



Homes &
Communities
Agency

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Decision statement

January 2015

Consultation on changes to the regulatory framework – decision statement

Introduction

- 1 In April 2013 the Social Housing Regulator (the regulator) launched the discussion paper 'Protecting social housing assets in a more diverse sector'. The paper explored whether the current regulatory framework needed strengthening to reflect a rapidly changing sector.
- 2 Registered providers have, in recent years, seen a reduction in public subsidy and the impact of risks such as welfare reform means that effective risk management in the sector has never been more important. We are seeing increasing diversity in business models as providers look to new and novel ventures and funding mechanisms to allow them to contribute to meeting the demand for affordable housing. At the same time, new types of profit making registered provider¹ are entering the sector.
- 3 The responses to the discussion paper and the debate that followed helped the regulator to develop proposals to update the regulatory framework and to better understand the range of challenges facing registered providers in the current environment. In May 2014 the regulator issued a consultation paper proposing changes to its regulatory framework. The proposals built on the existing co-regulatory approach and included strengthened requirements for registered providers to ensure they effectively manage their risks and have the appropriate skills and capabilities to meet their objectives. The consultation proposals included introduction of a code of practice to amplify the Governance and Financial Viability Standard (the Standard). They also included proposals for changes to the consents regime in relation to transactions between non-profit and profit making providers and changes to the registration criteria.
- 4 A total of 152 responses to the consultation were received from a range of different 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.
- 5 This document provides a summary of the key areas of feedback and sets out the regulator's decision on changes to the regulatory framework that will come into effect on 1 April 2015. It is not intended to be an exhaustive exploration of all responses received, but a summary of the key issues and comments made. A list of respondents is provided in Annex 1 and a statistical breakdown of responses in Annex 2.
- 6 Throughout its consideration of the various changes to the regulatory framework, the regulator has had in mind the need to balance its objective of protecting social housing assets with the need to be open to innovation and to new entrants to the sector. To the

¹ This document uses throughout the terms "profit making registered provider" and "non-profit registered provider" to refer to the two types of private registered provider designated in the 2008 Housing and Regeneration Act. For brevity the term "registered providers" is used where the reference is to both types of private registered providers. Where used, this term excludes local authority registered providers. Where the document uses the term "the non-profit sector" this indicates both non-profit private registered providers and local authority registered providers.

extent that different requirements are placed on different types of provider (such as here in relation to different requirements in the Governance and Financial Viability Standard, and elsewhere in the regulatory framework), the regulator has been satisfied that any restrictions are justified by the regulator's legitimate objective and are proportionate to that objective.

Governance and Financial Viability Standard

Feedback overview

- 7 Of those who gave feedback on the proposed changes to the Standard, around 90% of responses were in favour of the proposed Standard. Less than 5% were unsupportive of the proposals. Many of the feedback points provided related to both the Standard and the code of practice (the Code). Where the regulator felt it was appropriate to make changes to our approach in light of feedback these have been through additional clarification in the Code covered in paragraphs 12-22. As such, we have not felt it necessary to make any further changes to the Standard following the statutory consultation. Feedback which was more general in nature has been covered below.

Regulatory burden

- 8 Around 8% of respondents who commented on the Standard raised concern about the overall impact of the proposals on the sector. A key element of the proposals concerns effective risk management. This should be part of any well run business, and not something which is done purely to meet regulatory requirements. A balance must be struck between the burden of requirements on the sector and the regulator's ability to meet its objective of protecting social housing assets. The regulator has concluded that the proposals are a proportionate response to meeting its objective of protecting social housing assets.

Impact on smaller providers

- 9 A small number of respondents raised concern about the impact on smaller providers. The regulator does not prescribe how the outcomes required by the Standard should be achieved. A provider is free to find the most appropriate solution for their business. The demands of the requirements on risk management, stress testing and records of assets and liabilities in particular will vary according to the size and complexity of the registered provider and its operations. Typically, smaller providers have less complex business structures and undertake a smaller range of activities. As such, the impact of the proposals should generally be lower. The regulator's publication 'Regulating the Standards' sets out our approach to regulating smaller providers under 1,000 units. Whilst all standards apply to smaller providers, regulatory engagement is less so there is a reduced burden on smaller providers. This fits with the regulator's proportionate approach to regulation.

Compliance with all relevant law

- 10 A key area of stakeholder concern was the requirement to comply with 'all relevant law', a change from 'all relevant legislation'. In particular, some respondents felt it would be difficult to be certain of complete compliance for practical reasons. It is obviously important that registered providers comply with the law. However the regulator does

recognise that there may be circumstances where providing absolute assurance on this point might create a burden for a registered provider. The regulator concludes that it is important that this requirement remains. However non-compliance with law will not automatically result in a breach of the Standard where the registered provider can evidence to the regulator that they have taken all reasonable measures to comply with all relevant law. This fits with the regulator's proportionate approach to regulation. This approach is set out in the publication 'Regulating the Standards' which will be updated and published in March prior to the Standard coming into effect.

Regulator's capacity

- 11 Some responses raised concerns over the regulator's skills base and capacity to regulate the new Standard. Alongside investing in existing staff, we have also secured additional resource to reinforce our capacity with additional senior financial and governance skills. The regulator is taking steps to revise its operational strategy to reflect the more complex nature of the sector. This will involve seeking greater assurance on how providers are managing their risks including their strategies for mitigation. Together these steps will help to ensure that the regulator is well placed to regulate the new Standard in an increasingly complex operating environment.

Final position – Governance and Financial Viability Standard:

With effect from April 2015, the Governance and Financial Viability Standard will be as set out at Annex 3.

Code of practice

General feedback in relation to the Code

Feedback overview

- 12 Of the 125 respondents who commented on the Code, 78% were largely supportive of the Code and its contents, 14% were unsupportive and the remainder did not state their views. Although some respondents questioned the introduction of the Code, many of the concerns raised were in relation to the way in which a particular part of the Code had been drafted. Both these aspects are considered below.

Status of the Code

- 13 Some respondents raised concerns about the status of the Code. The Housing and Regeneration Act 2008 (the Act) sets out how and when the regulator can introduce a Code. The regulator has responded to feedback by providing further clarification in the Code about its status.

Rationale for the Code

- 14 A number of respondents raised concern about the introduction of a Code and suggested it may be more appropriate for other bodies to be producing material covered by the Code. The regulator considers it is important to retain the Code. The Act gives

the regulator the power to introduce a Code and to take this into account when considering compliance with the Standard. It is therefore an important regulatory tool, which if produced by another body would not have the same status. As outlined above, the vast majority of respondents were supportive of introducing the Code. Many responses commented on the support it gave to registered providers about how compliance with the Standard could be achieved and this is the key reason why the regulator has decided to adopt a new code.

Improvements to drafting

- 15 There were a number of responses where suggestions to the drafting were made to improve the clarity of the document and make it more accessible. These have been considered in the revisions made to the Code and adopted where relevant and appropriate.

Requirements applicable to all registered providers

Compliance with all relevant law

- 16 Paragraph 10 above sets out our revised approach in the Code. This is set out in paragraph 6 of the Code.

Certification of compliance

- 17 A number of respondents raised concern regarding the requirement to certify compliance with the Standard in the annual accounts. Registered providers must take compliance with the standards seriously and in the regulator's view this should include transparency with stakeholders. The regulator recognises the concerns raised regarding where certification should take place. The annual accounts are a public document and the regulator has concluded that this is the right place. However, the regulator has clarified in the Code (paragraph 45) that this should be in the narrative report that accompanies the financial statements.

Independence

- 18 Profit making providers in particular raised concerns over the regulator's expectation for levels of independence from its parent, particularly where common directors and boards are often the norm. There were also concerns that the proposals were too open to interpretation, leaving profit making providers exposed to inappropriate intervention by the regulator. The regulator has made changes to paragraphs 16-18 to clarify the requirements on independence and to address the concerns raised.

Risk flows in group structures

- 19 Following discussions with stakeholders, the regulator has reflected in the Code the importance that boards understand how activity in one entity can result in recourse to the assets of other entities within group structures. This includes ensuring that the provider has an appropriate methodology to model and communicate such risk flows. This can be found in paragraph 34 of the Code.

Record of assets and liabilities

- 20 A small number of respondents asked for additional information on what is required in relation to records of assets and liabilities and the format that these should take. Such records are likely to look quite different from one organisation to the next, depending on the size of the organisation and the type of activity it undertakes. The regulator does not consider it appropriate to provide further detail in the Code. However, some minor drafting changes to the Code to help improve understanding of what the regulator is looking for have been made.

Issues relating to profit making registered providers

Proportion of non-social housing activities permitted in legal entity

- 21 Some respondents raised concern that the small amount of non-social housing activities which would be permitted in the legal entity (in the region of 5%) is too restrictive. According to the Act, the regulator's role in relation to profit making registered providers only relates to the social housing part of the business. In order to meet the requirements of the Act as well as the regulator's objective of protecting social housing assets, the regulator believes it is necessary to introduce the requirement for a separate legal entity. Increasing the proportion of non-social housing activities permitted in the legal entity has the effect of limiting the regulator's ability to gain assurance on the risk to social housing assets identified as well as its ability to only regulate the social housing part of the business as required by the Act. It is therefore proposed not to make any changes to this requirement.

Social housing activities

- 22 Some respondents sought clarity on what the regulator considered to be an activity in relation to the provision of social housing. This was particularly an issue for profit making registered providers who are required to put their non-social housing in a separate legal entity. In line with our co-regulatory approach it is for registered providers to assure themselves of how the different activities they undertake fit are classified as being in relation to the provision of social housing. To help providers, the Code sets out a range of activities that in the view of the regulator are non-social housing activities but if providers are unsure they should discuss with the regulator.

Final position – code of practice:

With effect from April 2015, the code of practice will be as set out at Annex 4.

Category 6 of the General Consent

Feedback overview

- 23 Ninety three respondents commented on the proposed changes to the General Consents regime. Just over two thirds were supportive of the changes, while 23% were not in favour. The proposals in relation to changes to category 6 of the General Consent

created some debate during consultation, and of those who responded specifically on the proposals for changes to category 6, 13 raised minor concerns and 17 had significant concerns with the proposals.

Definition of private finance provider to exclude registered providers

- 24 There was very little feedback received on this proposal. The regulator intends to implement this requirement.

Restrict access for subsidiaries of registered providers with unregistered parents

- 25 There was some resistance to this proposal from a minority of respondents. The regulator does not have oversight over the whole of the group for providers whose parent is not registered. The parent is also not required to comply with regulatory requirements and standards. As our oversight of this group of providers is therefore considerably lower than for the rest of the sector the regulator is not able to gain the same levels of assurance and believes that introducing additional requirements is appropriate.
- 26 A limited number of respondents said that the regulator should require this only where the parent is neither charitable nor a non-profit organisation. The regulator does not consider this approach to be appropriate. It would not be in a position to scrutinise the status, objects, strategy or be sighted on any changes to these organisations where the parent is not registered. Although a charitable parent would need to be registered with the Charity Commission, it would be required by charity law to put all assets on an equal footing and not necessarily prioritise social housing.

Index linked finance

- 27 A small number of respondents felt that this change was unnecessary and sought clarification on what the regulator's concerns are. Currently there is limited index linked finance in the sector. The regulator is aware of increasing interest in index-linked structures, which bring with them new risk exposures for a sector with constraints on its income. The regulator has concluded that it will implement this requirement.

On-lending

- 28 Feedback from the consultation highlighted the difficulties registered providers would have in differentiating the source of the lending; whether from cash reserves or on-lent from secured facilities. As a result, concerns were raised that it may lead to registered providers seeking specific consent for a large number of financing deals. This would have an impact on resource required to implement the consents both for the registered providers and the regulator.
- 29 The regulator has given consideration to the balance of the additional regulatory control that would be achieved through these proposals to achieve its aim of protecting social housing assets against the impact of operation. It has concluded that it will not implement this proposal.

Transitional arrangements

- 30 Respondents to the consultation sought clarification on transitional arrangements in moving from the existing General Consent to the new. The implementation arrangements associated with a new General Consent will be developed and published prior to the introduction of the General Consent in April 2015.

Final position – General Consent:

With effect from April 2015, the General Consent will be as set out at Annex 5.

Disposals

Feedback overview

- 31 Of those who responded, 87% were supportive of the changes, while 7% were not, the remainder did not state their views. The majority of the detailed responses were from profit making providers and advisors to the sector.
- 32 A small number of responses were critical of some aspects of the proposals. The majority of those critical to the proposals were either directly affected by the proposals or those with particular knowledge of the issues.

Requirement to place proceeds of sale into a Disposal Proceeds Fund

- 33 Feedback received suggests that some further clarity is required in relation to the proposals. The requirement for proceeds of sale to be placed in a Disposal Proceeds Fund (DPF) will *only* apply on stock where the profit making registered provider has purchased the stock from a non-profit registered provider. It will not apply to stock built or developed by a profit making provider.
- 34 Some respondents said that the proposals were too restrictive and were unreasonable. The greatest concern raised was that the proposed disposals regime would discourage profit making providers from investing in social housing as their ability to make a profit would be too restricted. Some questioned whether it is unreasonable for profit making registered providers to make capital gains from the sale of stock. The regulator is not seeking to stop capital gains being made but requires that they must be reinvested within the stock. Others thought that a requirement to place all proceeds into a DPF was excessive, and that sale of stock to profit making providers at higher prices would generate a greater source of funding to reinvest in social housing. Some suggested that profit making registered providers should be able to retain their original purchase price outside of a DPF.
- 35 In designing and developing the proposals the regulator has come to a view on the settlement which most appropriately balances risk to social housing assets with the freedoms of profit making registered providers. It has concluded that the proposals are reasonable and it will continue with the proposals as consulted on.

- 36 It was suggested by some that the proposals be extended to include land and partially completed developments. The objective of the proposals is to protect the historical value in stock. Our concern relates to stock transfers from a non-profit registered provider who has restricted objects, and therefore what the proceeds of sale could be used for is restricted, to a profit making registered provider who has the potential to use the proceeds for a wider range of uses. The regulator considers that to extend the requirements would take us away from our original objective and would introduce an unreasonable burden on the sector, particularly profit making registered providers.

Preserved right to buy

- 37 Some respondents were concerned about the proposals on preserved right to buy, whereby all proceeds will be required to go into DPF. They suggested that arrangements are already in place whereby in some cases either all or some of the proceeds are to be returned to the local authority, as part of the stock transfer deal.
- 38 The regulator has sought clarity on this. It is intended that the requirement that all proceeds will go into DPF replaces existing arrangements for all future transactions. The proposed changes will not be applied retrospectively and will only apply to transfers completed after 31 December 2014.
- 39 Revisions to the DPF requirements and guidance documents will be made and published in advance of the framework coming into effect in April 2015.

Registration criteria

Feedback overview

- 40 Of the 105 respondents who commented on the proposed changes to the registration criteria 94% were in favour of such changes; only 2% were unsupportive. Some respondents raised concerns which are discussed below. The regulator will implement the proposals but with some additional clarifications in the registration guidance and the Code to address the issues raised.

Compliance with governance and financial viability requirements

- 41 In relation to changes to the registration criteria, some respondents raised concerns that the requirement to comply with both the governance and financial viability aspects of the Standard would be a barrier to entry. The regulator has considered the concerns raised. However, full compliance with both aspects of the Standard is expected for all registered providers so the regulator believes it is therefore reasonable to expect compliance at the registration stage. We do not propose to change the requirement. However, additional clarity will be provided in the registration guidance on this point.

Social housing activities

- 42 Some respondents said that there is a need for clarification on activities in relation to the provision of social housing to support the assessment of eligibility. The regulator has responded to the concerns raised as discussed in paragraph 22 above.

Small providers

- 43 Respondents raised concerns regarding the proportionality of requirements for small providers. The regulator considers that as part of a regulated sector, it is important that all registered providers comply with regulatory requirements, and that this should extend to applicants too. The requirements consulted on should not be a significant burden on small providers, as the impact will depend on the complexity of the business and associated risks. The regulator does not propose to make any changes for small providers of social housing. This fits with the regulator's proportionate approach to regulation.

Other changes to registration criteria

- 44 The consultation proposed some other consequential changes to the registration criteria. Only a minority of the responses (62) gave any opinion on the other proposed changes to the registration criteria. None of the responses were unsupportive of the proposals. The regulator will continue with these changes as set out in the consultation document.

Final position – registration criteria:

With effect from April 2015, the registration criteria will be as set out at Annex 6.

Rents

Feedback overview

- 45 There were 123 responses received on the proposed changes to the Rent Standard. Of those, 86% agreed that the proposed changes largely reflected the direction from the Secretary of State and that the requirements for registered providers were clear, succinct and outcome focused while 6% were not in agreement.
- 46 Much of the feedback in relation to the Rent Standard related to the government's policy on the end of rent convergence. The regulator is directed by the Secretary of State in relation to rents. Proposed changes to the end of rent convergence are therefore not within the regulator's control. Feedback suggests that some clarification regarding the policy on high income social tenants is required. Whilst the Rent Standard allows for higher rents to be charged to high income social tenants the decision as to whether to introduce this lies with the registered provider. It is therefore optional and not a requirement that it must be implemented.

Rent Standard and Rent Standard Guidance

- 47 The only change to the Rent Standard is the removal of the phrase "so far as possible" from the end of paragraphs 1.2 and 1.3, this was included in the Rent Standard in error having been picked up from the Rent Direction. The applicability of "so far as possible" was intended to have reference to the regulator's obligations in setting the Rent Standard, and not on registered providers being able to meet the Rent Standard so far as possible.

- 48 The regulator has made a number of minor amendments to the Rent Standard Guidance to address minor inconsistencies and to provide clarity that Rent to Buy falls outside of the Rent Standard. The revised guidance also clarifies that exemptions in relation to temporary housing that were historically grant funded are to be included.

Final position – Rent Standard and Rent Standard Guidance:

With effect from April 2015, the Rent Standard will be as set out at Annex 7 and the Rent Standard Guidance will be as set out at Annex 8.

Regulatory framework format

- 49 The format and presentation of the regulatory framework is due to change in March 2015. The purpose of this is to ensure that the regulatory framework documents held on our website can easily be navigated in an intuitive way. This will include publishing the regulatory standards separately and clearer signposting between regulatory requirements and guidance.

Next steps

- 50 The regulator will record its formal decisions in the form of a Decision Instrument, as it has in previous changes to the regulatory framework. The matters which will be dealt with in the Decision Instrument are those referred to in the 'Final position' paragraphs of this document.
- 51 The new regulatory framework will be published at the end of March 2015 and will come into effect on 1 April 2015.

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

A2Dominion
Accent Group
Accord Housing Association
Affinity Sutton Group Ltd
Agudas Israel Housing Association
Aldwyck Housing Group Ltd
AmicusHorizon
Anchor Trust
Aspire Group
Audit Commission
B3 Living Limited
Black Country Housing Group
BME National
Board Development Agency
Bolton at Home
BPHA
Bracknell Forest Homes Ltd
Bromford Housing Group
Campbell Tickell
Catalyst Housing Ltd
Central & Cecil Housing Trust
Cestria Community Housing Association Ltd
Charity Commission
Chelmer Housing Partnership
Cherwell District Council
Christian Action
CIH
Circle Housing
City West Housing Trust Ltd
CML
Colchester Borough Council
Community Gateway Association Ltd
Croftons LLP
Curo Group
Derby Homes Ltd
Derwent Housing Association
Devon and Cornwall Housing
Devonshire Business Advisory Services
Devonshire solicitors
Dimensions (UK) Limited
East Thames Group and East Homes
EMH Group
Estuary Housing Association Ltd
First Ark and Knowsley Housing Trust
First Choice Homes Oldham
First Wessex
Flagship HG
Fortis Living
profit-making Registered Providers/New Entrants
G15
Gloucester City Homes
Grand Union Housing Group
Great Places Housing Group Ltd
GreenSquare Group Limited
Halton Housing Trust
Hartlepool Borough Council
Hastoe Housing Association Ltd
Helena Partnerships
Hexagon HA
Housing & Care 21
HQN
ICSA
Incommunities
Irwell Valley Housing Association
Islington and Shoreditch Housing Association Ltd
Isos Housing
Jays8 Cic
John Cross Consulting
John Husband
Kate Perez
Linden First
Livin Housing
London & Quadrant Housing Trust
Longhurst Group
Magna Housing Group
Metropolitan
MHS Homes Group (Heart of Medway HA)
Midland Heart
Million Homes
Moat
Mr S A Spooner
National Housing Federation
Network Housing Group
North Hertfordshire Homes
Notting Hill Housing Trust
Nottingham City Homes
Octavia Housing
One Housing Group
One Vision Housing
Orbit Group
Orwell Housing Association
Paragon
Peabody
Phoenix Community Housing Association Ltd
Place Shapers
Places for People
Plymouth Community Homes
Progress Housing Group
Radian
Raglan

Gentoo Group Ltd
Rochdale Boroughwide Housing
Sadeh Lok Housing Group
Saffron Housing Trust
Sam Worth (Confidential)
Sanctuary Group
Sevenside Housing
Shepton Mallet United Charities
Shropshire Housing
Soha Housing
South Lakes Housing
South London YMCA
Southway Housing Trust
Sovereign Housing Association
Spectrum Housing Group
St Mungos Community Housing Association
Stafford & Rural Homes Ltd
Stockport Homes
Swan Housing Association
Symphony Housing Group
TCUK Homes
Teign Housing
The Abbeyfield North Downs Society
The Abbeyfield Society
The Almshouse Association
The Havebury Housing Partnership

Riverside Group
The Housing Plus Group Ltd
The Housing Diversity Network
The Hyde Group
The Wrekin Housing Group
Thirteen Group Ltd
Thrive Homes
Town & Country Housing Group
Trowers and Hamlin
Two Saints
Vale of Aylesbury Housing Trust
Viridian Housing
Wakefield and District Housing
Walsall Housing Group Ltd
Waterloo Housing Group
Watford Community Housing Trust
West Kent Housing Association
Westward Housing Group Limited
Wigan and Leigh Housing Company Ltd
Wirral Methodist Housing Association
Wirral Partnership Homes (aka Magenta Living)
WM Housing Group
Yarlington Housing Group
Yorkshire Coast Homes Ltd
Yorkshire Housing
Your Housing Group Ltd

Annex 2: Statistical breakdown of responses received

Of the 152 formal responses to the statutory consultation received, the breakdown by type of stakeholder was as follows:

- 110 from non-profit registered providers
- 1 from profit-making registered providers (this was a single response on behalf of a group of profit-making registered providers)
- 7 from small registered providers (<1,000 units)
- 3 from local authorities (both stock and non-stock holding)
- 4 from our statutory consultees
- 8 from trade bodies
- 4 from tenants
- 5 from ALMOs
- 1 from an intending provider
- 9 from other types of organisations including lawyers, financial institutions and consultants

The following shows a statistical breakdown of the responses received to the statutory consultation, by respondent type. Tables 1 and 2 show the overall level of support and how many of each type of respondent submitted a response. Tables 3 to 9 show the level of support for each consultation question.

Table 1: Level of overall support for the proposed changes

	Total number of responses	Very supportive	Generally supportive with few concerns	Neutral	Generally unsupportive
All respondents	152	37	89	19	7
%		24%	59%	13%	5%
non-profit RP ²	110	29	72	7	2
profit making RP	1	0	0	1	0
small RP	7	3	3	0	1
LA stock holding	2	0	2	0	0
LA non stock holding	1	1	0	0	0
statutory consultee	4	1	2	1	0
trade body	8	0	4	3	1
Other	9	1	3	4	1
Tenant	4	0	0	2	2
ALMO	5	2	3	0	0
intending provider	1	0	0	1	0

² For the purposes of these tables we have abbreviated the term Registered Provider to RP.

Table 2: Number of responses by question and respondent type

	Total number of responses	Governance & Financial Viability Standard	code of practice	Disposals	Registrations (in relation to standard)	Rents	General Consents	Registration (other)
All respondents	152	138	125	115	105	123	93	62
Non-profit RP	110	103	99	88	70	95	75	48
profit making RP	1	1	1	0	0	0	0	0
Small RP	7	4	3	3	3	5	3	2
LA stock holding	2	2	2	2	2	2	1	1
LA non stock holding	1	1	1	1	1	1	1	1
statutory consultee	4	3	3	2	3	2	2	2
trade body	8	8	6	7	6	6	4	3
Other	9	9	6	5	6	7	5	4
tenant	4	2	0	2	0	0	1	0
ALMO	5	5	4	5	5	5	1	1
intending provider	1	0	0	0	0	0	0	0

Table 3: Governance and Financial Viability Standard

	Very supportive	Gen. supportive with few concerns	Neutral	Generally unsupportive	Did not answer question
	45	78	9	6	14
of those who answered question	33%	57%	7%	4%	
non-profit RP	34	63	4	2	7
profit making RP	0	1	0	0	0
small RP	2	2	0	0	3
LA stock holding	1	1	0	0	0
LA non stock holding	1	0	0	0	0
statutory consultee	2	1	0	0	1
trade body	1	4	1	2	0
other	1	3	3	2	0
tenant	0	1	1	0	2
ALMO	3	2	0	0	0
intending provider	0	0	0	0	1

Table 4: code of practice

	Very supportive	Gen. supportive with few concerns	Neutral	Generally unsupportive	Did not answer question
All respondents	48	50	9	18	27
% of those who answered question	38%	40%	7%	14%	
non-profit RP	38	41	5	15	11
profit making RP	0	0	1	0	0
small RP	2	1	0	0	4
LA stock holding	0	1	0	1	0
LA non stock holding	1	0	0	0	0
statutory consultee	2	0	0	1	1
trade body	1	4	1	0	2
other	1	2	2	1	3
tenant	0	0	0	0	4
ALMO	3	1	0	0	1
intending provider	0	0	0	0	1

Table 5: Changes to the disposals regime

	Very supportive	Gen. supportive with few concerns	Neutral	Generally unsupportive	Did not answer question
All respondents	70	30	7	8	37
% of those who answered question	61%	26%	6%	7%	
non-profit RP	55	26	4	3	22
profit making RP	0	0	0	0	1
small RP	3	0	0	0	4
LA stock holding	1	1	0	0	0
LA non stock holding	1	0	0	0	0
statutory consultee	1	0	0	1	2
trade body	4	1	1	1	1
other	2	0	1	2	4
tenant	0	0	1	1	2
ALMO	3	2	0	0	0
intending provider	0	0	0	0	1

Table 6: Changes to the registration criteria (from G&FV Standard)

	Very supportive	Gen. supportive with few concerns	Neutral	Generally unsupportive	Did not answer question
All respondents	83	16	4	2	47
% of those who answered question	79%	15%	4%	2%	
non-profit RP	70	9	0	0	31
profit making RP	0	0	0	0	1
small RP	1	2	0	0	4
LA stock holding	1	1	0	0	0
LA non stock holding	1	0	0	0	0
statutory consultee	2	0	1	0	1
trade body	4	0	1	1	2
other	2	2	1	1	3
tenant	0	0	0	0	4
ALMO	2	2	1	0	0
intending provider	0	0	0	0	1

Table 7: Changes to the Rent Standard and Guidance

	Very supportive	Gen. supportive with few concerns	Neutral	Generally unsupportive	Did not answer question
All respondents	65	40	11	7	29
% of those who answered question	53%	33%	9%	6%	
non-profit RP	53	30	8	4	15
profit making RP	0	0	0	0	1
small RP	2	3	0	0	4
LA stock holding	1	1	0	0	0
LA non stock holding	1	0	0	0	0
statutory consultee	0	2	0	0	1
trade body	1	2	0	3	2
other	3	1	3	0	3
tenant	0	0	0	0	4
ALMO	4	1	0	0	0
intending provider	0	0	0	0	1

Table 8: Changes to General Consents

	Very supportive	Gen. supportive with few concerns	Neutral	Generally unsupportive	Did not answer question
All respondents	36	26	10	21	59
% of those who answered question	39%	28%	11%	23%	
non-profit RP	31	20	7	17	35
profit making RP	0	0	0	0	1
small RP	2	1	0	0	4
LA stock holding	0	1	0	0	1
LA non stock holding	1	0	0	0	0
statutory consultee	0	1	0	1	2
trade body	1	1	1	1	4
other	0	2	1	2	4
tenant	0	0	1	0	3
ALMO	1	0	0	0	4
intending provider	0	0	0	0	1

Table 9: Other proposed changes to the registration criteria

	Very supportive	Gen. supportive with few concerns	Neutral	Generally unsupportive	Did not answer question
All respondents	54	7	1	0	90
% of those who answered question	87%	11%	2%	0%	
non-profit RP	43	4	1	0	62
profit making RP	0	0	0	0	1
small RP	2	0	0	0	5
LA stock holding	1	0	0	0	1
LA non stock holding	1	0	0	0	0
statutory consultee	1	1	0	0	2
trade body	3	0	0	0	5
other	2	2	0	0	5
tenant	0	0	0	0	4
ALMO	1	0	0	0	4
intending provider	0	0	0	0	1

homesandcommunities.co.uk
mail@homesandcommunities.co.uk
0300 1234 500



Homes & Communities Agency

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

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

Publication date: January 2015



Homes &
Communities
Agency

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Annex 3: Governance and Financial Viability
Standard

January 2015

Governance and Financial Viability Standard

1 Required outcomes

1.1 Governance

Registered providers¹ shall ensure effective governance arrangements that deliver their aims, objectives and intended outcomes for tenants and potential tenants in an effective, transparent and accountable manner. Governance arrangements shall ensure registered providers:

- (a) adhere to all relevant law
- (b) comply with their governing documents and all regulatory requirements
- (c) are accountable to tenants, the regulator and relevant stakeholders
- (d) safeguard taxpayers' interests and the reputation of the sector
- (e) have an effective risk management and internal controls assurance framework
- (f) protect social housing assets

1.2 Financial viability

Registered providers shall manage their resources effectively to ensure their viability is maintained while ensuring that social housing assets are not put at undue risk.

2 Specific expectations applicable to all registered providers

- 2.1 Registered providers shall adopt and comply with an appropriate code of governance. Governance arrangements should establish and maintain clear roles, responsibilities and accountabilities for the board, chair and chief executive and ensure appropriate probity arrangements are in place. Areas of non-compliance with their chosen code of governance should be explained. Registered providers should assess the effectiveness of their governance arrangements at least once a year.
- 2.2 Registered providers shall ensure that they manage their affairs with an appropriate degree of skill, independence, diligence, effectiveness, prudence and foresight.
- 2.3 Registered providers shall communicate in a timely manner with the regulator on material issues that relate to non-compliance or potential non-compliance with the standards.
- 2.4 Registered providers shall ensure that they have an appropriate, robust and prudent business planning, risk and control framework.

¹ The term "registered providers" refers to private registered providers.

- 2.4.1 The framework shall ensure:
- (a) there is access to sufficient liquidity at all times
 - (b) financial forecasts are based on appropriate and reasonable assumptions
 - (c) effective systems are in place to monitor and accurately report delivery of the registered provider's plans
 - (d) the financial and other implications of risks to the delivery of plans are considered
 - (e) registered providers monitor, report on and comply with their funders' covenants
- 2.4.2 The framework shall be approved by the registered provider's board² and its effectiveness in achieving the required outcomes shall be reviewed at least once a year.
- 2.5 In addition to the above registered providers shall assess, manage and where appropriate address risks to ensure the long term viability of the registered provider, including ensuring that social housing assets are protected. Registered providers shall do so by:
- (a) maintaining a thorough, accurate and up to date record of their assets and liabilities and particularly those liabilities that may have recourse to social housing assets
 - (b) carrying out detailed and robust stress testing against identified risks and combinations of risks across a range of scenarios and putting appropriate mitigation strategies in place as a result
 - (c) before taking on new liabilities, ensuring that they understand and manage the likely impact on current and future business and regulatory compliance
- 2.6 Registered providers shall ensure that any arrangements they enter into do not inappropriately advance the interests of third parties, or are arrangements which the regulator could reasonably assume were for such purposes.
- 2.7 Registered providers shall communicate with the regulator in an accurate and timely manner. This includes returns to the regulator, including an annual report on any losses from fraudulent activity, in a form determined by the regulator.
- 2.8 Registered providers shall assess their compliance with the Governance and Financial Viability Standard at least once a year. Registered providers' boards shall certify in their annual accounts their compliance with this Governance and Financial Viability Standard.

² Where a registered provider does not have a board, it should be taken to include an equivalent management body as appropriate.

3 Specific expectations applicable to specific categories of registered provider

Registered group parents

- 3.1 Registered providers which are parent companies shall, as appropriate, support or assist those of their subsidiaries that are registered providers with a view to ensuring compliance with regulatory requirements.

Registered providers with unregistered parents

- 3.2 Registered providers with parent companies who are not registered providers shall ensure that they do not enter into agreements to support the activity of the parent or another group member that may have a material negative impact on the social housing assets of the registered provider.
- 3.3 To enable compliance with the regulator's standards or other regulatory requirements, registered providers with parent companies that are not registered providers shall have in place effective mechanisms to ensure that:
- (a) such parent companies will give any appropriate support or assistance as necessary to the registered provider
 - (b) such registered providers have the ability to require the support or assistance of the parent company concerned
 - (c) the registered provider's ability to meet the regulator's standards and other regulatory requirements is not and cannot be prejudiced by the activities or influence of the parent company or another part of the group

Profit making registered providers

- 3.4 Profit making registered providers shall ensure that they undertake their social housing activities in an entity which is legally and operationally separated from any other activities they may undertake, except as set out below.
- 3.5 Profit making registered providers should ensure that activities they undertake which do not relate to the provision of social housing:
- (a) form only a very small part of the activities they undertake
 - (b) are not such as to mean that registered providers place social housing assets, activities relating to the provision of social housing or their own financial viability at undue risk

homesandcommunities.co.uk
mail@homesandcommunities.co.uk
0300 1234 500



Homes & Communities Agency

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

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

Publication date: January 2015



Homes &
Communities
Agency

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Annex 4: Governance and Financial Viability
Standard code of practice

January 2015

Governance and Financial Viability Standard code of practice

The role of the code of practice

- 1 This code of practice (the Code) is designed to amplify the requirements in the Governance and Financial Viability Standard (the Standard). It is designed to help registered providers¹ understand what the regulator is looking for when seeking assurance on compliance with the Standard. The Code clarifies the Standard by explaining and elaborating on the content, with illustrative examples where necessary. Registered providers should have regard to the Code when assessing their compliance against the Standard. In considering whether standards have been met, the regulator will have regard to the Code. It is therefore important that registered providers are familiar with its content. However, it is the Standard rather than the Code that the regulator can enforce against.
- 2 The regulator adopts a co-regulatory approach to its work. It sets both economic and consumer standards designed to help it to deliver its statutory objectives. Responsibility lies with the boards² of registered providers to meet these standards. The Code fits with the co-regulatory regime by allowing registered providers to innovate and develop their own approaches to achieve the outcomes and expectations set out in the Standard.
- 3 The Code does not elaborate on all outcomes and expectations set out in the Standard, only where the regulator believes that greater explanation will help registered providers. This does not indicate the relative importance of different elements of the Standard. Registered providers need to comply with the entire Standard.
- 4 Examples of how registered providers might achieve compliance are not intended to be exhaustive nor prescriptive. Should a registered provider comply with the requirements of the Standard in a different manner then it is free to do so. If there are any conflicts between the Code and the Standard, the Standard takes precedence.
- 5 The Code is structured so it follows the layout of the Standard. As such, the required outcomes in the Standard, which set out the high-level obligations on registered providers, are considered first followed by the specific expectations. The regulator intends to adopt a purposive approach to interpreting the Standard. This means the regulator will consider the purpose of including the outcomes and expectations in the Standard when assessing compliance with them.

¹ This document uses throughout the terms “profit making registered provider” and “non-profit registered provider” to refer to the two types of private registered provider designated in the 2008 Housing and Regeneration Act. For brevity the term “registered providers” is used where the reference is to both types of registered providers. Where used, this term excludes local authority registered providers. Where the document uses the term “the non-profit sector” this indicates both non-profit private registered providers and local authority registered providers.

² Throughout this Code references to registered providers' 'boards' should, where a registered provider does not have a board, be taken to include an equivalent management body as appropriate.

Required outcomes

Paragraph 1.1: governance required outcome

- 6 The required outcome for governance ensures the delivery of a registered provider's objectives, including being responsible holders and stewards of social housing assets. The regulator considers the reference to compliance with 'all relevant law' in the first bullet point encompasses legislation (including secondary legislation), and common law. In ensuring compliance registered providers should have regard to relevant statutory guidance. To meet the required outcome on adherence to all relevant law boards should take reasonable measures to assure themselves of their compliance.
- 7 The fourth bullet point concerns reputation. Reputation is key in maintaining confidence in the sector. The social housing sector has benefited from being part of a regulated sector with low lending rates combined with the availability of public investment. Registered providers should ensure that they manage their businesses and their risks in such a way that they do not negatively impact on the reputation of the sector.

Paragraph 1.2: financial viability required outcome

- 8 Registered providers should take all such steps as are reasonably necessary to ensure that any activities they undertake do not place social housing assets, activities relating to the provision of social housing or their own financial viability at undue risk. The regulator recognises that registered providers should have the flexibility to consider risks in light of their individual circumstances. Boards of registered providers have the responsibility to satisfy themselves and provide assurance to the regulator that:
 - they have considered the requirement appropriately in relation to their own external and internal operating environment
 - they are satisfied they will comply with regulatory requirements now and in the foreseeable future
- 9 Examples of what the regulator considers to be unacceptable outcomes resulting from social housing assets being put at undue risk are outlined below. These examples are not intended to be exhaustive but rather to give context to registered providers in considering the risks within their business:
 - loss of social housing assets and/or tenants losing their home or the benefits of being within a regulated sector due to lenders or others enforcing their security or insolvency
 - loss of social housing assets where the sale of those assets is the result of poor business planning and decisions or where the reason for the sale is to make good an unplanned cash shortfall
- 10 The regulator recognises every business decision will carry risk and sometimes those risks will crystallise. There is, however, a difference between managed risk and uncontrolled loss. The regulator expects boards to manage the business to promote the former and avoid the latter. In addition, the regulator does not intend that all social

housing assets should remain in the sector for ever. However, the value in the assets should not be lost to the sector. Under the Value for Money Standard, registered providers are expected to consider how to make best use of their assets.

Specific expectations applicable to all registered providers

- 11 The specific expectations set out in the Standard are obligations with which registered providers must comply. Registered providers must demonstrate compliance with **both** the required outcomes and the specific expectations in the Standard. This section of the Code will help registered providers understand what the regulator is looking for when considering compliance with the Standard.

Paragraph 2.1: expectations on the effectiveness of governance arrangements

- 12 Registered providers should demonstrate their actions are consistent with both the principles and relevant provisions of their code of governance and overall contribute to sound governance.
- 13 The regulator anticipates that an assessment of the effectiveness of governance arrangements may vary in terms of depth and scope in line with the internal and external environment within which the registered provider operates. Some parts of a governance review may be carried out to a different timescale than an annual review where this helps ensure the quality and effectiveness of the review. Where this is the case, the annual assessment of the effectiveness of governance arrangements should give assurance on the timescale and progress of work on these areas.

Paragraph 2.2: expectations on the management of registered providers' affairs

- 14 Paragraph 2.2 of the Standard complements the board's responsibilities to act lawfully and responsibly. Compliance will include both behavioural aspects, such as ensuring that the board and executive foster a culture of constructive challenge and debate, and good governance practices.
- 15 To ensure that registered providers have the requisite skills and capability to perform their functions, the regulator would expect them to:
- have an appropriate skills strategy to address the needs of the business
 - regularly assess whether boards and management have the right competencies, experience, and technical knowledge appropriate to the size, scale and risk profile of the organisation³
 - ensure that all material decisions are made with appropriate internal/external expertise or advice and should satisfy themselves of the impartiality of any support or advice

³ This should include the business it is currently involved in or is going to become involved in the future as well as the external operating environment.

- have plans to address any skills gaps identified (including through bringing in external skills), and such plans should be monitored to ensure that they are followed through
- 16 In order to determine the appropriate level of independence, registered providers should have regard to their adopted code of governance, relevant legal requirements, e.g. charity law and to their business model. In some businesses, influence is inherent in the corporate structure of the registered provider (for example a profit making registered provider which is a subsidiary of a group). In other cases, influence may not be inherent in the corporate structure but result from close associations the registered provider has with other organisations or individuals.
 - 17 In managing their affairs with an appropriate degree of independence, board members should exercise independence of judgement and act at all times in the best interests of the registered provider. There should also be appropriate mechanisms in place to manage any conflicts of interest to demonstrate probity and value for money.
 - 18 Registered providers should not be subject to undue influence from third parties that could reasonably be expected to lead to non-compliance with regulatory standards.

Paragraph 2.3: communication with the regulator

- 19 The regulator requires registered providers to tell it at the earliest opportunity about any material issues that indicate there has been or may be a breach of the standards. This might include, for example, material frauds, liquidity issues, breaches of lenders covenants or failures of governance. This transparency is a fundamental pillar of the co-regulatory approach.
- 20 In deciding what is material, registered providers should be mindful of the regulator's role in the consumer standards. The regulator may only intervene where there has been a breach of the standard which has, or may cause, serious detriment. In relation to the consumer standards registered providers are only obliged to disclose those matters which have or may relate to such a breach.

Paragraph 2.4: expectations about business planning, risk and control frameworks

- 21 Registered providers need to ensure their business planning, risk management and control framework is effective. It should cover all areas of the registered provider's business. This should demonstrate the registered provider fully understands and has considered its operating environment, so it can deliver its business plan and organisational objectives. It does not need to be captured in a single document.
- 22 Registered providers should have a clear understanding of their risk tolerances and ensure that they are appropriate to the scale and nature of the activities they are undertaking and their role as a registered provider. Registered providers should be able to identify the capital at risk from any investment activities, and ensure that investment is priced at such a level with a rate of return which is commensurate to the level of risk presented. Where a registered provider is a charity they should consider this alongside

their objects and duties under charity law. Registered providers should consider the potential aggregated impact of risks, as well as their impact at an individual level.

- 23 Registered providers should ensure that they have access to sufficient committed and available liquidity at all times. They should understand the timing of cash flows and any conditions for a drawdown so they can manage cash flow risk. This means registered providers should understand the receipts and outgoings of the business, for example, rental income, investment in existing stock, the costs of development, receipts from sales and other business, financing costs (loan capital and interest payments) and build sufficient prudence into their plans to cope with changes. In particular, boards should assure themselves that they put funding lines in place in sufficient time to cope with major cash outflows. Boards should ensure that they effectively identify and manage any risks of re-financing whether planned or in reaction to changes in the operating environment.
- 24 Registered providers should also look at the relationship between operational and capital cash flows. Non-discretionary expenses, including all major repairs (whether capitalised or not) and interest costs, should be met from operating income. When using capital income (for example, receipts from disposals) to meet operating expenses, boards should ensure there is a plan that ensures operating cash flows fully cover operating expenses in the future. While this is not the case, registered providers need a plan to ensure that exposures are managed.
- 25 Registered providers need to build their business on robust and prudent assumptions. Registered providers should assure themselves the assumptions used are reasonable. For example these may be based on:
 - past performance
 - market conditions
 - deliverability and forecasts of possible future conditions
- 26 The regulator expects these assumptions will be kept under review and updated in the light of changing circumstances. It is important that registered providers ensure their plan enables them to meet lenders' covenants. Registered providers need to ensure sufficient headroom to allow them to take remedial action if assumptions within the plan significantly change or (potentially) if they are not delivering against the plan.
- 27 The regulator expects registered providers to identify the impact of significant business decisions (for example, major changes in development appetite, a new major scheme, moving into a new business stream or taking on new sources of funding) on viability (including continued covenant compliance). It also expects registered providers to report these to the board and take remedial action where necessary. Registered providers should think about their covenants in the broadest sense (financial and non-financial), set target measures of financial performance which provide headroom over covenants, and ensure they monitor all covenants.
- 28 The boards of registered providers should also be aware of the risks posed where separate companies are in effect controlled by others (through common or shadow

directorships) and liabilities may be attributed to the registered provider putting social housing assets at risk. These risks should also be identified and mitigated.

Paragraph 2.5: expectations about risk management

- 29 Boards are the custodians of social housing assets and the financial viability of the registered providers that hold those assets. The responsibility for managing risks, and specifically risks to social housing assets, lies with boards. As social housing is a long term asset, normally funded by long-term debt, it follows that boards need to maintain a long-term perspective on managing risk. They need to ensure that their decisions do not put short-term gains ahead of the long term sustainability of the business and the security of their social housing assets.

Paragraph 2.5.a): expectations about assets and liabilities

- 30 The primary purpose of this requirement is to ensure that registered providers understand their housing assets and security position and have swift access to this information in decision making and risk management. Such information needs to be readily available in the event of a potential or actual failure of the registered provider. This will enable the regulator to draw up resolution strategies and aid a potential rescuer to value the social housing assets. The asset and liability register should contain sufficient information to enable a potential buyer to accurately price the value of the business and/or the value of the social housing assets in the event of distress.
- 31 It is for registered providers to ensure such information is accurate and up-to-date. They should be able to produce an overview for the regulator at short notice. The records need to cover the breadth of the registered provider's activities (including activities carried out in subsidiaries, joint ventures and SPVs) and identify its assets and liabilities. The regulator does not prescribe the format of such records. The approach taken is likely to vary according to the size and complexity of the registered provider. The regulator expects that a registered provider's board will oversee the maintenance of these records and that they are readily reconcilable and regularly reconciled.
- 32 Asset records should clearly identify social housing assets and where these assets are encumbered. Such records would normally include, but are not limited to, treasury arrangements, key contracts, title information and any restrictions on that title (for example planning obligations, charitable or other restrictions), valuations, stock condition and lender covenants.
- 33 Registered providers should consider and record their liabilities in the widest context. The regulator considers the liabilities should include items which relate directly to the social housing assets and those which might have an impact on the business as a whole. This may include, but is not limited to:
- loans including borrowing from other group companies or related undertakings
 - guarantees, indemnities etc. including those provided to subsidiaries and SPVs, whether secured or unsecured
 - leases, sale/lease and leaseback transactions
 - mark-to-market exposures on derivative positions

- cross default provisions (for example, a provision in a loan agreement which provides that a default on one loan agreement gives rise to a default on another one, including where these potentially cross between entities)
- a duty or responsibility that obligates the entity to another, leaving it little or no discretion to avoid settlement⁴
- the potential for any impairment particularly in relation to investments in non-core activities

34 Within group structures, boards should ensure they have full understanding of where liabilities exist between all entities (both registered and unregistered). This should include understanding of how a failure in one part of the group may affect other members of the group. Registered providers in a group should ensure they have an appropriate methodology to model and communicate the impacts of risks crystallising in one entity on other entities within the group, in particular where there would be recourse to social housing assets.

Paragraph 2.5 b): expectations on stress testing

35 The regulator expects registered providers, as part of their risk management approach, to stress test their plans against different scenarios across the whole group. The scenarios used will vary according to the size, type and structure of the organisation. Registered providers should go beyond simple sensitivity testing and include multi-variate analysis which tests against potential serious economic and business risks. Registered providers should explore those conditions which could lead to failure of the business, even if planned mitigations and controls are successfully implemented. They should assure themselves that the scenarios are consistent with what they consider to be acceptable levels of risk and their obligations. Stress testing should employ scenarios that are designed to assess resilience.

36 In designing the stress testing, boards should consider both the long term, cyclical nature of economic factors that impact on the business as well as internal business risks.

37 Two potential examples are offered by way of illustration:

- a) The board of a developing registered provider with a shared ownership and outright sale programme that is raising external debt will need to think about how key variables in the business plan would move during a housing market slowdown or crash. This would include, for example:
- what is happening to sale prices and volumes
 - how lenders would be operating in that market
 - the potential for impairment
 - what might be happening to variable rate debt and the costs of working capital
 - other costs of holding the asset such as increased security costs and the movements in nominal and real inflation rates

⁴ This could include where defaults of a subsidiary or other group members gives rise (either directly or indirectly because of an accounting consequence) to a default under loan agreements secured by social housing assets

- b) The board of an organisation with significant supported housing business, but little new development, will need to think about for example:
- what might happen to corporate overheads and contract-specific costs if the registered provider lost key contracts
 - unsustainable price inflation or wage growth that removed margin from the business
- 38 Managing and addressing risk should involve developing plausible scenarios that test the business plan against adverse movements in the operating environment. Doing so will help underpin boards' understanding of where the risks lie and inform their consideration and planning for remedial action if the risks crystallise either singly or in combinations. Registered providers should consider the implications of this stress testing for its existing business including how the business may need to respond, whether business streams may need to be altered or stopped, whether it has sufficient headroom, what controls they have in place and how those controls are implemented.
- 39 As long-term businesses, registered providers need to ensure that they can withstand the long-term cycles in the economy and that short term decisions do not constrain their ability to cope with risk. This does not prevent registered providers from taking on measured risk to deliver their objectives. It means that when taking on risks, boards should fully understand the impact on their business in the round, as well as on their social housing assets. Boards should have appropriate mitigations and controls in place as well as a strategy to protect those assets during the long term.

Paragraph 2.6: expectations relating to arrangements with third parties

- 40 Registered providers should act in good faith appropriately advancing their own interests and those of their tenants. The focus here is on transactions which, for example, over-price services received so the contractor receives an inflated price or, where services are given without a suitable charge being levied.
- 41 For the avoidance of doubt, the regulator does not intend that transactions undertaken to promote charitable or social objectives, nor appropriate dividend payments by profit making registered providers will be caught by this expectation.
- 42 Where there are conflicts or perceived conflicts of interest, registered providers should clearly set out how they effectively manage these. They should ensure that, for example, parent companies, other entities or individuals who have control or influence (or whom the regulator reasonably believes has such control or influence) cannot or do not exert influence which would have a damaging effect on the registered provider or its compliance with standards. This could be, for example, charging unfavourable prices for the provision of services.
- 43 Third parties are any person or body which is not the registered provider. This includes, for example, directors and board members and may also include individuals or organisations that have close links to the registered provider.

Paragraph 2.7: returns to the regulator

- 44 The regulator requires registered providers to communicate with them in an accurate and timely manner. This includes provision of information, for example data returns. The regulator will clearly articulate its requirements for regulatory returns to the sector and, where appropriate, will consult on these. It is the responsibility of registered providers to ensure that they submit required data returns in a timely manner and the information provided is of a good quality. This includes for example ensuring that returns such as the Financial Forecast Return are fully complete with no missing information, that the data is accurate and submitted by the deadline required. It is not the regulator's role to correct or fill in incorrect or missing data and we will view such returns as evidence of a weak control environment.

Paragraph 2.8: expectations on reporting requirements

- 45 In addition to assuring themselves of compliance with standards on a yearly basis, boards need to assure themselves of their continuing compliance when taking on significant new risks. This could be, for example, when undertaking a new development or entering a major contract. Registered providers' boards shall certify their compliance in the narrative report which accompanies their financial statements. When certifying compliance with the Standard, registered providers shall ensure that they consider compliance with regulatory standards in the round as set out in the required outcomes of the Standard.

Specific expectations applicable to specific categories of registered provider

- 46 This section applies only to specified classes of registered provider where the regulator considers additional controls to protect social housing assets are needed.

Paragraph 3.2: use of social housing assets to support other parts of the business

- 47 Where a registered provider has an unregistered parent, the social housing assets should not be used to support non-social housing activity in other parts of the business to the extent that it may have a material negative impact on, or material recourse to the social housing assets. The regulator would also expect the risk to the social housing assets to be low. Registered providers would not be expected to enter into, for example:
- formal agreements such as guarantees or cross default clauses in loan agreements
 - less formal or indirect arrangements such as making investments which lead to impairment, or which, in the event of insolvency, might allow recourse to the social housing assets

Paragraphs 3.1 and 3.3: assistance

- 48 Paragraphs 3.1 and 3.3 seek to ensure that where a registered provider is part of a group, it can look to other entities within that group for assistance with achieving compliance with regulatory requirements. If a registered provider is part of a corporate group, the regulator expects the registered provider will ensure that other entities within

the group are aware of the regulatory requirements placed on the registered provider and understand the implications of them.

49 Pursuant to paragraph 3.1, in groups where the parent is a registered provider, the parent is required to provide support or assistance to ensure the group's compliance with regulatory standards. This includes, where appropriate, ensuring the ongoing viability of the group, and may require assistance to one registered provider from other registered providers to ensure continued compliance with regulatory standards.

50 Paragraph 3.3 means if a registered provider has an unregistered parent company, the registered providers must put in place mechanisms to ensure the parent company concerned will assist the registered provider to comply with regulatory requirements. Also, to ensure the parent company or another part of the group does not do anything that compromises the registered provider's ability to meet regulatory requirements. In some circumstances it may be appropriate for the regulator to be a party to such agreements.

Paragraph 3.4 & 3.5: separate legal entities for profit making registered providers

51 Profit making registered providers should separate any activities that do not relate to providing social housing from those that do. The regulator is concerned that any potential recourse to the social housing assets from other non-social housing parts of the business is minimal. Profit making registered providers should manage their affairs in such a way that this is the case.

52 A small amount of activity that does not relate to providing social housing is permitted within the legal entity. This is to allow for situations where the activity is undertaken for both social and non-social housing reasons, for example, mixed tenure developments. In such circumstances, the registered provider should ensure the non-social housing activity within the entity does not place social housing assets, activities or its own financial viability at undue risk. The regulator considers, where it is necessary for non-social housing activity to be carried out in the legal entity, the amount of non-social housing activity should be in the region of no more than 5% of capital or turnover. Registered providers should include within the calculation of the amount of non-social housing activity any agreements entered which relate to non-social housing activity by others, which could have a material negative impact on the social housing assets.

53 Boards of profit making registered providers should consider what are social housing or non-social housing activities and should approve the final designation. The regulator may seek assurance on the robustness of the processes and challenge if it considers the conclusions are inconsistent with the required outcomes contained in the Standard. The designation of activities should be considered by boards and updated as activities start or stop or when the organisation enters into new ventures. To aid boards, the regulator lists below some activities which are not considered to be related to the provision of social housing:

- management/maintenance services to other organisations
- management/maintenance services for own non-social housing
- care services

- development and letting of market rent housing and provision of any associated services
- development and sale of outright market sale properties
- development and letting of student housing and provision of any associated services
- development activity (other than affordable/social housing development)
- estate agency services

Legal status of the Code

- 54 This Code is issued by the Homes and Communities Agency, as the regulator of social housing, under section 195(1) of the Housing & Regeneration Act 2008 (as amended) (the Act). It relates to the Governance and Financial Viability Standard set by the regulator under section 194(1) of the Act (the Standard).
- 55 Section 195(2) of the Act provides the regulator may have regard to the Code when considering whether the Standard has been met.
- 57 The Code applies to all registered providers who are subject to the Standard (i.e. registered providers and not local authority providers of social housing). Some paragraphs of this Code relate to parts of the Standard that only apply to specified classes of registered provider.

homesandcommunities.co.uk
mail@homesandcommunities.co.uk
0300 1234 500



Homes & Communities Agency

Homes and Communities Agency

Fry Building
2 Marsham Street
London SW1P 4DF

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



Homes &
Communities
Agency

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Annex 5: the General Consent to disposals

January 2015

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

The General Consent 2015 under section 172 of the Housing and Regeneration Act 2008, Section 133 of the Housing Act 1988 and Section 171D of the Housing Act 1985 in respect of Disposals of Social Housing Dwellings and other Social Housing Land by Private Registered Providers

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

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

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

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

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

Note

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

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

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

Pursuant to Section 171D of the Housing Act 1985 consent of the Regulator is required for a disposal by a landlord of less than his whole interest in a dwelling house which is subject to the preserved right to buy (the landlord having previously acquired the dwelling house from a local authority) and the consent of the Regulator may also be required under Section 172 of the Act.

Pursuant to Section 171D of the Housing Act 1985 consent of the Regulator is not required for the disposal by a landlord of less than his whole interest in a dwelling house to a qualifying person with the preserved right to buy (but consent under Section 172 of the Act may still be required).

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

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

Exclusions

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

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

Citation and Effective Date

This General Consent may be cited as The General Consent 2015.

This General Consent will come into effect on 1st April 2015 ("the Effective Date").

Superseded consents

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

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

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

Interpretation

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

Part I

The Categories of Disposal

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

A Disposals of Unoccupied Social Housing Dwellings and Tenanted Leasehold Social Housing Dwellings

Category 1

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

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

Specific conditions

- This category of consent excludes a disposal which, on its own or forming part of a larger transaction, reduces the number of Social Housing Dwellings of a Private Registered Provider by more than 50%.
- A transfer or a grant, surrender or assignment of a lease under this Category may be at any consideration agreed between the transferor and transferee (or lessor and lessee)

Private Registered Providers so long as it does not exceed Best Consideration and General Condition 3A is varied to that extent.

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

Category 2

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

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

Specific conditions

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

Category 3

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

A Private Registered Provider may dispose of an Unoccupied Social Housing Dwelling (which does not comprise a Former Dwelling) by way of a transfer or by way of a grant, surrender or assignment of a lease to a Local Authority which is Registered Provider and which acquires the Social Housing Dwelling under Part II of the Housing Act 1985.

Specific conditions

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

Category 4

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

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

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

Category 5

Application: Disposals under Section 172 of the Act

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

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

Specific conditions

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

B Charging and other Security Interests

Category 6

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

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

Specific conditions

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

1. This category of consent is not available to a profit-making Private Registered Provider nor to a non-profit Private Registered Provider which is a Subsidiary of a person who is not a Private Registered Provider.
2. This category of consent is available only to a non-profit Private Registered Provider that has received a letter from the Regulator authorising the non-profit Private Registered Provider to use this category of consent.
3. In relation to each grant of a Security Interest, not earlier than two Business Days before the Security Interest is entered into, a non-profit Private Registered Provider shall certify to the Private Finance Provider as follows:
 - (a) That it has a letter from the Regulator (following an application made by the non-profit Private Registered Provider to the Regulator) authorising it to use this category of consent and that the authorisation has not been revoked.
 - (b) That the non-profit Private Registered Provider gave the following undertakings to the Regulator when applying for a letter of authorisation to use this category of consent:
 - (i) It will not advance the whole or any part of the Private Finance Facilities other than to a Group Member.
 - (ii) Before entering into an agreement to advance the whole or part of the Private Finance Facilities to a Group Member who is not a non-profit Private Registered Provider the disposing Private Registered Provider will obtain independent professional advice that the proposed agreement is on reasonable commercial terms for parties at arm's length.

- (iii) Security Interests granted under this category of consent will have the authority of the grantor's governing body and decisions will be properly minuted. The grantor's governing body may delegate authority to a sub-committee or to two or more Officers, according to an appropriate scheme of delegation.
- (iv) Security Interests granted under this category of consent will only be granted within the terms of the grantor's governing instrument (and applicable law including where relevant, charity law).
- (v) It will not, for the purposes of this category of consent, make any certificate to a Private Finance Provider which is incorrect, incomplete or misleading.
- (vi) It will enter in a register (which is to be the same register as that required by General Condition 6 for recording information about other disposals) the following information:
 - that the grant of the Security Interest accords with the General Consent and that the conditions of the General Consent have been complied with;
 - that this category of the General Consent applies;
 - the interest or title being disposed of;
 - the Social Housing Dwelling(s) which are the subject of the Security Interest;
 - the identity of the Private Finance Provider; and
 - the date of the Security Interest

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

- (vii) The Security Interest will not confer any benefit on any of the non-profit Private Registered Provider's or Group Member's Officers or employees or on any of their relatives or on any business trading for profit in which any such person has an interest.
- (c) That the provisions of section 172 of the Housing and Regeneration Act 2008 and/or Section 171D of the Housing Act 1985 have been complied with, that this category of consent applies to the disposal and that the specific conditions of this category of consent have been complied with.
4. This category of consent is not available in respect of the grant of a Security Interest over a Social Housing Dwelling to a Private Finance Provider which secures, or is given on the terms that it may in future secure Index Linked Finance.
 5. If the non-profit Private Registered Provider is in breach of any of the undertakings to the Regulator referred to in specific condition 3(b) or if any of the certificates in specific condition 3(a), (b) or (c) is incorrect the Private Finance Provider can nonetheless rely

on certifications in specific condition 3(a), (b) and (c) and the consent given to a particular disposal under this category of consent will remain effective; **but** if the Regulator publishes a notice of revocation of the consent given under this category of consent and/or a notice withdrawing the letter of authorisation referred to in the certification in specific condition 3(a) above then (and until such time as the Regulator issues a further notice to the non-profit Private Registered Provider reinstating its consent or that letter or a further letter of authorisation), the Private Finance Provider will not, after the date of publication, be able to rely on the certifications in specific condition 3(a), (b) and (c) above and any disposal after the date of that publication (and prior to the issue of such further notice) will be void under section 175 of the Act. Such notice may be published on the Regulator's website.

6. It is a condition under this category of consent that a Dwelling subject to a Security Interest shall continue to be Social Housing and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act. The only exception to this condition is that a Dwelling will cease to be Social Housing when a Private Finance Provider exercises a right under the terms of a Security Interest to dispose or procure a disposal of that Dwelling and any period of moratorium in respect of the exercise of such right has expired. An exercise of a right under a Security Interest includes (for the purpose of this Condition) an exercise of such right by the Private Finance Provider or by an insolvency practitioner appointed by it and includes any such exercise which is, under the terms of the Security Interest, treated as made by or on behalf of the non-profit Private Registered Provider.
7. The non-profit Private Registered Provider must carry out an independent audit (which need not be an external audit) and prepare a report on its use of this category of consent every twelve months from the date of the issue by the Regulator of the letter authorising it to use this category of consent. A copy of the report must be provided to the Regulator on request.

Category 7

Application: Disposals under Section 172 of the Act

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

- (a) a developer of that Social Housing Dwelling taking the Security Interest other than as security for the payment of overage by the Private Registered Provider and solely for the duration of the development period; or
- (b) a registered charity with a financial interest in the Social Housing Dwelling.

Specific conditions

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

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

Category 8

Application: Disposals under Section 172 of the Act

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

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

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

Specific conditions

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

Category 9

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

A Private Registered Provider may grant a rentcharge over a Social Housing Dwelling which is an estate rentcharge within the meaning of Section 2 of the Rentcharges Act 1977.

Specific conditions

- The rentcharge shall not be created for the purpose of making a covenant by the Private Registered Provider to pay overage enforceable by the rent owner.
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.

- The rent charge under this Category may be at any Consideration agreed between the parties so long as it does not exceed Best Consideration and general Condition 3A is varied to that extent.

C Disposals Incidental to Home Ownership Initiatives

Category 10

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

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

Specific conditions

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

Category 11

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

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

Specific conditions

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

Category 12

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

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

Specific condition

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

Category 13

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

A non-profit Private Registered Provider may:-

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

A profit-making Private Registered Provider may:-

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

Specific conditions

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

Category 14

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

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

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

Specific Conditions

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

Category 15

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

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

Category 16

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

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

Category 17

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

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

Category 18

Application: Disposals under Section 172 of the Act

A Private Registered Provider may dispose of a Social Housing Dwelling in accordance with a policy for disposals to tenants (submitted by the Private Registered Provider to the Regulator and which is approved by the Regulator after the Effective Date) by way of a transfer or by way of a lease to a tenant who is in occupation of the Social Housing Dwelling. In approving a policy for disposals, the Regulator may disapply or modify General Condition 3.

Specific Conditions

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

Category 19

Application: Disposals under Section 133 of the Housing Act 1988

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

Specific Conditions

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

- Any discount available under the terms of the right to buy contained in the tenancy agreement will apply and General Condition 3A is varied to that extent.

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

Category 20

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

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

Specific conditions

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act.
- General Condition 3 shall apply to the consideration for an easement under this category with the following modifications:
 - (a) Where the value is less than £10,000, General Condition 3B does not apply, so there is no requirement to obtain a Valuation. The minuted opinion of the board of the Private Registered Provider shall be conclusive as to whether the value is less than £10,000.
 - (b) an easement may be granted at nil or nominal consideration when it is in favour of a body corporate or person responsible for supplying gas, water electricity, drainage, telephone and other communication services to the Private Registered Provider's own land or to adjacent land owned by another Private Registered Provider and General Condition 3A is varied to that extent.
 - (c) an easement may be granted at nil or nominal consideration when it is in favour of another Private Registered Provider or a Local Authority either of which owns land adjacent to the Social Housing Dwelling or when it is in favour of a person with whom another Private Registered Provider or Local Authority has an agreement jointly to develop for Social Housing land adjacent to the Social Housing Dwelling and the sole purpose of the grant of the easement is the provision of the Social Housing.

Category 21

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

A Private Registered Provider may dispose of land that forms part of a Social Housing Dwelling by transfer or lease to a person responsible for the supply of gas, water electricity, drainage,

telephone or other communication services where the primary purpose is to supply such services to Social Housing Dwellings owned by a Private Registered Provider.

Specific conditions

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

Category 22

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

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

Specific conditions

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

Category 23

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

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

Specific condition

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

E Options

Category 24

Application: Disposals Under Section 172 of the Act

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

Specific condition

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

F Leases

Category 25

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

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

Specific condition

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

Category 26

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

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

Category 27

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

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

Specific conditions

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

Category 28

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

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

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

Specific conditions

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

G Vacant Land, gardens, yards, outhouses and appurtenances

Category 29

Application: Disposals under Section 133 of the Housing Act 1988

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

- (a) if the land is in London, £240,000
- (b) if the land is elsewhere, £120,000

Specific Conditions

- A certificate by a Valuer (given not more than three months before the disposal) that the value does not exceed the limit specified in (a) or (b) above or the minuted opinion of the board of the Private Registered Provider that the value does not exceed £10,000 and the disposal is not part of a larger transaction where the value of the interest disposed of does not exceed £10,000 shall be conclusive for the purposes of this category and General Condition 3B is varied to that extent.
- The Private Registered Provider is not the landlord of any tenancy affecting the land, other than a tenancy where the tenant is the person or one of the persons to whom the disposal is made or, in the case of a joint tenancy, where all the tenants are or are among the persons to which the disposal is made.

Category 30

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

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

Specific conditions

- The garage must continue to be used as such following the transfer or lease and the transferor lease will contain a covenant to that effect.
- This category does not apply to land or buildings on the site of a former garage.

- General Condition 3 shall not apply to the consideration under this category and the Private Registered Provider may charge whatever premium and rental it considers appropriate.

Category 31

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

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

Specific conditions

- Any disposal under Section 171D of the Housing Act 1985 must be of less than the whole of the landlord's interest
- General Condition 3A does not apply, so the disposal may be at nil or nominal consideration.
- General Condition 3B does not apply, so there is no requirement to obtain a Valuation.

Category 32

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

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

Specific conditions

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

H Subsoil

Category 33

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

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

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

Specific conditions

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

I Amendments to Existing Consents

Category 34

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

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

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

Specific condition

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

Part II

General conditions applying to disposals

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

Conditions

1. The disposal shall adhere to all relevant law and comply with the Private Registered Provider's governing document and all regulatory requirements.
2. If the disposal is of a Social Housing Dwelling subject to a legal charge or mortgage, the consent of the mortgagee to the disposal should be obtained before exchanging contracts, unless the charge or mortgage will be discharged from the disposal proceeds.
3.
 - A. Every disposal under this General Consent shall be at Best Consideration or in the case of an auction, the reserve price shall be the Best Consideration.
 - B. Every decision to dispose shall be supported by a Valuation carried out by a Valuer.
4. Each disposal shall have governing body authority and decisions shall be properly minuted. Subject to the Private Registered Provider's constitution, governing bodies may delegate authority to a sub-committee or two or more Officers for any of the categories in part I of this General Consent, according to an appropriate scheme of delegation.
5. Before any disposal takes place the Secretary (or equivalent) and one other authorised Officer or employee of the Private Registered Provider shall certify to the disponent in a form specified by the Regulator:
 - that the provisions of section 172 of the Act or Section 133 of the Housing Act 1988 or Section 171D of the Housing Act 1985 as appropriate have been complied with, that the disposal accords with the General Consent and that the conditions of the General Consent have been complied with;
 - specifying the category of the General Consent that applies;
 - identifying the interest or title being disposed of; and
 - identifying the Social Housing Dwelling(s) which are the subject of the disposal
6. A Private Registered Provider shall maintain a register of disposals made under the authority of the General Consent which contains:

- a copy of the certification to the disponee with the same information as required in the certification to the disponee;
- the identity of the disponee;
- the date of the disposal; and
- if one was required, the valuation obtained in accordance with General Condition 3B

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

7. If the disposal is of a Social Housing Dwelling funded by Capital Grant or by Financial Assistance from the Homes and Communities Agency or the Greater London Authority, the Private Registered Provider should consult the Homes and Communities Agency's Affordable Housing Capital Funding Guide and any other terms (including under contractual arrangements) under which grant was given, or the equivalent publication of the Greater London Authority in respect of a disposal in Greater London, to see whether the disposal is one that calls for the repayment or recycling of the Capital Grant or Financial Assistance. If so, the Private Registered Provider shall follow the timetables for reporting and recording published in the guide or any other relevant requirements.
8. The disposal shall not, in the opinion of the Private Registered Provider's governing body, materially affect the Private Registered Provider's assets that are available as security for its existing financial commitments.
9. Disposals shall not be made to or for the benefit of the Private Registered Provider's officers, employees, and their relatives, or any businesses trading for profit in which those parties have an interest.

Part III

Withholding, withdrawal and restriction of access to the General Consent

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

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

Part IV

Validity of General Consent

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

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

Schedule 1

The meaning of terms used in the General Consent

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

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

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

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

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

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

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

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

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

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

"Financial Assistance" means that provided by the Homes and Communities Agency and/or the Greater London Authority under section 19 of the Act or Section 333 ZE of the Greater London Authority Act 1999.

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

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

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

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

"Indexed Linked Finance" means the arrangements for the provision of finance the repayment of which in whole or part is calculated by reference to an index which is a measure of inflation.

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

"Lease Finance" means arrangements for the provision of finance the repayment of which in whole or in part is by way of a liability under a lease.

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

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

"London" means the City of London or any London Borough.

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

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

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

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

"Preserved Right to Buy" means those rights conferred by Part V of the Housing Act 1985 as it applies in a case where the right to buy is preserved under Section 171A of the Housing Act 1985 on the disposal of a dwelling-house to a person who is not an authority or body within Section 80 of the Housing Act 1985.

"Private Finance Facilities" means arrangements for any of:

- (i) lending money, including term loan, standby loan, revolving loan or any other lending facilities and including overdraft facilities and unsecured facilities but excluding facilities made available through Lease Finance and/or Index Linked Finance;
- (ii) interest rate hedging including arrangements embedded within loan agreements or those documented separately;
- (iii) issuance of loan notes, loan stock and bonds;
- (iv) the provision of other facilities including loan notes, loan stock, performance bonds, guarantees, indemnities and letters of credit to the extent the same relate to arrangements within (i), (ii) or (iii).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Valuation" means a valuation carried out by a Valuer exercising their independent judgement on the basis of the Royal Institution of Chartered Surveyors Valuation Standards (the Red Book)

using the version current at the date of the Valuation. This valuation needs to be dated three months or less before the contract is exchanged, or completion if earlier, or any such other period as the Regulator may specify.

'Valuer' means:

- (i) a professionally qualified valuer who is a member or fellow of the Royal Institution of Chartered Surveyors or any successor body or bodies thereof; and
- (ii) who is not employed by, or acting on behalf of and is not a member of the family of, the person or organisation disposing of, marketing, auctioning or purchasing the Social Housing Dwelling being valued; save that where the transferee is a Local Authority, that authority's District or Borough Valuer may provide the Valuation and the requirement of this paragraph (ii) will not apply.

homesandcommunities.co.uk
mail@homesandcommunities.co.uk
0300 1234 500



Homes & Communities Agency

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

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

Publication date: January 2015



Homes &
Communities
Agency

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Annex 6: registration criteria

January 2015

Registration criteria

An applicant must meet the Governance and Financial Viability Standard at the point of registration and demonstrate it can sustain its financial viability on an ongoing basis.

An applicant must have in place management arrangements that enable it to demonstrate the capacity to meet the other regulatory standards.

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

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

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

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

An applicant which is a Charitable Incorporated Organisation (CIO) must have (in addition to the requirements above for applicants that are registered charities) within its constitution requirements that:

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

homesandcommunities.co.uk
mail@homesandcommunities.co.uk
0300 1234 500



Homes & Communities Agency

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

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

Publication date: January 2015



Homes &
Communities
Agency

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Annex 7: Rent Standard

January 2015

Rent Standard

Required outcome of the Rent Standard

Registered providers¹ shall charge rents in accordance with the government's direction to the regulator of May 2014 and the Rent Standard Guidance.

Specific expectations

1. Registered providers shall ensure they meet the following requirements, which derive from the government's direction to the regulator of May 2014, and the 'key requirements' set out in the Rent Standard Guidance that accompanies this standard.
- 1.2 Subject to paragraphs 1.3, 1.5 and 1.6, registered providers shall set rents for low cost rental accommodation with a view to achieving the following:
 - 1.2.1 Rents conform with the pattern produced by the rents formula set out in the Rent Guidance² ('formula rents') with a 5% upward tolerance on individual rents (10% for supported housing and sheltered housing) ('the limit of the rent flexibility level'), but subject to the maximum rent levels specified in that Guidance ('rent caps'),
 - 1.2.2 Weekly rent for accommodation increases each year by an amount which is no more than CPI + 1%,
 - 1.2.3 Weekly rent for accommodation which is above the limit of the rent flexibility level increases each year by an amount which is less than CPI +1%, until it reaches the limit of the rent flexibility level,
 - 1.2.4 Rent caps increase annually by CPI +1.5%,
 - 1.2.5 Formula rents increase annually by CPI +1%.
- 1.3 The requirements of paragraph 1.2 do not apply to accommodation let on Affordable Rent terms. Subject to paragraph 1.6, where accommodation is let on Affordable Rent terms, registered providers shall set rents with a view to achieving the following,
 - 1.3.1 Rent for accommodation (inclusive of service charges) is set at a level which is no more than 80% of the estimated market rent for the accommodation (inclusive of service charges), based on a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors.
 - 1.3.2 Rent for accommodation increases each year by an amount which is no more than CPI + 1%.
 - 1.3.3 Rent for accommodation is re-set, based on a new valuation, each time the accommodation is:

¹The term "registered providers" refers to private registered providers.

² The Rent Guidance means the Guidance on Rents for Social Housing issued by the Government on 23 May 2014 and any other guidance issued by the Government in relation to that document.

- (a) let to a new tenant, or
 - (b) re-let to the same tenant (but where a probationary tenancy comes to an end and the registered provider re-lets the accommodation to the same tenant the provider is not required to re-set the rent).
- 1.4 Affordable Rent terms can only be used in relation to accommodation provided pursuant to a housing supply delivery agreement entered into between a registered provider and the Homes and Communities Agency (HCA) or the Greater London Authority (GLA).
- 1.5 The Rent Standard shall not apply to rental accommodation let by registered providers to a social housing tenant household during a financial year where the household income was £60,000 or more in the tax year which ended in the financial year preceding the financial year in which the Rent Standard will not apply.
- 1.6 Where the application of the Rent Standard would cause providers to be unable to meet other standards, particularly in respect of financial viability, including the risk that a reduction in overall rental income causes them to risk failing to meet existing commitments such as banking or lending covenants, the regulator may agree to waive specific requirements of the Rent Standard for a period of time.
- 1.7 Registered providers shall provide clear information to tenants that explains how their rent and any service charge are set, and how they are changed, including reference to the CPI benchmark to which annual changes to rents should be linked (except where rents are controlled under different legislation).

homesandcommunities.co.uk
mail@homesandcommunities.co.uk
0300 1234 500



Homes & Communities Agency

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

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

Publication date: January 2015



Homes &
Communities
Agency

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Annex 8: Rent Standard Guidance

January 2015

Rent Standard Guidance

Contents

Rent Standard Guidance

	Page
Introduction	2
General guidance	3
Social rent guidance	4
Affordable Rent guidance	10
Rents for social housing tenants with high incomes	13
Further information	14
Appendix 1 Detailed information on calculating formula rents	15
Appendix 2 Additional guidance on property valuation under the Rent Standard	21
Appendix 3 RICS guidance on valuation for Affordable Rent	33

Introduction

- 1 The Rent Standard requires that “registered providers¹ shall charge rents in accordance with the Government’s direction to the regulator of May 2014.” This replaces the direction of November 2011 and introduces several changes which are described below.
- 2 This document – the Rent Standard Guidance – replaces that which took effect from April 2012. The previous version had consolidated all of the previous guidance first issued by the Housing Corporation and adopted by its successor social housing regulator bodies. It is guidance issued in relation to the requirements of the Rent Standard that applies from 1 April 2015.
- 3 The Rent Standard also requires registered providers to meet the ‘key requirements’ set out within the Rent Standard Guidance.
- 4 This guidance sets out the following:
 - **key requirements**

Those matters which are key elements of compliance with the Rent Standard. This includes information about circumstances where those requirements do not apply and are set out in these parts of this document:

 - general guidance
 - social rent guidance
 - Affordable Rent guidance
 - rents for social housing tenants with high incomes (HIST)
 - appendix 2 – Calculating formula rents
 - appendix 3 – Guidance on property valuation for formula rents
 - **background issues**

These are the issues that are explanation of or assistance on how to understand the Rent Standard, how to achieve compliance with it, and how to manage difficulties with compliance. These are all background matters; they are not part of the Rent Standard. These issues are set out in these parts of this document:

 - introduction
 - further information
 - appendix 3 – Royal Institution of Chartered Surveyors (RICS) guidance on valuation for Affordable Rent
- 5 The key requirements (as listed above) are core elements of compliance and form part of the Rent Standard. The background issues (as listed above) provide further guidance and clarification where necessary. Together, these form a comprehensive reference document to all current forms of low cost rental social housing² rents.

¹ The term “registered providers” refers to private registered providers.

² Social housing is defined in ss.68-77 of the Housing and Regeneration Act 2008.

General guidance

- 6 This section together with the other sections referred to above as 'key requirements' are core elements of compliance and form part of the Rent Standard.
- 7 There are a number of considerations that are relevant to all forms of social housing and to all registered providers³.

Compliance with the Rent Standard

- 8 The regulator will take a risk based and proportionate approach in accordance with its published approach to regulating the economic standards.

Annual rent increases

- 9 There is an annual limit, a Guideline Limit, for rent increases in social housing for any single year. That limit is the Consumer Price Index (CPI) +1.0%. The Guideline Limit for increases in rents is applicable to social rent and Affordable Rent.
- 10 The relevant rate of CPI to be applied for the year beginning 1 April is taken as the rate applicable for the previous September. The September CPI is released in the following October by the Office for National Statistics and the regulator publishes a notification to confirm the new Guideline Limit each year.
- 11 The Guideline Limit is a ceiling, not a target. It is open to providers to increase rents by a lower figure where circumstances justify doing so, but if this course of action is adopted there can be no "catching up" in later years, other than at re-let.

Insolvency

- 12 In a situation (such as an insolvency) where there is a mortgagee in possession or receiver in place or where the registered provider's stock is sold to a non-registered landlord following intervention by the regulator, neither the mortgagee in possession, nor the receiver, nor the landlord to whom the stock is sold will be bound by the Rent Standard. That would be the case in relation to all social housing to which the regulatory framework had previously applied, including those properties let on social and Affordable Rent terms. If the stock was transferred to another registered provider, the regulator would discuss compliance with regulatory standards, including the Rent Standard, as part of the transfer arrangements.

³ The Rent Standard and this guidance do not apply to local authority social housing. Local authority landlords are subject to rent policy but through different arrangements.

Social rent guidance

13 This section of the guidance covers the following:

- key principles of social rent
- applicability of social rent
- compliance with rent policy

14 It is supported by these appendices:

- Appendix 2 – Detailed information on calculating formula rents
- Appendix 3 – Further guidance on property valuation

Key principles of social rent

15 The formula for setting social rent should enable registered providers to set rents at a level that allows them to meet their obligations to their tenants, maintain their stock (to at least Decent Homes Standard) and continue to function as financially viable organisations, including meeting their commitments to lenders. The requirements for setting social rent are detailed below.

16 There are some differences for certain kinds of social housing, such as supported housing, Affordable Rent and for housing let to HIST. Further detail is given later in this guidance.

Formula rent

17 The previous policy of rent controls referred to target rents. In terms of calculation these are functionally identical to formula rents, although there are differences in the context in which they operate as a part of the rent policy.

18 Where the requirements of the Rent Standard and this guidance apply, registered providers should ordinarily have achieved target rents by 31 March 2012 (or in certain cases 31 March 2013). When the previous rent policy was introduced in April 2002, registered providers were required to calculate and attribute a target rent to each of their social housing properties. Actual rents were then phased to reach target rents, usually by 31 March 2012. To demonstrate compliance with rent policy, registered providers were required to produce, and maintain, a rent plan setting out the phasing of rents over the ten year implementation period.

19 The calculation of a formula rent is based on a pre-set method. Detail on the information needed to calculate a formula rent is set out in the appendices and tables. The calculation is derived from a combination of property values (as at January 1999), local earnings and property size.

20 For the vast majority of social rent properties a formula rent has already been set so registered providers will usually only need to calculate a formula rent for new social rent properties that they are acquiring. If there is a major refurbishment of housing stock which results in a higher valuation then the formula rent may be revised, but this must be based at 1999 levels, and then updated to current levels using the appropriate annual increases. Rebased rents can only be charged upon re-let.

21 The basis for the calculation of formula rents is:

- 30% of a property's rent should be based on relative property values compared to the national average
- 70% of a property's rent should be based on relative local earnings compared to the national average
- a bedroom factor should be applied so that, other things being equal, smaller properties have lower rents

Rent Flexibility Level

22 Once formula rents have been calculated, registered providers have flexibility to set rents at up to +5% of the formula rent. For supported housing, the flexibility is +10% of the formula rent. This is intended to allow registered providers discretion in dealing with local factors.

Rent caps

23 Rent caps were introduced under the previous rent policy and apply as a limit on social rents, as calculated by the formula rent. The rent cap level for each property size was set in 2002/03 and was inflated annually by RPI+1%, but will increase by CPI+1.5% each year from 1 April 2015. Rents above rent cap levels were to be reduced over the life of the rent plan with the aim that the cap will be achieved as a maximum at the end date of the plan. Current rent cap levels are published each year as a part of the notification on Guideline Limit rent increase levels. Social rents cannot rise above the rent cap level for the appropriate size of property.

24 The rent cap levels for 2015-16 are shown at Appendix 1d.

Service charges

25 Service charges are subject to separate legal requirements, including tenancy agreements. They are limited to covering the cost of providing the services and are not formally covered by this guidance. However, it is expected that registered providers will endeavour to keep increases for Housing Benefit eligible service charges within the Guideline Limit. Registered providers should, therefore, properly distinguish between rents and service charges. If a registered provider proposes to provide additional Housing Benefit eligible services, leading to a significant increase in the level of charges, it should discuss this with the relevant local authority. Providers are reminded that the Rent Standard requires tenants to be supplied with clear information on how service charges are set.

Applicability of social rent and exemptions

26 Where the Rent Standard does apply, the social rent requirements are applicable to **all** registered providers and it covers all low cost rental accommodation that fall within the definition of social housing (as set out in Sections 68-77 of the Housing and Regeneration Act 2008). Social rent, and the calculation of a formula rent, therefore applies to the whole of a registered provider's social rental housing stock, whether it is grant funded or not.

27 Consistent with Government Rent Guidance, social rented property let by providers will continue to be let on a social rent basis unless Affordable Rent or

HIST exemptions apply. The requirement to use social rent levels applies on re-let or following transfer or sale of the property between registered providers.

- 28 There are some types of social housing where the Rent Standard does not apply at all, and so the social rent requirements do not apply. Further details on which categories of registered provider stock are exempt are detailed below.
- 29 Tenants subject to 'fair rents' protection will retain this under the rent policy. If a rent officer sets a fair rent below the formula rent, this lower rent will prevail. If the rent officer sets a fair rent above the formula rent, then we would expect the registered provider to use the formula rent rather than the higher 'fair' rent. Any change to the existing rent charged remains subject to the guideline limit of CPI +1.0% so that tenants with fair rents enjoy the same protection as other tenants. Upon re-let of a property where a tenant previously enjoyed a fair rent then social rent or Affordable Rent where applicable should be charged.

Exemptions from social rent and the Rent Standard

- 30 These categories are exempt from social rent and the Rent Standard, other than Affordable Rent for which particular requirements apply within the Rent Standard:
 - property let at Affordable Rent levels
 - property let to HIST
 - intermediate rent
 - specialised supported housing fitting certain criteria
 - PFI schemes
 - shared ownership and low cost home ownership (LCHO)
 - temporary social housing/short life leasing schemes for the homeless
 - residential care or nursing homes
 - student homes
 - key worker accommodation
- 31 By 'intermediate rent' we mean social housing provided to tenants at rent levels which are above social rent levels and below market rent levels. This housing may have been funded with or without Social Housing Grant (SHG), or other public subsidy, and includes (but is not restricted to) key worker accommodation and the Intermediate Rent housing funded by the HCA and its predecessor bodies. Typically levels of rent for these properties are set at no more than 80% of the comparative market level and therefore the rent setting aspects of formula rent do not apply.
- 32 However, consistent with the key principle of the framework that seeks ensure that rents remain affordable in the long term and protect tenants from excessive rent increases, we expect providers to limit the increases in rent levels to the Guideline Limit wherever possible.

Supported housing generally

- 33 The definition of supported housing used here is that used by the HCA, which states that "the term 'supported housing' applies to purpose designed or designated supported housing." This goes on: "Purpose Designed Supported Housing: Buildings that are purpose designed or remodelled to enable residents to adjust to independent living or to enable them to live independently and which

require specific design features.” And “Designated Supported Housing: Buildings with some or no special design facilities and features but that are designated for a specific client group with support services in place to enable them to adjust to independent living or to enable them to live independently.”

- 34 A certain category of supported housing - specialised supported housing fitting certain criteria - is exempt from social rent requirements entirely. The criteria are set out in the next paragraph. The requirements of social rent for all other supported housing affected by social rent requirements (that is, other than that exempt category) are slightly different to other types of housing:
- implementation of rent restructuring could be delayed by a year and so the deadline for reaching target rents was 31 March 2013
 - when calculating formula rents, the depreciated replacement cost (DRC) method of valuation can be used where it is considered that EUV would not provide an appropriate assessment of the valuation of the property
- 35 DRC is intended to provide a better indication of the particular qualities and characteristics of supported housing properties and the costs that may be involved in providing them. (Appendix 2c provides further detail).

Exemption for specialised supported housing

- 36 The exemption from social rent requirements of specialised supported housing is usually limited to those properties developed in partnership with local authorities or the health service and which satisfy all the following criteria:
- the scheme offers a high level of support for clients, for whom the only acceptable alternative public or voluntary sector options are care homes, and
 - no, or negligible, public subsidy has been received, whether in the form of grant or free land, and
 - the scheme has been commissioned in line with local health, social services or Supporting People strategies and priorities, (but which are not of sufficiently high priority as to receive SHG)
- 37 Experience of assessing proposals over time has shown that in some cases the above criteria can be difficult to interpret and circumstances are no longer exactly the same. For example, ‘public subsidy’ is not precisely defined and has been described in various ways in different legislation.
- 38 Exemption has been and will in the future be allowed when there has been a public capital payment and it was shown that:
- funding was secured by means of a charge or mortgage against a property by way of a loan, and
 - the commissioning body was satisfied with the resulting rent levels charged, and
 - advice had been sought to confirm that the exemption criteria set out above was being followed.

Temporary social housing

- 39 There is an exemption from the Rent Standard where temporary social housing (TSH) is developed without public subsidy and in conjunction with local authorities to provide housing for the homeless.
- 40 Where schemes involve the acquisition of the freehold or long lease by the registered provider using private finance and the properties effectively form part of the provider's permanent stock, the exemption for TSH is extended where the following conditions apply:
- the acquisition of the property has not been funded with social housing assistance or other public funding, and
 - there is a nominations agreement with a local authority for housing the statutory homeless, and
 - the local authority retains responsibility for finding a permanent home, and
 - the property is let on an assured shorthold basis.
- 41 If any of these conditions cease to apply, the exemption is no longer available and the normal Rent Standard requirements should be applied.
- 42 There is an exemption from the Rent Standard for TSH whether grant funded or not, which is leased and in some cases improved in conjunction with local authorities to provide housing for the homeless. The exemption for TSH properties applies where the following conditions are met:
- being available for use by the housing association for a period of time covered by a lease or licence for longer than two years and less than 30 years,
 - not owned by a registered provider,
 - there is a nominations agreement with a local authority for housing the statutory homeless, and the local authority retains responsibility for finding a permanent home, and
 - the property is let on an assured shorthold basis.

Compliance with the Rent Standard

- 43 This section explains more about the requirements of social rent and how registered providers should manage achieving compliance.
- 44 Where the requirements of the Rent Standard and this guidance apply, movement to formula rents for current provision should ordinarily have been achieved by 31 March 2012 (or 31 March 2013 for Supported Housing). This would mean that rents were within the allowed flexibility of +5% (10% for supported housing) of formula rent levels.
- 45 However, registered providers are not required to increase rents to formula levels if they are able, without that increase, to meet the regulator's standards. Registered providers must keep rent increases within the Guideline Limit and should note that upward convergence through rent increases above the Guideline Limit is no longer allowed. Registered providers can move to formula (or flexibility level) upon re-let.

- 46 Where rents are over flexibility level then further rent increases must be at less than CPI +1% until the appropriate level is reached. It should be done in a way that brings the rent within the flexibility level within a reasonable period of time, whilst ensuring financial viability is maintained. The regulator considers the application of increases of CPI only to be a reasonable approach to bringing down rents currently above the flexibility level.

Waivers from the requirements of the Rent Standard

- 47 Where the application of the Rent Standard would cause providers to be unable to meet other standards, particularly in respect of financial viability, the regulator is able to agree to waive specific requirements of the Rent Standard for a period of time. This would be considered in cases where, for example a reduction in overall rental income as a consequence of the ending of rent convergence uplift would cause a registered provider to risk failing to meet existing commitments such as banking or lending covenants.
- 48 An application for a waiver from specific requirements of the Rent Standard should be made to the regulator in writing. The regulator will also consider waivers in situations where the ending of rent convergence prevents existing contractual commitments to tenants – for example, relating to investment resulting from stock transfer – from being met. It should be noted that requests for waivers will only be considered when all other possibilities have been explored. Further detail on our approach to waiving requirements of the Rent Standard is set out in the regulator’s *Regulating the Standards* publication.

Affordable Rent guidance

- 49 The Rent Standard sets out that Affordable Rent terms can only be used in relation to accommodation pursuant to a housing supply delivery agreement entered into between a registered provider and the Homes and Communities Agency (HCA) or the Greater London Authority (GLA).
- 50 Homes let on Affordable Rent terms fall within the definition of social housing, but are exempt from social rent guidance section of this document. This section sets out the requirements for rents in those homes.

Applicability of Affordable Rent

- 51 The Rent Standard requires that in order to use Affordable Rent terms, the registered provider enters into a housing supply delivery agreement with the HCA or the GLA. Where the housing supply delivery agreement is entered into under the Affordable Homes Programme, this should take the form of either a Framework Delivery Agreement (FDA) or a Short Form Agreement (SFA) for new social housing supply. Those registered providers that have entered into a FDA under the Affordable Homes Programme also have the flexibility to convert vacant social rent properties, at re-let, within the scope of that agreement to Affordable Rent, setting rents at up to 80% of market rent for an equivalent property of that size and location. For the avoidance of doubt, registered providers that have entered into a SFA may not convert vacant social rent properties to Affordable Rent.

How initial rents are set

- 52 Homes let on Affordable Rent terms should be made available at a rent level of up to 80% of gross market rents (inclusive of service charges where applicable). Registered providers are reminded of the need for them to also comply with the terms of the FDA or SFA entered into with the HCA or GLA.
- 53 Gross market rents are generally expressed inclusive of any service charges. An Affordable Rent, set at up to 80% of the gross market rent, should take account of the service charge for a property (where applicable) and reflect the property size and location. The maximum rent level for Affordable Rent should be assessed according to the individual characteristics of the property. Landlords are required to assess the gross market rent that the individual property would achieve and set the initial rent (inclusive of service charges) at up to 80% of that level.
- 54 Housing for vulnerable and older people often includes a range of services to support the particular needs of the client group. When setting an Affordable Rent, the gross market rent comparables should be based on similar types and models of service provision. Where there are insufficient comparables for similar types of provision in the local area, valuers should be requested to identify comparables from other areas, and extrapolate their best view of the gross market rent that would be applicable in the location in which the property is situated. Registered providers should set the initial rent at up to 80% of that level.
- 55 A tenancy where a registered provider is the landlord is excluded from mainstream Local Housing Allowance rules. But landlords should consider the

local market context when setting rents, including the relevant Local Housing Allowance for the Broad Rental Market Area in which the property is located.

- 56 In all cases, an Affordable Rent should be no lower than the rent calculated based on the formula rent. In cases where an Affordable Rent would otherwise be lower than the formula rent for a property, the formula rent will constitute a 'floor' for the rent to be charged.

Valuations for initial rent setting

- 57 Valuations for initial rent setting should be in accordance with a Royal Institution of Chartered Surveyors (RICS) recognised method.
- 58 The reference to "a RICS recognised method" is to ensure that registered providers adopt a consistent and transparent approach to the valuation of market rents. RICS sets out its principles for valuations in the RICS Valuation Standards (known as the Red Book). This is available free to RICS members and can be purchased online or as a hard copy. Appendix 2 provides further information on valuations, including an extract from the Red Book on the recognised methods of valuation.
- 59 It is not our intention that the valuation of homes for Affordable Rent should present significant additional costs or burdens for providers. Further advice on valuation for Affordable Rent is available from RICS, developed in consultation with the regulator and the wider HCA, and should assist providers to engage effectively with the process. Registered providers are independent businesses and are required to have robust governance and internal controls.
- 60 Whatever a provider's approach to valuation, boards will need to be assured that decisions on what rents to charge comply with regulatory requirements generally and thus with the terms of HCA or GLA delivery agreements.

Rent increases

- 61 In order to provide protection and certainty for tenants, providers and funders, the maximum annual rent increase on an Affordable Rent property will be the Consumer Price Index (CPI) + 1.0%. CPI will be taken as at September of the previous year. This figure is a ceiling, not a target. It is open to providers to increase rents by a lower figure where circumstances justify doing so.

New and reissued tenancies

- 62 On each occasion that an Affordable Rent tenancy is issued for a property - whether it is let to a new tenant or an existing tenancy is re-issued, providers are required to reset the rent based on a new valuation, to ensure that it remains at no more than 80% of the relevant market rent. This requirement overrides the CPI + 1.0% limit. However, where the accommodation is re-let to the same tenant as consequence of a probationary tenancy coming to an end, the provider is not required to re-set the rent.
- 63 Further advice on valuation, developed by RICS, is set out in Appendix 2. It also provides further clarification on how the requirement to rebase rent can be met.
- 64 It is likely that in areas where Affordable Rent is widely used, providers will have a rolling schedule of tenancies coming up to reissue or re-let. That being the

case, over time providers should have adequate comparables readily to hand without undertaking a full valuation on each occasion and it may be possible to rebase rents using a desktop review of recent transactions.

Later acquisition of homes let on Affordable Rent terms

- 65 If homes let on Affordable Rent terms in compliance with the Rent Standard are sold to, or otherwise acquired by, another registered provider, the registered provider acquiring that stock is unlikely (in relation to that stock) to have an agreement with the HCA or GLA. Nonetheless, that acquiring registered provider will still be in compliance with the Rent Standard where it continues to charge rents in accordance with the Affordable Rent provisions of the Rent Standard and the provisions of the Affordable Rent tenancies which they acquired. However, the acquiring registered provider will not be in compliance with the Rent Standard if it sets rents on Affordable Rent terms in relation to other stock, if it does not itself have in place a FDA or SFA with the HCA or GLA. For the avoidance of doubt, existing stock may only be converted to Affordable Rent terms if a FDA is in place.
- 66 Consistent with Government Rent Guidance, Affordable Rented property let by providers will continue to be let on an Affordable Rent basis unless converted back to social rent or the HIST exemption applies. The requirement to let the property at Affordable Rent levels applies on re-let or following transfer or sale of the property between registered providers.

Delivering new Affordable Rent Homes without grant funding

- 67 Guidance on delivering new Affordable Rent Homes without HCA or GLA grant funding can be found in the Funding Guides published by these bodies. In these circumstances a Short Form Agreement will be required.

Rents for social housing tenants with high incomes (HIST)

68 The Rent Standard does not apply to rental accommodation let by private registered providers to a social housing tenant household during a financial year where the household income was £60,000 or more in the tax year preceding the financial year in which the Rent Standard will not apply. Registered providers may implement different rent policies for such tenants and where they do so, they are expected to follow the principles set out below. Registered providers are expected to use additional capacity generated to fund new affordable housing, where possible.

Principles for HIST lettings

69 Household means the tenant or joint tenants named on the tenancy agreement, and any tenant's spouse, civil partner or partner where they reside in the rental accommodation. Where several people live in the property the highest two incomes should be taken into account for household income. Income means taxable income in the tax year ending in the financial year prior to the financial (i.e. rent) year in question.

70 To give an example, the income received in the 2013-14 tax year would guide the rent payable in the 2015-16 rent setting year, where a household was above the threshold. Here, 2013-14 is the "tax year ending (on 5 April 2014) in the financial year (2014-15) prior to the financial (i.e. rent) year in question (2015-16)".

71 Where a household is subject to a sudden and on-going loss of income, having declared that they are above the threshold, providers would be expected to reconsider the rent that household is being charged, and amend if appropriate.

72 In the context of HIST lettings:

- "household" means: the tenant or joint tenants and the spouse, civil partner or partner of a tenant where the spouse, civil partner or partner is residing at the rental accommodation.
- "household income" means: the sum of the incomes of the household or where the household consists of two or more persons, the sum of the two highest incomes in the household.
- "income" has the same meaning as "total income" as described in section 23 of the Income Tax Act 2007;
- "partner" means the person where the tenant and the person are of opposite sexes, the tenant and the person are living together as if they were married to each other; or where the tenant and the person are of the same sex, the tenant and the person are living together as if they were married to each other or living together as if they were civil partners.
- "tax year" means a year beginning on 6 April.

73 Further information on income in scope can be found at:
www.hmrc.gov.uk/incometax/taxable-income.htm.

Termination of HIST Tenancy

- 74 Where a HIST tenancy comes to an end, and the property is vacated, we would expect properties to typically be re-let in line with their previous lower rent – be it at social rent or Affordable Rent – to a household in housing need. This is not intended to restrict the re-letting of vacant properties within any investment programme. Any property subject to this exemption will remain social housing and subject to the regulator’s consent regime.

Further information

- 75 For any questions on the Rent Standard or this guidance, please contact the referrals and regulatory enquiries team by emailing mail@homesandcommunities.co.uk or phoning 0300 1234 500.

Appendix 1: Detailed information on calculating formula rents

Appendix 1a: Detail on the rent setting formula

Calculating the rent setting formula

- 1 Landlords need to derive a formula rent for each property based upon a calculation derived from property values, local earnings and size (see Appendices 1a – 1c for a more detailed explanation). The basis for the calculation of formula rents is:
 - 30% of a property's rent should be based on relative property values
 - 70% of a property's rent should be based on relative local earnings
 - a bedroom factor should be applied so that, other things being equal, smaller properties have lower rents
- 2 The formula rent for a property is calculated using the following approach:

Weekly rent is equal to:	Plus
70% of the average rent for the HA sector	30% of the average rent for the HA sector
Multiplied by relative county earnings	Multiplied by relative property value
Multiplied by bedroom weight	

- 3 Property values must be based on an existing use value (EUV), assuming vacant possession and continued residential use (N.B. not EUV-SH) at January 1999 levels with an average national property value of £49,750. It is permitted to use a different valuation method, depreciated replacement cost, for supported housing (see Appendix 2 for further guidance).
- 4 The average rent at 31 March 2000 was estimated to be £53.50 per week. This was inflated to £58.23 at 2002/03 levels (being the first year of the revised regime).
- 5 Details of relative earnings levels and bedroom weights which are required to derive a formula rent calculation are attached at Appendix1b. If formula rent is being calculated or updated then appropriate indexation will also need to be applied and details of RPI/CPI changes are at Appendix1b.
- 6 Recalculation of formula rents should not normally be necessary but can be carried out where improvements are carried out which may affect the valuation of the housing stock, or if there is evidence that original valuations were in any way inadequate or inaccurate. These should always be rebased to January 1999 levels.

Limits on annual increases

- 7 The annual guideline limit for increases in formula rent for any single year is CPI +1.0%. The relevant rate of CPI to be applied for the year beginning 1 April is taken as the rate applicable for the previous September. So the guideline limit for rent increases from 1 April 2015 to 31 March 2016 will be dictated by the September 2014 CPI. The September CPI is released in the following October.

- 8 Actual Rents may be increased annually by a maximum of the guideline limit, that is, $\text{CPI} + 1.0\%$.

Appendix 1b - Data for calculating Formula Rents

- 9 This provides the information, other than property-specific details, that is needed to calculate formula rent.

Average Rent

- 10 The national average rent, net of service charges, that should be used, as at 31 March 2000, is £53.50 per week

Earnings

- 11 Earnings data for the formula are given in the table below:

Earning		Earnings		Earnings	
County	£/week	County	£/week	County	£/week
Avon	321.20	Greater London	354.10	Nottinghamshire	298.00
Bedfordshire	343.70	Greater	307.30	Oxfordshire	323.80
Berkshire	345.40	Hampshire	328.70	Shropshire	295.40
Buckinghamshire	328.30	Hereford & Worcs.	289.60	Somerset	299.70
Cambridgeshire	330.10	Hertfordshire	343.70	South Yorkshire	299.10
Cheshire	322.00	Humberside	318.40	Staffordshire	296.20
Cleveland	338.40	Isle of Wight	288.50	Suffolk	304.30
Cornwall	255.50	Kent	316.40	Surrey	333.20
Cumbria	323.70	Lancashire	302.70	Tyne & Wear	307.90
Derbyshire	321.10	Leicestershire	303.10	Warwickshire	326.10
Devon	278.00	Lincolnshire	286.70	West Midlands	320.60
Dorset	293.90	Merseyside	324.90	West Sussex	332.50
Durham	289.70	Norfolk	302.50	West Yorkshire	302.70
East Sussex	281.50	North Yorkshire	299.60	Wiltshire	313.90
Essex	325.90	Northamptonshire	328.50		
Gloucestershire	308.00	Northumberland	276.10	England average	316.40

- 12 These figures were derived from the New Earnings Survey (ONS) and represent the average gross weekly earnings of full time male and female manual workers over the 1997 to 1999 period, up lifted to 1999 prices. Pre-1996 counties were used, because of the problems of small sample sizes for some of the new counties, especially unitary authorities.

Bedroom weights

- 13 The following bedroom weights are applied to the earnings term in the formula:

No. bedrooms	Bedroom weights
0	0.80
1	0.90
2	1.00
3	1.10
4	1.20
5	1.30
6 or more	1.40

- 14 These weights were not derived from any single source, but were intended to provide a broad reflection of the way in which larger properties tend to be valued more highly by their inhabitants.

Property values

- 15 Individual property values for formula rent setting must be based upon a January 1999 valuation date and an Existing Use Value (EUV) assuming continued residential use and vacant possession.
- 16 The national average property value for registered providers at January 1999 to be used is £49,750
- 17 This figure was based on a survey by a national firm of locally-based valuers and represents an Existing Use Value assuming vacant possession and continued residential use.

Table 1: Annual rates of retail/consumer price index change and guideline limits

September	Effective Year	Rate of RPI /CPI* Increase	Guideline Limit
2001	2002/03	1.7%	2.2%
2002	2003/04	1.7%	2.2%
2003	2004/05	2.8%	3.3%
2004	2005/06	3.1%	3.6%
2005	2006/07	2.7%	3.2%
2006	2007/08	3.5%	4.1%
2007	2008/09	3.9%	4.4%
2008	2009/10	5.0%	5.5%
2009	2010/11	-1.4%	-0.9%
2010	2011/12	4.6%	5.1%
2011	2012/13	5.6%	6.1%
2012	2013/14	2.6%	3.1%
2013	2014/15	3.2%	3.7%
2014	2015/16	1.2%*	2.2%

- 18 Prior guideline limits (Required for indexation of formula rents).

Year	Guideline Limit*
1999/2000	4.2%
2000/2001	2.1%
2001/2002	4.3%

* based upon previous rent limit of RPI + 1%.

Appendix 1c - Example calculation of Formula Rent

19 Consider a one-bed registered provider property in South Yorkshire, for which the landlord estimates the capital value to be £30,000 in January 1999.

20 The information needed to apply the rent formula is set out in Appendix 2.

National average registered provider rent in 1999/2000	£53.50*
Average earnings in South Yorkshire	£299.10
National average earnings	£316.40
Bedroom weight	0.90
National average registered provider property value in January 1999	£49,750

* This is the national average rent as at 31 March 2000.
The financial year is used for presentational purposes.

21 Putting these figures into the formula:

		Total
70% of sector-average rent	70% x £53.50	£37.45
Multiplied by relative county earnings	x £299.10/£316.40	£35.40
Multiplied by bedroom weight	x 0.90	£31.86
		subtotal
30% of sector-average rent	30% x £53.50	£16.05
Multiplied by relative property value	x £30,000/£49,750	£9.68
		subtotal
Adding together the sub-totals	£31.86 + £9.68	£41.54

In this example, the initial formula rent is £41.54 a week, which increases by the guideline limit each year, available in Table 1.

Appendix 1d – Rent Caps

22 Formula rent caps for 2015-16 are as outlined below:

Bedroom size	Rent Cap in 2015-16
Bedsit and one bedroom	£141.43
Two bedrooms	£149.74
Three bedrooms	£158.06
Four bedrooms	£166.37
Five bedrooms	£174.69
Six or more bedrooms	£183.00

Appendix 2: Additional guidance on property valuation under the Rent Standard

Appendix 2a: Property valuations

- 1 While a formula rent will be required for each property it is neither practicable nor desirable to value each property individually. As relative property values play a modest role in the formula, small differences in individual valuations will not have a large impact on formula rents. However, for the purposes of calculating formula rents, a value will have to be attributed to each property.
- 2 Given the broad range of registered providers by size and the geographical spread of their stock, this guidance is not prescriptive about the method by which property values are established. However, boards must satisfy themselves that they are adopting the most appropriate procedure for valuing their stock, with the benefit of professional advice, where necessary.
- 3 To achieve a consistent and fair pattern of social rents, a common date and basis of valuation must be adopted. January 1999 should be used as the property valuation base for calculating formula rents.
- 4 Registered providers should use an Existing Use Valuation (EUV), assuming vacant possession and continued residential use. EUV's should be produced by the comparative method and not by a discounted cash flow method. Appendix 2b sets out the definition by the Royal Institution of Chartered Surveyors (RICS) of the concept of EUV. Registered providers should note that this is not the same basis as Existing Use Value—Social Housing (EUV—SH), which adjusts the valuation to take account of the social housing tenancy and is also different from an Open Market Valuation (OMV) which can include the benefit of a planning gain.
- 5 Valuations should be in accordance with the RICS Appraisal and Valuation Manual and may be desk based. Registered providers may choose to use external valuers or appropriately qualified in-house staff to carry out valuations, and they must keep written confirmation of the valuations.
- 6 If existing valuations need to be re-based to January 1999, this can be done by reference to an appropriate house price index, reference to the data available from the Land Registry website, by an external valuer or appropriately qualified in-house staff.
- 7 If a property is subject to a s106 Agreement (Town & Country Planning Act), this should be disregarded for the purposes of attributing a value to the property for formula rent setting purposes. Similarly, if a building is listed under the Planning (Listed Buildings & Conservation Areas) Act 1990, this should be disregarded. If a property has a relatively short lease that affects its value, the valuation should be on the assumption that the property has a long leasehold interest, to avoid anomalies.

Appendix 2b - Existing Use Valuation

(Reproduced by permission of the Royal Institution of Chartered Surveyors which owns the copyright).

Existing Use Value (EUV) as defined in the RICS Appraisal and Valuation Manual

- 8 Existing Use Value (EUV) — an opinion of the best price at which the sale of an interest in the property would have been completed unconditionally for cash consideration on the date of valuation, assuming:
- a willing seller
 - that, prior to the date of valuation, there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest, for the agreement of the price and terms and for the completion of the sale
 - that the state of the market, level of values and other circumstances were, on any earlier assumed date of exchange of contracts, the same as on the date of valuation
 - that no account is taken of any additional bid by a prospective purchaser with a special interest
 - that both parties to the transaction had acted knowledgeably, prudently and without compulsion
 - the property can be used for the foreseeable future only for the existing use
 - that vacant possession is provided on completion of the sale of all parts of the property occupied by the business

Appendix 2c - Guidance on the valuation of supported housing

Introduction

- 9 This guidance explains the approach that registered providers should adopt to the valuation of supported housing for formula rent setting purposes. It is not intended to provide advice on valuations for accounting purposes. The term supported housing is defined at 3.2.2 in the main body of the Guidance.
- 10 The key principles underpinning formula rent for supported housing are the same as those for general needs housing. Rents are expected to reflect the size, condition and location of the accommodation. Properties have to be valued for these purposes using a common valuation base (January 1999) and a comparable method.
- 11 There are two approaches that can be used by registered providers to the valuation of supported housing. Existing Use Valuation (EUV), which assumes vacant possession, is the preferred method of valuation and, where possible, registered providers should obtain EUVs for supported housing. Where it is not appropriate to value properties on this basis, registered providers can use a Depreciated Replacement Cost (DRC) method of valuation. This guidance broadly explains how registered providers can use both the EUV and DRC methods to value their supported housing stock.
- 12 The main principles underpinning the valuation methods for supported housing are as follows. The methods should:
 - reflect the same principles as those for general needs housing
 - be simple to operate
 - take account of the full costs of replacement

Existing Use Valuations (EUVs)

- 13 EUVs should be applied to ordinary supported housing units that are similar to general needs housing, for instance self-contained housing and small shared units. The concept of EUV is based on assuming vacant possession and continued residential use.
- 14 Appendix 2b to this guide sets out the definition by the Royal Institution of Chartered Surveyors of the concept of Existing Use Value. In particular, the concept assumes that the property remains in its current use, which in this instance is housing and is not converted into, for example, retail or office accommodation.
- 15 Supported housing schemes can be included within registered providers' existing valuation methods for general needs housing, where the stock is similar. Such approaches may involve valuing a representative sample of housing stock, or registered providers jointly forming a 'valuation club' where valuations are shared. Where a supported housing scheme is isolated from other types of properties then an individual valuation may be required. The EUV methodology should reflect the cost of specialist adaptations.

- 16 It is anticipated that the EUV method of valuation should be appropriate for a substantial proportion of supported housing, as there is sufficient evidence of various types of residential property to enable a robust valuation to be prepared for rent setting purposes. Registered providers should, where possible, use EUVs. Registered providers may choose to use external valuers or appropriately qualified in-house staff to carry out EUVs.

Depreciated Replacement Costs (DRC)

- 17 In some cases valuations on an EUV basis would not take account of the particular qualities and characteristics of supported housing. Where the Board of a registered provider decides that this is the case, with the benefit of professional advice where appropriate, the registered provider may value properties on a DRC basis.
- 18 The DRC method of valuation broadly corresponds to the cost of replacing the building, taking account of the fact that generally it would not be brand new. This approach should only be applied for the purposes of setting the formula rent.
- 19 The approach set out in this guidance involves the calculation of a DRC valuation based on the replacement of an existing property with a modern alternative. This replacement cost will need to be depreciated where the condition of the existing property does not meet modern standards. The value of the land will then need to be added to this calculation.
- 20 The methodology set out below explains how registered providers with specialist properties can calculate a DRC. Registered providers may pursue this approach without having to engage professional valuers, in which case they should ensure that a competent person is responsible for applying the methodology.

Build cost per square metre (sq m)

- 21 To calculate the DRC of an existing property, it will be necessary for the registered provider to first calculate the cost of its replacement with a modern alternative. The methodology involves using a standard per sq m rate for the build cost of a modern alternative. The January 1999 rates for each Total Cost Indicator (TCI) area are shown below, details of the local authorities that fall within each TCI area are shown in Table 2.

TCI area	A	B	C	D	E
Build cost per sq m	871	799	761	737	707

- 22 The sq m build rates shown above include on costs and take account of the additional costs associated with building supported housing.
- 23 Registered providers will need to calculate the gross external area of the existing property using guidance provided in the Royal Institution of Chartered Surveyor's Code of Measuring Practice. If the gross external area is difficult to measure, then registered providers could derive this calculation from the gross internal area, taking into account the thickness of the external walls and the space occupied by partitions.
- 24 The calculation will involve multiplying the build rate by the gross sq m to arrive at a replacement cost for a modern alternative.

Specialist adaptations

- 25 Supported housing can include the provision of specialist adaptations for people with a physical disability. A distinction needs to be made between property related adaptations and personal equipment for an individual (eg hoists etc).
- 26 The build cost calculation for replacing an existing scheme with a modern alternative includes the costs of complying with building regulation requirements for wheelchair accessibility. There are, however, other property related adaptations that may need to be taken into account in assessing replacement costs, for instance the provision of specialist equipment.
- 27 Two key multipliers have been identified that can enhance the basic build cost to take account of those adaptations that are not reflected within the sq m calculation. These multipliers are as follows:

Wheelchair (specialist fixed equipment e.g. showers/kitchen units)	1.12
Serviced by new lifts	1.12

Condition of the property

- 28 To ensure that the DRC valuation reflects the condition of the property, it will be necessary for the replacement cost to be depreciated.
- 29 Where the property has been regularly maintained and upgraded, and complies with modern design and construction standards, the replacement cost should not be depreciated. Where the property does not meet modern standards a notional abatement factor of 0.90 should be applied to depreciate the replacement costs in any of the following circumstances:
 - no central heating
 - the kitchen/s has not been refurbished within the previous ten years
 - the bathroom/s has not been refurbished within the previous 15 years

Standardised land value calculation

- 30 There are two approaches that registered providers can adopt to calculating the land value for formula rent setting purposes. These approaches are explained below.
- 31 Registered providers can use professional valuers (internal or external) to provide advice on the valuation of a site (at the January 1999 price base). This approach provides a tailored method for calculating the value of the land component.
- 32 Alternatively, registered providers can use land values prepared by the Valuation Office in spring 1999. If these land values are used, it is not necessary to rebase the valuation to January 1999. This approach would involve registered providers calculating the size of the site in hectares (see formula in Table 3 to translate sq m into hectares). Registered providers could make use of ordnance survey maps to facilitate this calculation. The value of the land would be derived by multiplying the land value prepared by the Valuation Office by the actual size of the site.

- 33 The land values prepared by the Valuation Office are based on each local authority area, assuming a representative location with planning permission available for residential development, services are to the edge of the site and the site is ripe for development. The spring 1999 values for each local authority area are given in Table 3 showing the value of small sites as well as those in excess of two hectares. As the valuation figures provide a broad indication of land value over each local authority area, they may not reflect the specific value of the registered provider's site. Where a registered provider considers this to be the case, it may wish to use a professional valuer.

Table 2: Local authorities within each TCI area
(based on TCI circular of 1998/99)

LA code	Local authority	TCI CG	LA code	Local authority	TCI CG
202	City of London	A	312	Oxford	B
204	Barnet	A	318	Chiltern	B
206	Brent	A	320	Wycombe	B
208	Camden	A	321	Broxbourne	B
210	Ealing	A	322	Dacorum	B
213	Hackney	A	323	East Hertfordshire	B
214	Hammersmith and Fulham	A	324	Hertsmere	B
215	Haringey	A	325	North Hertfordshire	B
216	Harrow	A	326	St. Albans	B
218	Hillingdon	A	327	Stevenage	B
219	Hounslow	A	329	Watford	B
220	Islington	A	330	Welwyn Hatfield	B
221	Kensington and Chelsea	A	335	Cambridge	B
222	Kingston upon Thames	A	356	Brentwood	B
223	Lambeth	A	361	Epping Forest	B
225	Merton	A	362	Harlow	B
228	Richmond upon Thames	A	251	Ashford	C
229	Southwark	A	252	Canterbury	C
231	Tower Hamlets	A	253	Dartford	C
233	Wandsworth	A	254	Dover	C
234	City of Westminster	A	256	Gravesham	C
317	South Bucks	A	257	Maidstone	C
328	Three Rivers	A	261	Swale	C
447	Isles of Scilly	A	262	Thanet	C
203	Barking and Dagenham	B	264	Tunbridge Wells	C
205	Bexley	B	266	Eastbourne	C
207	Bromley	B	269	Lewes	C
209	Croydon	B	271	Wealden	C
211	Enfield	B	272	Adur	C
212	Greenwich	B	273	Arun	C
217	Havering	B	274	Chichester	C
224	Lewisham	B	276	Horsham	C
226	Newham	B	278	Worthing	C
227	Redbridge	B	281	Eastleigh	C
230	Sutton	B	282	Fareham	C
232	Waltham Forest	B	283	Gosport	C
259	Sevenoaks	B	285	Havant	C
263	Tonbridge and Malling	B	286	New Forest	C
275	Crawley	B	287	Portsmouth	C
277	Mid Sussex	B	289	Southampton	C
279	Basingstoke and Deane	B	290	Test Valley	C
280	East Hampshire	B	295	Newbury	C
284	Hart	B	296	Reading	C
288	Rushmoor	B	311	Cherwell	C
291	Winchester	B	313	South Oxfordshire	C
294	Bracknell Forest	B	314	Vale of White Horse	C
297	Slough	B	315	West Oxfordshire	C
298	Windsor and Maidenhead	B	316	Aylesbury Vale	C
299	Wokingham	B	319	Milton Keynes	C

LA code	Local authority	TCI CG	LA code	Local authority	TCI CG
300	Elmbridge	B	331	North Bedfordshire	C
301	Epsom and Ewell	B	332	Luton	C
302	Guildford	B	333	Mid Bedfordshire	C
303	Mole Valley	B	334	South Bedfordshire	C
304	Reigate and Banstead	B	340	South Cambridgeshire	C
305	Runnymede	B	355	Basildon	C
306	Spelthorne	B	358	Castle Point	C
307	Surrey Heath	B	359	Chelmsford	C
308	Tandridge	B	360	Colchester	C
309	Waverley	B	363	Maldon	C
310	Woking	B	364	Rochford	C
365	Southend-on-Sea	C	350	Ipswich	D
367	Thurrock	C	352	St. Edmundsbury	D
368	Uttlesford	C	353	Suffolk Coastal	D
401	Bournemouth	C	357	Braintree	D
402	Christchurch	C	366	Tendring	D
403	North Dorset	C	414	Mendip	D
404	Poole	C	415	Sedgemoor	D
405	Purbeck	C	416	Taunton Deane	D
406	West Dorset	C	417	West Somerset	D
407	Weymouth and Portland	C	418	South Somerset	D
408	East Dorset	C	420	Exeter	D
409	Kennet	C	422	Plymouth	D
410	North Wiltshire	C	424	Teignbridge	D
411	Salisbury	C	425	Mid Devon	D
412	Thamesdown	C	426	Torbay	D
413	West Wiltshire	C	427	Torridge	D
419	East Devon	C	428	West Devon	D
421	North Devon	C	429	Caradon	D
423	South Hams	C	430	Carrick	D
436	Bristol	C	431	Kerrier	D
440	North West Somerset	C	432	North Cornwall	D
441	Cheltenham	C	433	Penwith	D
442	Cotswold	C	434	Restormel	D
501	Bromsgrove	C	443	Forest of Dean	D
513	Stratford-on-Avon	C	444	Gloucester	D
514	Warwick	C	445	Stroud	D
515	Birmingham	C	446	Tewkesbury	D
519	Solihull	C	451	Blaby	D
554	Sheffield	C	452	Charnwood	D
558	Leeds	C	453	Harborough	D
562	Harrogate	C	455	Leicester	D
567	York	C	456	Melton	D
584	Durham	C	457	North West Leicestershire	D
591	North Tyneside	C	458	Oadby and Wigston	D
602	Liverpool	C	459	Rutland	D
608	Manchester	C	462	Lincoln	D
612	Stockport	C	463	North Kesteven	D
613	Tameside	C	467	Corby	D
614	Trafford	C	468	Daventry	D
616	Chester	C	469	East Northamptonshire	D
621	Macclesfield	C	470	Kettering	D
628	Fylde	C	471	Northampton	D
633	Ribble Valley	C	472	South Northamptonshire	D
636	West Lancashire	C	473	Wellingborough	D
639	Barrow-in-Furness	C	475	Bassetlaw	D
643	South Lakeland	C	476	Broxtowe	D
701	Bath and North East Somerset	C	477	Gedling	D
706	Brighton and Hove	C	480	Nottingham City	D
711	The Medway Towns	C	481	Rushcliffe	D
260	Shepway	D	484	Chesterfield	D
267	Hastings	D	486	Erewash	D
270	Rother	D	487	High Peak	D
336	East Cambridgeshire	D	488	North East Derbyshire	D
338	Huntingdonshire	D	489	South Derbyshire	D
339	Peterborough	D	490	Derbyshire Dales	D
342	Broadland	D	505	Redditch	D
345	Norwich	D	507	Worcester City	D
347	King's Lynn and West Norfolk	D	508	Wychavon	D
348	Babergh	D	509	Wyre Forest	D
349	Forest Heath	D	510	North Warwickshire	D
512	Rugby	D	606	Bolton	D
516	Coventry	D	607	Bury	D
517	Dudley	D	609	Oldham	D

LA code	Local authority	TCI CG	LA code	Local authority	TCI CG
518	Sandwell	D	610	Rochdale	D
520	Walsall	D	611	Salford	D
521	Wolverhampton	D	615	Wigan	D
522	Cannock Chase	D	617	Congleton	D
523	East Staffordshire	D	618	Crewe and Nantwich	D
524	Lichfield	D	619	Ellesmere Port and Neston	D
525	Newcastle-under-Lyme	D	620	Halton	D
526	South Staffordshire	D	622	Vale Royal	D
527	Stafford	D	623	Warrington	D
528	Staffordshire Moorlands	D	624	Blackburn	D
529	Stoke-on-Trent	D	625	Blackpool	D
530	Tamworth	D	626	Burnley	D
531	Bridgnorth	D	627	Chorley	D
532	North Shropshire	D	629	Hyndburn	D
533	Oswestry	D	630	Lancaster	D
534	Shrewsbury and Atcham	D	631	Pendle	D
535	South Shropshire	D	632	Preston	D
536	The Wrekin	D	634	Rossendale	D
551	Barnsley	D	635	South Ribble	D
552	Doncaster	D	637	Wyre	D
553	Rotherham	D	638	Allerdale	D
555	Bradford	D	640	Carlisle	D
556	Calderdale	D	641	Copeland	D
557	Kirklees	D	642	Eden	D
559	Wakefield	D	702	South Gloucestershire	D
560	Craven	D	707	Isle Of Wight	D
561	Hambleton	D	708	East Riding	D
563	Richmondshire	D	709	North East Lincolnshire	D
564	Ryedale	D	712	Herefordshire	D
565	Selby	D	713	Malvern Hills District	D
566	Scarborough	D	337	Fenland	E
574	Kingston upon Hull	D	341	Breckland	E
577	Hartlepool	D	343	Great Yarmouth	E
578	Redcar and Cleveland	D	344	North Norfolk	E
579	Middlesbrough	D	346	South Norfolk	E
580	Stockton-on-Tees	D	351	Mid Suffolk	E
581	Chester-le-Street	D	354	Waveney	E
582	Darlington	D	454	Hinckley and Bosworth	E
583	Derwentside	D	460	Boston	E
585	Easington	D	461	East Lindsey	E
586	Sedgefield	D	464	South Holland	E
587	Teesdale	D	465	South Kesteven	E
588	Wear Valley	D	466	West Lindsey	E
589	Gateshead	D	474	Ashfield	E
590	Newcastle upon Tyne	D	478	Mansfield	E
592	South Tyneside	D	479	Newark and Sherwood	E
593	Sunderland	D	482	Amber Valley	E
594	Alnwick	D	483	Bolsover	E
595	Berwick-upon-Tweed	D	485	Derby	E
596	Blyth Valley	D	511	Nuneaton and Bedworth	E
597	Castle Morpeth	D	710	North Lincolnshire	E
598	Tynedale	D			
599	Wansbeck	D			
601	Knowsley	D			
603	St. Helens	D			
604	Sefton	D			
605	Wirral	D			

Table 3: Formula for converting sq m into hectares

$$\frac{\text{Sq metres}}{10,000} = \text{Hectare}$$

Example: a site measures a total of 2000 sq m

$$\frac{2,000}{10,000} = 0.2 \text{ Hectare}$$

Table 4: Valuation office residential land values at spring 1999

LA code	Local authority	Small sites	Bulk land (more than two hectares)	LA code	Local authority	Small sites	Bulk land (more than two hectares)
Values at £000 per hectare				Values at £000 per hectare			
202	City of London	20,500	20,500	282	Fareham	1,400	1,200
203	Barking and Dagenham	1,358	1,600	283	Gosport	1,025	1,000
204	Barnet	3,800	3,500	284	Hart	1,720	1,720
205	Bexley	2,000	1,600	285	Havant	1,200	1,100
206	Brent	2,300	3,000	286	New Forest	1,280	1,400
207	Bromley	2,000	2,470	287	Portsmouth	1,000	900
208	Camden	9,000	5,500	288	Rushmoor	1,720	1,720
209	Croydon	2,000	2,000	289	Southampton	1,400	1,020
210	Ealing	3,100	3,200	290	Test Valley	1,250	1,100
211	Enfield	3,000	2,800	291	Winchester	1,720	1,720
212	Greenwich	2,000	1,700	294	Bracknell Forest	2,000	2,000
213	Hackney	2,500	2,500	295	West Berkshire	1,600	1,600
214	Hammersmith and Fulham	5,000	2,550	296	Reading	1,950	1,950
215	Haringey	2,500	2,500	297	Slough	1,950	1,950
216	Harrow	2,500	3,400	298	Windsor and Maidenhead	2,100	2,100
217	Havering	1,736	2,000	299	Wokingham	2,000	2,000
218	Hillingdon	2,300	3,000	300	Elmbridge	1,800	1,500
219	Hounslow	3,100	3,200	301	Epsom and Ewell	1,450	1,400
220	Islington	5,250	5,250	302	Guildford	2,250	2,250
221	Kensington and Chelsea	27,000	17,500	303	Mole Valley	975	1,425
222	Kingston upon Thames	2,350	2,350	304	Reigate and Banstead	1,780	1,750
223	Lambeth	2,100	2,100	305	Runnymede	2,300	2,300
224	Lewisham	1,600	1,600	306	Spelthorne	1,780	1,750
225	Merton	2,500	2,500	307	Surrey Heath	2,200	2,200
226	Newham	1,545	1,425	308	Tandridge	1,780	1,750
227	Redbridge	1,650	1,650	309	Waverley	2,000	2,000
228	Richmond upon Thames	2,600	2,600	310	Woking	2,150	2,150
229	Southwark	2,300	2,300	311	Cherwell	1,000	900
230	Sutton	1,900	2,470	312	Oxford	3,500	3,350
231	Tower Hamlets	2,475	2,225	313	South Oxfordshire	1,250	1,200
232	Waltham Forest	1,650	1,650	314	Vale of White Horse	1,200	1,150
233	Wandsworth	2,900	2,900	315	West Oxfordshire	1,200	1,100
234	City of Westminster	20,500	20,500	316	Aylesbury Vale	1,600	1,600
251	Ashford	1,020	925	317	South Buckinghamshire	2,750	2,750
252	Canterbury	1,850	1,350	318	Chiltern	2,500	2,500
253	Dartford	1,100	1,100	319	Milton Keynes	1,500	1,500
254	Dover	700	450	320	Wycombe	2,100	2,100
256	Gravesham	825	825	321	Broxbourne	2,200	2,000
257	Maidstone	1,250	1,250	322	Dacorum	1,900	2,250
259	Sevenoaks	1,600	1,600	323	East Hertfordshire	1,400	1,350
260	Shepway	865	650	324	Hertsmere	1,900	2,250
261	Swale	890	710	325	North Hertfordshire	1,200	1,100
262	Thanet	700	450	326	St Albans	1,900	2,250
263	Tonbridge and Malling	1,500	1,500	327	Stevenage	1,400	1,250
264	Tunbridge Wells	1,600	1,600	328	Three Rivers	1,900	2,250
266	Eastbourne	875	750	329	Watford	1,900	2,250
267	Hastings	375	275	330	Welwyn Hatfield	1,400	1,200
269	Lewes	900	900	331	North Bedfordshire	1,000	1,000
270	Rother	740	700	332	Luton	1,000	
271	Wealden	1,040	875	333	Mid Bedfordshire	1,050	1,050
272	Adur	800	750	334	South Bedfordshire	1,100	1,100
273	Arun	1,125	1,110	335	Cambridge	1,480	2,200
274	Chichester	1,850	1,750	336	East Cambridgeshire	615	565
275	Crawley	1,200	1,200	337	Fenland	225	210
276	Horsham	1,450	1,425	338	Huntingdonshire	890	890

LA code	Local authority	Small sites	Bulk land (more than two hectares)	LA code	Local authority	Small sites	Bulk land (more than two hectares)
Values at £000 per hectare				Values at £000 per hectare			
277	Mid Sussex	1,000	1,050	339	Peterborough	590	565
278	Worthing	950	900	340	South Cambridgeshire	1,130	1,025
279	Basingstoke and Deane	1,720	1,720	341	Breckland	325	275
280	East Hampshire	1,500	1,500	342	Broadland	325	275
281	Eastleigh	1,440	1,250	343	Great Yarmouth	325	275
344	North Norfolk	350	300	440	North Somerset	1,100	950
345	Norwich	600	550	441	Cheltenham	1,500	1,500
346	South Norfolk	350	300	442	Cotswold	1,350	1,350
347	King's Lynn and West Norfolk	325	275	443	Forest of Dean	740	740
348	Babergh	350	335	444	Gloucester	1,100	1,100
349	Forest Heath	320	300	445	Stroud	850	850
350	Ipswich	650	630	446	Tewkesbury	1,100	1,100
351	Mid Suffolk	308	300	447	Isles of Scilly	1,480	2,200
352	St Edmundsbury	650	650	451	Blaby	750	700
353	Suffolk Coastal	410	400	452	Charnwood	800	800
354	Waveney	320	320	453	Harborough	750	800
355	Basildon	1,025	988	454	Hinckley and Bosworth	850	750
356	Brentwood	1,555	1,400	455	Leicester	750	700
357	Braintree	800	750	456	Melton	775	725
358	Castle Point	1,200	1,300	457	North West Leicestershire	750	750
359	Chelmsford	1,280	1,225	458	Oadby and Wigston	750	700
360	Colchester	900	900	459	Rutland	800	675
361	Epping Forest	1,600	1,480	460	Boston	270	185
362	Harlow	1,025	988	461	East Lindsey	410	250
363	Maldon	700	900	462	Lincoln	500	375
364	Rochford	900	1,100	463	North Kesteven	340	250
365	Southend-on-Sea	990	920	464	South Holland	325	300
366	Tendring	600	400	465	South Kesteven	375	250
367	Thurrock	640	555	466	West Lindsey	210	135
368	Uttlesford	1,200	1,100	467	Corby	350	350
401	Bournemouth	1,600	1,500	468	Daventry	740	740
402	Christchurch	1,600	1,500	469	East Northamptonshire	570	570
403	North Dorset	950	915	470	Kettering	618	618
404	Poole	1,600	1,500	471	Northampton	800	800
405	Purbeck	1,000	950	472	South Northamptonshire	865	865
406	West Dorset	925	875	473	Wellingborough	679	679
407	Weymouth and Portland	850	800	474	Ashfield	350	300
408	East Dorset	1,400	1,300	475	Bassetlaw	400	300
409	Kennet	700	700	476	Broxtowe	680	625
410	North Wiltshire	950	950	477	Gedling	675	600
411	Salisbury	1,050	1,050	478	Mansfield	320	300
412	Swindon	850	1,050	479	Newark and Sherwood	425	340
413	West Wiltshire	800	950	480	Nottingham City	700	620
414	Mendip	600	550	481	Rushcliffe	800	745
415	Sedgemoor	450	440	482	Amber Valley	520	450
416	Taunton Deane	925	875	483	Bolsover	325	250
417	West Somerset	620	580	484	Chesterfield	495	325
418	South Somerset	1,000	900	485	Derby	600	550
419	East Devon	893	819	486	Erewash	540	460
420	Exeter	1,103	987	487	High Peak	440	440
421	North Devon	683	612	488	North East Derbyshire	450	270
422	Plymouth	683	525	489	South Derbyshire	460	375
423	South Hams	716	625	490	Derbyshire Dales	550	490
424	Teignbridge	893	819	501	Bromsgrove	1,235	1,350
425	Mid Devon	683	612	505	Redditch	810	775
426	Torbay	914	840	507	Worcester	820	775
427	Torridge	525	478	508	Wychavon	830	765
428	West Devon	680	650	509	Wyre Forest	1,050	1,175
429	Caradon	200	220	510	North Warwickshire	725	600
430	Carrick	400	350	511	Nuneaton & Bedworth	700	600

LA code	Local authority	Small sites	Bulk land (more than two hectares)	LA code	Local authority	Small sites	Bulk land (more than two hectares)
Values at £000 per hectare				Values at £000 per hectare			
431	Kerrier	300	265	512	Rugby	800	700
432	North Cornwall	320	290	513	Stratford-on-Avon	1,450	1,400
433	Penwith	330	300	514	Warwick	1,900	1,800
434	Restormel	330	300	515	Birmingham	890	890
436	Bristol	1,350	1,350	516	Coventry	950	850
517	Dudley	950	1,000	599	Wansbeck	245	200
518	Sandwell	570	480	601	Knowsley	400	350
519	Solihull	1,800	1,650	602	Liverpool	700	650
520	Walsall	975	1,025	603	St Helens	500	410
521	Wolverhampton	900	950	604	Sefton	500	425
522	Cannock Chase	900	950	605	Wirral	360	360
523	East Staffordshire	700	475	606	Bolton	550	500
524	Lichfield	1,100	900	607	Bury	550	500
525	Newcastle-under-Lyme	450	325	608	Manchester	1,000	800
526	South Staffordshire	950	1,000	609	Oldham	675	625
527	Stafford	600	425	610	Rochdale	650	650
528	Staffordshire Moorlands	450	325	611	Salford	500	450
529	Stoke-on-Trent	450	325	612	Stockport	1,350	1,350
530	Tamworth	750	575	613	Tameside	600	490
531	Bridgnorth	750	715	614	Trafford	925	855
532	North Shropshire	495	495	615	Wigan	550	450
533	Oswestry	490	445	616	Chester	645	825
534	Shrewsbury and Atcham	650	765	617	Congleton	540	500
535	South Shropshire	495	445	618	Crewe and Nantwich	350	300
536	Wrekin	500	550	619	Ellesmere Port and Neston	360	350
551	Barnsley	550	375	620	Halton	500	450
552	Doncaster	625	425	621	Macclesfield	700	550
553	Rotherham	460	440	622	Vale Royal	575	500
554	Sheffield	630	540	623	Warrington	940	700
555	Bradford	600	525	624	Blackburn	470	325
556	Calderdale	550	450	625	Blackpool	750	675
557	Kirklees	615	475	626	Burnley	470	310
558	Leeds	1,000	975	627	Chorley	775	625
559	Wakefield	700	500	628	Fylde	800	750
560	Craven	525	500	629	Hyndburn	470	235
561	Hambleton	800	800	630	Lancaster	800	750
562	Harrogate	850	1,000	631	Pendle	470	270
563	Richmondshire	600	540	632	Preston	775	625
564	Ryedale	500	400	633	Ribble Valley	675	625
565	Selby	450	350	634	Rossendale	475	265
566	Scarborough	400	350	635	South Ribble	775	625
567	York	800	750	636	West Lancashire	775	625
574	Kingston upon Hull	475	375	637	Wyre	800	750
577	Hartlepool	500	475	638	Allerdale	250	197
578	Redcar and Cleveland	375	400	639	Barrow-in-Furness	425	375
579	Middlesbrough	425	450	640	Carlisle	360	270
580	Stockton-on-Tees	500	500	641	Copeland	200	150
581	Chester-le-Street	494	494	642	Eden	320	270
582	Darlington	500	500	643	South Lakeland	675	575
583	Derwentside	315	275	701	Bath and NE Somerset	1,500	1,400
584	Durham	650	600	702	S Gloucestershire	1,300	1,200
585	Easington	350	215	706	Brighton and Hove	1,200	1,000
586	Sedgefield	350	300	707	Isle of Wight	475	360
587	Teesdale	325	300	708	East Riding of Yorkshire	610	550
588	Wear Valley	400	300	709	N E Lincolnshire	410	350
589	Gateshead	500	450	710	North Lincolnshire	410	350
590	Newcastle upon Tyne	800	800	711	Medway Towns	750	730

LA code	Local authority	Small sites	Bulk land (more than two hectares)	LA code	Local authority	Small sites	Bulk land (more than two hectares)
Values at £000 per hectare				Values at £000 per hectare			
591	North Tyneside	600	800	712	Hereford	600	570
592	South Tyneside	500	450	713	Malvern Hills	820	795
593	Sunderland	475	425				
594	Alnwick	430	310				
595	Berwick-upon-Tweed	370	245				
596	Blyth Valley	245	200				
597	Castle Morpeth	450	370				
598	Tynedale	495	400				

Appendix 3: Royal Institution of Chartered Surveyors (RICS) guidance on valuation for Affordable Rent

- 1 An extract from the Red Book is reproduced below with permission of the RICS, which owns the copyright. RICS in general recognises five methods of valuation: comparison, investment, land residual, cost and profits. Rental valuations of residential property are generally arrived at by comparison. However, we do not wish to be prescriptive as to the method used in individual cases.
- 2 For rental valuations, in order to establish open market rental value for Affordable Rent, it is for individual registered providers to come to a decision as to what approach to take to valuation, and who will carry out that valuation, following principles of good governance. To arrive at a compliant process, registered providers will need to consider issues of:
 - probity
 - independence
 - the comparables selected
 - the method by which the comparables are used inform the market rent value
 - the suitability of the valuer
 - the policy for taking the market rental valuation into account in setting the Affordable Rent to be charged
- 3 The process will need to be transparent and accountable. Whatever the method used, the valuation will be built on the definitions of the basis of market rent contained within the RICS Red Book.
- 4 For certain types of provision (such as housing that includes support services) or provision in areas where there is relatively little rental activity (such as some rural localities) there may be insufficient comparables readily available. In these cases, valuers should identify comparables in other areas and form their best view of the market rent that would be applicable. However these rents are derived, registered providers need to ensure a consistent and transparent approach.
- 5 The text below is taken from the RICS Valuation Standards. It is reproduced by permission and subject to RICS copyright.

Market rent

Valuations based on market rent (MR) shall adopt the definition settled by the International Valuation Standards Committee.

- 6 Market rent: The estimated amount for which a property, or space within a property, should lease (let) on the date of valuation between a willing lessor and a willing lessee on appropriate lease terms in an arms length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion. Whenever market rent is provided the 'appropriate lease terms' which it reflects should also be stated. (©IVSC, GN 2, para. 3.1.9.1)

homesandcommunities.co.uk
mail@homesandcommunities.co.uk
0300 1234 500



Homes & Communities Agency

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

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

Publication date: January 2015



Homes &
Communities
Agency

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Annex 9: business engagement assessment

January 2015

Business engagement assessment

Business Engagement Assessment	
Title of proposal	Changes to the regulatory framework, January 2015
Lead regulator	<i>Homes and Communities Agency – the social housing regulator</i>
Contact for enquiries	<i>Referrals and Regulatory Enquiries team 0300 1234 500 (option 2) consultation@hca.gsi.gov.uk</i>

Date of assessment	<i>December 2014</i>	Stage of assessment	<i>Final</i>
Net cost to business (EANCB)		Commencement date	<i>1 April 2015</i>
Which area of the UK will be affected by the change(s)?	<i>England</i>	Price and present value base years	
Does this include implementation of Red Tape Challenge commitments?	<i>No</i>	Is this directly applicable EU or other international legislation?	<i>No</i>

Brief outline of proposed change in regulatory action

The regulator is updating the regulatory framework in England to reflect existing and future changes in the operating environment of the sector, to ensure it continues to fulfil its statutory obligations. These changes include:

- revisions to the Governance and Financial Viability Standard
- introduction of a code of practice for the Governance and Financial Viability Standard
- changes to the disposals regime
- changes to the registration criteria
- changes to the General Consents regime

The statutory consultation document also included changes to the Rent Standard. However, this is subject to an impact assessment prepared by the Department for Communities and Local Government (DCLG), rather than by the Homes and Communities Agency (HCA).

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

The social housing sector has undergone significant changes in the last few years, and it continues to change. We have published three *Sector Risk Profiles*¹, in June 2012, September 2013 and September 2014, which identify key risks facing the sector and conclude that the sector is facing an increasing number and a more diverse range of risks.

¹ <https://www.gov.uk/government/collections/sector-risk-profiles>

Existing registered providers² are becoming involved in more diverse and commercial activities. We are also seeing the registration of profit making providers and anticipate that this trend will continue. In addition to activities becoming more diverse, so too are funding streams. Registered providers are no longer relying on bank debt to fund diversification and there are other sources of finance from an increasing range of parties which bring with them different risks.

Operating environment changes

Changes to the economic environment are impacting on registered providers. Levels of grant funding are significantly reduced, and government initiatives such as welfare reform present risks to registered providers' income cash flows. In order to continue to meet their objectives, registered providers are seeking novel ways to source finance and are diversifying their activities. The new range of diverse activities have brought with them benefits to the sector. However there are risks which need to be managed in order to ensure that the social housing assets are protected.

Legislation changes

The Housing and Regeneration Act 2008 made provision for profit making providers to be able to register as social housing landlords. This presents a number of challenges to the regulator. Non-profit registered providers, by the nature of their status, must reinvest any profits back into their business. The current regulatory system for issuing consents to dispose of social housing property is underpinned by this. This leaves a gap. There are currently no controls to prevent historic grant and other public investment being distributed out of the sector by transference of social housing from a non-profit registered provider to a profit making registered provider.

In addition, the regulator's remit for profit making registered providers only extends in so far as it relates to social housing. The regulator needs to ensure that it is able to regulate and protect the social housing part of the business without overstepping its remit. Profit making registered providers also need to ensure that they are able to effectively manage any risks to the social housing part of their business.

Emerging cases

Although performance of the sector is strong overall, the regulator has seen a number of recent cases of poor governance and ineffective risk management, particularly where registered providers have entered into diverse activities without fully understanding the risks to the social housing assets. If not managed this could lead to reputational damage to the individual registered providers and the sector overall. In more extreme cases there are risks of major financial failure with potential impacts on credit ratings, lending rates and funding availability. The sector benefits from reduced funding costs. Ensuring social housing assets continue to be protected is key to ensuring the long term availability of favourable lending terms for the sector.

As a result of the above, the regulator needs to revise the regulatory framework to ensure that the regulator continues to be able to meet its statutory objectives and its aim of ensuring that social housing assets are protected.

² This document uses throughout the terms "profit making registered provider" and "non-profit registered provider" to refer to the two types of private registered provider designated in the 2008 Housing and Regeneration Act. For brevity the term "registered providers" is used where the reference is to both types of private registered providers. Where used, this term excludes local authority registered providers. Where the document uses the term "the non-profit sector" this indicates both non-profit private registered providers and local authority registered providers.

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

As at January 2015 there were 1,589 providers registered with the social housing regulator. Of those, 1,093 were non-profit making registered providers with less than 1,000 units and 27 were profit making registered providers.

All registered providers will be affected by the proposed changes to the Governance and Financial Viability Standard. The extent to which they are affected will depend on the risks to social housing assets within their business. For those registered providers who manage their risks well, the impact will be minimal. For others it will be greater.

The proposals could have a knock on impact on the tenants of registered providers. Clearly the potential of any loss of social housing may lead to tenancies, on those social housing assets, being vulnerable. However, it is the regulator's intention to ensure greater protection of tenants as a consequence of ensuring that social housing assets are protected through the proposed changes.

The proposals could also have a knock on impact on lenders and other funders. If registered providers better manage the risks then funders will be able to better price loans and have more confidence in a better managed sector. This in turn could see benefits for registered providers in continued beneficial loan rates.

Changes being proposed to the Disposal Proceeds Fund (DPF) element of the consents regime will only directly affect those registered providers who have been designated as profit making on the register, and will only affect them if they acquire stock from a non-profit registered provider.

Changes being proposed to the registration criteria will affect new entrants to the sector and will have no effect on existing registered providers.

How will the change impact these businesses?

Three main options were considered as part of these proposals:

Option A – do nothing

Option B – changes detailed in the discussion document 'Protecting social housing assets in a more diverse sector' published in April 2013,³ primarily the introduction of ring fencing arrangements, a requirement to have recovery plans, and changes to the disposals regime for profit making registered providers.

Option C – changes detailed in the statutory consultation published May 2014,⁴ primarily changes to the Governance and Financial Viability Standard, changes to the disposals regime for profit making registered providers and changes to the General Consents regime. These proposals have been further amended after consideration of feedback from stakeholders following the statutory consultation.

³http://cfg.homesandcommunities.co.uk/sites/default/files/our-work/130404_regulatory_framework_discussion.pdf

⁴<https://www.gov.uk/government/consultations/changes-to-the-regulatory-framework>

Option A - do nothing

The regulator has a number of fundamental objectives set out in statute. The regulatory framework articulates the regulator's expectations of registered providers to enable it to fulfil those statutory objectives.

The current regulatory framework was written at a time when the sector and the operating environment were different. Although the Housing and Regeneration Act 2008 (as amended by the Localism Act 2011) allowed profit making providers to register as social housing landlords, few had done so prior to April 2012, and the regulator had little experience and knowledge to draw on to reflect in the regulatory framework.

If the regulator were to take no action, in spite of the evidence of the need for change, risks to social housing assets would be greater. Social housing may be lost to the sector, tenants risk losing their homes and public investment made in those assets may be lost. Loss of assets would have a knock on impact to the reputation of the sector and may affect pricing and availability of funding.

In the regulator's view, if the regulatory framework does not provide adequate protection against these risks, it is no longer fit for purpose. Therefore, option A, to do nothing, has been discounted.

Option B – changes detailed in the discussion document published April 2013

In April 2013, the regulator published a discussion document, 'Protecting social housing assets in a more diverse sector', to start a conversation with stakeholders in the sector about how the regulator should address the issues and risks facing the sector. The key areas of change proposed in this document were ring fencing, recovery planning and disposal consents.

In the discussion document the regulator asked stakeholders for specific feedback on the impact of each of the proposals on their businesses. The impact of the proposed changes detailed here includes evidence gained through this process.

Ring fencing

The discussion paper response analysis document reflected that whilst registered providers seemed to understand the concept of the 'comply or explain' approach, there was less understanding of who it would apply to. A large number of non-profit registered providers responded as if they would have to comply, whereas the explain route would have been available to them. The 'comply' route would only have been required for profit making registered providers and new entrants, not to existing not for profit registered providers. Therefore, the impacts described below would have only applied to a relatively small number of registered providers.

Of prime concern was the disproportionate burden that would be placed on registered providers, with more prescriptive requirements. There was concern that this would have a significant negative impact on the existing non-profit sector, potentially limiting development and new supply. There would potentially be a financial cost of compliance for some providers if they were required to move social housing assets into a separate legal entity, which may also trigger a review of lending agreements and re-pricing of loans.

The ring fencing proposals may bring the benefit of greater protection of social housing assets than the current regime. However, the regulator has concluded that social housing assets can be protected via a different route for the existing not for profit sector, thus reducing the burden on this group. For this reason, the ring fencing proposals in their original form were discounted.

However, for the profit making sector the regulator can only regulate in so far as it relates to social housing. For this reason it is reasonable to require some ring fencing for this group. For registered providers whose parent is not registered, actions and decisions made by the parent or other parts of the group may have a negative impact on the social housing assets. For this group the regulator only has oversight over the registered provider and not the activities of the parent. It is therefore reasonable to require additional mechanisms to ensure that social housing assets are protected where the group is structured so as to have an unregistered parent.

Recovery planning

The proposal in the discussion document was for a three tiered regime, ranging from a light touch register of assets and liabilities to a more extensive contingency planning requirement.

This requirement would drive an improvement in registered providers' asset registers, and in registered providers' understanding of their security position, particularly for those registered providers who have no asset register or where it is scant in detail or poorly maintained. The proposals would have the greatest impact on those who do not have accurate records and carry out limited work in this area already.

The proposals were tiered for different registered providers in order that the requirements were proportionate to the complexities of the registered provider. For all registered providers there would be resource requirements to draw up and maintain recovery and where required contingency plans.

As a result of the changes to ring fencing proposals, to avoid duplication and reduce the burden on the sector the recovery planning proposals were built into the risk management requirements in the standard. The full proposals were reviewed and streamlined to reduce burdens wherever possible.

Changes to the disposals regime

The proposals put forward in the discussion document on changes to the disposals regime only apply to profit making registered providers.

There are a number of potential impacts on profit making registered providers of the proposals. The proposals may have a market shaping impact if it deters new profit making providers from entering the sector or discourages them from purchasing stock from non-profit registered providers.

There is also the potential that the additional requirements may affect the financial gains of profit making providers in such transactions which could in turn result in a lack of investment in the stock, for example in maintenance of existing stock.

In addition to potential generic impacts of changes to the disposals regime, the two alternative approaches also have potential impacts. Option 1 in the discussion document addressed the concern about the potential for asset stripping by profit making registered providers. Options 2, based on a formula with a proportion of the proceeds reinvested in social housing assets, was more open to manipulation and therefore public investment being taken out of the sector. It also required greater skill and resource to manage the more complex process.

Responses to the discussion document showed a preference for option 1. This, alongside the potential loss of historic public investment through manipulation as a result of option 2, meant that option 1 was taken forward and developed for formal consultation.

Option C – changes detailed in the statutory consultation

The areas of change proposed in the statutory consultation are to:

- Governance and Financial Viability Standard
- the disposals regime
- registrations
- Rent Standard to reflect the government's latest direction on rents

Changes to the Rent Standard are not included here as DCLG have already consulted on changes to rents and the changes outlined in the statutory consultation document follow the directions issued to us by DCLG.

Changes to the Governance and Financial Viability Standard

When changes to the Governance and Financial Viability Standard have been considered, the regulator has been mindful of the duty to balance our statutory objectives and to minimise interference. The changes are designed to ensure that registered providers better understand the risks they face and have appropriate plans in place to manage them. Many already do this well and there will be little impact on those registered providers. However, whilst the regulator recognises that there may be a small increase in regulatory burden on registered providers, the changes are necessary to ensure we meet all our statutory objectives and are, in the regulator's view, a proportionate approach which minimises interference.

The regulator also considers that these activities are those which would be undertaken by a well-run business. In addition, the standard is not prescriptive but instead allows providers to tailor their approach to meet the required outcomes. Inevitably those registered providers carrying out activities with greater risks will see the greatest impact on their businesses of the proposals. The impacts on those registered providers are described below.

For those registered providers who do not have sufficient skills to manage the activities they undertake or plan to undertake, additional resource and skills will be required in order to fulfil the requirements. For example, this may be by providing training or hiring staff or consultants. Skill and resource will also be required to develop risk frameworks, ensure accurate asset and liability registers, carry out stress testing and using this to inform decision making.

It is the regulator's expectation that the requirements on entering agreements with third parties will only impact on a small number of registered providers or potential new applicants. It is not expected to impact on those whose agreements are entirely appropriate and proper.

Likewise, for those registered providers who already regularly assess compliance with the standards, the new reporting requirement (to assess and certify compliance with the Governance and Financial Viability Standard) creates a minimal additional burden in terms of boards gaining assurance. However, it will have a greater impact on those who do not already evaluate their compliance and will require resource and skill to do so.

There are some additional new requirements being proposed which would apply only to specific types of registered providers. The requirement for a separate legal entity for profit making registered providers could have a financial and administrative cost where restructure of the business is required. This currently affects a very small number of existing registered providers who are designated as profit making. The requirement ensures that the regulator can effectively regulate the part of the business that it is required to. However, the cost of

doing this is potentially offset by a lower cost of borrowing on social housing as lenders would be able to better price social housing risks and offer reduced loan rates.

The requirement for registered group parents to provide assistance to other registered providers in the group is an enhancement to existing expectations. Whilst it has not been a formal requirement before it has been the expectation of the regulator and the understanding of the sector. The impact of this requirement will vary from case to case, and will only be required where reasonable.

The requirement for registered providers with unregistered parents to not enter into arrangements which support the activity of the parent, or another group member, where they may have a material negative impact on the social housing assets will have an impact on the ability of registered providers whose parent isn't registered to use the social housing assets to support other parts of the business. This may have an impact on the growth of those other parts of the business. However, the regulator is of the view that this impact is reasonable and proportionate in order to continue to meet its fundamental objectives and its aim of protecting social housing assets.

In order to protect social housing assets some additional changes are proposed to the General Consent regime. The proposed change to Category 6 of the General Consent will impact on non-profit registered providers with unregistered parents. This group will now be required to seek specific consent from the regulator. There will be an administrative burden on registered providers in seeking that consent, and inevitably some of those consents may not be granted. However, the regulator is of the view that this is reasonable in order that it continue to meet its fundamental objectives and its aim of protecting social housing assets.

Changes to disposals regime

Changes proposed are only concerned with profit making registered providers when stock is acquired from non-profit registered providers. They place restrictions on the use of proceeds from onward disposal of this stock. This ensures that public investment in social housing stock is retained in the sector.

The potential impacts are similar to those highlighted in the discussion document section previously. There is a risk that due to the restrictions on the proceeds from the sale of this stock that once acquired, profit making registered providers do not invest in social housing stock that they own, for example on repairs and maintenance. This may have a negative impact on the long term value of that stock. The restrictions may also impede new profit making applicants from entering the sector or discourage them from acquiring stock from non-profit registered providers. However, the proposed changes to the disposals regime should have a positive impact on perceptions and reputation of profit making registered providers.

Changes to the registration criteria

Changes in the Governance and Financial Viability Standard have consequential changes on the registration criteria. Given that the specific expectations of the Governance and Financial Viability Standard have been merged, there is now a requirement that in order to be registered a provider must meet the requirements of the Governance and Financial Viability Standard at the point of registration. This means that the regulator will take a view on whether the arrangements in place are appropriate for the stage of development of the applicant (whether this is a start-up business or an existing business, for example). We do not anticipate that this change will have any material impact on the number of applicants that are judged to meet the registration criteria.

Impact on small businesses

The majority of the proposed changes to the Governance and Financial Viability Standard apply to all registered providers regardless of their size. Any differentiation in requirements is by type of registered provider not size. In reality, profit making registered providers currently tend to be small, but it is likely that this will not always continue to be the case in the future. The regulator has a risk based approach to regulation. In general, small registered providers have a lower risk profile and as such are subject to a reduced regulatory approach.

For smaller registered providers with low risk profiles, the effect of the proposals will be limited. Whilst they are still required to comply the work involved in complying is likely to be significantly lower than for registered providers with higher risk profiles.

Equality and diversity

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

homesandcommunities.co.uk
mail@homesandcommunities.co.uk
0300 1234 500



Homes & Communities Agency

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

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

Publication date: January 2015



Homes &
Communities
Agency

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Annex 10: equality analysis

January 2015

Equality analysis – changes to the regulatory framework for social housing

Introduction

1. This document is the equality analysis undertaken by the Social Housing Regulator (the regulator) on its revised regulatory framework. The purpose of this document is to set out the equalities matters that the regulator considered both before and during the development of the revised regulatory framework. This includes equalities related feedback that was identified as a result of the consultation undertaken by the regulator on changes to the regulatory framework. The paper finally draws conclusions as to what action, if any, needs to be undertaken as a result of the regulator's assessment of equality implications informed by the views of the consultation.

Background

2. In April 2013 the regulator launched a discussion document on 'Protecting social housing assets in a more diverse sector'. The document explored whether the current regulatory framework needed strengthening for a sector undergoing significant changes including diversification into new areas and the emergence of profit making registered provider.
3. In October 2013, the regulator published the responses to the discussion document and set out the regulator's proposed direction of travel. There was a consensus around the need for the regulatory framework to be updated and for it to place greater emphasis on managing risks and on ensuring the protection of social housing assets.
4. The statutory consultation was launched in May 2014. The consultation set out the regulator's formal proposals in the light of the responses to the discussion document. This equality analysis covers the elements of the regulatory framework which were subject to statutory consultation. Following the consultation, the wider regulatory framework document has been reviewed and revised where appropriate. The revised regulatory framework will come into effect on 1 April 2015.

Equality duties

5. 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 focuses on nine protected characteristics – 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 this Act
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it

- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it¹
6. The way in which the Homes and Communities Agency (HCA) aims to meet the General Equality Duty and the Specific Equality Duties set out in regulations² (of which publishing objectives is one) is set out in our Equality and Diversity Strategy.³ There are several tangible benefits in conducting equality analysis prior to making policy decisions, including:
- a) higher quality decisions as a result of more complete management information
 - b) reduced cost as a result of not having to revisit policy that is not fit for purpose
 - 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

7. 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. It must be remembered that 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.
8. 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:** 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.

¹ S149 Equality Act 2010

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

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

³ 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.
9. The evidence reviewed and options adopted by the regulator will be fully explained in this analysis. However, the conclusion after the review was that no major change is required to the regulatory framework.

The regulator's objectives and the regulatory framework

10. The regulator has a range of statutory objectives that need to be balanced when considering any changes to the regulatory framework. The Housing and Regeneration Act 2008 as amended by the Localism Act 2011 states that the regulator must perform its functions with a view to achieving (as far as is possible) the economic regulation objective and the consumer regulation objective. It is to do so in a way that minimises interference and (so far as is possible) is proportionate, consistent, transparent and accountable.⁴ The revision of the framework particularly concerns the economic objective which is set out below:
- to ensure that registered providers of social housing are financially viable, properly managed, and perform their functions efficiently and economically
 - to support the provision of social housing sufficient to meet reasonable demands (including by encouraging and promoting private investment in social housing)
 - to ensure that value for money is obtained from public investment in social housing
 - to ensure that an unreasonable burden is not imposed (directly or indirectly) on public funds
 - to guard against the misuse of public funds
11. The regulator considers that protecting social housing assets is central to meeting these objectives. Protecting social housing assets will help safeguard the investment made by taxpayers in these assets, and means that tenants will continue to be protected. It will underpin the pre-conditions for on-going private sector investment in providers on terms that enable providers to deliver new homes.
12. The regulator is revising the regulatory framework in order that it can continue to be able to meet its objectives set out in statute and social housing assets continue to be protected in light of changes to the operating environment. A summary of the changes to the framework and the equality considerations that have been identified can be found in Table 1.

Equality considerations arising from the framework

13. During the development of the proposed framework, the regulator explored the possible equality implications arising from the new framework, but few specific equalities implications were identified for registered providers or tenants. Nevertheless the regulator appreciated that, as with any strategic policy/project, undertaking a meaningful analysis can be difficult at an early stage. The real impact of any proposed change on

⁴ s92K Housing and Regeneration Act 2008

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 the intention to revisit matters if new information giving rise to equalities concerns impacting on equality came to light.

14. The framework is for registered providers to implement. Therefore it is incumbent on registered providers to be fully aware of the equality impact for them created by the implementation of this framework.
15. Under the equality duty, registered providers of social housing are not listed for the general equality duty (under schedule 19 of the Equality Act 2010). Despite this, the general equality duty still applies to certain private or voluntary sector bodies when they are carrying out public functions. This is where an organisation is exercising a function which would otherwise be exercised by the state and where individuals have to rely upon that person for the exercise of that function. This applies to 'any person who has functions of a public nature'.
16. The question of whether a registered provider is covered by the general equality duty is determined by whether they carry out any public functions. A landmark case in 2009 (Weaver vs. London and Quadrant Housing Trust) ruled that the housing provider in question was carrying out public functions, for the purposes of the Human Rights Act in the allocation, management and termination of social housing. This was based on the particular facts of the case, but it is likely to apply to most registered providers that have the same or similar functions.
17. In relation to registered providers the general equality duty applies only to public functions, not to everything that a registered provider does. Examples of public functions include:
 - allocation of housing
 - transfer and exchange of properties
 - setting rent levels
 - complaints procedures
 - tenant participation
 - consulting and informing tenants
 - the establishment and application of certain policies, such as allocations and ASB policies
 - setting terms of tenancy
 - the termination of tenancies
18. Given the above and that it is a requirement of the revised regulatory framework for registered providers to comply with 'all relevant law', the regulator sees compliance with the equality duties and any issues arising out of the implementation of the framework to be a matter that registered providers need to address. Failure to do so could lead to a finding by the regulator that regulatory standards had not been met.
19. All registered providers are different. The regulator has a co-regulatory approach to regulation. As described above, the Standard describes the outcome that must be

achieved and it is for individual registered providers to determine how they meet this in respect of their approach to equality and diversity.

Table 1 – Changes to the regulatory framework introduced in the statutory consultation and equality implications

<p>Changes to the Governance and Financial Viability Standard relating to all providers</p>	<ul style="list-style-type: none"> Registered providers need to ensure they have the appropriate skills to conduct their affairs with an appropriate degree of independence Requirement to comply with all relevant law Thorough and documented understanding of their assets and any liabilities on those assets Registered providers are required to stress test their businesses, testing what would happen to the business under a range of different scenarios and if multiple risks were to crystallise Boards are required to certify on an annual basis that they continue to meet the regulator’s standards 	<p>A small number of equality implications identified:</p> <ul style="list-style-type: none"> skills of the Board all relevant law
<p>Requirements for profit making registered providers</p>	<ul style="list-style-type: none"> Profit making registered providers must undertake any activities that relate to the provision of social housing separately from those that don’t. A small amount of non-social housing will be permitted within the entity of no more than 5% of capital or turnover. 	<p>No equalities implications identified</p>
<p>Requirements for registered group parents</p>	<ul style="list-style-type: none"> Where the parent company of a group is a registered provider, it should look to maintain compliance with regulatory requirements of all the registered members within the group. 	<p>No equalities implications identified</p>
<p>Requirements for registered providers whose parents are not registered</p>	<ul style="list-style-type: none"> The regulator does not have oversight of the activities of the group parent, but decisions or actions by the group parent or other parts of the group may have an impact on the social housing assets. We are therefore introducing requirements to help mitigate that risk by setting out our expectations on the role of the parent that they will assist the registered provider to comply with regulatory requirements and that the parent company does not do anything that compromises the registered provider’s ability to meet regulatory requirements. 	<p>No equalities implications identified</p>
<p>Category 6 consents</p>	<ul style="list-style-type: none"> Changes are proposed to category 6 of the General Consent for all non-profit registered providers. Removing category 6 of the General Consent for non-profit registered providers whose parent is not registered allows the regulator to scrutinise individual consent proposals prior to a security interest being granted. 	<p>No equalities implications identified</p>
<p>Code of practice</p>	<ul style="list-style-type: none"> The regulator is proposing to introduce a code of practice to explain and elaborate on the content of the Governance and Financial Viability Standard. 	<p>No equalities implications identified</p>
<p>Changes to the disposals regime</p>	<ul style="list-style-type: none"> Changes to the way profit making providers can purchase existing stock from non-profit registered providers or local authority registered providers by expanding the use 	<p>No equalities implications identified</p>

	of the Disposals Proceeds Fund. The regulator wishes to ensure that the considerable public investment that has gone into developing and maintaining those assets is captured on disposal through the use of this fund.	
Changes to the registration criteria	<ul style="list-style-type: none"> • The criteria applicants have to meet when they are applying to join the register of social housing providers have changed. Applicants are required to meet both the governance and financial viability aspects of the Standard at the point of registration (where in the past they were required to be on a path to compliance). • In addition, the opportunity was taken to consult on changes to cater for the possible registration of charitable incorporated organisations and also to alter the constitutional requirements for applicants that are charitable. 	Given that many specialist diversity related organisations are small, the requirement to meet both the governance and viability aspects to be registered may be argued to have a disproportionate impact on these groups given the perceived regulatory burden may put them off registering
Changes to the Rent Standard	<ul style="list-style-type: none"> • The new rent policy changes the indexation basis from RPI to CPI and removes the ability to increase rent relative to the formula level by up to £2 a week. Registered providers will be permitted to charge up to market rent levels to those tenants earning high incomes. • The regulator has no control over the rent policy as this is driven from the Rent Direction to the regulator from the Department for Communities and Local Government. 	No equalities implications identified

Consultation process

20. The statutory consultation was launched in May 2014 and ended on 19 August 2014. The consultation document confirmed that no specific equalities implications had been identified in advance of the consultation.
21. 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 registered providers of social housing, all organisations it must consult as required by statute and other key stakeholders. As part of the consultation, the regulator also undertook a number of consultation events in partnership with a range of other organisations including the National Housing Federation.

Results of the consultation

22. The regulator received a total of 152 responses to the consultation. Most responses were from non-profit registered providers (72%). Low numbers of responses were received by individuals and other types of organisations (such as for profit registered providers, small providers and trade bodies). This may be explained by the low number of trade bodies and profit making registered providers and the fact that a number of profit making providers provided a joint response. Four of the statutory consultees submitted formal responses (Audit Commission, Council of Mortgage Lenders, National Housing Federation and the Charity Commission). Table 2 provides a breakdown of the responses received.

Table 2: Overall responses by type of respondent

Type of respondent	No. of responses	% of responses	% in favour*	% against
Non-profit registered provider (over 1000 units)	110	72	92	1
Other	9	6	44	11
Trade body/representative groups	8	5	50	12
Small providers (under 1000 units)	7	5	86	14
Arm's-length management organisations	5	3	100	0
Statutory consultees	4	3	75	0
Tenant/individual	4	3	0	50
LA stock holding	2	1	100	0
LA non stock holding	1	<1	100	0
Profit making registered providers*	1	<1	0	0
Intending provider	1	<1	0	0
Total number of responses	152			

* a number of profit making registered providers submitted a joint response.

23. Levels of support were high overall from non-profit registered providers and from the regulator's statutory consultees (of the four who responded). Those local authorities and arms-length management organisations who responded were unanimously in favour of the proposals. Of the small providers who responded, the vast majority were in favour of the proposals.

24. The level of support from trade bodies/representative groups were more mixed, with around half remaining neutral in their response. ‘Other’ respondents, which include lawyers and consultants, reflected a similar pattern of support.

Table 3: Level of support by work stream

	Very supportive %	Generally supportive %	Overall in favour %	Neutral %	Un-supportive %	Did not answer (number)
G&FV Standard	33	57	90	7	4	14
Code of practice	38	40	78	7	14	27
Disposals	61	26	87	6	7	37
Registration (G&FV)	79	15	94	4	2	47
Rents	53	33	86	9	6	29
General Consent	39	28	67	11	23	59
Registration (other)	87	11	98	2	0	90

25. Overall, the level of support for each work stream was high. The two areas which attracted the highest proportion of respondents who were unsupportive were the code of practice and revisions to the General Consent. However, the proportion of those unsupportive for these two work streams was still low relative to the numbers who were supportive of the proposals. Consideration was also given to the number of respondents who did not respond directly to these questions – one possible conclusion that may be drawn from this is that either they felt they would be either unaffected by these changes or the changes were likely to have minimal impact on their organisations.
26. Of the 152 responses, two were received from diversity specific organisations (although other organisations responding to the consultation do have related divisions which focus on the needs of particular groups). The diversity specific organisations were:
- **The Housing Diversity Network** - a social enterprise, not-for-profit, limited company working mainly (but not exclusively) within the social housing sector across England to promote equality and diversity and also mentoring to a range of groups
 - **BME National** - a collective of over 60 black and minority ethnic housing associations operating within England managing circa 60,000 homes nationally
27. Only the Housing Diversity Network identified any equality related issues in their response. These were that:
- other than the diversity statement, there was little else in the consultation in relation to diversity and equality
 - the issue of board diversity should have been addressed within the consultation
 - the pursuit of skills may lead to a reduction in the focus on board diversity

28. Of the other 150 organisations that responded only one equality related issue in relation to the consultation was raised. This was also that requirements around skills of board members may reduce the diversity of boards.
29. There were a number of comments received in relation to the consultation that although not made in relation to equality, could be read as having possible equality implications:
- proposals may have a disproportionate impact on smaller providers (e.g. in relation to risk management/stress testing) with some suggesting that different requirements should be in place for smaller providers
 - concern that expectations about tenant representation are no longer clear given the proposed requirements on board skills and capability
 - potential for barriers to entry, particularly for smaller organisations , with the requirement to comply with the new Governance and Viability Standard on registration

Analysis of equality considerations

30. The previous sections have highlighted the equality related considerations that have been identified both by the regulator and the responses to the consultation. This section looks at the considerations identified above and comes to a conclusion on that aspect of the framework.

Coverage of equality and diversity in the consultation

31. One of the consultees commented on the lack of specific equality content within the consultation on the revised framework. In developing the revised framework, the regulator took the approach that equalities considerations should be integral to the framework. The perceived lack of equality related content (other than the equalities statement) is a result of the very limited equalities considerations/impacts that were discovered during discussion stage of the process and during the development of the revised framework.
32. It was anticipated that through the consultation exercise, any equalities considerations that we had overlooked or not explored would be highlighted. As already discussed, the consultation has brought up very few additional equality considerations and none which had a material effect on the framework.
33. The lack of explicit equalities issues being addressed by respondents in the consultation documentation is a reflection of the limited impact the framework has on equalities and is not a reflection of due regard by the regulator. The equalities statement in the consultation highlighted the limited impact we considered the document to have on equality and also stated that we would revisit this after the consultation in light of feedback received.
34. Given the regulator's position that it is for registered providers to respond to the equality implications within their organisation which may fall out of meeting the standards the regulator has taken a proportionate approach and considers that the consultation and revised framework adequately addresses equality issues.

Conclusion - No change to the regulatory framework

Increasing focus on the skills of the board

35. Given the aim of the revised framework is to better protect the social housing assets, the regulator considers that the increased focus on the skills and capability of the boards of registered providers is wholly justified.
36. There is ample evidence⁵ that a diverse board such as in terms of skills, life experiences, personal characteristics leads to more effective, dynamic and innovative boards. Previous studies⁶ have shown that a failure to recruit a diverse board may lead to a less effective board with limited skills. Where this affects the governance of an organisation, this will be picked up during our on-going regulation of providers.
37. It is for registered providers to identify what skills and capabilities they need on their boards to fulfil their functions and it is for them to ensure that they attract suitable candidates with the requisite skills and capabilities. Furthermore, registered providers are required by the standards to adopt and comply with an appropriate code of governance which may cover diversity on the board.

Conclusion - No change to the regulatory framework

Changes to the registration criteria

38. Both the regulator and respondents to the consultation on the framework identified the change to the registration criteria may be perceived as a barrier to registration by smaller providers. In the previous framework, organisations only had to demonstrate that they were on a path to compliance with our Governance and Financial Viability Standard. The changes have brought in the requirement for all organisations wishing to register to be compliant with the standards at the time of registration.
39. Given the increasing commerciality of the sector, increasing number of profit making providers, housing market pressures and welfare reform, the risks to the sector and thus the social housing assets have increased. This change has been brought in in part to ensure that this increased risk is managed effectively and in this regard it is justifiable for the regulator to introduce this new requirement.
40. There are a number of small diversity specific organisations. However, there are no reasonable grounds to believe that the new requirement will disproportionately affect

⁵ Daniel Ferreira (2010) 'Board Diversity' London School of Economics, London

⁶ Thomas Barta, Markus Kleiner, and Tilo Neumann (2012), 'Is there a payoff from top-team diversity' McKinsey Quarterly

them, and thus have a disproportionate effect on persons sharing protected characteristics.

41. In implementing this requirement, we will be proportionate and take into account the size, complexity and risks presented by the organisations during the registration process. We also report annually on new registrations within the regulator and through this we will be able to monitor if smaller organisations are in fact being put off registering with the regulator. Should this prove to be the case, we will be in a position to undertake further work and explore if it is disproportionately impacting on diversity related organisations.

Conclusion - No change to the regulatory framework

Monitoring and review

42. Equality analysis is an on-going 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.

homesandcommunities.co.uk
mail@homesandcommunities.co.uk
0300 1234 500



Homes & Communities Agency

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

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

Publication date: January 2015