



Homes &
Communities
Agency

Consultation on registration criteria & use of powers

Decision statement



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Consultation on registration criteria & use of powers – decision statement

Introduction

- 1 The Welfare Reform and Work Act 2016 (WRWA) and the Housing and Planning Act 2016 (HPA 2016) have introduced a range of changes to the duties and powers of the social housing regulator (the regulator) that have led the regulator to reconsider the criteria for registration of providers with the regulator and the guidance the regulator issues on the use of its powers.
- 2 The deregulatory measures in the HPA 2016 amend the Housing and Regeneration Act 2008 (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 conversions or restructures.
- 3 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 arising out of specified conversions or such restructures has also led the regulator to consider the criteria that should apply to those registrations.
- 4 The WRWA and the HPA 2016 have introduced changes to the regulator's enforcement powers that 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'. These include:
 - revised definition of "mismanagement" (in s.275 HRA 2008) which clarifies the circumstances in which the regulator can apply some of its enforcement powers;
 - a change to one of the three specific circumstances in which the regulator might use its enforcement power to appoint new officers or managers; and
 - the WRWA 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 In light of this, in May 2016, the regulator launched a statutory consultation on:
 - changes to the registration criteria for entry of new entrants to the sector onto the register of providers of social housing;
 - new registration criteria for bodies arising out of specified conversions or restructures; and
 - changes to the guidance on the regulator's use of powers.

- 6 This decision statement outlines the responses to the statutory consultation and presents the finalised registration criteria and guidance notes on use of powers which have been amended following consultation.
- 7 A total of 36 responses to the consultation were received from a range of stakeholders. The responses to the consultation have informed the final outcome set out in this document. In addition, the regulator held a number of stakeholder engagement events to discuss the proposals, including round tables and bilateral meetings with provider representatives and trade bodies. The stakeholder views expressed at these events have also been taken into account in the development of proposals.
- 8 This document provides a summary of the key areas of feedback and sets out the regulator's decision on changes to the registration criteria and use of powers documents that will come into effect on 6 April 2017. It is not intended to be an exhaustive exploration of all responses received (all of which have been taken into account in reaching the conclusions set out in this decision statement), but a summary of the key issues and comments made. A list of respondents is provided in Annex 1, a statistical breakdown of responses in Annex 2 and a copy of all responses received published at Annex 6 (redacted to remove identifying information).
- 9 The revised registration criteria following the consultation can be found at Annex 3 of this document. These are the criteria which we will publish and adopt following the commencement of the HPA 2016. The Guidance Notes can be found at Annex 4 and likewise are the notes which we will publish and adopt at the same time.

Changes to the registration criteria for new entrants

Overview

- 10 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.
- 11 The majority of changes proposed to the current registration criteria for new entrants to the sector set out in the consultation were those that the regulator considers necessary to reflect the removal of the consents regime and the new requirement to consider registration of certain 'new bodies'. Respondents to the consultation were asked if the proposed changes to the registration criteria for new entrants were:
 - clear and succinct; and
 - reasonable and proportionate.

Summary of responses

- 12 Of those who gave feedback on the revised registration criteria for new entrants to the sector, around 90% of responses were fully supportive of the proposed changes and felt that the proposals were both clear and succinct and also reasonable and proportionate.
- 13 Two responses (7%) were neutral in respect of the proposals and did not give a view on whether they were clear and succinct or reasonable and proportionate.
- 14 Only one response (3%) was unsupportive of the proposals as the respondent considered that the proposed requirement to "Ensure the parent and its controls are clearly identified" gives freedom to the Homes and Communities Agency (HCA) to impose onerous and unnecessary obligations on charities which are trying to register a subsidiary, ignoring the protections already established in statute which sits outside of HCA regulation (for example, charity law). This response has not led to any changes to the criteria as the criterion in question does not, in fact, give the regulator any power to impose any obligation; it simply means that providers identify any parental controls which the parent body may have over the subsidiary that may exist.
- 15 One response suggested that profit making bodies not being required to meet any registration criteria could be made clearer in the registration criteria. This has not been addressed in the finalised criteria and will instead be addressed in the guidance.

- 16 Two responses suggested minor legal technical changes. Where appropriate, these have been addressed and are contained in the finalised criteria at Annex 3.
- 17 One response considered that it was inequitable that private registered providers were subject to voluntary registration whereas local authorities were subject to compulsory registration and suggested that all bodies should be subject to compulsory registration. This point has not been addressed as this is beyond both the scope of the consultation and beyond the regulator's control given this is legislative in origin (being set out in the Housing and Regeneration Act 2008).

Final position – registration criteria for new entrants

With effect from 6 April 2017, the registration criteria for new entrants to the regulated sector will be those set out at Annex 3.

Introduction of registration criteria for restructured bodies

Overview

- 18 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 2016) 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 specified types of conversion or restructuring (restructured bodies).
- 19 The regulator considers that new criteria are necessary to support its registration decision and ensure appropriate designation of such restructured bodies on the register. 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 one or more bodies already on its register. Therefore, it proposed simplified registration criteria for the restructured bodies and a simple registration process.
- 20 Respondents to the consultation were asked if the proposed new registration criteria for restructured bodies were:
 - clear and succinct; and
 - reasonable and proportionate.

Summary of responses

- 21 Of the respondents who commented on the new registration criteria for restructured bodies, 91% were very supportive of the new criteria and felt that the proposals were both clear and succinct and also reasonable and proportionate.
- 22 Only one response (3%) was unsupportive of the proposals and felt the criteria were neither clear or succinct or reasonable and proportionate. The reason given for this view was that the respondent considered that on the basis of risk (both financial and governance), there is much less risk involved in the conversion from a company to a registered society than a partial transfer of engagements. The respondent contended that the involvement of the regulator in such a decision made by a Board does not seem proportionate and is rather against the presumption of less regulation. However, no changes have been made to the criteria as the HRA 2008 (as amended by the HPA 2016) dictates the circumstances when the regulator is required to make a registration decision for restructured bodies.

- 23 One response, while being generally supportive, considered that the lack of a timescale on compliance with the regulatory standards was an omission and suggested that restructured bodies be given a one year time frame for compliance following registration. Similarly, another respondent also suggested that an in depth assessment (IDA) be undertaken on the restructured body within 12 months of registration. However, the regulator considers that an accelerated IDA within 12 months of registration or a timescale on compliance would not be proportionate in all cases as the regulator considers the use of an IDA on a case by case basis. In all cases, the regulator expects continued compliance with the standards before, throughout and after the registration process.
- 24 One respondent considered that the requirement that a restructured body demonstrate its compliance with the Equality Act 2010 at registration was not appropriate given the requirement for a private registered provider to comply with 'all relevant law'. However, the regulator remains of the view that this is reasonable and proportionate and enables the regulator to comply with its own equality duties as explained in the equality analysis that accompanied the consultation. The consultation made it clear that any work needed to manage the outcome in relation to equality issues would be undertaken once that restructured body is on the register and hence, would be managed through the 'all relevant law' requirements of the Governance and Financial Viability Standard.

Final position – registration criteria for restructured bodies

With effect from 1 62017, the registration criteria for restructured bodies will be those set out at Annex 3.

Changes to guidance on the use of powers

Overview

- 25 In the consultation, the regulator proposed changes to the guidance notes concerning certain of its powers to clarify the circumstances in which it will exercise its powers in order to take account of all the legislative changes in the WRWA and the HPA 2016.
- 26 Respondents to the consultation were asked if the proposed changes to the guidance notes on the use of its powers were:
- clear and succinct; and
 - reasonable and proportionate.

Summary of responses

- 27 All but one of those that responded (97%) to this section of the consultation were very supportive (83%) or generally supportive (14%) of the proposed changes, stating they were both clear and succinct and reasonable and proportionate.
- 28 Only one respondent (3%) was neutral to the proposals and did not provide any comment on either the clarity or reasonableness of the proposals but did provide some technical legal feedback on the wording of the documents. These comments have been incorporated, where appropriate, in the revised documents at Annex 4.
- 29 One respondent, who was generally supportive of the proposed revisions, considered those changes in relation to the WRWA were unnecessary given their legislative basis as the Governance Standard already requires organisations to comply with all relevant law and, therefore, it is not necessary to highlight this in the guidance notes. However, as the circumstances in which the regulator can use its powers are specified in lists in the relevant section of legislation and the provisions in the WRWA are in addition to those lists, the WRWA provisions need to be mentioned specifically in the guidance notes so that it is clear as to when the regulator will use its powers.
- 30 The same respondent suggested that the regulator gives more clarity in the guidance notes on when enforcement action can be taken 'where the registered provider has failed to comply with relevant provisions of the Welfare Reform and Work Act 2016' and for the regulator to outline the expected requirements as part of the Rent Standard. The regulator has taken the decision not to update the Rent Standard following the enactment of the WRWA as the WRWA supersedes the Rent Standard in almost all cases and the WRWA itself specifies the position on rent setting. The regulator is of the view that as this is legislative, it is not appropriate to include it in guidance which relates to the regulatory position on rent setting and that the WRWA makes it clear when the regulator can use its

powers. The regulator considers that this position is appropriately reflected in the guidance notes.

- 31 One respondent suggested that the regulator's power to award compensation should be subject to a minimum and maximum level. This is not within the scope of the consultation and as such, the regulator is unable to incorporate this suggestion in the final guidance documents. In any event, any award of compensation is already subject to a maximum level of £5,000 set under the Housing and Regeneration Act 2008.
- 32 Another respondent suggested that there should be an agreed term for the appointment of a manager. The regulator has considered this proposal but is of the view that this is not appropriate or proportionate. The appointment of a manager is undertaken for as short a time as necessary to address the issue at hand and which is decided on a case by case basis depending upon the circumstances. The regulator considers that it is not proportionate or appropriate to assign an arbitrary time period to this appointment.
- 33 One respondent commented that the powers described in Guidance Note 12 (compensation) and Guidance Note 13 (appointment of manager) cannot be exercised in relation to local authorities. The respondent suggested that this supports its assertion that it is inequitable for local authority social housing providers to be subject to compulsory registration when they are not then subject to all of the regulator's powers. This point has not been addressed as this is beyond both the scope of the consultation and beyond the regulator's control given this is legislative in origin (being set out in the Housing and Regeneration Act 2008).

Final position – guidance on use of powers

With effect from 6 April 2017, the guidance on the use of powers documents will be those set out at Annex 4.

Equality analysis

Overview

- 34 As part of the consultation, an equality analysis was provided concerning the impact of the proposals on equality. The purpose of the analysis was to set out the equalities matters that the regulator considered both before and during the development of the proposals.
- 35 As part of the analysis, the regulator committed to further revise and update the analysis as a result of the statutory consultation and any equalities-related issues that were identified by respondents.
- 36 Based on the work the regulator had undertaken on the proposals in the consultation, the regulator's preliminary conclusion set out in the equality analysis was that its proposed policy raised no major change/issues and the published analysis demonstrated that the proposed policy was robust and that there was no evidence to suggest a potential for discrimination.
- 37 Respondents to the consultation were asked:
- “Do you have any comments on/agree with our analysis of equality issues outlined in the equality analysis?”

Summary of responses

- 38 The question in relation to the equality analysis was answered by about 50% of respondents to the consultation. Of these, all respondents were very satisfied with the analysis.
- 39 Other than agreeing with the regulators analysis, no respondent gave any detailed comments or suggested any changes should be made to the analysis. As such, the analysis at Annex 5 remains unchanged from the consultation version save as to include an update that the regulator has consulted upon the equality analysis and this has not identified any equality issues which the regulator needs to address prior to implementing its proposals.

Annex 1: list of respondents to the statutory consultation on changes to the regulatory framework

Altair Consultancy & Advisory Services Limited	Peabody
Amicus Horizon Limited	Progress Housing Group Limited
Anthony Collins Solicitors LLP	Radian Group Limited
Bracknell Forest Homes Limited	Sanctuary Housing Association
Bromford Housing Group Limited	Sovereign Housing Association Limited
Campbell Tickell Limited	Stockport Homes Limited
Cheshire Peaks and Plains Housing Trust	Symphony Housing Group Limited
Curo Group (Albion) Limited	The National Association of Almshouses
Devonshires Solicitors LLP	Thorngate Almshouse Trust
East Midlands Housing Group Limited	Town & Country Housing Group
East Thames Group Limited	Trowers & Hamlins LLP
Fortis Living	Wakefield and District Housing Limited
Gentoo Group Limited	Waterloo Housing Group Limited
Greenfields Community Housing Limited	Watford Community Housing Trust
Halton Housing Trust	Wirral Partnership Homes (Magenta Living)
Home Group Limited	Wythenshawe Community Housing Group
National Housing Federation	YMCA Fairthorne Group
Orbit Group Limited	Your Homes Newcastle Limited

Annex 2: statistical breakdown of responses received

Of the 36 formal responses to the statutory consultation received, the breakdown by type of respondent was as follows:

- 27 from non-profit registered providers
- 2 from trade bodies
- 1 from an intending provider
- 6 from other types of organisations including lawyers, financial institutions and consultants

The following charts show a statistical breakdown of the responses received to the statutory consultation, by respondent type.

Charts 1 and 2 show the overall level of support and how many of each type of respondent submitted a response. Charts 3 to 6 show the level of support for each consultation question.

Chart 1: level of overall support for the proposed changes

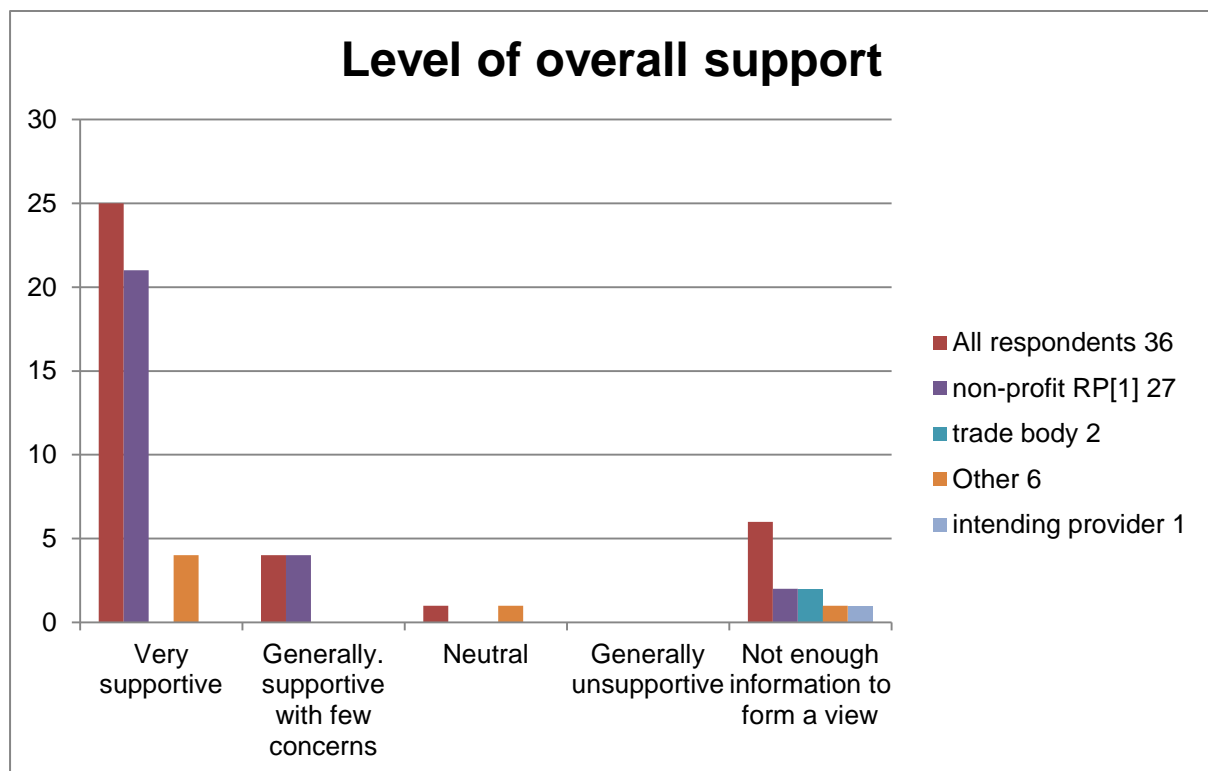


Chart 2: number of responses by question and respondent type

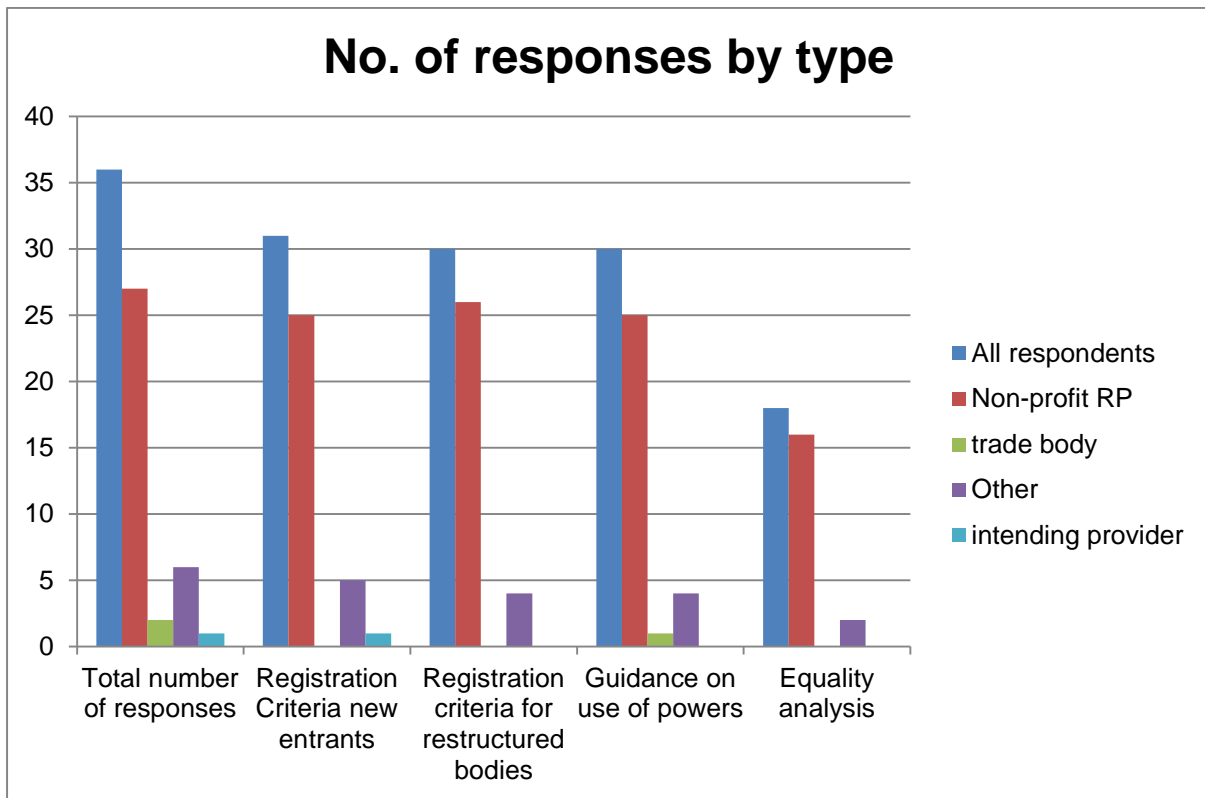


Chart 3: registration criteria new entrants

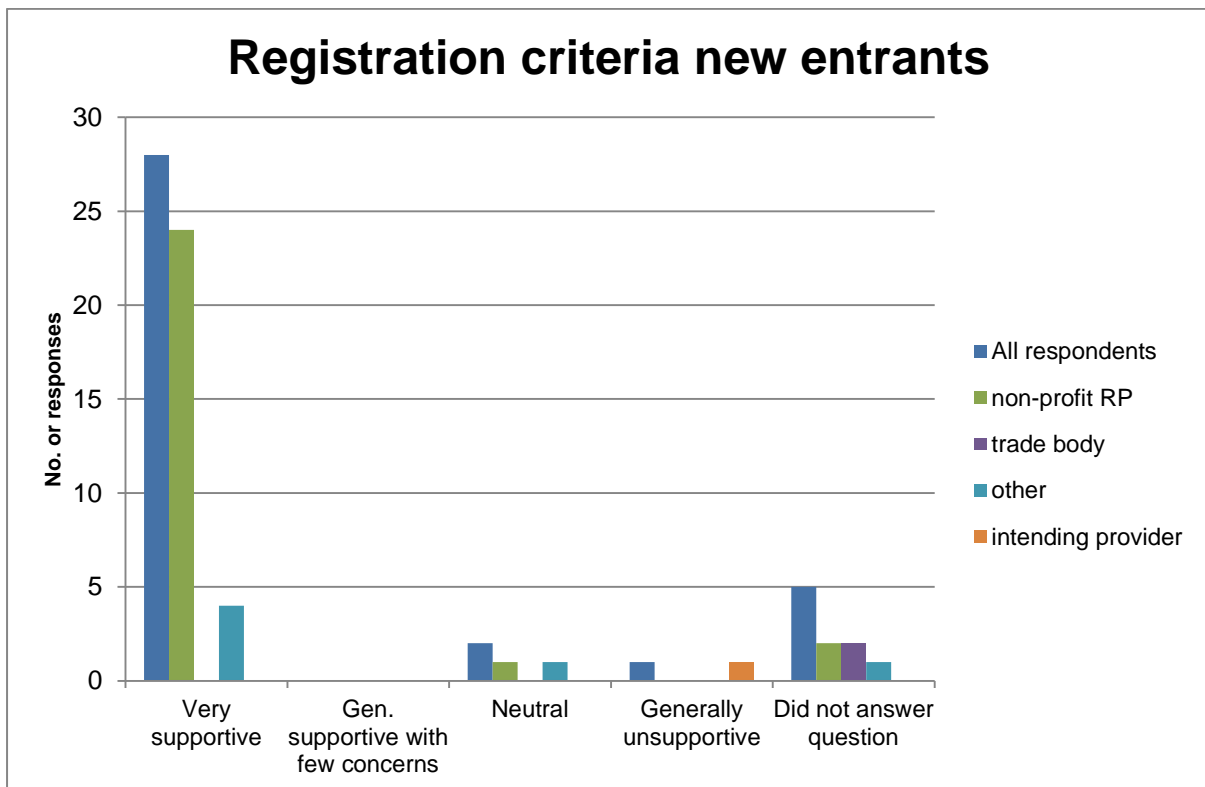


Chart 4: registration criteria restructured bodies

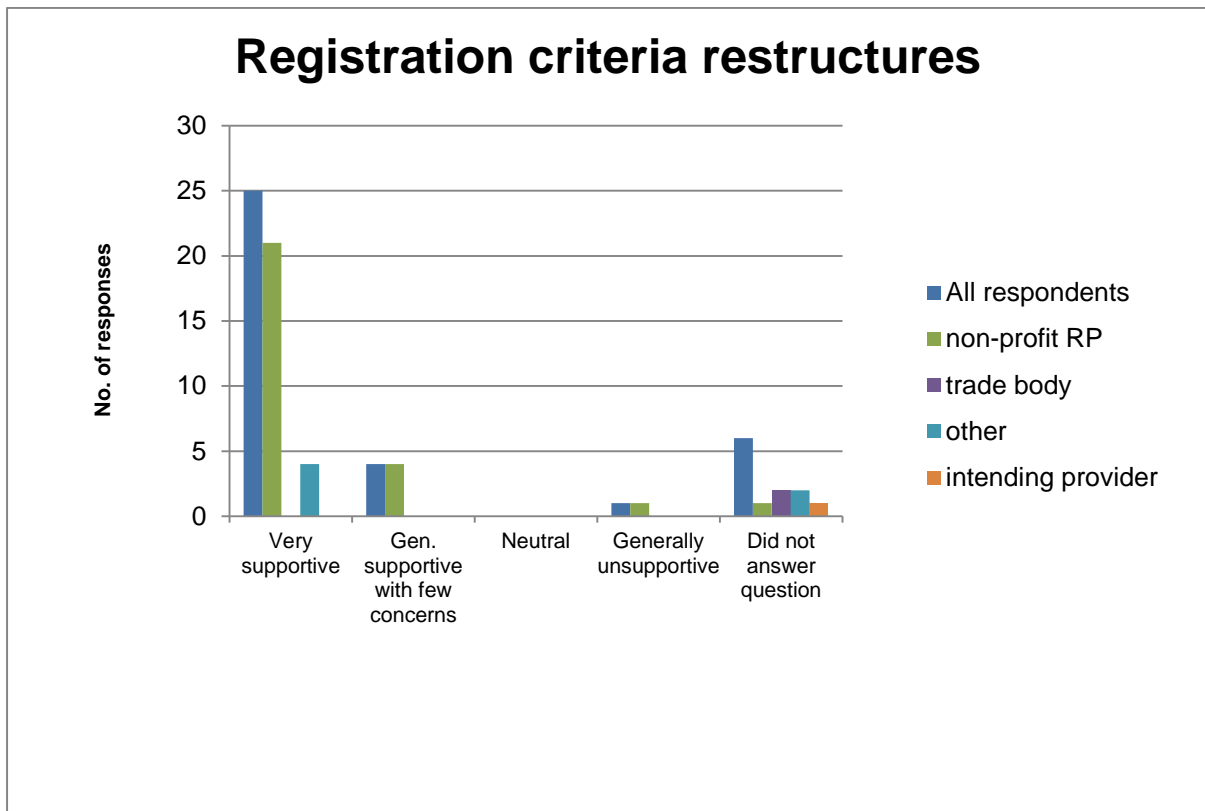


Chart 5: guidance on use of powers

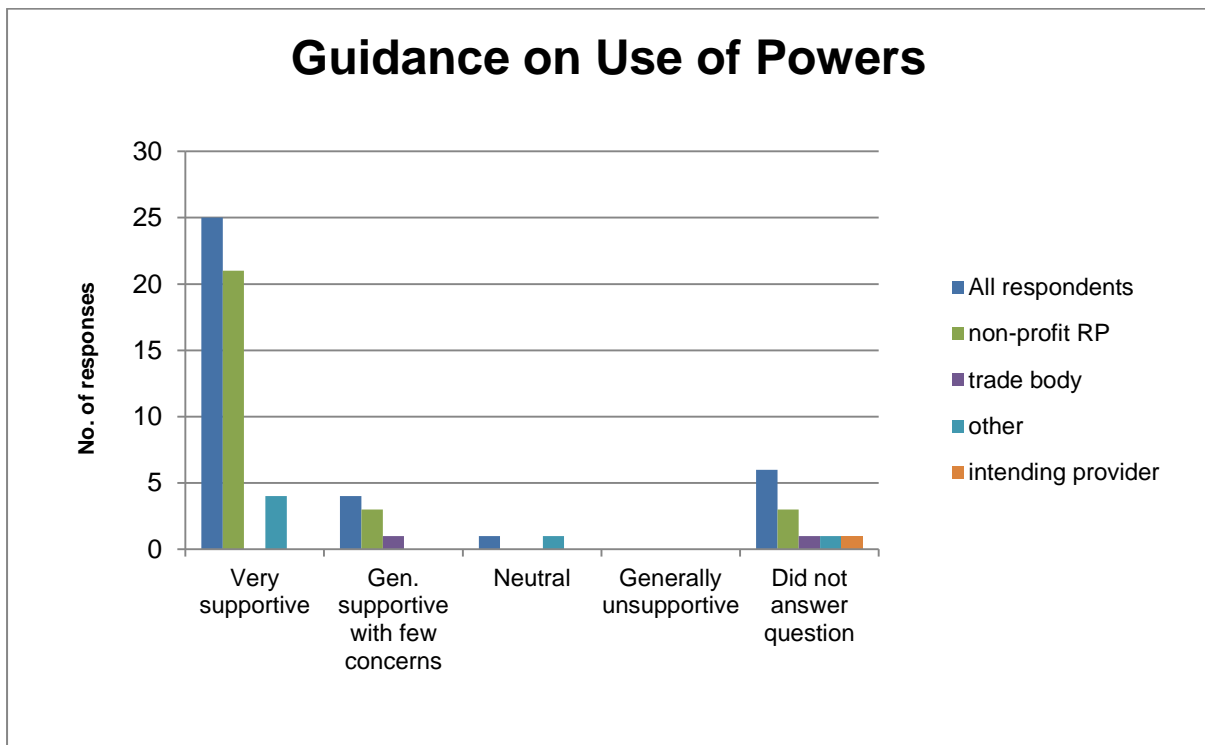
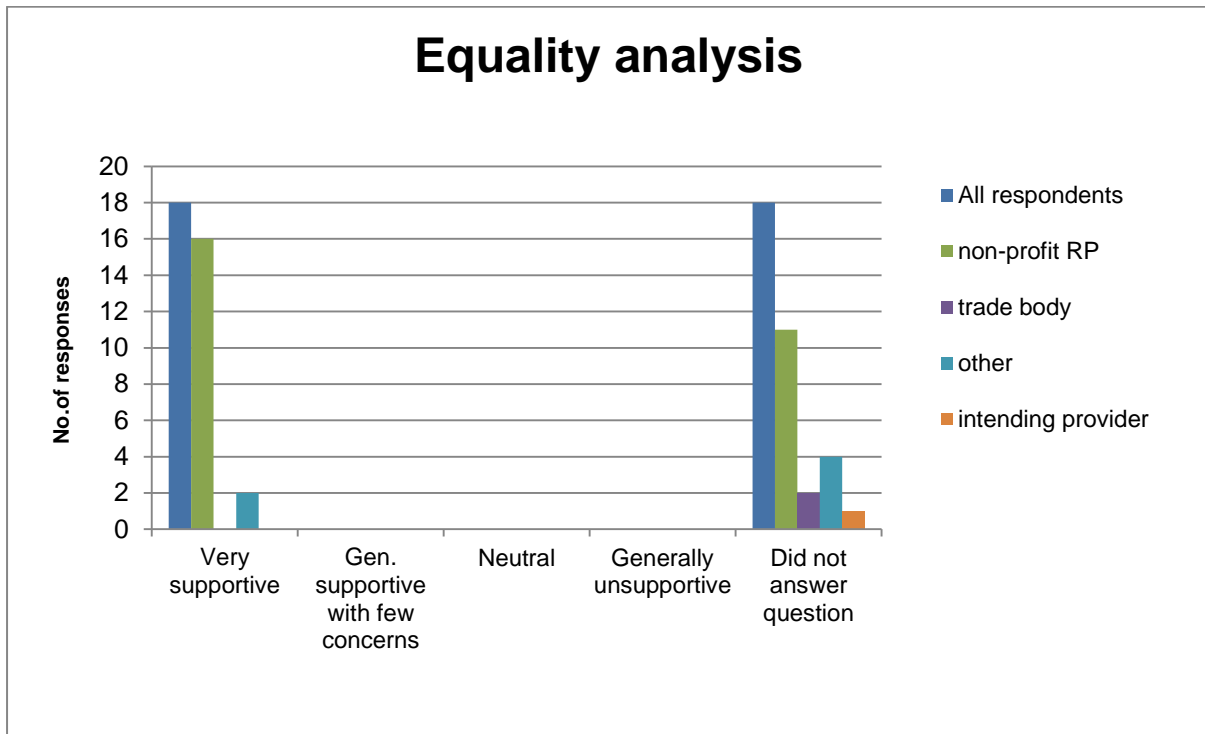


Chart 6: equality analysis



Annex 3: registration criteria

Registration requirements

These registration requirements **apply** (to the extent set out below) to:

- new entrants to the sector; and
- new bodies to be registered following the restructure of a registered provider (called 'restructured body' in the Registration Criteria below) in the following circumstances only:
 - a registered provider which has converted into a registered society pursuant to section 115 of the Co-operative and Community Benefit Societies Act 2014; or
 - a body created or arising or to whom engagements are transferred 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.

These registration requirements **do not** apply to local authorities¹.

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.

Section 112 of the Housing and Regeneration Act 2008 ('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, i.e. the Eligibility Conditions below, and, once the regulator has established that it meets these requirements, it will be assessed against the condition 2 criteria that the regulator has set, i.e. the Registration Criteria below.

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.

¹ Local authorities are subject to the 'compulsory registration' provisions in Section 114A of the Housing and Regeneration Act 2008

Eligibility conditions

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

All applicants:

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
- have in place management arrangements that enable it to demonstrate the capacity to meet the other regulatory standards

For applicants seeking non-profit designation

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, state as much and ensure the parent and its controls are clearly identified

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, state as much and ensure the parent and its controls are clearly identified

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) requirements that:

- if it is a subsidiary, state as much and ensure that the parent and its controls are clearly identified
- 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

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
- The body created or arising or to whom engagements are transferred 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, 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 parent and its controls are clearly identified
- 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 4: revised guidance on use of powers

Extracts from the “Guidance on the regulator’s approach to intervention, enforcement and use of powers”

The text below comprise extracts taken from the publication “Guidance on the regulator’s approach to intervention, enforcement and use of powers” dated April 2015 as consulted upon and incorporating relevant changes taking into account responses from the consultation.

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 chapter 7 sections 219 to 225 of the Housing and Regeneration HRA 2008 (the HRA 2008).

Scope

- 2 The power may be exercised in relation to all providers including a non-profit registered provider, a for-profit 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 HRA 2008 includes 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 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 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 HRA 2008
 - 4.9 where an offence under part 2 of 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 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 Where the regulator considers that the circumstances may require use of the power, it will advise the provider accordingly 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 an 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 HRA 2008).

Scope

- 2 The power may be exercised in relation to a non-profit registered provider, or a for-profit 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 HRA 2008 includes seven specific circumstances in which the regulator may exercise the power on 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 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 HRA 2008
 - 4.6 where an offence under part 2 of 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 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 warning is received by the provider. The regulator will normally send such notices by recorded delivery and 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 two of 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 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 HRA 2008).

Background and context to the use of the power

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

Potential triggers to the exercise of the power

- 3 Section 237 of the HRA 2008 includes 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 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 for-profit 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 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 HRA 2008).

Scope

- 2 The power may be exercised in relation to non-profit registered providers and for-profit 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 in accordance with any applicable legal requirements, meets 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 HRA 2008 sets out 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 considers that the provider:
 - is facing critical financial viability problems that require urgent action to remedy; and/or

- is failing to adequately 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

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 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. The regulator will normally send such notices by recorded delivery and 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 HRA 2008).

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 for-profit registered provider.
- 3 The word “officer” is defined in section 270 of 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 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. The regulator will consider the willingness of members of the provider’s governing body to contribute positively to a timely resolution of the 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 resolving the failure

against standards or mismanagement.

Potential triggers to the exercise of the power

7 Section 269 of 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 HRA 2008, that is the removal of an officer 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).

8 The regulator is most likely to exercise the power to appoint an officer where 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 has been serious detriment to tenants
- it is necessary to replace an officer removed in accordance with the provisions of section 266 of the HRA 2008
- where there are no officers

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 whether the governing body has the capability, expertise and skills in sufficient depth to resolve any failure against standards or mismanagement.

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 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 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-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.

The period and the terms of an appointment

- 13 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 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 HRA 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 HRA 2008 places no restrictions on who can be an appointed officer, the regulator will always 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.

Notification and initial contact

- 18 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.
- 19 The regulator will provide the appointed officers with 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
 - key correspondence between the regulator and the provider

- the terms of any public statement that the regulator asks the provider to make
- a draft news release to announce the appointed officers

20 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
- 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 mismanagement
- agree lines of communication between the regulator and the provider

Expectations

What appointed officers can expect from the regulator

21 The regulator will agree appropriate liaison arrangements and lines of communication with appointed officers including nominating a member of the regulator's staff as the main point of contact for all aspects of the appointments

What the regulator expects from appointed officers

22 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
- to act within the provider's rules on confidentiality but also to act in a manner consistent with the Regulatory Standards
- refer any media enquiries to the provider and to act within the provider's communications strategy

What the regulator expects from the provider

23 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

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 HRA 2008).

Scope

- 2 The power may be exercised in relation to all providers including a non-profit registered provider, a for-profit 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 Arms 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 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
- 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 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 three specific circumstances in which the regulator may exercise its discretion to use the power to tender management functions are set out in paragraph 6 of this guidance. The regulator is most likely to 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 has been 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

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 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 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 for-profit 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 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 for-profit 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 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 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 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 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 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 HRA 2008 makes reference to:

- a pre-penalty warning (section 230 of the HRA 2008)
- a pre-compensation warning (section 242 of the HRA 2008)
- a management transfer (section 250 of the HRA 2008)
- an appointment of a manager (section 252 of 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 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 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 over-riding 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 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 5: revised equality analysis

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 updated registration criteria and Guidance Notes on the regulator's use of powers set out in the 'Guidance on the regulator's approach to intervention, enforcement and use of powers'. The purpose of this document is to set out the equalities matters that the regulator considered both before, during the development of the proposals and following consultation.
- 2 This equalities analysis has been further revised and updated as a result of the statutory consultation which the regulator has undertaken upon its proposed changes to the registration criteria and guidance notes on the use of powers and the equalities-related feedback given by respondents.
- 3 The aim of the assessment is to enable the regulator to draw conclusions as to what action, if any, needs to be undertaken to address any equalities issues identified.

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 it².
- 5 The way in which the regulator aims to meet the General Equality Duty and the Specific Equality Duties set out in regulations³ (of which publishing objectives is one) is set out in the Homes and Communities Agency's Equality and Diversity

² S149 Equality Act 2010

³ Equality Act 2010 (Specific Duties) Regulations 2011 (SI 2011/2260)

Strategy.⁴ 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;
- 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 three 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;

⁴ HCA, Equality and Diversity Strategy 2012-2015

- 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 (and taking into account the consultation responses) was that no major change is required to the updated registration criteria and guidance notes on the use of powers.

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.⁵ The regulator's proposals particularly concerned 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 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

- 11 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.

⁵ s92K Housing and Regeneration Act 2008

- 12 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.
- 13 As outlined in the consultation, once the provisions of the Housing and Planning Act 2016 (HPA 2016) are implemented (on 1 April 2017), the regulator will 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 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.
- 14 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 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.
- 15 The regulator considered 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.

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

17 A summary of the changes to the registration criteria and the equality considerations that were identified can be found in Table 1 below. Table 2 below outlines the proposed new criteria for restructured bodies and identifies any equality considerations that were identified prior to consultation. The regulator committed to re-assess the position following the close of the consultation to take into account any equality issues identified as part of that consultation.

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</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 	<p>No equalities</p>

<p>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 must be notified to the regulator.</p>	<p>they cannot distribute assets</p> <ul style="list-style-type: none"> • 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>implications identified</p>
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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
<p>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</p>	<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 	<p>No equalities implications identified</p>
<p>Not requiring a restructured body to:</p> <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 	<p>No equalities implications identified</p>

Equalities in the use of powers

- 18 The deregulatory measures in the 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.
- 19 In addition, the Welfare Reform and Work Act 2016 (WRWA) also amended circumstances in which the regulator could exercise the use of some of its enforcement powers in relation to rent compliance by providers.
- 20 To address these changes, the regulator proposed revisions to a number of its Guidance Notes included within its guidance on the use of powers. In doing this, it only changed the notes to reflect the legislative changes that have been introduced.
- 21 Given these changes are legislatively driven and they are minimal changes that do not significantly change the emphasis or nature of the Guidance Notes, the regulator assessed that there were no equality implications associated with the proposed changes.
- 22 A summary of the proposed changes to the Guidance Notes and the equality considerations that were identified can be found in Table 3 below.

Table 3 – changes to the guidance notes 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

<p>12 Compensation</p>	<p>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</p>	<p>No equalities implications identified</p>
<p>13 Appointment of a Manager</p>	<p>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</p>	<p>No equalities implications identified</p>
<p>18 Appointment of an Officer</p>	<p>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</p>	<p>No equalities implications identified</p>
<p>19 Management Tender</p>	<p>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</p>	<p>No equalities implications identified</p>

23 In summary, it can be seen from the above table that no equalities implications were identified in the course of developing the proposed changes. However, as with the registration criteria, this was a preliminary assessment and the regulator committed to revisit the assessment should any equalities-related issues arise during the statutory consultation.

Equality considerations arising from the changes proposed

24 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 appreciated that, as with any strategic policy/project, undertaking a meaningful analysis can be difficult at an early stage. The regulator acknowledged that 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 set out its intention to revisit matters if new information giving rise to concerns impacting on equality comes to light.

- 25 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.
- 26 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.
- 27 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.
- 28 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.
- 29 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

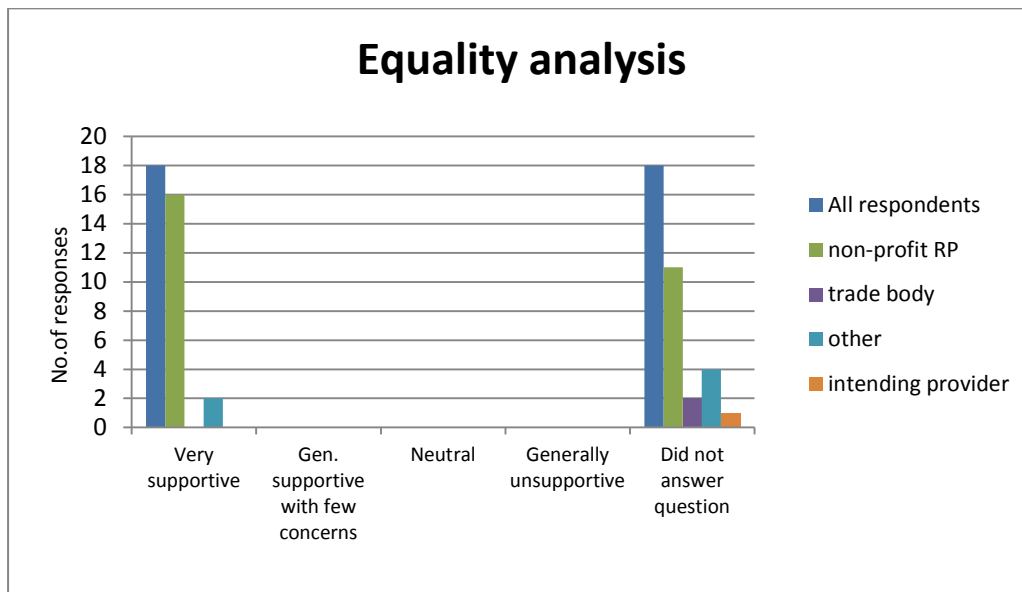
- 30 The statutory consultation was launched in May 2016 and ended on 22 July 2016.
- 31 The consultation was open to anyone who had an interest in the future of social housing in England. To support the open consultation, the regulator also circulated the consultation to all private registered providers of social housing and all organisations it must consult as required by statute as well as other key

stakeholders. The regulator also engaged with stakeholders via its existing bilateral meetings and panel meetings.

Consultation outcome

32 By the close of the consultation, the regulator had received 36 written responses to the consultation. Chart 1 on the next page provides a breakdown of the responses with regard to the equality analysis broken down by respondent type.

Chart 1: equality analysis



33 As can be seen from the table above, the question in relation to the equality analysis was answered by about 50% of all respondents (18 in total) to the consultation. Of these, all respondents were very satisfied with the regulator’s analysis.

34 Other than agreeing with the regulator’s analysis, no respondent suggested any changes should be made to the analysis.

35 As a result, the regulator considers that its equality analysis remains accurate following the statutory consultation.

Analysis of equality considerations

36 Based on the work the regulator has undertaken to date on the proposals coupled with the statutory consultation, the regulator’s 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.

Monitoring and review

- 37 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 which the regulator will continue to do.

Annex 6 – redacted responses to the consultation

Julian Ashby
consultation@hca.gsi.gov.uk

20 July 2016

Dear Sir,

Registration Criteria & Use of Powers Consultation

Thank you for the opportunity to respond to the HCA 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.

With regards to section 1 which deals with changes to the registration criteria as a consequence of the provisions in the Housing & Planning Act 2016, we feel that the proposed changes to both new entrants and restructured bodies are clear and respond proportionately to the changes to the consents regime. Whilst the need for regulatory consent has been removed, it is clear that the regulator will be assessing the clarity and quality of the governance in place and will be grading accordingly.

With regards to section 2, proposed minor amendments to “Guidance on the Regulator’s Approach to Intervention, Enforcement and the Use of Powers”, the proposed changes are clear and proportionate. The definition of “mismanagement” in this respect brings more clarity to registered providers.

Yours sincerely,



Cathy Durham
Director

t: 

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AmicusHorizon response to: Consultation on Registration Criteria and Guidance

21 July 2016

Introduction

AmicusHorizon is an award winning housing association, providing 28,000 homes for 60,000 people in housing need across London and South East England. With an annual turnover of £161m, we're a strong regional housing association and part of the [g15](#).

Our mission is '*Making homes, helping people*'. We improve lives, not just through the bricks and mortar of housing, but by helping people into jobs and training.

Summary

Overall the proposed changes seem logical, given the changes in legislation. We've outlined below our support for each of the changes and highlighted a couple of areas where there could be greater clarity.

Consultation questions

A. New entrants:

We support the reduced regulatory burden for new entrants. And agree the criteria are reasonable and proportionate.

B. New entities following restructure of existing registered providers:

We support the proposals for new regulation criteria for new bodies from existing registered providers, who restructure.

We would like to see greater clarity concerning when registration is required. In particular, section 4.3b outlining where registration **may be** required. For clarity, we would prefer to see these situations under section 4.3a, where registration **will be** required.

We're very supportive of section 4.3c outlining where registration is not required. This would not be a valuable use of the Regulator's time.

We support the proposals which mean a restructured organisation will not need to meet regulatory standards at the point of registration. For clarity, we'd like the proposals to include the expected timescale to demonstrate compliance. If it's not possible to state a specific or maximum timescale, the proposals should include a commitment to ensure the timescale is reasonable and proportionate, based on the risks involved.

C. Changes to guidance on the use of powers:

The changes to reflect the definition of mismanagement are logical, given legislative changes.

It appears unnecessary to include the changes to reflect the Welfare Reform and Work Act. The consultation itself notes that these changes are legislatively driven, so have no additional implications. The Governance Standard already requires organisations to comply with all laws. Plus other 'relevant' legislation e.g. the Data Protection Act is not specifically referred to, so why add specific references to the WRWA?

The guidance notes enforcement action can be taken '*where the registered provider has failed to comply with **relevant** provisions of the Welfare Reform and Work Act 2016*'. It not clear which provisions are relevant. It would be clearer to outline the expected requirements as part of the Rent Standard.

D. Equality Analysis – Annex 3

We're supportive of the proposed approach to dealing with equality issues. It balances ensuring equality issues are dealt with in the same way as other regulatory standards, with allowing time for restructured organisations to demonstrate compliance.

For clarity, we'd like the proposals to include the expected timescale to demonstrate compliance. If it's not possible to state a specific or maximum timescale, the proposals should include a commitment to ensure the timescale is reasonable and proportionate, based on the risks involved.



CONSULTATION RESPONSE

Registration Criteria & Use of Powers

22 July 2016

Anthony Collins
solicitors



Referrals and Regulatory Enquiries
Homes and Communities Agency
The Social Housing Regulator
Fry Building
2 Marsham Street
London
SW1P 4DF

Email: consultation@hca.gsi.gov.uk

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; and
3. Changes to the guidance on the use of powers.

The response of Anthony Collins Solicitors LLP (“ACS”).

BACKGROUND

ACS is one of the leading social housing law firms in the country, focussing particularly on how we may best work with our clients to deliver social, economic and physical transformation in communities where people live.

We work with a large number of registered providers of social housing (“RPs”). Amongst other advice that we provide to RPs, we regularly advise in relation to the changing environment in which they operate as a result of the impact of new legislation such as the Housing and Planning Act 2016 (“HPA 2016”) and the Welfare Reform and Work Act 2016 (“WRWA 2016”).

ACS has reviewed the full consultation document; however we have no comments in relation to many areas. We are therefore only responding to Question 4(a) in relation to the new registration criteria for restructured bodies. Our feedback is set out below.

NEW REGISTRATION CRITERIA FOR RESTRUCTURED BODIES

(a) Are the proposed changes to the registration criteria for restructured bodies clear and succinct?

The registration of a restructured body will be optional and this should be made clear by the Regulator. Currently, paragraph 4.3(a) of the consultation document suggests that registration decisions will need to be made in certain circumstances without making it clear that this is only if an entity wishes to register. For example, if a Registered Provider (“RP”) transfers to a non-registered body, the non-registered body is not obliged under the Housing and Regeneration Act 2008 (“HRA 2008”) (as amended by the HPA 2016) to register.

In particular, paragraphs 4.3(a) (ii) and (iv) seem to suggest that registration will be required where a transfer of engagements takes place from a registered society to either a registered society or a company that is not an RP. However, registration will only take place if the new body wants to be an RP. The registration criteria should be amended so that it is absolutely clear on this point.

Having considered paragraph 4.3(b), we feel it is also unclear in what circumstances a registration decision will be required by the regulator on an amalgamation and what will happen where there is an amalgamation of two registered societies that are already RPs.

Proposed registration requirements (Annex I)

Where the Registration Criteria set out in Annex I refers to restructured bodies, it should be made clear that a transfer of engagements from an RP to another RP will not require new registration, because the ‘accepting’ RP will be and will remain an RP. If it is proposed that there will be a requirement to re-register then this should be made clear.

The consultation states that *“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...". We suggest it should be made clearer which of the registration requirements will apply in these circumstances.

Registration Criteria (Annex 1)

ACS believes that the registration criteria should clearly set out what is required in relation to the 'parent controls' referred to, in order to avoid the indirect creation of "shadow constitutional consents" requirements. In addition, it isn't currently clear at what point in the restructure process a constitution would need to be submitted to the Regulator for approval pursuant to the registration criteria. If it is to be after a restructure has taken place, then that would be after the requisite member or stakeholder approvals and therefore too late for any changes to then be made to the constitution. However, if it is a requirement that a constitution is submitted to the Regulator for approval prior to completion of the restructure, then this could undermine the deregulatory measures in the HPA 2016.

If you have any queries or comments in relation to this document please contact:

Sarah Greenhalgh
Solicitor

Tel:

[REDACTED]

Email:

[REDACTED]

Anthony Collins
solicitors

Anthony Collins Solicitors LLP
134 Edmund Street | Birmingham | B3 2ES
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20 July 2016

Referrals and Regulatory Enquiries
Homes and Communities Agency
The Social Housing Regulator
Fry Building
2 Marsham Street
London SW1 4DF



**Bracknell
Forest Homes**

Dear Sirs,

Registration Criteria and Use of Powers Consultation

Further to your letter dated 26 May 2016 regarding the deregulatory changes affecting the regulatory framework, on behalf of Bracknell Forest Homes we wish to respond as follows to each of the limited changes to the existing registration regime proposals.

1. **Changes to the Registration Criteria for New Entrants**

In response to the consultation question, we consider the proposed changes to the registration criteria for new entrants to be clear, succinct, reasonable and proportionate.

2. **New registration criteria for restructured bodies**

In response to the consultation question, we consider the proposed new criteria for restructured bodies as set out in Annex 1 to be clear, succinct, reasonable and proportionate. We would comment that this new simple regime, based on the principle that if the original bodies were RP's then the resulting body will also be suitable for registration provided it meets some very basic tests, seems sensible. Even though the old process is being swept away, we believe it is important that the HCA will still have a responsibility to keep regulatory judgements under review via monitoring the Governance and Financial Viability Standard. Making the process less bureaucratic will minimise timing pressures for future conversions, transfers of engagements or amalgamations.

3. **Proposed changes to the Guidance Notes**

In response to the proposed changes to the Guidance Notes, we consider the changes to be clear, succinct, reasonable and proportionate.



Registered Office: Berkshire Court Western Road Bracknell Berkshire RG12 1RE
Tel 01344 382800 Customer Enquiries 0800 692 3000
Email bfh@bracknellforesthomes.org.uk Web www.bracknellforesthomes.org.uk
Bracknell Forest Homes Limited is a charitable registered society under the
Co-operative and Community Benefit Societies Act 2014 registration number 30230R



**Bracknell
Forest Homes**

4. Equality Analysis

We agree with the analysis of equality issues outlined in the Equality Analysis.

Yours sincerely,



Caroline Titley
Chief Executive
Bracknell Forest Homes



Registered Office: Berkshire Court Western Road Bracknell Berkshire RG12 1RE
Tel 01344 382800 Customer Enquiries 0800 692 3000
Email bfn@bracknellforesthomes.org.uk Web www.bracknellforesthomes.org.uk
Bracknell Forest Homes Limited is a charitable registered society under the
Co-operative and Community Benefit Societies Act 2014 registration number 30230R

From: Philippa Jones [REDACTED]
Sent: 14 July 2016 11:58
To: Consultation
Cc: [REDACTED]
Subject: Registration Criteria & Use of Powers Consultation

I confirm that I have read the consultation document on behalf of Bromford and am happy with the proposed changes
Thank you

Philippa Jones

Chief Executive

T: [REDACTED]
M: [REDACTED]
www.bromford.co.uk

Exchange Court, Brabourne Avenue
Wolverhampton Business Park
Wolverhampton, WV10 6AU

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HCA The Social Housing Regulator
Fry Building
2 Marsham Street
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16 June 2016

Registration criteria and use of powers consultation – May 2016

Please find below our answers to each of the questions asked to the different sections:

Consultation questions

A. New entrants: Are the proposed changes to the registration criteria for new entrants:

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

B. New entities following restructure of existing registered providers:

Are the proposed registration criteria for restructured bodies:

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

C. Changes to guidance on the use of powers: Are the proposed changes to the guidance:

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

D. Equality Analysis – Annex 3

Do you have any comments on/agree with our analysis of equality issues outlined in the Equality Analysis? **Yes, agreed, your analysis seems sensible**

Yours sincerely

A large black rectangular redaction box covering the signature area.

Stephen Bull
Senior Consultant

A small black rectangular redaction box covering a line of contact information.A black rectangular redaction box covering a line of contact information.

From: Tim Pinder [REDACTED]
Sent: 22 June 2016 15:17
To: Consultation
Subject: Consultation on deregulatory changes affecting the regulatory framework

Thankyou for the opportunity to respond to the Consultation Document on deregulatory changes affecting the regulatory framework and specifically new registration criteria for bodies arising out of restructures.

The Consultation question that we want to respond to is “whether the proposed registration criteria for restructured bodies is a) clear and succinct? And b) reasonable and proportionate?”

We do not feel that the criteria is clear and succinct, because it fails to explain what it is about these events and what criteria they share for these particular “certain situations” to require a “registration decision”.

Consequently, in the absence of any published criteria, we cannot understand why would a company conversion to a registered society (4.3) require a “registration decision” but not a partial transfer of engagement between a registered society and a company where both are existing registered providers (c ii). Would the same go for criteria iii which is the reverse of the conversion we are making – i.e. from a registered society to a company ?

Our contention is that on the basis of risk (both financial and governance) there is much less risk involved in the conversion from Company to Registered Society than a partial transfer of engagements. The involvement of the regulator in such a decision made by a Board does not seem proportionate and is rather against the presumption of less regulation.

We do not understand why companies need to be referred to separately to registered societies anyway. They can both achieve the same objectives regardless of their status as company or society?

Regards
Tim Pinder | Chief Executive | Peaks & Plains Housing Trust
Reg'd.Office: Ropewalks, Newton Street, Macclesfield, SK11 6QJ
Telephone [REDACTED]
Registered in England Reg No: 05358740
Registered with the Tenant Services Authority Reg No: L4472
Registered with the Charities Commission Reg No: 1114633

Tim Pinder, Chief Executive
Peaks & Plains Housing Trust
Ropewalks, Newton Street, Macclesfield, SK11 6QJ
Telephone: [REDACTED]
Connect with me:

To see our 2014/15 annual review, [click here](#).

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Registered with the Homes and Communities Agency Reg No: L4472

Registered with the Charities Commission Reg No: 1114633

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The Social Housing Regulator
Fry Building
2 Marsham Street
London
SW1P 4DF

14th July 2016

Email: consultation@hca.gsi.gov.uk

Dear Colleagues,

PROPOSED CHANGES TO REGISTRATION CRITERIA AND INTERVENTION POWERS

Thank you for the opportunity to make a response to this consultation paper and to comment on the HCA's proposals.

We recognise the benefits that regulation brings to Curo and to the sector. Our own ambitions will benefit from that regulatory engagement and so we are keen that the HCA maintains robust, clear and effective registration and intervention processes. The proposed changes, in our view, deliver that.

The changes to the registration criteria are probably less clear in the explanation than they will be in their final format. The changes to the criteria for new entrants appear very minor and straightforward. Clearly the need for a new form of registration is more complex but the requirements are clear and the guidance on different circumstances is helpful.

The changes to the Guidance on intervention powers are also clear. The link between the new definition of 'mismanagement' and the approach to regulation against the Standards is helpful in defining what mismanagement means.

In both instances we agree that the proposals are proportionate. They are necessary, but do not go beyond what is necessary.

Finally, while we recognise that the changes to registration criteria are, by definition, about new entrants and new entities, they raise questions for existing RPs about their conditions of registration. It might be helpful when the outcomes

are published to include, in any covering letter or advice, confirmation of any deemed changes to – for example the commitment to seek consent – for existing RPs.

Thank you again for allowing us the opportunity to comment and we look forward to hearing the outcomes of the consultation paper.

With best regards

Yours sincerely

[Redacted signature block]

[Redacted name]

Head of Policy & Research

[Redacted line]

[Redacted line]

The Maltings, River Place, Lower Bristol Road, Bath BA2 1EP

Consultation on deregulatory changes affecting the regulatory framework: Devonshires Solicitors LLP's comments

General

The proposals in this consultation are largely technical and appear to be in order. We reply to your specific points below.

We are conscious that further work needs to be done on deregulation, in particular on the new notification regime on disposals and constitutional matters. We anticipate commenting more fully on these aspects in due course.

Chapters 3 and 4 and annex 1: Registration criteria for new entrants (and restructured bodies)

Are the proposed changes to the Registration criteria clear and succinct, reasonable and proportionate?

Yes. Here are some technical comments

- (i) Section 4 (restructured bodies):
4.3i: Between societies (plural)
- (ii) In annex 1 there are a couple of repeated words "must".
- (iii) Under restructured bodies second bullet, we would refer to a body created or arising pursuant to....

Chapter 6 and annex 2, intervention etc.

Are the proposed changes to the guidance notes clear and succinct, reasonable and proportionate?

Yes.

Annex 3 equality

No comments to make.

From: [REDACTED]
Sent: 22 July 2016 14:09
To: Consultation
Subject: Registration Criteria & Use of Powers Consultation

Further to your consultation on proposed changes to registration criteria and use of powers, I can confirm the following:

The proposed changes to the registration criteria for new entrants are both clear and succinct. I also consider them to be reasonable and proportionate and welcome the approach proposed.

Similarly, I consider the proposed registration criteria for restructured bodies to be clear, succinct, reasonable and proportionate, and particularly welcome the fact that restructured bodies already on the register will not have to comply with the same registration criteria as new entrants.

Kind regards

[REDACTED]
Executive Director Corporate Services
East Midlands Housing Group
Tel: [REDACTED]

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Enable Care & Home Support Limited Charity number 1001704

EMH Housing and Regeneration Limited operates under the name of emh homes Registration number 32198R

Midlands Rural Housing and Village Development Association Limited operating under the name of Midlands Rural Housing Registration number 24278R

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22 July 2016

Registration Criteria and Use of Powers Consultation

We welcome the opportunity to respond to the HCA's consultation on the regulatory changes arising from the Housing and Planning Act 2016.

1) Registration for new entrants

Are the proposed changes clear and succinct and reasonable and proportionate?

We agree that the reduced registration requirements for new registered providers set out in Annex 1 are simpler and sufficiently clear and succinct.

2) Registration requirements for restructured bodies

Are the proposed changes clear and succinct and reasonable and proportionate?

We welcome the overall expectation of the HCA that the new criteria should have a minimal impact on registered providers restructuring and a simpler process should enable prompt decisions by the regulator.

We welcome that in a number of situations set out in paragraph 4.3c, restructured providers will not be required to wait for a registration decision from the regulator at all. However, where registered providers like East Thames Group, amalgamate its entities, registration 'may' still be required depending on individual circumstances (para 4.3b). There are no details as to how these decisions are made and what will be required from the registered provider in order for it to be made. In this respect then it is not possible for us to comment on whether the process will be reasonable or proportionate.

The consultation makes clear that as registered providers are already required to meet the regulator's standards, there will be no need for additional requirements for restructured bodies who do need consent for their amalgamation – they will be required to meet the same criteria as new entrants. As

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Tel: 0300 303 7333 Email: info@east-thames.co.uk Web: www.east-thames.co.uk

East Thames Group Limited is a Community Benefit Society registered under the Co-operative and Community Benefit Societies Act 2014 (7298), an exempt Charity. Homes & Communities Agency Registered (LH4309) East Thames Group is comprised of the following subsidiaries – East Homes Limited: is a registered society under the Co-operative and Community Benefit Societies Act 2014 (22557R), an exempt Charity, Homes & Communities Agency Registered (LH2833). East Potential, a limited company: Registered in England & Wales (3123368) Registered Charity (1053142). East Living Limited: is a registered society under the Co-operative and Community Benefit Societies Act 2014 (27902R), an exempt Charity. East Treasury Limited: Registered in England & Wales (04660101). East Place Limited: Registered in England & Wales (04301063). East Regen Limited: Registered in England & Wales (04660100). East Thames Partnership Limited: Registered in England & Wales (04701731). East Finance plc: Registered in England & Wales (07984573). East Homes Services Limited: Registered in England & Wales (08747446).



these criteria are simpler we can envisage the overall process for registered providers who 'may' be required to have the regulator's consent, will be shorter and simpler.

However, with no real detail of the process it is difficult to say with confidence that criteria are reasonable and proportionate.

Changes to the Guidance Notes on the use of powers

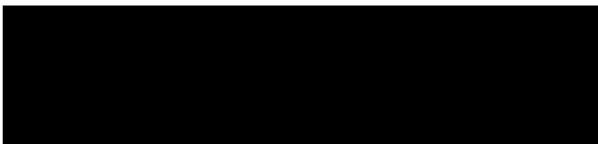
Are the proposed changes clear and succinct and reasonable and proportionate?

We welcome the clearer and more focussed definition of 'mismanagement' to specifically refer to when the registered provider has breached legal requirements. This therefore reduces the number of circumstances when the regulator can intervene. In particular, we note that the circumstances in which the regulator can appoint new officers are now far fewer removing circumstances such as 'where a governing body lacks skills and experience' and 'where they lack control' and focusses more explicitly on failure to meet required standards.

It is not clear however, why it is necessary to specifically extend powers to cover breach of the Welfare Reform and Work Act 2016 in relation to the rent reduction when providers are already required to meet the law which would include the rent clauses of the Act. Without further clarity, this does not appear to be necessary or reasonable.

We look forward to continuing to work with the regulator in the new environment to continue to provide a well governed business for the benefit of our tenants and residents.

Yours faithfully,



Yvonne Arrowsmith
Chief Executive
East Thames Group

From: Guy Weston [REDACTED]
Sent: 22 July 2016 15:23
To: Consultation
Subject: Registration Criteria & use of Powers Consultation

Please find below the comments on behalf of Fortis Living to the Registration Criteria & use of Powers consultation.

1. Are the proposed changes to the registration criteria for new entrants:
 - a. clear and succinct? Yes, but in the proposed registration criteria for new entrants (Annex 1) we consider that all new entrants should be expected to comply with at least G2 and V2 of the Standard.
 - b. reasonable and proportionate? Yes

2. Are the proposed registration criteria for restructured bodies:
 - a. clear and succinct? Yes, but (see para 4.3b) we consider that there should be some clear criteria for the individual circumstances which would determine the need for a registration decision.
 - b. reasonable and proportionate? Yes

3. Are the proposed changes to the Guidance Notes:
 - a. clear and succinct? Yes but we would comment on Annex 2, Guidance notes 12 and 13 as follows:
Guidance note 12

term “victim” does seem a little odd and as we assume this refers to a serious detriment to a tenant which we consider to be a more appropriate description.

i. The use of the

methodology for the award of compensation we would like to see a minimum and maximum level.

ii. In the

Guidance note 13 – we consider that the managers appointment should be for an agreed term which would be reviewed by the Regulator, as is the case for the appointment of officers.

- b. reasonable and proportionate? Yes

I trust this is of assistance
Regards

Guy

Guy Weston
Chief Executive
[REDACTED]

www.fortisliving.com

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- Festival Housing Limited trading as Fortis Living. Registered Provider No: L4278. Registered in England and Wales as a charitable registered society (registration number 29029R).
- Worcester Community Housing Limited trading as Fortis Living. Registered Provider No: LH4416. Registered as a Charity under the Charities Act 1960: Reg No 1109786.
- Fortis Property Care. Registered in England no: 3795555.

Registered addresses:

Fortis Living, Festival Housing Limited, Festival Property Care Limited : Festival House, Grovewood Road, Malvern, Worcestershire, WR14 1GD

Worcester Community Housing Limited : Progress House, Midland Road, Worcester, Worcestershire WR5 1DU

**HOMES AND COMMUNITIES AGENCY
CONSULTATION ON REGISTRATION CRITERIA
AND USE OF POWERS**

GENTOO GROUP RESPONSE

1. INTRODUCTION

1.1 Gentoo Group welcomes the opportunity to respond to the HCA consultation paper on registration criteria and use of powers. The consultation sets out:

- Changes to the registration criteria for entry into the register of Providers of Social Housing
- New registration criteria for bodies arising out of restructures
- Changes to the guidance on the use of powers

The Group will set out its response in turn to each of the proposed changes.

2. SECTION 1 - Changes to the registration criteria for entry into the register of Providers of Social Housing

2.1 Consultation question:

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

a) Clear and succinct?

The proposed changes appear clear, succinct and reasonable.

b) Reasonable and proportionate?

The changes appear reasonable and support the regulator's approach in relation to the protection of social housing assets. This would also apply in the context of private house builders with a social housing provider on its structure and therefore continue to

protect social housing assets particularly where there may have been public subsidy in the form of grant.

The changes also make provision for restructured bodies who may have restructured under the powers of the Co-operative and Community Benefit Societies Act 2014. The Group's conversion to a Community Benefit Society followed this process and was consistent with the National Housing Federation's guidance. We would therefore see this approach as reasonable and proportionate.

3. SECTION 2

3.1 Consultation question:

Are the proposed changes to the guidance notes:

a) Clear and succinct?

Yes

b) Reasonable and proportionate?

Gentoo recognise that along with all housing associations we have a duty to comply with all relevant law. The change in guidance seems a reasonable approach should a breach occur as this purely seeks to provide clarity that the requirement to comply includes the Welfare Reform and Work Act (WRWA). We would not see this as a significant change to the regulator's powers.

4. FURTHER INFORMATION

4.1 For further information, please contact:

[REDACTED]
Assistant Director, Strategy, Planning and Research
Gentoo Group Ltd
Emperor House, 2 Emperor Way
Doxford International Business Park,
Sunderland, SR3 3XR
Email: [REDACTED]
Tel: [REDACTED]

Greenfields' Response to HCA Consultation on:

- **Changes to the registration criteria for entry onto the register of providers of social housing**
- **New registration criteria for bodies arising out of restructures**
- **Changes to the guidance on the use of powers**

20th July 2016

Greenfields is a Community Gateway Association with more than 8,000 homes in Braintree District in the East of England. This consultation response has been put together by relevant members of Greenfields' Joint Leadership Team.

We are comfortable with the changes being suggested for both new entrants and bodies arising from restructures. Also, we are happy with the amendments proposed to the use of powers guidance.

Section 1 – Changes to our Registration Criteria

A. New entrants:

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

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

B. New entities following restructure of existing registered providers:

Are the proposed registration criteria for restructured bodies:

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

Section 2 – Changes to the 'Guidance on the Regulator's Approach to Intervention, Enforcement and Use of Powers'

C. Changes to guidance on the use of powers:

Are the proposed changes to the guidance:

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

D. Equality Analysis

Do you have any comments on/agree with our analysis of equality issues outlined in the Equality Analysis? No comments



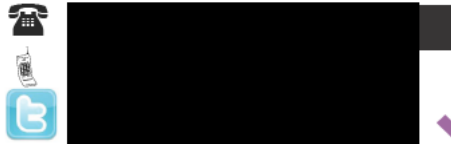
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Title: Consultation on:
1. Changes to the registration criteria for entry onto the register of providers of social housing
2. New registration criteria for bodies arising out of restructures
3. Changes to the guidance on use of powers

Reference: RS 114 : 2016/17

Contact: Nick Atkin

Telephone:



Email:



Closing Date: 22nd July 2016

Submission Date: 22nd July 2016

CONSULTATION RESPONSE

Halton Housing Trust Response

Introduction

1. The Trust welcomes this opportunity to comment on the proposed changes to the Homes & Communities Agency's (HCA's) registration criteria, as well as the associated changes to its guidance on use of powers.

Question A - New entrants:

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

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

Commentary Question A

2. a) The proposed changes to the registration criteria as described in section 3 of the consultation document, together with the additional information provided in Annex 1, do provide a clear and succinct explanation of the proposals.

The Trust also fully supports the proposal that any type of body whether profit making or non-profit making may apply for registration.

3. b) With regard to the proposed changes being reasonable and proportionate, for the HCA's role to be as effective as possible across the housing sector, this will not be achieved if registration for new entrants is on a voluntary basis. This is set out in the third paragraph of the 'Registration Requirements' section of Annex 1. This is inequitable when compared to the statement made in the 'Overview' paragraph in Section 3 (final sentence of point 3.1) that: 'Local authorities that provide social housing are subject to compulsory registration.....'

Question B – New entities following restructure of existing registered providers:

Are the proposed changes to the registration criteria for restructured bodies:

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

Commentary Question B

4. a) The Trust would make the following points concerning the proposed changes for restructured bodies being clear and succinct:
- In the initial 'Overview' in Section 4, point 4.3.a. lists situations where a registration decision will be required by the regulator. Item iv. of this list describes one of these situations as being 'a partial transfer of engagement'. Further guidance or clarification needs to be provided on what would constitute 'a partial transfer' sufficient to require such a decision to be made. This is not covered in the changes to the guidance mentioned later in the consultation document.
 - The wording of point 4.5 is unclear and confusing. It also seems to be describing an administrative process around redesignation, which - although may well be necessary for the purposes of complying with the HRA 2008 - nevertheless seems somewhat at odds with the statement made in the following point 4.6 that the regulator: 'is proposing a simplified registration criteria for restructured bodies and a simple registration process.'
 - The same comment relating to the administration process made above also applies to point 4.10 in Section 4.
5. b) On a more general point, the Trust agrees with the opening sentence of point 4.6 that because restructures involve bodies that are already on the register, restructured bodies should not have to comply with the same registration criteria as new entrants.

Question C – Changes to guidance on the use of powers:

Are the proposed changes to the guidance:

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

Commentary Question C

6. a) The Trust agrees that generally the proposed changes to guidance on use of powers as summarised in Section 6 of the consultation document are clear and succinct

However, there are some points that are unclear that relates to Guidance note

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19 (management tender). This is point 12 in the sub-section that deals with 'Additional provisions for local authority providers'. The Trust appreciates that this covers quite a technical area concerning management agreements. However it fails to offer those affected providers a clear indication of what they are expected to do to comply with the requirement.

7. b) Concerning whether the proposed changes to the guidance are reasonable and proportionate, the Trust would make the following comments as they relate to the various extracts contained in Annex 2 :

- The Trust notes, and fully supports, the Guidance note 10 on the scope of enforcement notices where it states: 'The power may be exercised in relation to all providers including a non-profit provider, a profit making provider and a local authority provider.'

However, in the scope sections of Guidance note 11 (penalties), Guidance note 12 (compensation) and Guidance note 13 (appointment of manager); it then states that none of the powers described in these particular notes can be exercised in relation to local authorities.

The underlying argument made earlier at point 2b) of this response could also be applied in this case; in that it seems inequitable for local authority social housing providers to be subject to compulsory registration, when they are not then subject to certain of the powers available to the regulator in a number of different and important areas covered by the guidance notes.

- The Trust has additional comments relating to the text for Guidance note 19, which relate to points 21 and 29 of this extract.

Point 21 deals with various items surrounding the regulator seeking views on a requirement to tender management functions. The first bullet point of this sub-section lists 'relevant tenants' as being a group whose views the regulator must have regard to. As tenants will always be the ultimate beneficiaries of the vast majority of services from the provider, the Trust supports this approach.

Point 29 then deals with the requirement itself, and the first bullet point here relates to the people who will make up a panel with responsibility for selecting the new manager. The last part of this bullet point says that there should be 'specific provision for ensuring that tenants' interests will be represented on the panel.' Again, the Trust supports this approach and would suggest that this would be essential to ensure the success of this process. Indeed, it could be argued that this point should be expanded to say that such interests should wherever

possible be put forward by engaged tenant representatives who are part of the panel. However as there are a number of technical elements to this process, they do also need to be suitably competent and trained to discharge this responsibility.

Question D – Equality Analysis, Annex 3:

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

Commentary Question D

8. The Trust agrees with the analysis of equality issues provided in the consultation document which were actually contained in Annex 4, and not Annex 3 as indicated in the consultation question.

The Trust welcomes the statement made in the final sentence of point 23 of Annex 4 that *‘the regulator is setting out its intention to revisit matters if new information giving rise to concerns impacting on equality comes to light.’*

CONSULTATION RESPONSE

HCA Registration Criteria & Use of Powers Consultation

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

- a. Clear and succinct?
- b. Reasonable and proportionate?

We believe that the proposed changes are both clear and succinct and reasonable and proportionate. Home Group feels that the proposed changes reflect the removal of the consent regime which we welcome as part of the broader de-regulation agenda. As the changes have been kept to a minimum, and only reflect changes in the legislation, the scope of the consultation is narrow. We believe that the requirement to clearly identify parent bodies and control aligns to the approach taken in the IDA's.

2) Are the proposed registration criteria for restructured bodies:

- a. Clear and succinct?
- b. Reasonable and proportionate?

Home Group believes that the proposed changes for restructured bodies are both clear and succinct and reasonable and proportionate.

3) Are the proposed changes to the Guidance Notes:

- a. Clear and succinct?
- b. Reasonable and proportionate?

Home Group believes that the changes to the guidance notes are both clear and succinct and reasonable and proportionate. We particularly support elements which extend the de-regulation agenda, such as the amending of the definition of 'mismanagement' to breach in legal requirements and clarification of the circumstances in which the regulator can apply enforcement powers.

We also support the removal of several triggers for the regulator appointing officers replaced with the failure to meet standards or mismanagement.

We support the draft proposal to add a trigger for the regulator to act where "the RP has failed to comply with the relevant of the Welfare Reform and Work Act 2016". As this relates to the requirements within this Act for the setting and charging of rent. As the Housing Association Sector have accepted the 1% rent reduction, it makes sense that this will be enforced by the regulator.

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

We agree with the decision to adopt Option 2 for the registration criteria for restructured bodies as this avoids duplication with the Governance and financial Viability Standard. We have no further comments on the overall analysis.

22 July 2016

Referrals and Regulatory Enquiries
Homes and Communities Agency
Fry Building
2 Marsham Street
London
SW1P 4DF

Registration Criteria and Use of Powers Consultation

Dear [REDACTED]

Please find enclosed the Federation's response to the above technical consultation.

We have a specific comment on the proposed re-wording in relation to the use of enforcement powers in Guidance Note 10 on page 22 of the consultation document.

We are concerned that the proposed re-wording creates ambiguity since the use of the word 'triggered' suggests that the contact with the provider on enforcement powers might follow, rather than precede, the exercise of the power.

The current Guidance Note states that "*Where a problem is identified, the regulator will bring it to the notice of the provider ...*" (our italics). Whereas the proposed Guidance Note will read, "*Where the exercise of the power has been triggered, the regulator will bring it to the notice of the provider ...*".

It is our understanding that, other than in an extreme case of exceptional urgency, the HCA would always contact a provider before having resort to its regulatory powers. This is clearly good practice since it allows the provider an opportunity to put its perspective to the regulator, and perhaps to supply additional information or context that the regulator may wish to take into account before invoking any enforcement powers. It also accords with the 'no surprises' policy consistently espoused by the HCA.

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A company with limited liability
Registered in England No 302132

As such we strongly suggest rewording the first sentence of Guidance Note 10 to read:
"Where the regulator considers that the circumstances may require use of the power, it will advise the provider accordingly and seek information on the provider's intended response."

Other than that, we have no comments.

Yours sincerely


Assistant Director, Policy and Research

National Housing Federation
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National Housing Federation Limited
Trading as National Housing Federation
A company with limited liability
Registered in England No 302132

From: [REDACTED]
Sent: 22 July 2016 17:20
To: Consultation
Subject: Registration Criteria & Use of Powers Consultation

Dear Sir/Madam,

We think that the changes to the registration criteria for Registered Providers; the New Registration criteria arising out of restructures; and the changes to the guidance on the use of intervention, enforcement and powers are user friendly, proportionate, clear and succinct.

We have no other comments to make.

Kind regards

[REDACTED]
Research and Policy Manager
Orbit Group - Futures
T: [REDACTED]
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Orbit Group

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Peabody was established in 1862 by the American banker and philanthropist, George Peabody. Our mission is ‘to make London a city of opportunity for all by ensuring that as many people as possible have a good home, a real sense of purpose and a strong feeling of belonging.’

We work solely in London, with a presence in the majority of London boroughs. We own and manage around 28,000 homes, providing services to over 80,000 Londoners. This is set to grow with 8,000 new homes planned across the capital, meaning Peabody will provide a good home for one in every 100 Londoners. Every penny that we generate from sales on the open market is reinvested into providing more affordable homes and building thriving communities – expanding George Peabody’s founding mission to more people than ever before.

As well as bricks and mortar, Peabody provides community programmes for the benefit of its residents and for people living in the surrounding neighbourhoods, including employment and training support; health and wellbeing projects; family support programmes; welfare benefits advice; and activities for younger and older people. This work aims to tackle poverty at its roots, supporting people to transform their lives and communities for the better.

Our Response

Consultation questions	Response
<p>A. New entrants:</p> <p>Are the proposed changes to the registration criteria for new entrants:</p> <p>a) Clear and succinct? b) Reasonable and proportionate?</p>	<p>a) Yes b) Demonstrating compliance to the Governance and Viability standard like other registered providers is more attractive to investors and ensures that there are controls in place for subsidiaries. It is deemed reasonable and proportionate and in the interest of the sector.</p>
<p>B. New entities following restructure of existing registered providers:</p> <p>Are the proposed registration criteria for restructured bodies:</p> <p>a) Clear and succinct? b) Reasonable and proportionate?</p>	<p>a) Yes b) The Group has adopted the NHF voluntary code on Mergers, Group Structures and Partnerships. In line with the rest of the sector, the Board is keeping under review how the Peabody Group can most efficiently and effectively meet current challenges and will ensure that any proposal or opportunity is properly and transparently evaluated against</p>

Peabody's purpose and objectives. The criteria are reasonable and proportionate on the basis of them being in the organisation's interest of being a social housing provider and not for profit organisation. If Peabody did conduct a restructure or amalgamation, it would still meet these criteria.

C. Changes to guidance on the use of powers:

Are the proposed changes to the guidance:

- a) Clear and succinct?
- b) Reasonable and proportionate?

- a) Yes
- b) There doesn't appear to be much change but rather updates on this section. The additions of provisions under the Welfare Reform Act 2016 are enacted by law and we will comply with them.

D. Equality Analysis –Annex 3

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

We agree with the equality analysis on changes to the above areas. The framework takes equality into account and we already utilise Equality Impact Assessments for our own operational policies and service provision.

For further information about our response please contact:

██████████ Policy Officer
██████████
██

HCA Consultation on Changes to Registration Criteria and Use of Powers

QUESTIONS:	RESPONSE:
New entrants	
Are the proposed changes to the registration criteria for new entrants:	
a) clear and succinct?	We agree that the changes to the registration criteria for new entrants are clear and succinct
b) reasonable and proportionate?	We believe that the criteria for the registration of new entrants is both reasonable and proportionate and retains the regulator's ability to assess a new entrant's compliance with the Governance and Financial viability standards and in so doing retain the integrity of the sector.
New entities following mergers or restructuring of registered providers	
Are the proposed registration criteria for restructured bodies:	
a) clear and succinct?	The registration criteria for restructured bodies as stated on page 19 of the document is clear and succinct.
b) reasonable and proportionate?	The principle comment we would wish to make here is that whilst we applaud the focus of promoting the public sector equality duty, the requirement to have a restructured body demonstrate its compliance with this duty at re-registration seems at odds with the general approach set out in 4.8; in that the regulator would expect all previously registered providers to comply with its regulatory standards. We would therefore expect that meeting the requirements of the Equality Act as set out in paragraph 4.12 would be part of our ongoing regulatory engagement under the requirements to meet all relevant law and should not therefore be a specific requirement when reregistering a restructured body.
Changes to guidance on use of powers	
Are the proposed changes to the guidance:	
a) clear and succinct?	We agree that the changes to the guidance notes are clear and succinct.
b) reasonable and proportionate?	We welcome the new definition of mismanagement, which we believe provides greater clarity than the previous definition.
Equality analysis	
Do you have any comments on/agree with our analysis of equality issues outlined in the Equality Analysis?	We would agree that the changes to the registration criteria and use of powers are primarily neutral in relation to their equality impact. However, we would recommend that should the regulator use its powers to appoint officers or managers to a registered provider, the regulator does so in a way that promotes a positive impact on equality and diversity within that provider.

From: [REDACTED]
Sent: 11 July 2016 13:56
To: Consultation
Subject: Registration Criteria and Use of Powers consultation

Dear Sirs

I write on behalf of the Radian Group Limited in response to the above consultation. I have canvassed views within our organisation and our overall response is that we support the proposed changes (which appear reasonable and minor).

However, we would like to comment on the general change for new applicants which is that with regard to a “non-profit applicant (for registration) that is not a registered or a non -registrable charity (it) must have as an object the provision of social housing” (my emphasis). With the introduction of affordable rents, rent to buy and other products, social housing is no longer a clear enough definition. Given the plethora of tenures and products that have been grant fundable and which could therefore loosely be referred to as social housing, we suggest it might be better if the reference were to be extended, to “providing housing for people in housing need”.

We look forward to hearing the results of the consultation process in due course but should there be any queries about our submission, please do not hesitate to contact me.

Kind regards,

[REDACTED]

[REDACTED]

Compliance Manager

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Radian Group Ltd

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Communities Agency No L4172

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Registration Criteria & Use of Powers Consultation Questions

A. New entrants:

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

a) clear and succinct?

The proposed changes make it clear that, where a registrant is a subsidiary, its constitution must include information on the structure of the group of which it forms a part. The changes also make it clear that alterations to such provisions in an RP's constitution will not require the Regulator's prior consent.

b) reasonable and proportionate?

The changes proposed by the Regulator are minimal and appear to implement the removal of the consents regime as introduced by the HPA. The changes are reasonable as they require new entrants which are subsidiaries to ensure that their constitution includes information on their group structure. This in turn allows the Regulator to take the group structure into account when assessing whether the new entrant meets the criteria for registration. It is important that this can be taken into account by the Regulator, as a potential RP's position and level of control in a group structure will impact on its viability.

B. New entities following restructure of existing registered providers:

Are the proposed registration criteria for restructured bodies:

a) clear and succinct?

The re-drafted criteria are clear and an obvious distinction is drawn between the criteria that apply to new entrants and the criteria that apply to restructured bodies.

b) reasonable and proportionate?

We agree that, as restructured bodies are formed as a result of activity by existing RPs, the criteria for restructured bodies should be less onerous. We understand the need for the Regulator to safeguard social housing assets and manage risk across the sector and appreciate the need for the Regulator to be clear on the position of a restructured body within a group before granting registration.

C. Changes to guidance on the use of powers:

Are the proposed changes to the guidance:

a) clear and succinct?

The proposed changes to the guidance are clear. Whilst the level of detail is sufficient to understand why, when and how the Regulator may exercise its powers, the succinctness of the current guidance notes are not adversely affected by the proposed changes.

b) reasonable and proportionate?

The proposed changes to the guidance appear to be reasonable, as they give the Regulator the power to enforce provisions in the WRWA. Further, they amend the regulations in line with amendments to existing definitions made in the HPA. The changes are proportionate as the revised guidance is clear on when the Regulator may exercise its powers and also enforces recent legislation.

D. Equality Analysis – Annex 3

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

Sanctuary takes a proactive approach to ensuring it meets and, where possible, exceeds its obligations relating to Equality and Diversity (E&D). Annex 4 of the consultation illustrates that the Regulator takes an equally thorough approach to E&D and expects RPs to adopt the same approach. We agree with the Regulator's analysis of equality issues in table one of Annex 4, as it is unlikely that the proposed changes that form the subject of this consultation will have any equalities implications.

We also agree with the Regulator that option 2 in relation to restructured bodies is a sensible approach to adopt in ensuring that restructured bodies meet specific E&D requirements.

HCA Consultation: Registration Criteria and use of powers

1. Introduction

Sovereign Housing Association owns and manages around 38,000 homes in the South East and the South West of England. Sovereign has exploited its financial strength to meet housing need, becoming a key developer across the region. In 2014/15 Sovereign developed 982 homes and acquired 294 from other housing associations. The overwhelming majority of Sovereign homes are provided for social rent. However, there are also over 6,000 other homes of which around 3,800 are shared ownership and former shared ownership.

2. Responses to consultation questions

We welcome the opportunity to comment on the proposed changes to the registration criteria and the Regulator's use of their powers.

We agree that all of the proposed changes are clear, succinct, reasonable and proportionate and think they strike a healthy balance between providing more freedom to housing associations whilst maintaining control over their compliance.

We do not have any comments concerning the equality analysis.

From: [REDACTED]
Sent: 22 July 2016 17:01
To: Consultation
Subject: Registration Criteria & Use of Powers Consultation

Please find below the response to the consultation on behalf of Stockport Homes Limited. Let me know if you require any further information.

Consultation questions – registration criteria

Are the proposed changes to the registration criteria for new entrants: clear and succinct; and reasonable and proportionate?

Stockport Homes Ltd response: We welcome this move to reduce the burden of regulation. The changes strike the right balance between the oversight requirements of a regulator and the freedoms of a registered provider to make decisions in the best interests of its business. The regulator can still use the Governance and Financial Viability elements of the Regulatory Framework to ensure businesses are operated in line with best practice principles.

Consultation questions – use of regulatory powers

Are the proposed changes to the registration criteria for new entrants: clear and succinct; and reasonable and proportionate?

Stockport Homes Ltd response: The changes are relatively minor but will focus interventions appropriately. Given that registered providers are already required to comply with the regulatory framework and Boards are responsible for co-regulation, the amended powers strike a balance between ensuring social housing assets are protected and giving providers the freedom to determine how best to operate their businesses.

Yours sincerely,

[REDACTED]
Performance and Improvement Manager

Corporate Services Directorate, Stockport Homes
? 1 St Peter's Square, Stockport, SK1 1NZ

? [REDACTED]
www.stockporthomes.org

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RESPONSE TO HCA CONSULTATION ON REGISTRATION CRITERIA AND USE OF POWERS

A. NEW ENTRANTS:

ARE THE PROPOSED CHANGES TO THE REGISTRATION CRITERIA FOR NEW ENTRANTS CLEAR AND SUCCINCT AND REASONABLE AND PROPORTIONATE?

SYMPHONY RESPONSE: YES TO BOTH

B. NEW ENTITIES FOLLOWING RESTRUCTURE OF EXISTING REGISTERED PROVIDERS:

ARE THE PROPOSED REGISTRATION CRITERIA FOR REGISTERED PROVIDERS CLEAR AND SUCCINCT AND REASONABLE AND PROPORTIONATE?

SYMPHONY RESPONSE: YES TO BOTH

C. CHANGES TO GUIDANCE ON THE USE OF POWERS

ARE THE PROPOSED CHANGES TO THE GUIDANCE CLEAR AND SUCCINCT AND REASONABLE AND PROPORTIONATE?

SYMPHONY RESPONSE: YES TO BOTH

D. EQUALITY ANALYSIS

DO YOU HAVE ANY COMMENTS ON/AGREE WITH OUR ANALYSIS OF EQUALITY ISSUES OUTLINED IN THE EQUALITY ANALYSIS?

SYMPHONY RESPONSE: NO COMMENT, WE AGREE WITH THE ANALYSIS

Symphony
HOUSING GROUP

Almshouse Association submission

Consultation on deregulatory changes affecting the regulatory framework

To: consultation@hca.gsi.gov.uk

Date: July 2016

Introduction and Background

The Almshouse Association's membership comprises around 95% of the almshouse charities in the United Kingdom. About 320 of these charities are also registered providers of social housing. A small number of almshouse charities are expected to apply to become registered providers every year for the foreseeable future, invariably as a condition of obtaining social housing grant to build brand new units. (The HCA Investment Agency's current prospectus acknowledges the long-standing basis whereby an almshouse charity does not have to become a registered provider where social housing grant is purely for re-modelling existing units.)

The Almshouse Association has a good working relationship both with the Registrar of Social Housing and her team, and with the HCA Investment Agency via [REDACTED]. To date the HCA has invested several million pounds in social housing provided by almshouse charities, and rightly regards them as low risk and recognises their good track record of delivering what they promise. The Association is grateful for the HCA's support for almshouse Registered Providers.

Many almshouse charities are unincorporated charities, meaning that the charity is not a separate legal person in its own right. In effect, the trustees themselves are the charity. We suspect that this makes almshouse charities unique amongst registered providers. However there is an increasing trend towards incorporation, so that the trustees can benefit from limited liability. This reflects the direction of travel in the charity sector more generally over the last 30 years, including virtually every household name charity in the UK. In a nutshell, incorporation involves the unincorporated charity passing its assets and liabilities to a corporate 'successor' charity with identical charitable purposes and the same trustees. The legal format of the corporate 'successor' charity may be either a Company Limited by Guarantee (CLG) or a Charitable Incorporated Organisation (CIO).

As far as we can establish, this process would not technically amount to 're-structuring' for the purposes of this consultation. The 're-structuring' provisions in the Housing and Planning Act 2016, as reflected in the consultation document, seem to refer only to scenarios where an *existing corporate* body converts into another type of corporate body.

Some almshouse charities have charitable purposes which oblige them by law to restrict accommodation to poor people who share a characteristic which has now become 'protected' under the Equality Act 2010. Typically the restriction is by age, sometimes gender (usually women-only), and occasionally religious belief.

Changes to the registration criteria for new entrants

The consultation question is:

Are the proposed changes to the registration criteria for new entrants...clear and succinct, and reasonable and proportionate?

Issue 1

We welcome the statement that *'the regulator recognises the obligations on CIOs as registered charities and wishes to minimise the administrative burden on such bodies'*.

Subject to the general points about the Equality Act 2010 in the separate section below, we agree that the proposed changes are reasonable for almshouse charities which are genuine 'new entrants'. That is, the almshouse charity applicant is not a 'successor' to an existing almshouse Registered Provider.

Issue 2: special case: incorporation of unincorporated almshouse Registered Provider

However, under the current criteria, when an *unincorporated* almshouse charity which is already a Registered Provider incorporates as described on page 1, the 'successor' corporate charity is treated as a 'new entrant'. We assume this is because, as explained on page 1, 're-structure' applications appear to be restricted by law only to certain scenarios where an existing *corporate* provider converts to some other corporate format. The Registrar's team recognised that this created an anomaly whereby the 'successor' almshouse charity would be subjected to the full process for new entrants, despite being run by the same trustees for whom the HCA had a record of compliance, in the same way, and with the same charitable purposes. Accordingly, since October 2015, the HCA agreed a pragmatic approach to registration of the 'successor' almshouse charity in this scenario, recognising that the spirit of the registration was much more akin to a 're-structure' application by a mainstream registered provider and accordingly did not justify the level of public resources needed to scrutinise a genuinely 'new' entrant.

That pragmatic approach is set out below. **First Recommendation:** We **recommend** that the HCA formally writes that pragmatic approach into its standard guidance for caseworkers and into its registration criteria, so that the HCA's and the charity's resources continue to be used effectively in such cases. We assume that the registration criteria and guidance in question would continue to be that for 'new entrants'. However, if possible it might be preferable to include these provisions as an express new type of 're-structure', given that it is analogous to the 're-structures' envisaged by the HPA 2016 where the consultation document recognises that a light touch approach is appropriate.

The pragmatic approach was specifically agreed in the context of the 'successor charity' being a CIO for its corporate format, but logically the same principles should apply to those who choose a CLG format and this should be spelled out in amended registration criteria and internal guidance to caseworkers.

Overview of the current, pragmatic approach

The HCA will register an almshouse corporate charity (CIO or CLG) (the ‘successor charity’) in place of an existing unincorporated almshouse charity which is already HCA registered. However, they will not apply the full approach normally used for new applicants. Instead, they will apply a ‘light touch’ approach to the successor charity’s application, confined to four areas:

1. Does the successor charity’s constitution contain the mandatory provisions required by the HCA guidance for registering a new Registered Provider?
2. Might registering the successor charity be a breach of the Equality Act 2010?
3. Can the trustees of the unincorporated charity assure the HCA’s Registration Team that the HCA’s Investment Agency has agreed to waive its theoretical right to demand repayment of social housing grant?
4. Does the unincorporated charity have a satisfactory regulatory track record?

The detail

1. Does the successor charity’s constitution contain the mandatory provisions required by the HCA?

Please see the attached letter from the Charity Commission to the Almshouse Association, commenting on some of the mandatory provisions required by the HCA. The Charity Commission letter refers to the HCA guidance for registration applicants which was current as at the date of the letter (25th May 2016). However, in all material respects these are the same as the proposed new criteria for new entrants.

2. Might registering the successor charity be a breach of the Equality Act 2010?

Please see the separate section below on the Equality Act for the issues here.

3. Waiver of the HCA’s right to repayment of social housing grant

The HCA Investment Agency (‘HCA IA’) is entitled to demand repayment of social housing grant if a Registered Provider disposes of assets which have been paid for with grant. Technically, for these purposes the HCA considers that an unincorporated charity may be ‘disposing of’ its assets when it passes them to its successor charity. However, the HCA IA has power to waive this right. The Association has explained to the HCA the generic reasons why almshouse charities cannot afford to repay social housing grant in these circumstances – see **Annex 1, Part 3**. The HCA has agreed that its pragmatic approach would usually be to waive the right to demand repayment in these circumstances, provided the unincorporated almshouse charity has:

- Formally explained to the HCA IA in writing, with reference to specific figures, why re-paying the grant would cause financial hardship on its specific facts; and
- Entered into a Deed with the HCA IA to put the waiver on a formal footing which preserves the HCA’s rights in other scenarios.

Annex 2 of this document contains edited extracts from an email of 16TH October 2015 from the HCA Registrar to the Almshouse Association, confirming this approach.

4. Does the unincorporated charity have a satisfactory regulatory track record?

This is confined to checking the HCA records for:

- whether the unincorporated charity has consistently complied with its obligations about filing accounts with the HCA and completing data returns
- whether the HCA is aware of breaches of regulatory requirements by the unincorporated charity.

Issue 3: Equality Act 2010

This part of our submission is relevant not only to scenarios involving genuinely ‘new’ almshouse applications, but also to incorporation scenarios as explained above.

The HCA considers that it is legally required to comply with the Equality Act 2010 when taking any step, for example deciding a registration application.

The vast majority of almshouse charities were founded decades, if not centuries, before the Equality Act 2010 was passed. Some almshouse charity constitutions restrict the pool of possible residents by reference to criteria which have now become ‘protected characteristics’ under the Act, for example, age, gender, or religious belief, etc. The restriction is set out in the charitable purposes in the constitution. Charity law obliges the charity to comply with the restriction unless and until it is no longer practical to do so (‘the cy-pres principle’). Even then the charity trustees would still not have discretion simply to remove the restriction but would instead be legally obliged to apply to the Charity Commission to have it removed.

Second Recommendation: We **recommend** that the guidance for applicants about the Equality Act implications, and the guidance manual for HCA caseworkers, should acknowledge explicitly that:

- charity law obliges charities to comply with their charitable purposes in their constitution, including any restrictions in those purposes by reference to ‘protected characteristics’, unless and until it is no longer practical to do so
- even then, charity trustees do not have authority to change those purposes. Instead they must ask the Charity Commission to change them, and the Commission in turn is legally required to make the minimum change compatible with the original benefactor’s intentions which would make it practicable to carry out the purposes (‘the cy-pres principle’).

The charities exception in section 193 Equality Act 2010

It is expressly lawful under the Equality Act for a charity to restrict accommodation by reference to a protected characteristic, provided the restriction comes within the exception for charities in section 193 (‘the section 193 exception’). If it does, the HCA in turn is complying with the Equality Act when it registers the charity as a registered provider.

Hence the decisive issue in practice is whether the restriction comes within the terms of the section 193 exception.

In May 2015 the Association and the HCA Registrar and her team agreed some principles around applications by almshouse charities and the section 193 exception. A key principle was as follows.

The HCA should only expect the almshouse charity to show it is 'more likely than not' that any such restriction comes within the section 193 exception – effectively the low threshold of proof required in civil litigation. If the charity makes a case which satisfies this low threshold, the HCA should accept without further enquiry that the charity comes within the section 193 exception, and that there would be no Equality Act problem with registering the charity. The HCA does not have a legal basis to, and therefore should not, either explicitly or implicitly require the charity to make a case any more compelling than that (eg, requiring the charity to satisfy the HCA 'beyond reasonable doubt', a threshold which the law only uses in criminal prosecutions, or even worse 'beyond any doubt', a standard which would be higher than that required by any court in the land).

Third Recommendation: We **recommend** that this principle, and all the other principles about the section 193 exception agreed between the Registrar's team and the Almshouse Association at the meeting in May 2015, be formally incorporated into the standard guidance for applicants and into the guidance manual for caseworkers in the Registrar's team. **Annex 1, Part 1** of this document sets out those principles in full and is an extract from the mutually agreed note of the May 2015 meeting.

Our concern is that if that recommendation is not followed, these principles will eventually be forgotten due to staff turnover, resulting in uncertainty for HCA caseworkers and therefore inefficient use of public servants' time.

If the HCA caseworker is not satisfied that the charity is within the section 193 exception

Fourth recommendation: We **recommend** that if the HCA caseworker is not satisfied that the charity is within the section 193 exception, even to the low threshold of 'more likely than not', he or she should immediately contact both the charity and the Almshouse Association, setting out explicitly and in full the specific points on which he or she disagrees with the charity's analysis of why section 193 applies. The Association has an officially recognised partnership with the Charity Commission, which would make it ideally placed in such cases to obtain the Commission's views rapidly and feed them back to the HCA caseworker.

We accept that the HCA cannot delegate its own Equality Act duties to the Charity Commission. However, it is vital for the HCA to understand the Commission's view on whether the section 193 exception applies, so that the HCA can then make an informed decision whether its own objections still stand. This is because if the Commission is satisfied that the charity is within the exception, the Commission will not have a lawful basis on which to remove the restriction by reference to a protected characteristic, because the charitable purposes can still practically be carried out. Hence an impasse would be created.

Likewise, without a detailed explanation of the HCA caseworker's reasoning, the charity would be left to guess where the caseworker thought the problem lay and would understandably engage in avoidable further correspondence, reducing efficient use of HCA resources in processing applications.

Queries about this submission

Please contact Anthony De Ritter (Director), cc'd to [REDACTED]

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i

The Almshouse Association, July 2016

Annex 1
Mutually agreed note of HCA/Almshouse Association meeting, May 2015
 Relevant extracts

Action points, and points agreed/clarified at 14 05 15 HCA/Almshouse Association meeting

Part 1: Almshouse charities applying to become HCA Registered Providers

S.193 Equality Act 2010- charities exception

Association's position: Section 193 provides that a person does not breach the Act if, pursuant to a charitable instrument, they restrict benefits to persons who share a protected characteristic, and that is justified:

- either [Test 1] as a proportionate means of achieving a legitimate goal,
- or [Test 2] as a way of compensating for a disadvantage linked to the protected characteristic.

Clarified : The HCA do not require providers to meet both tests under S193 of the EA2010. It is a matter for the provider to tell the HCA which test they are relying on. Action: However, the HCA agreed to look at revisiting wording of HCA template letters and internal instructions to reduce risk of case officers being confused about this.

Action: Association to 'educate' members to state very clearly which of the Tests they think they satisfy, and which elements of that Test they say their items of evidence go to.

The HCA confirmed that that they look for "sufficient assurance" in terms of equality issues and that as such the 'standard of proof' which applicants have to meet is the balance of probabilities, ie HCA case officers need to ask themselves *Does the evidence supplied satisfy me it is more likely than not that [Test 1] the restriction to those with protected characteristics is a proportionate means of achieving a legitimate goal, OR that [Test 2] the restriction is a way of compensating for a disadvantage linked to the protected characteristic(s)?*

Action: HCA to satisfy themselves that HCA case officers appreciate the 'standard of proof' is not higher than this.

- **Issue: Association's position:** The HCA should treat an almshouse charity as satisfying s.193 under Test 1, if the charity can evidence that there is still a demand for its accommodation from the beneficiary class. The Charity Commission have confirmed to the Association that they agree such demand is enough to satisfy Test 1.

Clarified: the guidance from the Equality and Human Rights Commission (EHRC) is clear that the HCA cannot delegate its s.149 Public Sector Equality Duty, therefore it is not entitled to rely on the Charity Commission's view on the subject and has to form its own view.

Clarified: the HCA is not prepared to agree as a blanket principle that showing continuing demand from the 'protected' group is automatically enough to show that Test 1 is satisfied, because in its view, that in itself does not necessarily satisfy the test. However, the HCA agreed that a charity's own experience of dealing with a group with a protected characteristic could be used as part of the evidence used to "objectively justify" a restriction.

Issue: Association's position: The HCA should deem generally that a restriction to 'elderly women' satisfies Test 2, without each applicant having to produce its own evidence, on the basis of the generic evidence set out in the Appendix of [the Association's briefing] document. [Note for Association members – that evidence is reproduced in the Appendix to this note.]

Clarified: the HCA agrees that that evidence [in the Appendix] is objective evidence of something which is applicable to elderly women generally as a group, irrespective of precise location within the UK. The HCA's informal reaction in the meeting is to agree that in principle it would have no objection to deeming Test 2 satisfied in relation to elderly women without applicants having to produce evidence of this.

Clarified: where the protected characteristics are 'elderly women + other protected characteristics', the applicant would still need to satisfy the HCA in relation to those other characteristics.

S.149 Public Sector Equality Duty ('PSED')

Agreed: almshouse charities are not public authorities and are not themselves subject to the PSED.

The HCA will not ask almshouse charities to show that complying with the restrictions to persons with protected characteristics will 'eliminate conduct prohibited by the Act' and/or 'advance equality of opportunity and foster good relations between' persons sharing the characteristic and those who don't.

Action: HCA to check case officers are aware of this point.

Requirement to have 'provision of social housing' within objects

Agreed: the HCA accepts the Charity Commission's view that adding the express wording to the objects clause to include "the provision of social housing in the form of almshouse accommodation" is not a change to the charitable purposes of the charity, since it is simply making explicit something which was already implicit in the objects. Hence making the change does not require the Commission's consent.

Action: HCA to confirm the position with the Charity Commission
Subject to Charity Commission confirmation, HCA to ensure HCA case officers are aware that they should not ask applicants to produce the Commission's consent to the addition of such wording, because the Commission will say their consent is unnecessary.

[Part 2: omitted as not relevant to the consultation]

Part 3: de-registration

Repayment of Capital Funding or grant of legal charge

Agreed: That de-registration remains a relevant event and will always trigger repayment. The HCA understands that upon de-registration there is not necessarily a receipt generated and that therefore a de-registering Almshouse may not have the cash flow to repay capital grant. The HCA will use its judgement on a case by case basis to determine whether to collect by repayment, allow repayment in part or instalment or waive to a subsequent relevant event. In those circumstances where it would seem reasonable for the HCA to waive repayment until a subsequent relevant event, the Agency would want adequate security in place to ensure that the liability was not forgotten.

It is accepted that once de-registration has occurred there is a restriction on the Land Registry's register of title that provides protection, in that the Land Registry simply will not register a disposal without the HCA's consent if that restriction is in place. [.....]

Action: the HCA is minded to propose that instead of requiring the charity to grant a charge, the charity could instead sign a deed of covenant whereby it promises to return the CF in various circumstances. The HCA will take advice on whether it is satisfied that the combination of this deed, the restriction, and the safeguard of charity law requiring the land to be held on charitable trusts for ever would provide adequate protection for public money.

Action: the Association will provide the HCA with the statutory authority for the fact that, even where an unincorporated charity's property is vested by statutory declaration in a CIO pursuant to the Charities Act 2011, the 'transfer' of land still has to be updated on the Land Registry's register of title and hence the restriction would still be adequate protection. *[Note – the Association provided the HCA with statutory authority on this point as a follow-up to the meeting.]*

Appendix

A restriction to elderly women falls within s. 193(2)(b) Equalities Act 2010, ie it is “for the purpose of....compensating for a disadvantage linked to the protected characteristic [sc. of age and gender].”

The **disadvantage linked to** elderly women is reduced pension income compared to men of the same age, and therefore reduced ability to afford housing. The **restriction compensates for this by** ensuring that women of that age do not have to compete with men for provision of this relatively cheap almshouse accommodation, given that men as a group are statistically more likely to have higher pension income and thus greater paying power and choice as to housing.

Evidence for the disadvantage, ie that elderly women are statistically likely to have reduced pension income as compared to their male counterparts, is as follows. As you will see there are a variety of different reasons.

Background

Data from The Office of National Statistics (ONS) shows that more than two thirds of pensioners living in relative poverty are women. The ONS explains the background as follows: “*This is partly because there are more female than male pensioners in the pensioner population as a whole, and partly because of the low income levels of many women pensioners. The low income levels of women pensioners reflect the gender pay gap during people’s working lives as well as interrupted working histories due to caring responsibilities, which impair the ability of women to save for retirement through the pension system. In addition, many older women pensioners are widows, and the level of occupational pension received by a widow is generally only half the level of the pension received by the couple when the man was alive*”.¹

Evidence

Data from the Office of National Statistics (ONS) shows that as at December 2012, just 46% of pension age women received the full basic state pension, compared to 80% of their male counterparts².

If women take on caring/childcare responsibilities they are also likely to receive relatively less by way of private pension, because private schemes typically do not provide ‘carer credits’ to offset missing contributions³.

The ONS national wealth survey results published in 2009 showed that women of all ages had significantly lower mean and median levels of private pension wealth than men. For example, in personal pension schemes, the median personal pension wealth of male contributors of all ages was

¹ ONS publication Pension Trends (September 2010) – Chapter 13, Inequalities and Poverty in Retirement

² <http://www.ons.gov.uk/ons/rel/pensions/pension-trends/chapter-5--state-pensions--2013-edition/sum-chp5-2013.html>

³ Appendix 19 of Women’s Equality in the UK: CEDAW shadow report 2013, available from <http://www.fawcettsociety.org.uk/wp-content/uploads/2013/05/Women%E2%80%99s-Equality-in-the-UK-A-health-check.pdf>

more than double that of women (men £15,800 : women £7,000). Focusing on contributors aged 55-64, the discrepancy was even more pronounced (men £30,000: women £12,000).⁴

The pattern is similar in defined contribution occupational schemes.

Percentages of each gender enrolled in pension schemes

Recent data from the ONS shows that a significantly lower percentage of women than men have been enrolled in pension schemes, both in the public and private sector, in every year from 1997 to 2013 (the latest year for which the ONS summary had data).⁵ The data show that even in recent years where the rate of enrolment has increased for both sexes, women's enrolment has still lagged noticeably behind men's.

Longer life expectancy for women

The above data show that women are statistically more likely to have reduced pension income than their male counterparts. They are also likely to have to cope with that reduced pension income for longer, because recent ONS data shows that life expectancy beyond 65 is projected to stay at least 2 years longer for women than for men for the foreseeable future.⁶ Similarly any savings women have at the start of retirement are therefore statistically likely to be spent down more quickly than their male counterparts' savings.

⁴ ONS publication – Wealth in Great Britain: Main results from the Wealth and Assets Survey 2006/2008: Chapter 6

⁵ <http://www.ons.gov.uk/ons/rel/pensions/pension-trends/chapter-7--pension-scheme-membership--2014-edition/sty-chapter-7-summary.html>

⁶ <http://www.ons.gov.uk/ons/rel/pensions/pension-trends/chapter-2--population-change--2012-edition/sum-pt2012ch2.html>.

Annex 2
Email of 16TH October 2015 from the Registrar of Social Housing to the
Almshouse Association
Relevant extracts

“[The Almshouse Association] wrote asking about arrangements for almshouses to deregister and about **unincorporated almshouses which wish to incorporate as charitable incorporated organisations**.....HCA Investment is aware of the content of this response.

Deregistration

[T]he purpose of this email is to consider the mechanism which – were the regulator to be minded to agree deregistration of a registered almshouse ...might be used in those cases where the [HCA Investment] Agency as funder (‘the Agency’) was willing to defer repayment of grant.

As you note in your email, there are cases where the Agency is able to defer recovery of grant to a subsequent relevant event – that is, one which occurred after a deregistration, on a case by case basis, provided that a financial hardship case is evidenced should the Agency oblige recovery. Where such a case has been made, I understand that the Agency would subsequently expect the registered provider to enter into a deed of covenant. In such cases, this would commit the deregistered almshouse to repay grant in the event of a future relevant event. It would also ensure that matters were clear, both about the position on past payment of grant and about the events which would trigger repayment in the future. Accordingly, the Agency would not require a legal charge unless there were some particular reasons for that – or indeed for some other variation from this usual approach. This is along very similar lines to those in [the proposed solution in the Almshouse Association’s] email to me.

Clearly, the decision on whether repayment of grant is required or not or whether a Deed would be required is a matter between the almshouse and the Agency and is not a decision for the regulator [ie, the Registrar’s team]. However, as you know it is an essential part of obtaining consent from the regulator that the registered provider has shown that the Agency (or in the case of almshouses based in Greater London, the GLA) is content with arrangements regarding grant. The regulator would therefore require assurance that an almshouse registered provider seeking deregistration had discussed the matter with the Agency (or GLA) and had (if so required by the Agency or GLA) entered into a Deed of Covenant with the Agency before the regulator was willing to deregister (again, in relation to those it was otherwise willing to deregister).

Incorporation as charitable incorporated organisations

Your email mentions queries from your member almshouses which are considering incorporating as a CIOs.....I can confirm that the regulator accepts that CIOs are registrable on the terms set out in the registration requirements and guidance which as you know are available on our website. **The regulator will consider applications for registration of**

CIOs which are 'successors' to existing registered provider almshouses on a more limited basis that the usual registration process, focusing on the constitutional requirements for CIOs set out in the registration criteria. For the other elements of the normal registration criteria we will place our reliance on the regulatory track record of the existing almshouses.

In addition to registering the CIO as a provider, the unincorporated almshouse registered provider would require disposal consent from the [HCA] to the transfer of assets to the CIO. From the point of view of the Agency as funder, that disposal consent requirement may be a relevant event for grant repayment. Accordingly, it might be useful for you to be aware that it is likely that the Agency as funder would likely require that the predecessor unincorporated almshouse and the CIO entered into a deed of covenant with the Agency on similar terms to those mentioned above and for the same purposes. From the regulator's point of view, the position would again be as above; that the regulator would expect assurance on entry into that Deed."

From: Anne Taylor FCCA [REDACTED]
Sent: 03 June 2016 13:39
To: Consultation
Cc: [REDACTED]
Subject: Response to Consultation

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Sir

I am responding to the consultation in respect of restructured bodies registration criteria.

I note you discuss the types of restructured bodies. I realise they are a small group but you do not mention registered provider unincorporated charitable trusts (almshouses are often this) conversion to registered provider Limited company, (which in fact we are intending to undertake later in the year).

Regards
Anne Taylor

Anne Taylor FCCA
Chief Executive

Tel: [REDACTED] | Mobile: [REDACTED] | Web: thorngate.org.uk
Head office: Clare House, Melrose Gardens, Gosport, Hampshire PO12 3BZ

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The Social Housing Regulator
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2 Marsham Street
London SW1P 4DF

Town & Country Housing Group
Monson House, Monson Way,
Tunbridge Wells, Kent TN1 1LQ

Phone [REDACTED]

Email info@tchg.org.uk

www.tchg.org.uk

16th June 2016

Dear Sir/Madam,

REGISTRATION CRITERIA AND USE OF POWERS CONSULTATION

Thank you for the opportunity to comment on the proposed changes to the registration criteria and the use of powers.

We have read the document and on this occasion have no comments.

Yours faithfully,

[REDACTED]

Bob Heapy
Chief Executive
Town and Country Housing Group



Town and Country Housing Group is a charitable community benefit society registered in England with the Financial Conduct Authority (FCA), under registration number: 30167R
HCA registration number: L4251

Trowers & Hamlins' response to the Homes & Communities Agency's Consultation on Registration Criteria & Use of Powers Consultation (issued May 2016)

We are a law firm who act for a large number of registered providers of social housing.

This paper sets out Trowers & Hamlins' response to various aspects of the Consultation Document.

Section 1 – Registration Criteria

We have noted that in the introduction it states that if the restructured body is a profit making body, the HCA does not propose any registration criteria. It would be helpful if this were repeated in the proposed registration criteria.

Annex 1 – Registration requirements

The linking sentence between the "Eligibility Conditions" box and the "Registration Criteria" box states that "[i]f the regulator is satisfied that a body is eligible, it will be assessed against the relevant registration criteria below." Our comment is linked to the one we made in regard to "Section 1 – Registration Criteria". If a body is a for profit body and there is no registration criteria, the HCA should make it clear that no registration criteria needs to be satisfied.

Annex 2

Guidance Note 10, point 6

At this point in the process, the exercise of the power has not been triggered, the power is simply available. It is, therefore, only a potential trigger until the power is exercised.

Guidance Note 13, point 5, second bullet point

We suggest that the failure to address serious deficiencies ought to be qualified by inserting the word "adequately" between "to" and "address".

Guidance Note 18

If the failure to meet a Regulatory Standard is considered to be a trigger under section 269(1)(c) on the basis that they are "imposed ..under an Act" then the Guidance ought to state this. This is partially dealt with at point 8 in the second and third bullet points, but should be made clearer.

Guidance Note 18, point 23, fourth bullet point

We suggest that the words "but also to act in a manner consistent with the Regulatory Standards" be added to the end of this bullet point. This would enable the registered provider to comply with the Regulatory Standards in respect of transparency and openness with the Regulator.



Chief Executive: Kevin Dodd
Merefield House, Whistler Drive, Castleford WF10 5HX

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Please reply to:
Phone:



21 July 2016

Referrals and Regulatory Enquiries
Homes and Communities Agency – The Social Housing Regulator
Fry Building
2 Marsham Street
London
SW1P 4DF

Dear Colleague

Registration Criteria and Use of Powers Consultation

Following the launch of your consultation about Registration Criteria and Use of Powers, as an organisation that has an interest in the proposals, we have considered the scope of the consultation and are providing a response to contribute our thoughts.

WDH is a registered provider that owns and manages properties in the Wakefield district whilst managing and repairing further homes across a large area of northern England. We are a not for profit company registered as a private limited company and also a registered charity.

Further to the consultation that you have launched about the Registration Criteria and Use of Powers, please find our response to this below:

A. New Entrants

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

a) clear and succinct?

Yes.

b) reasonable and proportionate?

Yes, although we would suggest that the Regulator completes an in depth assessment (IDA) of the restructured body after 12 months of registration.

B. New entities following restructure of existing providers:

Are the proposed registered criteria for restructured bodies:

a) clear and succinct?

Yes.

b) reasonable and proportionate?

Yes, although we would suggest that the Regulator completes an IDA of the restructured body after 12 months of registration.

C. Changes to guidance on the use of powers:

Are the proposed changes to the Guidance Notes:

a) clear and succinct?

Yes.

b) reasonable and proportionate?

Yes, although further guidance would be required on how the regulator would expect registered providers to evidence that they meet the requirements of the WRWA 2016, particularly in relation to the setting of social housing rents.

D. Equality Analysis – Annex 3

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

We have no comments to add.

I hope this information is of assistance, but if you need any further information please contact this office.

Yours sincerely

A large black rectangular redaction box covering the signature area.

Service Director Corporate Services

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**

Response of Waterloo Housing Group

Introduction

Waterloo Housing Group welcomes the opportunity to respond to this consultation. We hope that our response is of use in taking forward the important issues highlighted in this consultation paper.

We are a registered provider working across a range of local authority areas in the West Midlands, East Midlands and Lincolnshire, ranging from urban to rural areas so hope that our experience in developing and managing homes is of assistance in taking forward this consultation. We have also recently joined forces with Acclaim Housing to form a partnership owning and managing around 26,000 homes across the above areas.

In terms of the specific questions asked in the consultation paper, our response is as follows:

Consultation questions

A. New entrants:

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

a) clear and succinct?

The changes outlined in Annex 1 of the consultation paper clearly outline the proposed changes to registration criteria for new entrants.

b) reasonable and proportionate?

The revised criteria seem proportionate and sensible, not least in specifying that for subsidiaries, the parent and its controls are clearly identified.

B. New entities following restructure of existing registered providers:

Are the proposed registration criteria for restructured bodies:

a) clear and succinct?

The changes proposed in section 4 and Annex 1 are clear about what is expected in a number of circumstances where restructuring is taking place.

b) reasonable and proportionate?

The proposed changes are sensible and proportionate in focussing on those cases where a registration decision by the regulator would, may or would not be required. It is also right that the proposals also seek to ensure that any provider remaining on the register with a non-profit designation continue to meet the requirements for that designation.

C. Changes to guidance on the use of powers:

Are the proposed changes to the guidance:

a) clear and succinct?

Yes. The proposed changes outlined in section 2 and Annex 2 of the consultation are clearly set out in the consultation document, not least in terms of the definition of mismanagement and reference to exercise of a number of powers where a registered provider has failed to comply with the relevant provisions of the Welfare Reform and Work Act 2016 or related regulations.

b) reasonable and proportionate?

We agree that the proposed changes are sensible and proportionate, not least the definition of mismanagement as a registered provider being in breach of legal requirements.

The addition of reference to the Welfare Reform and Work Act 2016 is also reasonable, though it may be worth spelling out that the relevant provisions relate primarily to the setting and charging of rent for social housing.

D. Equality Analysis – Annex 3

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

We have no specific comments about the Equality Analysis undertaken.

Conclusion

We hope that our response is of use, but if you do have any queries about our response please contact the author below.

[Redacted]

Group Head of Policy and Communications

Waterloo Housing Group

Tel [Redacted]

Email [Redacted]

From: [REDACTED]
Sent: 18 July 2016 16:42
To: Consultation
Cc: [REDACTED]
Subject: Registration Criteria & Use of Powers Consultation
Attachments: 20160524 consultation letter to Chief Executives FINAL.pdf

Ref Referrals and Regulatory Enquiries
Homes and Communities Agency
The Social Housing Regulator
Fry Building
2 Marsham Street
London
SW1P 4DF

Dear Sirs

Registration Criteria & Use of Powers Consultation

Thank you for your attached letter dated 26 May 2016 regarding the above HCA statutory consultation to which we now respond (in red text) as below.

1. Conditions for Registration

Consultation question

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

a) clear and succinct? Yes

b) reasonable and proportionate? Yes

2. New registration criteria for restructured bodies

Consultation question

Are the proposed registration criteria for restructured bodies:

a) clear and succinct? Yes

b) reasonable and proportionate? Yes

3. Changes to guidance on the use of powers

Consultation Question

Are the proposed changes to the Guidance Notes:

a) clear and succinct? Yes

b) reasonable and proportionate? Yes

Please revert to the sender in the event of any queries regarding this response.

Yours faithfully

[REDACTED]
For & on behalf of Watford Community Housing Trust

[REDACTED]
Policy and Regulation Officer

T [REDACTED]
E [REDACTED]
W www.wcht.org.uk

Watford Community Housing Trust

Better homes friendlier communities - together

Gateway House, 59 Clarendon Road, Watford WD17 1LA

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