversion of society or amalgamation of society into a company etc.) of the Co-operative and Community Benefit Societies Act 2014.

Registration for new entrants is voluntary except where organisations receive financial assistance from the Homes and Communities Agency or from the Greater London Authority to provide low cost rental accommodation and the organisation intends to be the landlord of those homes when they are let. Local authorities are subject to the 'compulsory registration' provisions in Section 114A of the Housing and Regeneration Act 2008 ('HRA 2008').

Section 112 of the HRA 2008 sets out the conditions to be satisfied if a body is to be eligible for registration. A body must first meet condition 1 of the statutory eligibility requirements and, once the regulator has established that they meet these requirements, will be assessed against the condition 2 criteria that the regulator has set.

The HRA 2008 does not place any restrictions on the types of body that may apply for registration and bodies may be profit making or non-profit making.

Eligibility conditions

In assessing whether a body meets the eligibility requirements for registration under the ~~act~~ HRA 2008, the regulator will need to be satisfied on each of the following grounds (set out in Section 112 of the HRA 2008):

- the body is an English body, as defined in section 79 of the HRA 2008
- the body is a provider, as defined in section 80 of the HRA 2008, or an intending provider

- the housing that the body provides, or intends to provide, is social housing, as defined in sections 68-71 of the HRA 2008
- the social housing is being, or will be, provided in England

If the regulator is satisfied that a body is eligible, it will be assessed against the relevant registration criteria below.

Registration Criteria

New entrants

An applicant must:

- ~~An applicant must~~ meet the Governance and Financial Viability Standard at the point of registration and demonstrate it can sustain its financial viability on an ongoing basis
- ~~An applicant must~~ have in place management arrangements that enable it to demonstrate the capacity to meet the other regulatory standards

An applicant that is a registered or non-registrable charity must within its constitution:

- have as an object the provision of social housing (which can be worded as social housing in the form of almshouse accommodation or as charitable social housing)
- if it is a subsidiary, must state as much and **ensure the parent and its controls are clearly identified** ~~name the parent body (in such a way that the parent cannot be changed without seeking the regulator's consent)~~
- ~~if it is not a subsidiary, state that it has no power to become one without seeking the regulator's consent~~

A non-profit applicant which is not a registered or non-registrable charity must within its constitution:

- have as an object the provision of social housing
- embed non-profit status
- if it is a subsidiary, must state as much and **ensure the parent and its controls are clearly identified** ~~name the parent body (in such a way that the parent cannot be changed without seeking the regulator's consent)~~
- ~~if it is not a subsidiary, state that it has no power to become one without seeking the regulator's consent~~

An applicant which is a Charitable Incorporated Organisation (CIO) must have

within its constitution (in addition to the requirements above for applicants that are registered charities) ~~within its constitution requirements that:~~

- if it is a subsidiary, state as much and ensure that the identity of the parent and its controls are clearly stated
- ~~where it is a subsidiary, changes to its objects, to provisions for the non-distribution of assets to a member or members or to provisions enabling the CIO to become, or cease to be, a subsidiary of another body~~ **identifying the parent and/or its controls, shall be notified to the regulator only be effective if the consent of the regulator is obtained**
- ~~in the case of wrongful payments made by the CIO to one or more of its members, the CIO shall take all reasonable steps to recover the sum(s) wrongfully paid out~~
- where steps are taken preliminary to winding up or a voluntary arrangement in relation to the CIO, it shall notify the regulator of the fact
- changes to the provisions required by the regulator ~~may only be made if the~~ **must be notified to the regulator has consented to the change**

Restructured bodies

'Restructured body' means:

- a registered provider which has converted into a registered society pursuant to the section 115 of the Co-operative and Community Benefit Societies Act 2014
- an amalgamated or re-constituted body created pursuant to section 109 (amalgamation of societies), section 110 (transfer of engagements between societies) or section 112 (conversion of society into a company, amalgamation of society into a company, or transfer of a society's engagements into a company) of the Co-operative and Community Benefit Societies Act 2014

A restructured body that is a registered or non-registrable charity must within its constitution:

- have as an object the provision of social housing (which can be worded as social housing in the form of almshouse accommodation or as charitable social housing)
- if it is a subsidiary, must state as much and ensure the parent and its controls are clearly identified

A non-profit restructured body which is not a registered or non-registrable charity must within its constitution:

- have as an object the provision of social housing
- embed non-profit status
- if it is a subsidiary, state as much and ensure the parent and its controls are clearly identified

A restructured body which is a CIO must have within its constitution (in addition to the requirements above for applicants that are registered charities) requirements that:

- if it is a subsidiary, state as much and ensure that the identity of the parent and its controls are clearly stated
- where it is a subsidiary, changes to provisions identifying the parent and/or its controls, shall be notified to the regulator
- where steps are taken preliminary to winding up or a voluntary arrangement in relation to the CIO, it shall notify the regulator of the fact
- changes to the provisions required by the regulator must be notified to the regulator

Annex 2

Extracts from the ‘Guidance on the Regulator’s Approach to Intervention, Enforcement and Use of Powers’

The text below comprises extracts taken from the publication ‘Guidance on the Regulator’s Approach to Intervention, Enforcement and Use of Powers’ dated April 2015 amended to show the proposed changes to the original text. Insertions are highlighted in red and deletions have been shown struck through.

Guidance note 10

Guidance on sections 219 to 225: enforcement notices

Purpose

- 1 This document gives general advice and guidance on how the regulator proposes to exercise the power on enforcement notices. This is an enforcement power and is set out in Part 2 Chapter 7 sections 219 to 225 of the Housing and Regeneration Act 2008 (the HRA 2008).

Scope

- 2 The power may be exercised in relation to all providers including a non-profit registered provider, a profit making registered provider and a local authority provider.

Background and context to the use of the power

- 3 A provider is responsible for ensuring that it manages itself effectively, achieves the standards set by the regulator, and engages positively with the regulator’s regulatory framework. Where a failure against a standard or other problem has been identified, the regulator expects providers to respond in a prompt and effective manner. It may be necessary for the regulator to step in and exercise this power when a provider fails to do so.

Potential triggers to the exercise of the power

- 4 Section 220 of ~~the Act~~ **the HRA 2008** includes ~~ten~~ **eleven** specific circumstances in which the regulator may exercise the power of enforcement notices. They are:
 - 4.1. where the registered provider has failed to meet an economic standard or failed to meet a consumer standard and there are reasonable grounds to suspect there has been or there is a risk of serious detriment to tenants

- 4.2. where the affairs of the registered provider have been mismanaged
- 4.3. where the registered provider has failed to comply with an earlier enforcement notice
- 4.4. where the registered provider has failed to publish information in accordance with a requirement under section 228(3) or 240(3) of ~~the Act~~ **the HRA 2008**
- 4.5. where the interests of tenants of the registered provider require protection
- 4.6. where the assets of the registered provider require protection
- 4.7. where the registered provider has given an undertaking under section 125 of ~~the Act~~ **the HRA 2008** and failed to comply with it
- 4.8. where the registered provider has failed to pay an annual fee under section 117(2) of ~~the Act~~ **the HRA 2008**
- 4.9. where an offence under Part 2 of ~~the Act~~ **the HRA 2008** has been committed by a registered provider
- 4.10. where the registered provider has failed to comply with an order made by an ombudsman appointed by virtue of section 124 of ~~the Act~~ **the HRA 2008**
- 4.11. **where the registered provider has failed to comply with relevant provisions of the Welfare Reform and Work Act 2016 (WRWA) or with regulations made by the Secretary of State under the WRWA.**

- 5 Except in cases where urgent action is required, the regulator will attempt to secure the voluntary agreement of the provider to take the necessary action before issuing an enforcement notice. In reaching a decision to issue a notice, the regulator will have regard to the willingness, capacity and resources available to the provider to undertake the necessary action.

Process

- 6 ~~When a problem is identified~~ **Where the exercise of the power has been triggered**, the regulator will bring it to the notice of the provider and seek information on the provider's intended response. The regulator will take account of this intended response in considering whether an enforcement notice is needed. If the regulator considers that an enforcement notice is required, it will be issued in writing to the provider.
- 7 When issuing an enforcement notice, the regulator will:
 - specify the grounds on which the enforcement notice is given
 - specify the action the regulator requires the registered provider to take

- specify when the action is to be taken
- specify what information the registered provider must provide to the regulator to demonstrate that the required action has been completed
- explain that a registered provider who is given an enforcement notice may appeal to the High Court
- explain that the regulator may withdraw the enforcement notice by giving notice to the registered provider
- explain that if a registered provider does not comply with the enforcement notice the regulator may consider exercising other regulatory or enforcement powers

8 The regulator expects the provider to:

- take prompt and effective action in accordance with the direction in the enforcement notice
- provide evidence to demonstrate its achievement of the actions specified in the notice
- co-operate fully with the regulator
- co-ordinate its communications strategy on all matters relating to enforcement with the regulator, and to give the regulator the opportunity to comment on the content and timing of any news releases or other public statements

Notification

9 When the regulator issues an enforcement notice, it will send a copy of it to:

- the Greater London Authority where it relates to a provider owning land in Greater London
- the Secretary of State where it relates to a local authority provider

Guidance note 11

Guidance on sections 226 to 235: penalties

Purpose

- 1 This document gives general advice and guidance on how the regulator may exercise the power on penalties. This is an enforcement power and is set out in **Part 2** Chapter 7 sections 226 to 235 of the Housing and Regeneration Act 2008 (~~the Act~~ **the HRA 2008**).

Scope

- 2 The power may be exercised in relation to a non-profit registered provider, or a profit making registered provider. It may not be exercised in relation to a local authority.

Background and context to the use of the power

- 3 This power allows the regulator to penalise failure on the part of registered providers by the imposition of fines.

Potential triggers to the exercise of the power

- 4 Section 227 of ~~the Act~~ **the HRA 2008** includes ~~six~~ **seven** specific circumstances in which the regulator may exercise the power of imposing penalties. They are:
 - 4.1 where the registered provider has failed to meet an economic standard or failed to meet a consumer standard and there are reasonable grounds to suspect there has been or there is a risk of serious detriment to tenants
 - 4.2 where the affairs of the registered provider have been mismanaged
 - 4.3 where the registered provider has failed to comply with an enforcement notice
 - 4.4 where the registered provider has given an undertaking under section 125 of ~~the Act~~ **the HRA 2008** and failed to comply with it
 - 4.5 where the registered provider has failed to pay an annual fee under section 117 (2) of ~~the Act~~ **the HRA 2008**
 - 4.6 where an offence under Part 2 of ~~the Act~~ **the HRA 2008** has been committed by a registered provider
 - 4.7 **where the registered provider has failed to comply with relevant provisions of the Welfare Reform and Work Act 2016 (WRWA) or with regulations made by the Secretary of State under the WRWA**

- 5 In considering whether to penalise a provider, the regulator will take into account all relevant circumstances of the case, including the provider's financial position and any potential detrimental imposition on its tenants. It will also consider whether a penalty is the most appropriate response in each case, or if it should use one or more of its other powers.

Process

Warning

- 6 Before a penalty notice is issued, the regulator will give the provider a 'pre-penalty warning'. This will warn the provider that the regulator is considering imposing a penalty and will set out the grounds on which the regulator believes the penalty can be imposed.
- 7 The pre-penalty warning will include any details the regulator is able to give concerning the likely amount of the penalty. It will provide details of how the provider can make representations to the regulator. It will indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, a penalty. The warning will also include details of the enforcement of the proposed penalty.
- 8 The pre-penalty warning will be copied to the Greater London Authority (GLA) where it relates to a provider owning land in Greater London and any other persons the regulator thinks appropriate, in particular any person who provided information as a result of which the pre-penalty warning is being issued.

Representations

- 9 The regulator will specify a period in the pre-penalty ~~notice~~ **warning** during which the provider may make representations concerning the imposition of the proposed penalty or its amount. This period will be of at least 28 days and will begin on the date the pre-penalty ~~notice~~ **warning** is received by the provider. ~~We~~ **The regulator** will normally send such notices by recorded delivery and ~~we~~ will work on the basis that the provider receives the documents the day after they are sent. At the end of the period, the regulator will consider any representations and decide whether to impose the penalty.

Imposition

- 10 A penalty is imposed by the regulator giving a penalty notice to the provider. The notice will set out the grounds on which the penalty is imposed, the amount, payment method, payment period, the interest to be charged on any late payment and the means of appeal. The notice may require the provider to publish information about the penalty and may set out the manner of that publication.

Notifying the GLA

- 11 When a penalty is imposed the regulator will send a copy of it to the GLA where it relates to a provider owning land in Greater London.

Amount

- 12 Penalties for an offence under Part 2 of ~~the Act~~ **the HRA 2008** may not exceed the maximum amount of fine that a magistrates' court could impose for the relevant offence, and the notice will confirm that the penalty falls within the current limit. For all other instances the penalty imposed may not exceed £5,000 or other maximum amount as ordered by the Secretary of State.

Destination

- 13 Money received by way of a penalty will be paid to the Homes and Communities Agency (HCA) to be used at its discretion for investment in social housing. Before making such payment, the regulator may deduct a sum representing its direct and indirect costs and expenditure in administering the penalty. The regulator will establish and publish a methodology for calculating these deductions.

Enforcement

- 14 The penalty will be treated as a debt owed to the regulator. If payment is not made by the date specified in the notice the regulator may charge interest on the debt from that date and may impose one or more additional penalties in accordance with any regulations that may be made by ~~the~~ **HM** Treasury.
- 15 The regulator may include a provision in the penalty notice allowing a discount if the penalty is paid on or before the specified date. The regulator will establish and publish a methodology for calculating any discounts.

Appeal

- 16 The regulator has developed a protocol which allows a provider to appeal against its decisions on the use of some enforcement powers. In addition, a provider who is given a penalty notice may appeal to the High Court against the imposition of the penalty, its amount, or both.

Guidance note 12

Guidance on sections 236 to 245: compensation

Purpose

- 1 This document gives general advice and guidance on how the regulator may exercise the power on the award of compensation. This is an enforcement power and is set out in **Part 2** Chapter 7 sections 236 to 245 of the Housing and Regeneration Act 2008 (~~the Act~~ **the HRA 2008**).

Background and context to the use of the power

- 2 This power allows the regulator to award compensation to a victim of a failure on the part of a registered provider.

Potential triggers to the exercise of the power

- 3 Section 237 of ~~the Act~~ **the HRA 2008** includes ~~two~~ **three** specific circumstances in which the regulator may exercise the power on awarding compensation. They are:

- 3.1. where the registered provider has failed to meet an economic standard or failed to meet a consumer standard and there are reasonable grounds to suspect there has been or there is a risk of serious detriment to tenants
- 3.2. where the registered provider has given an undertaking under section 125 of ~~the Act~~ **the HRA 2008** and failed to comply with it
- 3.3. **where the registered provider has failed to comply with relevant provisions of the Welfare Reform and Work Act 2016 (WRWA) or with regulations made by the Secretary of State under the WRWA**

- 4 The regulator is most likely to find it appropriate to exercise the power in circumstances where a breach of the standards has resulted in serious detriment to a tenant, or tenants, as a result of a failure against a standard, or if the provider has failed to pay compensation that has been awarded by an ombudsman.

Scope

- 5 The power may be exercised in relation to a non-profit registered provider or a profit making registered provider. It cannot be applied to a local authority.
- 6 Awards of compensation may be made to persons who have suffered as a result of the failure provided that they are tenants of the provider.
- 7 If the housing ombudsman has already awarded compensation to a particular person on a particular matter, the regulator may not award

compensation to that person on that matter unless the provider has not made the payment directed by the ombudsman.

Process

Warning

- 8 Before a compensation notice is issued, the regulator will give the provider a 'pre-compensation warning'. This will warn the provider that the regulator is considering awarding compensation and will set out the grounds on which the regulator believes the compensation can be awarded.
- 9 The pre-compensation warning will include any details the regulator is able to give concerning the likely amount of the award. It will provide details of how the provider can make representations to the regulator. It will indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, an award. The warning will also include details of the enforcement of the proposed award. Before issuing a pre-compensation warning, the regulator will consult with the relevant ombudsman.
- 10 The pre-compensation warning will be copied to the Greater London Authority (GLA) where it relates to a provider owning land in Greater London and any other persons the regulator thinks appropriate, in particular any person who provided information as a result of which the pre-compensation warning is being issued.

Representations

- 11 The regulator will specify a period in the pre-compensation ~~notice~~ **warning** during which the provider may make representations to the regulator concerning the proposed award of compensation or its amount. This period will be of at least 28 days and will begin on the date the pre-compensation notice is received by the provider. At the end of the period, the regulator will consider any representations and decide whether to impose the compensation.

Award of compensation

- 12 Compensation is awarded by the regulator giving a compensation notice to the provider and the person(s) to be compensated. The regulator will establish and publish a methodology for determining when an award of compensation would be appropriate and for setting the level of compensation to be awarded.
- 13 The notice will set out the grounds on which the award is made, the amount, to whom it must be paid, the payment period, the interest to be charged on any late payment and the means of appeal. The notice may require the provider to publish information about the award and may set out the manner

of that publication.

Impact

- 14 When considering whether to award compensation or the amount of compensation to be awarded, the regulator will take account of information it has on the financial situation of the provider and the likely impact of the award on the provider's ability to provide services.
- 15 The regulator will aim to avoid jeopardising the financial viability of the provider, preventing the provider from honouring financial commitments or preventing the provider from taking action to remedy the matters on the grounds of which the compensation might be awarded.

Enforcement

- 16 The award will be treated as a debt owed to the person to whom it is awarded. If payment is not made by the date specified in the notice, the regulator may charge interest on the debt from that date and may impose additional compensation.

Appeal

- 17 The regulator has developed a protocol which allows a provider to appeal against its decision on the use of some enforcement powers. In addition, a provider who is given a compensation notice may appeal to the High Court against the award of compensation, its amount, or both.

Guidance note 13

Guidance on sections 251 to 252: appointment of manager

Purpose

- 1 This document gives general advice and guidance on how the regulator may exercise the power of appointment of a manager. This is an enforcement power and is set out in **Part 2** Chapter 7 sections 251 to 252 of the Housing and Regeneration Act 2008 (~~the Act~~**the HRA 2008**). ~~It may be exercised in relation to non-profit private registered providers and for-profit private registered providers.~~

Scope

- 2 The power may be exercised in relation to non-profit registered providers and profit making registered providers. It may not be exercised in relation to a local authority provider.

Background and context to the use of the power

- 3 A provider is responsible for ensuring that it manages itself **effectively in accordance with any applicable legal requirements, meets** ~~achieves~~ the standards set by the regulator, and engages positively with the regulator's regulatory framework. In some circumstances it may be necessary to appoint a manager to a provider.

Potential triggers to the exercise of the power

- 4 ~~the Act~~**The HRA 2008** sets out ~~the~~ **three** specific circumstances in which the regulator may exercise this power. These are:
 - 4.1. where the registered provider has failed to meet a standard
 - 4.2. where the affairs of the registered provider have been mismanaged in relation to social housing – **“mismanagement” in relation to the affairs of a registered provider is defined in section 275 of the HRA 2008 as managed in breach of any legal requirements (imposed by or under an act or otherwise)**
 - 4.3. **where the registered provider has failed to comply with relevant provisions of the Welfare Reform and Work Act 2016 (WRWA) or with regulations made by the Secretary of State under the WRWA**
- 5 The regulator is most likely to exercise the power in circumstances where **there has been a failure to meet a standard or the affairs of the provider have been mismanaged and the regulator** ~~it~~ considers that the provider:
 - is facing critical financial viability problems that require urgent action

to remedy; and/or

- is failing to address serious deficiencies in the delivery of services where there are reasonable grounds to suspect there has been or there is a risk of serious detriment to some or all of a provider's tenants

~~requires additional leadership and/or staffing resources to deliver essential organisational change~~

- 6 Key factors in a decision to appoint a manager will include the regulator's assessment of the seriousness of the problem, the need for additional professional support, and the registered provider's willingness and ability to take effective action without the need for the regulator to use this power.

Appointment process

- 7 Before making an appointment, the regulator will give the provider a warning notice. This notice will explain that the regulator is considering exercising this power, set out the grounds on which that action is proposed and explain its effects. The warning notice will specify a period during which the provider may make representations to the regulator. That period will commence on the date the registered provider receives the notice and will be for no less than 28 days. ~~We~~ **The regulator** will normally send such notices by recorded delivery and ~~we~~ will work on the basis that the documents are received by the provider the day after they are sent.
- 8 The warning notice will indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, the appointment of a manager.
- 9 The regulator will send a copy of the warning notice to the Greater London Authority (GLA) where it relates to a provider owning property in Greater London and any other persons the regulator thinks appropriate, in particular any person who provided information as a result of which the warning notice is issued.

Terms of appointment

- 10 The regulator will normally require the registered provider to appoint the manager. In exceptional cases, for example, where it has serious concerns about the performance of the governing body, the regulator may appoint the manager itself.
- 11 Managers will be individuals, rather than corporate bodies, although the individual may work for a corporate body. The individual will be selected by the regulator on the basis of relevant professional experience. The appointment may relate to the provider's affairs generally in regard to social housing or in relation to a specific aspect of social housing.

- 12 The manager's terms and conditions (including remuneration, which will be paid by the provider) will be specified by the regulator and included in the notice of appointment. In setting the remuneration level, the regulator will have regard to market rates for the specified work and the financial circumstances of the provider.
- 13 The manager will have any power specified in the notice of appointment and any other additional power he or she requires to achieve the purposes of the appointment. Where the manager considers that additional powers are required, he or she will discuss and agree these with the regulator.
- 14 The regulator may require the manager to report to it on the affairs specified in the appointment notice.

Notification to the GLA

- 15 When a manager is appointed, the regulator will notify the GLA where the appointment relates to a provider owning property in Greater London.

Appeal

- 16 The regulator has developed a protocol which allows a provider to appeal against its decision on the use of some enforcement powers. In addition, a provider may appeal to the High Court against the appointment of a manager or a requirement to appoint.

Guidance note 18

Guidance on section 269: appointment of new officers

Purpose

- 1 This document gives general advice and guidance on how the regulator may exercise the power on the appointment of a new officer. This is an enforcement power and is set out in **Part 2** Chapter 7 section 269 of the Housing and Regeneration Act 2008 (~~the Act~~ **the HRA 2008**). ~~It may be exercised only in relation to a non-profit registered provider and excludes local authorities.~~

Scope

- 2 The power may be exercised only in relation to an officer of a non-profit registered provider. It cannot be applied to a local authority provider or to a profit making registered provider.
- 3 The ~~term~~ **word** “officer” is defined in section 270 of ~~the Act~~ **the HRA 2008 in relation to the various constitutional arrangements of a registered provider. The word “mismanagement” in relation to the affairs of a registered provider is defined in section 275 of the HRA 2008 as managed in breach of any legal requirements (imposed by or under an Act or otherwise).**
- 4 This power may be exercised in relation to an officer of a registered charity only if the charity has received public assistance, as defined in section 274 of ~~the Act~~ **the HRA 2008**. In summary, this means that the registered charity must have received certain specified loans or grants from public sources or had property transferred to it by a local authority. The power to appoint an officer to a registered charity may be exercised only if the regulator has consulted the Charity Commission.

Background and context to the use of the power

- 5 The provider is responsible for ensuring that the organisation is properly governed and viable, and achieves the standards set by the regulator. In circumstances where there has been a failure against a standard or where a provider has been mismanaged, the regulator will assess the most appropriate course of action. ~~We~~ **The regulator** will consider the willingness of members of the provider’s governing body to contribute positively to a timely resolution of the ~~presenting problems~~ **failure against a standard or mismanagement** and whether they have the capability, expertise and skills in sufficient depth to achieve a satisfactory outcome. If the regulator concludes that they do not, it may appoint officers to the governing body.
- 6 The appointment of officers is intended to give the provider a range of relevant additional skills and expertise to assist in ~~addressing the regulator’s concerns. It is a supportive action designed to act as the catalyst for the changes necessary to resolving~~ **ing** the failure **against standards** or

mismanagement.

Potential triggers to the exercise of the power

7 Section 269 of ~~the Act~~ **the HRA 2008** includes three specific circumstances in which the regulator may exercise the power on the appointment of new officers. They are:

7.1. to replace an officer removed under section 266 of ~~the Act~~ **the HRA 2008**, that is the removal of an officer ~~without an inquiry~~ **in certain specified circumstances such as bankruptcy**

7.2. where there are no officers

7.3. **to ensure that the registered provider's affairs are managed in accordance with legal requirements (imposed by or under an Act or otherwise)** ~~where the regulator thinks an additional officer is necessary for the proper management of the provider's affairs~~

8 The regulator is most likely **to exercise the power** to appoint an additional officer ~~because it is necessary to do so for the proper management of the provider's affairs, particularly where in the opinion of the regulator one or more of the following circumstances apply:~~

- the provider's affairs have been mismanaged **in accordance with the definition in section 275 of the HRA 2008**
- there has been a failure against one or more economic standards
- there has been a failure against one or more consumer standards ~~where there are reasonable grounds to suspect there has been or there is a risk of a serious detriment to tenants~~
- it is necessary to replace an officer removed in accordance with the provisions of section 266 of ~~the Act~~ **the HRA 2008**, ~~that is in certain specified circumstances such as bankruptcy~~
- where there are no officers
- ~~the provider has failed to deal with previous regulatory interventions to the satisfaction of the regulator~~
- ~~the governing body lacks the skills and experience to run the business~~
- ~~there has been a lack of proper control by the governing body~~
- ~~there has been a failure to effectively challenge the executive team by the governing body, and that failure has been detrimental to the business~~
- ~~it is necessary to replace an officer suspended or removed during or following an inquiry~~

- ~~the case raises matters of wider significance or concern to the social housing sector~~

This is not an exhaustive list and the regulator may conclude that it is necessary to **consider** exercising the power in other circumstances **that meet the statutory grounds for appointments** to those set out above.

- 9 When the regulator exercises its power to remove an officer under section 266, it will always consider whether it is necessary to replace the officer who has been removed. It will make its decision in the light of the circumstances of the provider. In particular, it will assess ~~the level of risk associated with the provider and~~ whether the governing body has the capability, expertise and skills in sufficient depth to **resolve any failure against standards or mismanagement** ~~achieve the proper management of the provider's affairs, in the light of that regulatory risk assessment.~~
- 10 It is most unusual for there to be no officers on the governing body of a provider, so the regulator expects to have to exercise its power to appoint a person as an officer in these circumstances on very rare occasions. ~~The trigger for such action is clear.~~

The power

The restrictions on the number of appointed officers

- 11 The regulator may appoint more than one officer to the governing body of a provider. ~~the Act~~ **The HRA 2008** specifies that in general the use of this power overrides any restriction on eligibility or numbers of officers imposed by the provider's constitution. However, this is balanced by a restriction that in most circumstances the number of appointed officers must be a minority of officers of the provider. The regulator may appoint more than a minority of the officers of a provider only if:
- the provider has fewer officers than required by its constitution
 - the provider's constitution does not specify a minimum number of officers
- 12 The regulator will decide how many appointments to make based on **the need for additional capability, expertise and skills sufficient to resolve the failure against standards or mismanagement** ~~the circumstances of the case~~ and the constitution of the provider. The regulator will review the number of appointed officers from time to time and may adjust the number where it **is proportionate to do so** ~~concludes that the circumstances of the case make it necessary to do so.~~

The period and the terms of an appointment

- 13 ~~the Act~~ **The HRA 2008** requires the order appointing an officer to specify the period for which, and the terms on which, office is to be held. The regulator will usually appoint officers for an initial period of six months. The regulator will review the need for the appointments and may extend the period of office or may withdraw the appointed officers at any time, depending on the circumstances of the case. An appointed officer can resign at any time within the rules of the provider. In these circumstances, the regulator will decide whether to replace an appointed officer who has resigned. The terms on which an appointed officer holds office will be set out in the order making the appointment.

The rights, powers and obligations of an appointed officer

- 14 ~~the Act~~ **The HRA 2008** specifies that an appointed officer has the same rights, powers and obligations as any other officer of the provider's governing body.

Recommendation to the Homes and Communities Agency

- 15 Under section 92J of the Housing and Regeneration Act 2008, the regulator can make recommendations to the Homes and Communities Agency (HCA) about the exercise of the HCA's functions (which for the purposes of this section do not include the functions of the regulator). In circumstances where it has appointed an officer, the regulator will also consider whether to make such a recommendation to the HCA. If the regulator decides to do so, the HCA must publish the recommendation and its response to it in such manner as the HCA thinks fit.

Direction to the Greater London Authority

- 16 Under the Greater London Authority Act 1999 section 333ZG, in circumstances where the regulator has appointed an officer to the governing body of a provider, it may give a direction to the Greater London Authority (GLA) which prohibits the GLA from giving financial assistance to the provider. In circumstances where it has appointed an officer, the regulator will also consider whether to issue such a direction to the GLA. The regulator will review its approach on a regular basis until the person appointed has vacated office, at which point the direction to the GLA will be withdrawn. Further advice and guidance about the regulator's approach to the use of this power is set out in the relevant guidance note.

Who can be an appointed officer?

- 17 ~~While the Act~~ **the HRA 2008** places no restrictions on who can be an appointed officer. ~~They could be drawn from any source., The~~ regulator will always ~~try~~ **aim** to match the best and most suitable people to the provider and to the particular circumstances of each case. The regulator will appoint people with relevant knowledge, skills and expertise. ~~They should have the interpersonal and relationship management skills to operate effectively on~~

~~the governing body and to represent the provider at the highest level in its dealings with other bodies. Our overriding objective will be to identify the most appropriate people for the case.~~

18. ~~An appointed officer could be a member of staff of the regulator, although the regulator is only likely to appoint its staff in exceptional circumstances such as where there are no officers of a registered provider.~~

Notification and initial contact

- 19 The regulator will notify the provider about the appointments by a letter addressed to the chair or company secretary or other suitable person. The regulator will serve an order on the provider for each appointed officer and the orders will be copied to the appointed officers. The regulator will issue a news release to announce the appointed officers. The provider will usually be given an opportunity to comment on the factual accuracy of any such news release.

- 20 The regulator will ~~hold a meeting with the appointed officers to brief them and to provide them~~ **appointed officers** with **all the relevant background and briefing material** they will need to carry out their duties. As a minimum, such background material is likely to include:

- the provider's constitution
- the most recent audited accounts and auditor's management letter
- the most recent regulatory judgement
- the most recent **in depth assessment or stability check report** ~~annual viability review~~
- key correspondence between the regulator and the provider
- the terms of any public statement that the regulator ~~requires~~ **asks** the provider to make
- a draft news release to announce the appointed officers

- 21 The regulator will hold a meeting with the provider, usually with its governing body and senior staff, in order to:

- introduce the appointed officer(s)
- explain the **reasons for making the appointment** ~~role of the appointed officer(s), and their relationship with the provider and with the regulator and the regulator's expectations of appointed officers~~
- explain the regulator's expectations of the provider
- explain the implications of the provider's regulatory status and the actions that the regulator expects the provider to take to overcome the failure **against the standards** or ~~problem~~ **mismanagemen**t

- agree lines of communication between ~~the regulator and the appointed officers and between the regulator and the provider~~

Expectations

What appointed officers can expect from the regulator

22 The regulator will:

- agree appropriate liaison and reporting arrangements **and lines of communication** with appointed officers ~~at the outset~~ including nominating a member of the regulator's staff as the main point of contact for all aspects of the appointments
- ~~provide support to appointed officers, and meet them from time to time to check progress and ensure that the underlying concerns are resolved to the satisfaction of the regulator~~

What the regulator expects from appointed officers

23 The regulator expects an appointed officer to:

- work in the best interests of the provider
- act in the knowledge that they have the same rights, powers and obligations as any other officer of the provider's governing body, and to exercise their judgement accordingly
- work within the constitution, code of conduct, standing orders, policies and procedures of the provider or, where these are not properly documented, to exercise their judgement to comply with generally accepted good practice
- ~~be circumspect about making any public comments about the provider or about their role as appointed officer and to generally act~~ within the provider's rules on confidentiality
- refer any ~~news~~ **media** enquiries to the provider and to ~~generally act~~ within the provider's communications strategy
- ~~take an objective approach to implementing any strategy or action plan~~
- ~~maintain contact with the regulator, to keep it informed of key developments and to provide it with feedback on the progress of its regulatory strategy and action plan~~

What the regulator expects from the provider

24 The regulator expects the officers and staff of the provider to:

- co-operate fully with the regulator

- co-operate with an appointed officer
- facilitate the full involvement of an appointed officer in the affairs of the provider
- provide copies of all documents, codes of conduct, standing orders, policies and procedures relevant to their membership of the governing body to an appointed officer
- send copies of all notices, agendas and papers for meetings to an appointed officer
- consult an appointed officer about the dates and times of meetings that they will be required to attend
- inform any other relevant authority, for example, Companies House in the case of a registered company, that an appointed officer has joined the governing body as it is required to do when any new member joins the governing body
- provide details of the liability insurance cover it provides for all members of its governing body to an appointed officer, and to inform the insurers that an appointed officer has joined the governing body if it is required to do so under the terms of the insurance
- admit the appointed officer to membership and issue a share certificate where the provider has a shareholding membership
- reimburse an appointed officer for all reasonable expenses they incur in accordance with the established policy and practice for all members of the governing body
- offer to pay appointed officers where the provider pays members of its governing body - it will be for each appointed officer to decide whether or not to accept the offer
- ~~co-ordinate its communication strategy on all matters relating to an appointed officer or to special measures with the regulator, and to give an appointed officer and the regulator the opportunity to comment on the content and timing of any news releases or other public statements~~

Guidance note 19

Guidance on sections 247, 248 & 250A: management tender

Purpose

- 1 This document gives general advice and guidance on how the regulator may exercise the power to require a provider to tender its management functions. This is an enforcement power and is set out in **Part 2** Chapter 7 sections 247, 248 and 250A of the Housing and Regeneration Act 2008 (~~the Act~~ **the HRA 2008**). ~~It may be exercised in relation to all registered providers.~~

Scope

- 2 The power may be exercised in relation to all providers including a non-profit registered provider, a profit making registered provider and a local authority provider.

Background and context to the use of the power

- 3 A provider is responsible for ensuring that it achieves the standards set by the regulator. This requires the control and management of risk across all parts of the provider's operations and good service delivery to its tenants. Management services might be delivered by the provider directly, or by an agent or a contractor working under an agreement or a contract, including services delivered for a local authority by an Arm's Length Management Organisation (ALMO) or a Tenant Management Organisation (TMO). The provider is responsible for managing itself, its employees, its agents and its contractors effectively.
- 4 The regulator expects a provider to be proactive in responding to any organisational or service delivery problem before it reaches a critical stage. The provider has primary responsibility to review the performance of its employees, agents and contractors and, where under-performance or some other problem is identified, to take the action it considers necessary to improve performance or resolve the problem. This could include action against an agent or contractor under the terms of the relevant agreement or contract, or, if the provider considers it appropriate to do so, the termination of that agreement or contract. In circumstances where a provider does decide to instigate changes to its management arrangements, the regulator will expect it to take effective action to maintain continuity of services and ensure that new arrangements are put in place in a timely manner.
- 5 In circumstances where there has been a failure against a standard applicable to it, or where the affairs of a provider have been mismanaged in relation to its social housing, the regulator may consider exercising those enforcement powers that relate to the management of a provider. Those powers are:
 - ~~the power~~ to require a management tender (which is covered in this guidance note) where the regulator will specify the process for selection,

but the provider will select the new manager, or

- ~~the power~~ to require a management transfer (which is covered in a separate guidance note) where, in certain circumstances following a statutory inquiry, the regulator, with the consent of the Secretary of State, will select the new manager

The power of management tender

6 The power of management tender is set out in sections 247, 248 and 250A of ~~the Act~~ **HRA 2008**. The regulator may require a provider to put out to tender some or all of its management functions in relation to some or all of its social housing. The regulator may exercise the power of management tender if it is satisfied that:

- a registered provider has failed to meet a standard applicable to it
- the affairs of a registered provider have been mismanaged in relation to social housing – **“mismanagement” in relation to the affairs of a registered provider is defined in the section 275 of the HRA 2008 as managed in breach of any legal requirements (imposed by or under an Act or otherwise)**
- **the registered provider has failed to comply with relevant provisions of the Welfare Reform and Work Act 2016 (WRWA) or with regulations made by the Secretary of State under the WRWA**

7 In such circumstances, the regulator may issue a requirement to a provider. A requirement is a direction which sets out certain actions that the provider must take in order to tender out the specified management functions. In particular, the requirement will specify a process that the provider must implement to invite applications to undertake the relevant management functions and to select and appoint a new manager.

Potential triggers to the power of management tender

8 The ~~two~~ **three** specific circumstances in which the regulator may exercise its discretion to use the power to tender management functions are set out in paragraph six of this guidance. The regulator is most likely to ~~consider using this~~ **exercise the** power where **there has been a failure against a standard or the affairs of the provider have been mismanaged and** one or more of the following circumstances apply:

- there has been persistent poor performance in some or all of a provider’s social housing management functions
- there has been persistent poor performance in the delivery of services where ~~there are reasonable grounds to suspect~~ **there has been or there is a risk of a serious detriment to tenants**
- the provider is unable or unwilling to bring about necessary

improvements through its own voluntary action

- the provider has failed to honour a relevant voluntary undertaking to the satisfaction of the regulator
- ~~the provider has failed to deal with previous relevant regulatory interventions to the satisfaction of the regulator~~

~~These are illustrative examples of circumstances which might lead the regulator to consider whether there has been any failure against a standard or any mismanagement that is sufficient to satisfy the pre-conditions that may trigger the use of the power. This is not an exhaustive list and the regulator may conclude that it is necessary to consider exercising the power in other circumstances to those set out above.~~

- 9 When exercising the power of management tender, the regulator's main objectives will be to improve the management of social housing and to secure ~~better services for tenants~~ **compliance with the standards**. The regulator's approach will depend on the circumstances of the case, and on its assessment of the provider's willingness to contribute positively to a timely resolution of the presenting problems and capacity to achieve any necessary improvements or changes in the relevant management functions. The regulator is only likely to exercise the power of management tender when there are no appropriate and reasonable alternatives, or when it considers that the provider is unable to take action to resolve management failures through voluntary means.

Additional provisions for local authority providers

- 10 Section 250A of ~~the Act~~ **the HRA 2008** sets out some additional statutory provisions which apply where the regulator exercises the power of management tender in relation to a local authority provider. These are that:

- the regulator can exercise the power of management tender even if the local authority already has a management agreement covering the same management functions in place
- the local authority may not give effect to a new or separate management agreement relating to those management functions of the authority that are the subject of the regulator's requirement in the period that the requirement is in force
- any duty the local authority may have to consult on changes to the exercise of any relevant management functions does not apply in circumstances where the authority is acting in respect of a requirement imposed by the regulator
- a requirement imposed by the regulator is not a management agreement within the definition set out in section 27 of the Housing Act 1985, but the local authority remains responsible for anything done or not done by or to the new manager as if the requirement was a management agreement,

except where the terms of any relevant management agreement provide otherwise or in relation to criminal proceedings against the new manager

- 11 In addition, the provisions of The Housing Management Agreements (Break Clause) (England) Regulations 2010 (the Regulations) imposed an obligation on all local authority providers to include a break clause in any management agreement entered into after 1 April 2010. This is intended to ensure that local authority providers have a suitable break clause that allows the management agreement to be terminated and the management functions tendered in circumstances where a requirement to tender management functions is imposed by the regulator.
- 12 The position may not be clear in relation to any management agreements that were in place before 1 April 2010. Although many will include a clause providing for termination where there is serious under-performance, it is possible that some will not. It would not be tenable to defer a requirement to tender management functions until an existing management agreement had expired or had reached a previously agreed review point. In such circumstances, it would be for the provider to take any steps it considers necessary to comply with the requirement put in place by the regulator.

Additional expectations for private providers

- 13 The additional statutory provisions outlined in paragraphs 10 to 12 do not apply to either a non-profit or a profit making private provider. In general, the regulator expects such providers to ensure that any agreements or contracts with third parties for management services are specified to ensure compliance with relevant regulator standards. In addition, providers are expected to make provision for regular and periodic monitoring against agreed standards of performance and include provision for penalties or termination where agreed standards of performance are not achieved. In circumstances where the regulator imposes a requirement to tender management functions, the regulator expects the provider to review its options in relation to its existing arrangements for the delivery of the relevant management functions, to take any steps it considers necessary to comply with the requirement and to ensure that the new manager can perform its duties regardless of any agreement or contract previously in place.

Best practice in procurement

- 14 ~~the Act~~ **The HRA 2008** requires the regulator to ensure that best procurement practice consistent with any applicable procurement law is embedded into the tender process. The regulator will set out its initial proposals for achieving these outcomes at an early stage in the process, and will invite the provider to make its own proposals on how its existing procurement policies and procedures might contribute to such outcomes. It is in the best interests of both the provider and the regulator to identify the most efficient and effective tender process, and the regulator would expect the provider to co-operate with it in order to do so. The process to select the new manager will be carried out by the provider, so

the provider will carry any risk associated with compliance with any relevant statutory procurement requirements.

The potential for increased costs

- 15 It is possible that the management tender process may result in efficiencies or savings that might benefit the provider and its tenants. However, such efficiencies or savings are not specific objectives of the process and the provider should not assume that they will result from it. Neither should the provider assume that the tender process and new management arrangements will be cost neutral. The regulator will expect the provider to draw up financial projections and budgets based on the requirement and to make reasonable assumptions about any possible additional or increased costs. The nature and extent of these will depend on the particular circumstances of the case and on the provider's existing arrangements for the delivery of services in those management functions that are the subject of the requirement. Factors that may result in additional or increased costs could include:
- the costs associated with the administration of the tender process
 - the costs of any expert or legal advice the provider considers it necessary to commission in relation to the tender process
 - the costs associated with resolving any outstanding matters in relation to the previous standards of performance in the relevant management function
 - the costs associated with addressing previous under-investment or under-performance in the management function by the provider
 - an improved or extended specification for the future delivery of the management function to balance any previous under-investment or poor performance
 - a new liability for Value Added Tax (VAT) in circumstances where a non-profit or a profit making private provider that previously used its own staff to deliver the management function (where there would be no liability for VAT) subsequently purchases that management function from a third party (where there would be a liability for VAT)
- 16 Any additional or increased costs must ultimately be borne by the provider. In considering whether or not to impose a requirement for a management tender, the regulator will take account of any representations made by the provider in respect of the potential adverse impact on its management costs and its overall business. The regulator may work with the provider in order to explore how best to manage and mitigate these, but it will remain the provider's responsibility to decide on and take any action it considers necessary in order to do so.

Process

Notice

- 17 If the regulator is minded to exercise this power, it must give the provider notice and seek representations in accordance with the provisions set out in section 248 of ~~the Act~~ **the HRA 2008**. The notice must:
- set out the grounds on which the regulator might take action
 - warn the provider that the regulator is considering action
 - explain the effect of section 248 of ~~the Act~~ **the HRA 2008**
 - specify a period of at least 28 days beginning on the day the provider receives the notice in which the provider may make representations to the regulator
 - refer the provider to the provisions of section 125 of ~~the Act~~ **the HRA 2008**, by which the provider may give a voluntary undertaking to the regulator. The regulator must indicate whether, and to what extent, it would accept a voluntary undertaking instead of, or in mitigation of, any action to require the provider to tender management functions
- 18 ~~the Act~~ **The HRA 2008** specifies that the regulator must send a copy of the notice to:
- the Greater London Authority (GLA) in a case where the requirement would be imposed on a provider owning land in Greater London
 - the Secretary of State, in a case where the requirement would be imposed on a local authority provider
 - any other persons or organisations the regulator thinks appropriate depending on the circumstances of the case

The possible use of other enforcement powers

- 19 ~~the Act~~ **The HRA 2008** specifies that the regulator may combine this notice with one or more notices relating to the possible use of certain other enforcement powers. In particular, ~~the Act~~ **the HRA 2008** makes reference to:
- a pre-penalty warning (section 230 of ~~the Act~~ **the HRA 2008**)
 - a pre-compensation warning (section 242 of ~~the Act~~ **the HRA 2008**)
 - a management transfer (section 250 of ~~the Act~~ **the HRA 2008**)
 - an appointment of a manager (section 252 of ~~the Act~~ **the HRA 2008**)
- 20 In circumstances where the regulator decides to issue more than one notice it will do so in accordance with the terms of each relevant section of ~~the Act~~ **the HRA 2008** and of each relevant guidance note on the use of the specific power. It follows that the regulator will only do so where the circumstances of the case

make it appropriate and where the specific power is applicable to the particular type of provider. In addition, the regulator may also consider whether it would be appropriate to exercise any of its other enforcement powers either singly or in combination.

Seeking views on a requirement

21 ~~the Act~~ **The HRA 2008** specifies that in imposing a requirement to tender management functions, the regulator must have regard to views of:

- relevant tenants: the regulator recognises that in any situation where some or all of the provider's management functions might be subject to tender, tenants may have concerns about the potential impact on the services they receive. The regulator will ensure, as far as it is reasonably practicable to do so, that tenants are informed about the proposed changes and the potential implications for both them and the provider. The nature of the information given to tenants will depend on the circumstances of the case and the timescales involved. It may not be practicable in all situations to make direct contact with each individual tenant, and, in seeking tenants' views, the regulator may work through the provider or any recognised tenant representative groups or an appointed tenant adviser
- the registered provider: the regulator recognises that in any situation where some or all of the provider's management functions might be subject to tender, those involved in the delivery of the functions, including employees, agents and contractors may have concerns about how the proposals might impact on the provider, on their organisations or on them as individuals. The regulator will seek the views of the provider. The regulator will expect the provider to keep its employees, agents and contractors fully informed about how the requirement to tender management functions might impact on them throughout the process. Since the regulator is not required to have regard to the views of the provider's employees, agents or contractors, it will not seek their views and, if any such views are offered, it will not take them into account in reaching its decision
- the GLA where the requirement relates to a provider owning land in Greater London
- the Secretary of State, in a case where the requirement is to be imposed on a local authority provider
- any relevant local authority in circumstances where the regulator thinks it appropriate to do so. The regulator will seek the views of the local authority in its strategic housing role in the area in which the registered provider that is subject to the requirement operates. However, the regulator will not usually seek the views of a local authority in its strategic role if it is considering the use of this power against the same local authority in its landlord role. In such circumstances, the regulator will

usually only seek the views of the local authority in its role as the registered provider

- 22 The regulator will seek views on the proposed requirement from relevant people and organisations at the most appropriate point in the process. This could be at the same time as the regulator sends notice to the provider or at a later date. The regulator's overriding objective will be to provide all the information relevant to the particular circumstances of the case, so that respondents are as fully informed as possible when giving their views.

Considering views, representations and voluntary undertakings

- 23 Before making its decision on whether or not to impose a requirement, the regulator will consider all the views submitted to it by those individuals and organisations listed in paragraph 21. While the regulator must have regard to these views, it will not necessarily be bound by them. In particular, it may not be possible to reconcile all the various views in circumstances where some of them suggest a fundamentally different approach to others. The regulator's approach will depend on the nature of the various views submitted to it, on the specific circumstances of each case and on whether the regulator is satisfied that any necessary improvements or changes to relevant management functions will be achieved in a timely manner.
- 24 The regulator will also consider any representations and any proposals for voluntary undertakings submitted by the provider in response to the notice in accordance with its general approach to such undertakings set out in the first section of this document. The acceptability, or otherwise, of any such undertaking will depend on the circumstances of the case. The regulator will consider the provider's capacity to honour the undertaking and whether the terms of the undertaking are sufficient to bring about the necessary improvements to relevant management functions in a timely manner.
- 25 Where the regulator is satisfied with the proposed terms of the voluntary undertaking, it may decide not to impose the requirement with immediate effect, but to allow the provider a period of time to implement its proposals. In such circumstances, the regulator will monitor and review the provider's progress on a regular basis and at key milestones in order to assess whether or not the provider has honoured the undertaking. The regulator will give reasons for any decisions it makes in relation to such monitoring or review. In circumstances where the regulator subsequently concludes that a provider has failed to honour the undertaking or has failed to deliver any obligations at key milestones, it may decide to impose the requirement to tender management functions without delay.
- 26 Alternatively, where the regulator is not satisfied with the proposed terms of the voluntary undertaking, it may decide to impose the requirement without delay. The regulator is likely to take such action where it considers that the terms of the undertaking are unsatisfactory or insufficient to resolve the problems or

where urgent or immediate action is necessary.

The requirement

- 27 In circumstances where the regulator decides to impose a requirement, the regulator will specify a process that the provider must implement to:
- invite applications to undertake the relevant management functions
 - select from the applications
 - appoint a new manager
- 28 The requirement will set out the extent of the services that the provider must put out to tender. The terms of an individual requirement will vary from case to case and will be dependent on a combination of factors, including in particular the nature and the extent of both the management functions and the housing stock to which the requirement applies. A requirement may include some or all of the provider's management functions and some or all of its social housing stock. It could be limited to specific services or to specific parts of the social housing stock, for example, to tackle management problems on a single estate.
- 29 The requirement must also include provision:
- about the persons that will make up the panel with responsibility for selecting the new manager, including specific provision for ensuring that tenants' interests will be represented on the panel
 - for ensuring that the procurement process follows best practice and is consistent with any applicable procurement law
 - about the terms and conditions on which the new manager is to be appointed including specific provision for setting, monitoring and enforcing standards of performance and for the resources that are to be made available or applied to the management function that is the subject of the requirement
- 30 The regulator will notify the provider about a requirement by a letter addressed to the Chief Executive or other suitable person. The regulator will set out proposals for how it intends to liaise with the provider, monitor progress against the requirement and ensure that the specified process is followed. The regulator will expect the provider to effectively manage the transition from its existing manager to the new manager and to implement the change in a timely manner.
- 31 The regulator will publicise the action that it takes in accordance with its policy on public statements.

Notification of a requirement

- 32 The regulator will inform those individuals and organisations that provided views on the proposed requirement about the regulator's final decisions on the matter. ~~the Act~~ **The HRA 2008** specifies that in circumstances where the

regulator imposes a requirement to tender management functions, it must send a copy of it to:

- the GLA in a case where the requirement is to be imposed on a provider owning land in Greater London
- the Secretary of State, in a case where the requirement is to be imposed on a local authority provider

Appeal

- 33 The provider may appeal to the High Court against a requirement to tender management functions.

Complying with a requirement

- 34 The regulator will expect the provider to keep it informed about progress and to demonstrate compliance with the terms of the requirement at certain specified points in the process. These milestones will have been set out in the requirement, and are most likely to occur when the short-list of applicant managers is agreed, when the new manager is selected and when the new manager is appointed. The regulator will review the information submitted by the provider to demonstrate compliance and will wish to satisfy itself that the provider is taking the appropriate action in all the circumstances of the case. Where the provider does not do so, the regulator will review its options and may consider exercising any of its regulatory, enforcement or general powers or taking other action against the provider.

Expectations

What the provider can expect from the regulator

- 35 The regulator will:
- agree appropriate liaison and reporting arrangements including nominating a member of regulator staff as the main point of contact for all aspects of the enforcement and management tender processes
 - give notice of possible enforcement action, seek the views of the provider and consider any representations or any voluntary undertaking offered by the provider
 - in circumstances where a requirement is imposed, review progress at agreed points in the process

What the regulator expects from the provider

- 36 The regulator expects the provider to:
- co-operate with the regulator at all stages of the management tender process

- take any step it considers necessary to comply with the terms of any requirement that is imposed by the regulator
- take any steps it considers necessary to ensure that the new manager can perform its duties
- ensure an effective transition between managers and maintain continuity of service during the process
- draw up financial projections and budgets based on the requirement and to make reasonable provision for any possible additional or increased costs
- commission and pay for any expert advice or legal advice it considers necessary in relation to either the tender or associated processes, including any specific matters of concern to the provider or its staff: such matters will depend on the specific circumstances of the case but may include, among other things, any obligations it may have in relation to pensions, taxation, the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014, the Public Contracts Regulations 2015 or the European Union Public Procurement Directive 2014/24/EU
- comply with best procurement practice and any applicable procurement law
- keep its employees, agents and contractors informed about how the requirement might impact on them and ensure that they co-operate with the regulator in relation to the requirement
- provide information and documents in relation to the requirement when requested, keep the regulator informed about progress generally and demonstrate compliance with the terms of the requirement at certain specified points in the process or when requested by the regulator
- co-ordinate its communications strategy on all matters relating to a requirement to tender management functions and to give the regulator the opportunity to comment on the content and timing of any news releases or other public statements

Annex 3

Consultation questions

A. New entrants:

Are the proposed changes to the registration criteria for new entrants:

- a) clear and succinct?
- b) reasonable and proportionate?

B. New entities following restructure of existing registered providers:

Are the proposed registration criteria for restructured bodies:

- a) clear and succinct?
- b) reasonable and proportionate?

C. Changes to guidance on the use of powers:

Are the proposed changes to the guidance:

- a) clear and succinct?
- b) reasonable and proportionate?

D. Equality Analysis – Annex 3

Do you have any comments on/agree with our analysis of equality issues outlined in the Equality Analysis?

Annex 4

Equality analysis – changes to the registration criteria and guidance on the use of powers

Introduction

1. This document is the equality analysis undertaken by the social housing regulator (the regulator) on its proposed revised and new registration criteria and changes to the Guidance Notes on the regulator's use of powers set out in the 'Guidance on the Regulator's Approach to Intervention, Enforcement and the Use of Powers'. The purpose of this document is to set out the equalities matters that the regulator considered both before and during the development of the proposals.
2. This equalities analysis will be further revised and updated as a result of the statutory consultation and any equalities-related feedback that is identified by stakeholders.
3. The aim of the assessment is to enable the regulator to draw conclusions as to what action, if any, needs to be undertaken as a result of the regulator's assessment of equality implications informed by the views of the consultation.

Equality duties

4. Equality is concerned with treating everyone fairly and with dignity and respect, ensuring that individuals have equal chances in life regardless of their personal characteristics or background. The Equality Act 2010 prohibits unlawful discrimination on the basis of protected characteristics. These protected characteristics are – age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage or civil partnership. As a public body, the regulator must have due regard in the exercise of its functions to the need to:
 - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it¹.
5. The way in which the regulator aims to meet the General Equality Duty and the Specific Equality Duties set out in regulations² (of which publishing objectives is one) is set out in the Homes and Communities Agency's Equality and Diversity Strategy.³ There are several tangible benefits in conducting equality analysis prior to making policy decisions, including:
 - a) higher quality decisions as a result of more complete management information;
 - b) reduced cost as a result of not having to revisit policy that is not fit for purpose;

¹ S149 Equality Act 2010

² Equality Act 2010 (Specific Duties) Regulations 2011 (SI 2011/2260)

³ HCA, Equality and Diversity Strategy 2012-2015

- c) enhanced reputation as an organisation that is seen to understand and respond positively to diversity.

Most importantly, through equality analysis we are able to take into account the needs of our different groups of stakeholders, staff and diverse tenants within the sector.

Methodology and decision making

6. Changes proposed in policy, strategy, transformational programmes and elsewhere are analysed from an equality perspective and the results considered before drawing conclusions as to the impact on equality. Where potential equality impacts have been identified, consideration has been given as to whether there is a need for further action. A good equality analysis is not simply about identifying and removing negative effects or discrimination, but is also an opportunity to identify ways to advance equality of opportunity and foster good relations. All 3 parts of the general duty need to be addressed or the duty will not have been met.
7. At the end of the assessment of the evidence, the regulator can make one of four decisions in respect of the changes:
 - a) **no major change/issues:** the analysis demonstrates that the policy is robust, the evidence shows no potential for discrimination and the appropriate opportunities to advance equality and foster good relations have been taken;
 - b) **adjust the policy:** this means ensuring steps are taken to remove barriers or better advance equality. This could be introducing new measures to mitigate the effect;
 - c) **continue the policy:** this means taking forward the proposal unchanged despite the identification of adverse effects or missed opportunities to advance equality. It is important that the objective justification for continuing with the policy and how the decision was reached is recorded. On many occasions when it is not considered appropriate to change the policy or practice, other interventions should be considered. Examples include staff training, marketing, communications and publicity campaigns or positive action initiatives;
 - d) **stop and remove the policy:** if there are adverse effects which cannot be justified or mitigated, it may be that consideration needs to be given to stopping the policy altogether.
8. The evidence reviewed and options adopted by the regulator will be fully explained in this analysis. However, the conclusion after the review in relation to both the registration criteria and the changes to the Guidance Notes on the use of powers was that no major change is required to the proposals.

The regulator's objectives and its registration criteria

9. The regulator has a range of statutory objectives that need to be balanced when considering any changes to the regulatory framework. The HRA 2008, states that the regulator must perform its functions with a view to achieving (so far as is possible) the economic regulation objective and the consumer regulation objective. It is to do so in a way that minimises interference and (so far as is possible) is proportionate, consistent,

transparent and accountable.⁴ The regulator's proposals particularly concern the economic objective which is set out below:

- a) to ensure that registered providers of social housing are financially viable, properly managed, and perform their functions efficiently and economically;
- b) to support the provision of social housing sufficient to meet reasonable demands (including by encouraging and promoting private investment in social housing);
- c) to ensure that value for money is obtained from public investment in social housing;
- d) to ensure that an unreasonable burden is not imposed (directly or indirectly) on public funds; and
- e) to guard against the misuse of public funds.

10. The regulator has made the proposals in light of the legislative changes in order that it can continue to be able to meet its objectives set out in statute.

Equalities in the registration application process

12. Currently, through the application process for registration, the regulator gains assurance that the provider wishing to register meets requirements of equalities legislation via its constitutional arrangements. It does this through the current requirement to comply with 'all relevant law' as part of the Governance and Financial Viability Standard. Failure of a provider to provide the necessary assurance would lead to the provider being refused registration.

13. For restructured organisations, the regulator would previously (prior to the removal of its consent powers) seek similar assurance around equalities, where relevant, in advance of any consent for a restructure being granted.

14. As outlined earlier, the regulator will now have to take a registration decision in relation to restructured bodies so a new approach to dealing with equalities-related issues is needed. The regulator has considered two different approaches:

- (a) **Option 1:** introducing an equalities-related criteria into the registration criteria for restructured bodies
- (b) **Option 2:** examining equalities-related information as part of the registration process for restructured bodies and addressing any such issues post registration via its engagement process.

15. For new entrants to be registered, they have to demonstrate that they comply with all legislation including equalities legislation by virtue of having to demonstrate that it meets the Governance and Financial Viability Standard at the point of registration. Option 1 places the same obligation on restructured bodies but only in relation to equalities legislation. Option 2 does not require the restructured body to demonstrate that it is complying with the equalities legislation at the point of registration because it is already bound to comply in meeting the Governance & Financial Viability Standard as a result of

⁴ s92K Housing and Regeneration Act 2008

already being registered. However, the regulator will ask the same questions of restructured bodies as are asked of new entrants in relation to equalities, and will be able to consider whether there are any issues with the restructured body's equality legislation compliance at the point of registration which needs to be tackled as part of its regulatory engagement activities post registration.

16. The regulator considers that the most effective approach both to meeting the regulator's fundamental objectives and ensuring that the regulator meets its obligations under the Equality Act 2010 is to adopt the second option for the following reasons:

- following registration, the regulator can work with the provider to address any equalities-related issues identified during the application process, relying on compliance with the Governance and Financial Viability Standard which includes the requirement to abide by all relevant law. The regulator will consider the use of its regulatory powers should a provider not address the equalities-related issues identified during the registration process;
- the regulator considers that working with the provider to address the equalities-related issues (rather than simply not registering them) better demonstrates its own adherence to the General Equality Duty, because actively working with providers to change their practice and ultimately taking regulatory action is a more robust and effective way of tackling the issue. This approach enables the regulator to demonstrate through its ongoing regulatory work how it is 'eliminating unlawful discrimination', 'advancing equality of opportunity' and 'fostering good relations' between people who share a protected characteristic and those who do not;
- it will keep providers and their social housing stock within a regulated environment thereby influencing good equalities behaviour to larger numbers of tenants.

17. Given the above, the regulator intends to adopt option 2 to ensure that the provider remains registered and that positive change is facilitated in providers, where relevant.

16. A summary of the changes to the registration criteria and the equality considerations that have been identified can be found in Table 1 below. Table 2 below outlines the proposed new criteria for restructured bodies and identifies any equality considerations so far identified.

Table 1 – Changes to the registration criteria for new entrants and associated equality implications

| Criteria for new entrants | Notes | Equalities implications |
|---|---|--|
| <p>For registered charities, non-registrable charities and non-profit applicants which are not charities:</p> <p>Revision to the requirement for a subsidiary to identify the parent in the governing document to reflect changes in the regulator’s powers</p> | <ul style="list-style-type: none"> • This is a legislative driven change due to the deregulatory measures within the Housing and Planning Act 2016 which remove the regulator’s power of consent over changes to constitutions and introduce notifications relating to similar changes • It is proposed to revise this requirement to reflect the removal of the regulator’s consent powers • The proposed requirement requires a subsidiary registered provider to state its subsidiary status and name the parent body to ensure the parent and its control is clearly identified | <p>No equalities implications identified</p> |
| <p>For registered charities, non-registrable charities and non-profit applicants that are not charities:</p> <p>Removal of the requirement for the status of the body as independent to be explicit in the governing document</p> | <ul style="list-style-type: none"> • This is a legislative driven change due to the deregulatory measures within the Housing and Planning Act 2016 • It is proposed to remove this requirement since the regulator is satisfied that changes to a body’s independent status will require notification to the regulator | <p>No equalities implications identified</p> |
| <p>For Charitable Incorporated Organisations (CIOs):</p> <p>Removal of the requirements for specific provisions relating to the following:</p> <ul style="list-style-type: none"> • non-distribution of assets • object changes • wrongful payments made by the CIO to members <p>Replacement of the requirement for the regulator’s consent to be sought prior to certain amendments to provisions required by the regulator by the requirement to state changes</p> | <ul style="list-style-type: none"> • As CIOs are charities and subject to charity law, there is no need for specific approval for non-distribution of assets since they cannot distribute assets • Object changes will be covered as for all non-profit registered providers by the notification regime introduced by the Housing and Planning Act 2016 so there is no need for the regulator to include specific provisions relating to this • Removing the wrongful payment provisions treats CIOs in the same way as other registered charities • The new requirement requires the provider if it is a subsidiary, to state as much and name the parent body to ensure parent and its control is clearly identified (requirement is the same as for other charities). Additionally, for CIOs they must state that they must notify the regulator of any changes to the identification of a parent. The change reflects the removal of the regulator’s consent power and introduction of notification requirements on certain rule changes that do not extend to CIOs | <p>No equalities implications identified</p> |

| | | |
|------------------------------------|--|--|
| must be notified to the regulator. | | |
|------------------------------------|--|--|

Table 2 – New registration criteria as set out in the statutory consultation for existing providers creating a new restructured body and associated equality implications

| Criteria | Notes | Equalities implications |
|--|---|---------------------------------------|
| Requiring a restructured body that is to be designated as non-profit to have in place the same constitution requirements as a new entrant that is non-profit | <ul style="list-style-type: none"> • Same comments as in Table 1 • The regulator considers that, for those restructured bodies that intend to maintain a non-profit designation, they must meet requirements similar to new entrants to do that | No equalities implications identified |
| Not requiring a restructured body to: <ul style="list-style-type: none"> • meet the Governance and Financial Viability Standard at the point of registration • demonstrate it can sustain its financial viability on an ongoing basis • have in place management arrangements that enable it to demonstrate the capacity to meet the other regulatory standards | <ul style="list-style-type: none"> • The regulator considers different criteria are appropriate for restructured bodies and that this is a proportionate approach that will impact all organisations equally • Existing registered providers by virtue of their registration are required to meet this standard up to the point of restructure and that requirement will continue as long as the registration remains | No equalities implications identified |

Equalities in the use of powers

17. The deregulatory measures in the Housing and Planning Act 2016 (HPA 2016) amend the Housing and Regeneration Act 2008 (HRA 2008) by introducing a revised definition of “mismanagement” which has the effect of changing the circumstances in which the regulator might use its enforcement powers to appoint managers and new officers to private registered providers. The amendments to the HRA 2008 also change one of the three specific circumstances in which the regulator might use its enforcement power to appoint new officers.
18. In addition the Welfare Reform and Work Act 2016 (WRWA) has also amended circumstances in which the regulator could exercise the use of some of its enforcement powers in relation to rent compliance by providers.
19. To address these changes the regulator has revised a number of its Guidance Notes included within its guidance on the use of powers. In doing this, it has only changed the notes to reflect the legislative changes that have been introduced.
20. Given these changes are legislatively driven and they are minimal changes that do not significantly change the emphasis or nature of the Guidance Notes, we have assessed that there are no equality implications associated with the proposed changes and as such no changes to our proposals are required.
21. A summary of the proposed changes to the Guidance Notes and the equality considerations that have been identified can be found in Table 3 below.

Table 3 – Changes to the Guidance Notes included in the guidance on the use of powers

| Guidance Note | Notes | Equalities Implications |
|-------------------------------|--|---------------------------------------|
| 10 Enforcement Notices | The proposed changes reflect the addition of a reference to a failure to comply with the Welfare Reform and Work Act 2016. It introduces a new ground for use of the powers. No change to the regulator’s approach to the application of the power is proposed | No equalities implications identified |
| 11 Penalties | The proposed changes reflect the addition of a reference to a failure to comply with some specific sections of the Welfare Reform and Work Act 2016. It introduces a new ground for use of the powers. No change to the regulator’s approach to the application of the power is proposed | No equalities implications identified |
| 12 Compensation | The proposed changes reflect the addition of a reference to a failure to comply with some specific sections of the Welfare | No equalities implications identified |

| | | | |
|-----------|----------------------------------|--|---------------------------------------|
| | | Reform and Work Act 2016. It introduces a new ground for use of the powers. No change to the regulator's approach to the application of the power is proposed | |
| 13 | Appointment of a Manager | The changes reflect the revised definition of "mismanagement" set out in s.275 of the Housing and Regeneration Act 2008 and the addition of a reference to a failure to comply with some specific sections of the Welfare Reform and Work Act 2016 | No equalities implications identified |
| 18 | Appointment of an Officer | The changes reflect the definition of "mismanagement" set out in s.275 of the Housing and Regeneration Act 2008 and amended one of the grounds for appointment under s.269, i.e. that officers may only be appointed in a situation that the registered provider has not been managed in accordance with legal requirements | No equalities implications identified |
| 19 | Management Tender | The proposed changes reflect the revised definition of "mismanagement" set out in the s.275 of the Housing and Regeneration Act 2008 and the addition of a reference to a failure to comply with some specific sections of the Welfare Reform and Work Act 2016. It introduces a new ground for use of the powers. No change to the regulator's approach to the application of the power is proposed | No equalities implications identified |

22. In summary, it can be seen from the above table that no equalities implications have been identified in the course of developing the proposed changes. As with the registration criteria, this is a preliminary assessment and this will be revisited should any equalities-related issues arise during the statutory consultation.

Equality considerations arising from the changes proposed

23. During the development of the proposals, the regulator explored the possible equality implications for existing registered providers. Having considered the equalities implications in detail, no specific equalities implications were identified for existing registered providers or tenants through the proposed changes. Nevertheless, the regulator appreciates that, as with any strategic policy/project, undertaking a meaningful analysis can be difficult at an early stage. The real impact of any proposed change on equality and diversity can only arise from the detailed consideration of the views of stakeholders and the post-implementation monitoring of the policy/strategy. Consequently, as part of the consultation process, the regulator is setting out its intention to revisit matters if new information giving rise to concerns impacting on equality comes to light.

24. The regulator understands the importance of equality and diversity and its relevance to the regulatory framework. To this end, the proposals have had equality and diversity embedded firmly within both the process and overall approach.
25. Additional equality considerations arose from the changes proposed for the registration criteria. The application process for new organisations wishing to register with the regulator includes detailed examination of the structure of the organisation wishing to register, including an assessment of how it is meeting its statutory obligations in relation to equality with regard to its:
- objects;
 - membership;
 - access to services;
 - provision of charitable benefits.
26. Where there are any restrictions on access to services or charitable benefits, the regulator seeks assurance that these are both covered within the organisation's objects and also fit the exemption criteria within the Equality Act 2010.
27. The regulator will also identify such restrictions in the case of a restructured body at the point of registration and will influence a change of those restrictions as part of its ongoing regulation.
28. The regulator intends to continue with its approach of robustly assessing the equalities implications of applications for registration and considers that the revised/new registration criteria do not impact on our approach.

Consultation process

29. The statutory consultation will be launched in May 2016 and will last for approximately 6 weeks. Given that the regulator is proposing limited changes, all of which are deregulatory, the regulator considers this is an adequate period for consultation.
30. The consultation is open to anyone who has an interest in the future of social housing in England. To support the open consultation, the regulator will also circulate the consultation to all registered providers of social housing and all organisations it must consult as required by statute and other key stakeholders.

Post consultation

31. Once the consultation has closed, the regulator will revisit this equality analysis and update it with the results of the consultation. The regulator will also examine any equality related feedback that is provided and ensure that this is addressed where applicable in the final analysis.

Preliminary analysis of equality considerations

32. Based on the work the regulator has undertaken to date on the proposals, the regulator's preliminary conclusion is that its policy raises **no major change/issues**: the analysis to date demonstrates that the policy is robust, there is no evidence to suggest a potential for discrimination. This conclusion will be revisited at the end of the consultation.

Monitoring and review

24. Equality analysis is an ongoing process that does not end once a policy has been agreed or implemented. For example, the actual effect of a policy will only be known once it has been introduced or the sector may change leading to different needs. It is, therefore, appropriate that this equality analysis is kept under review. This does not mean repeating the analysis but rather reflecting on the experiences of implementation.

Consultation Question

Do you have any comments on/agree with our analysis of equality issues outlined in the Equality Analysis?

Annex 5

Business Engagement Assessment

| Business Engagement Assessment | |
|--------------------------------|---|
| Title of proposal | Consultation on: (1) Changes to the Registration Criteria for Entry on to The Register of Providers of Social Housing for new entrants (3) New Registration Criteria for Bodies arising out of Restructures & (3) Changes to the Guidance on the Use of Powers, May 2016 |
| Lead regulator | <i>Homes and Communities Agency – the social housing regulator</i> |
| Contact for enquiries | <i>Referrals and Regulatory Enquiries team 0300 1234 500 (option 2) consultation@hca.gsi.gov.uk</i> |

| | | | |
|---|-----------------|--|-------------------------|
| Date of assessment | <i>May 2016</i> | Stage of assessment | <i>Final</i> |
| Net cost to business (EANCB) | | Commencement date | <i>To be determined</i> |
| Which area of the UK will be affected by the change(s)? | <i>England</i> | Price and present value base years | |
| Does this include implementation of Red Tape Challenge commitments? | <i>No</i> | Is this directly applicable EU or other international legislation? | <i>No</i> |

Brief outline of proposed change

The regulator is making changes to its existing registration criteria which currently apply only to new entrants to the regulated social housing sector and introducing new registration criteria for restructured bodies. It is also making changes to its guidance on the use of its powers. These changes are to reflect the deregulatory measures contained in the Housing and Planning Act 2016 (HPA) and additional procedural changes in the Welfare Reform and Work Act 2016 (WRWA). The impact is mainly to reduce any regulatory burden and not to increase it.

Why is the change proposed? Evidence of the current problem?

The regulator has a range of statutory objectives. The Housing and Regeneration Act 2008 (HRA 2008) states that the regulator must perform its functions with a view to achieving (so far as is possible), the economic regulation objective and the consumer regulation objective. It is to do so in a way that minimises interference and (so far as is possible) is proportionate, consistent, transparent and accountable. This consultation focuses on meeting both the regulator's objectives but with specific reference to the economic objective. This is set out below:

- to ensure that registered providers of social housing are financially viable, properly managed, and perform their functions efficiently and economically;
- to support the provision of social housing sufficient to meet reasonable demands (including by encouraging and promoting private investment in social housing);
- to ensure that value for money is obtained from public investment in social housing;
- to ensure that an unreasonable burden is not imposed (directly or indirectly) on public funds; and
- to guard against the misuse of public funds.

Having robust and transparent registration criteria and guidance on powers helps ensure that the regulator can meet its objectives and that registered providers have the benefits of being part of the regulated sector.

The statutory consultation document sets out the regulator’s proposals in the light of the removal of the constitutional consents framework and other deregulatory provisions introduced by the HPA and procedural changes in the WRWA.

The HPA removes the requirement for the regulator to consent to certain constitutional changes and introduces a new decision point for the regulator on the registration of new bodies arising out of restructures. The regulator’s existing registration criteria were, in part, designed to reflect the regulator’s powers of consent and so the 2015 registration criteria only applied to new entrants to the regulated sector.

The HPA also contains provisions that require the regulator to register new bodies arising out of certain restructures of registered providers if they are eligible for registration. Unlike when the consent powers were in place, given the regulator will now have no involvement in the restructure other than through the notification process, this necessitates new registration criteria being developed which restructured bodies must meet before registration is accepted.

Both the WRWA and the HPA contain deregulatory provisions relating to the ability for the regulator to use its powers where a provider fails to comply with the requirements of the Acts, amends the definition of “mismanagement” and makes changes affecting appointment of managers and the appointment of new officers.

Consequently, changes are needed to the regulator’s Guidance Notes in relation to the appointment of managers and the appointment of new officers.

Which types of businesses will be affected? How many are affected?

As at 1 April 2016, there were 1,777 providers registered with the social housing regulator. Of those, 1,253 were non-profit making registered providers with less than 1,000 units and 31 were profit making registered providers.

All existing non-profit registered providers are potentially affected by the new registration criteria that apply to restructured bodies. The extent to which they are affected will depend on whether or not they undertake a restructure which creates one of the specified new entities. For those registered providers who do not change their structure, there will be no impact. For those that do change their structure, the impact is limited as the need to meet

the regulator's registration criteria is a much simpler process than its previous constitutional consent requirements.

New entrants seeking registration as a registered provider of social housing will also be affected by this policy as the registration criteria they will need to meet will change. However, the proposed changes to the registration criteria for new entrants to the regulated sector are minimal and will reduce rather than increase the regulatory burden.

The proposals in relation to the registration criteria may have a limited impact on lenders and other funders. Lenders are likely to need to give their consent for any restructures by current registered providers. The introduction of registration criteria for these providers may lead to lenders withholding their consent until such time as a registration decision has been made by the regulator or making their consent conditional upon a registration decision by the regulator.

The proposed changes to the Guidance Notes on the use of powers which reflect the legislative changes will affect all registered providers who are at risk of failing viability. As this is a rare occurrence in the sector, the impact overall on registered providers is limited but when such providers are found to be in those circumstances, the impact is much greater.

How will the change impact these businesses?

For new entrants, the impact of the changes proposed to the registration criteria will be negligible. The process for registration will stay the same and the only changes concern the requirements for constitutions for organisations wishing to be registered as non-profit and reduce the regulatory burden compared to the requirements currently in place.

For existing registered providers who restructure, the impact will also be to reduce any regulatory burden. Whilst such providers will need to undertake a registration process that they have not previously had to undertake, this new process will comprise a much reduced regulatory burden than is in place at present through the consent process for constitutional changes.

The regulator has explored not undertaking any changes to the registration criteria but has concluded that not doing so would leave the regulator open to challenge for not adhering to its legislative duties.

The implications of the changes to the guidance notes for providers concerning deregulatory measures around the appointment of managers and the appointment of officers are minimal. These are powers that the regulator uses very infrequently indeed and hence will not affect providers unless the regulator decides to use this power. The measures in the HPA serve to restrict further the occasions when the regulator can use these powers and hence even fewer providers are potentially affected.

The implications arising out of the procedural changes brought in through the WRWA will have no additional implications for providers. The changes just replicate the regulator's existing powers to take enforcement action when there is a breach of the Rent Standard to where there is a breach of the rent requirements of the WRWA.

Impact on small businesses

The majority of new entrants onto the register are small. The assessment that the regulator carries out on any applicants for registration is proportionate to the risks that applicants are exposed to.

In relation to the new criteria for existing registered providers who restructure, this should impact equally on small providers and large providers. However, the overall impact of the new criteria will be less than the impact of the former consents framework.

Equality and diversity

The regulator is mindful of its statutory equality duties under section 149 of the Equality Act 2010. The regulator has published its equalities strategy which sets out 9 equality objectives that we are working to deliver. This includes work to ensure that we pay due regard to equality when undertaking our regulatory functions. The regulator will take a proportionate approach to its equality obligations and has identified no specific equalities implications for this consultation. An equality analysis has been completed on the proposals and equality will continue to be considered during development of the proposals and reviewed as part of our analysis of stakeholder feedback to the consultation. The regulator's equality analysis covers all relevant equalities considerations and no changes to the proposed criteria were deemed necessary as a result. However, the regulator will revisit these matters if new relevant information comes to light.

Annex 6

Statutory consultees

The statutory consultees for the purpose of changes to the registration criteria are:

Section 112 HRA 2008

- The Greater London Authority
- One or more bodies appearing to the regulator to represent the interests of private registered providers. The regulator has decided that the following bodies represent those interests for this purpose:
 - National Housing Federation
 - Chartered Institute of Housing
 - Northern Housing Consortium
 - Housemark
 - Placeshapers
 - Council of Mortgage Lenders
- Any body for the time being nominated by the Secretary of State under section 278A. No body has been nominated.
- One or more [other] bodies appearing to the regulator to represent the interests of tenants. The regulator has decided that the following bodies represent those interests for this purpose:
 - TPAS
 - TAROE

The statutory consultees for the purpose of changes to the guidance on the use of powers are:

Section 216 HRA 2008

- One or more bodies appearing to the regulator to represent the interests of registered providers. The regulator has decided that the following bodies represent those interests for this purpose:
 - National Housing Federation
 - Chartered Institute of Housing
 - Northern Housing Consortium
 - Housemark
 - Placeshapers
 - Council of Mortgage Lenders

- One or more bodies appearing to the regulator to represent the interests of tenants. The regulator has decided that the following bodies represent those interests for this purpose:
 - TPAS
 - TAROE

- One or more bodies appearing to the regulator to represent the interests of local housing authorities. The regulator has decided that the following bodies represent those interests for this purpose:
 - LGA

- The Audit Commission for Local Authorities and the National Health Service in England

- The HCA

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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.

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