



Homes & Communities Agency

THE REGULATOR OF SOCIAL HOUSING

Decision Instrument

Instrument number: 11

Title of Instrument: **Direction about registration criteria and guidance on the Regulator's use of powers**

Introduction

- A Regulation of social housing in England under the Housing and Regeneration Act 2008 ('the Act') is the responsibility of the Homes and Community Agency acting through its Regulation Committee ('the Regulator').
- B The Act was amended by the Housing and Planning Act 2016 ('the HPA 2016') and by the Welfare Reform and Work Act 2016 (WRWA). The changes made include:
- a requirement for the Regulator to determine the eligibility of a new body arising out of a restructuring in circumstances specified in section 161(4) of the Act ('Company: conversion into registered society') and section 163(5) of the Act ('Registered Society: restructuring'); and
 - changes to the Regulator's enforcement powers. These include:
 - a revised definition of "mismanagement" (section 275 of the Act) which clarifies the circumstances in which the Regulator can apply some of its enforcement powers;
 - a change to the circumstances in which the Regulator might use its enforcement power to appoint new officers or managers (section 251 of the Act); and
 - a new ground for the exercise of some of the Regulator's enforcement powers where a registered provider fails to comply with the WRWA (sections 220 (enforcement notice), 227 (penalty), 237 (compensation), and 247 (management tender) of the Act).

- D The Regulator has consulted on changes to registration criteria and to guidance on the use of its intervention powers arising from the changes introduced by the HPA 2016 and the WRWA. The purpose of this document is to set out the decisions of the Regulator made following the conclusion of that consultation to revise the registration criteria and the guidance on the use of intervention powers.

Decision

Date decision made: 26 September 2016

Decision made by: Regulation Committee

1	In exercise of its power under section 112 of the Act to set criteria for the registration of providers of social housing, the Regulator has decided to change the criteria which providers must meet in order to be eligible for registration. The registration criteria will be as set out in Schedule 1 to this Decision Instrument.
2	The Regulator has decided to revise its guidance about how it uses and intends to use its powers under Chapters 6 and 7 of the Act (currently, "Guidance on the Regulator's approach to intervention, enforcement and use of powers" dated April 2015). The changes made are as set out in the extracts from the "Guidance" in Schedule 2 to this Decision Instrument.
3	This direction comes into force on 6 April 2017.

Authentication

Name: Julian Ashby

Position: Chairman of the Regulation Committee of the Homes and Communities Agency

Signature:



Schedule 1 to Decision Instrument 11

Registration criteria for providers of social housing

Registration requirements

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

- new entrants to the sector; and
- new bodies to be registered following the restructure of a registered provider (called 'restructured body' in the Registration Criteria below) in the following circumstances only:
 - a registered provider which has converted into a registered society pursuant to section 115 of the Co-operative and Community Benefit Societies Act 2014; or
 - a body created or arising or to whom engagements are transferred pursuant to section 109 (amalgamation of societies), section 110 (transfer of engagements between societies) or section 112 (conversion of society into a company, amalgamation of society into a company, or transfer of a society's engagements into a company) of the Co-operative and Community Benefit Societies Act 2014.

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

Registration for new entrants is voluntary except where organisations receive financial assistance from the Homes and Communities Agency or from the Greater London Authority to provide low cost rental accommodation and the organisation intends to be the landlord of those homes when they are let.

Section 112 of the Housing and Regeneration Act 2008 ('HRA 2008') sets out the conditions to be satisfied if a body is to be eligible for registration. A body must first meet condition 1 of the statutory eligibility requirements, i.e. the Eligibility Conditions below, and, once the Regulator has established that it meets these requirements, it will be assessed against the condition 2 criteria that the Regulator has set, i.e. the Registration Criteria below.

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

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

Eligibility conditions

The Regulator will need to be satisfied on each of the following grounds (set out in section 112 of the HRA 2008):

- the body is an English body, as defined in section 79 of the HRA 2008
- the body is a provider, as defined in section 80 of the HRA 2008, or an intending provider
- the housing that the body provides, or intends to provide, is social housing, as defined in sections 68-71 of the HRA 2008
- the social housing is being, or will be, provided in England

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

Registration criteria

New entrants

All applicants:

An applicant must:

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

For applicants seeking non-profit designation

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

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

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

- have as an object the provision of social housing
- embed non-profit status

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

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

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

Restructured bodies

‘Restructured body’ means:

- a registered provider which has converted into a registered society pursuant to the section 115 of the Co-operative and Community Benefit Societies Act 2014
- The body created or arising or to whom engagements are transferred pursuant to section 109 (amalgamation of societies), section 110 (transfer of engagements between societies) or section 112 (conversion of society into a company, amalgamation of society into a company, or transfer of a society’s engagements into a company) of the Co-operative and Community Benefit Societies Act 2014.

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

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

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

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

identified

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

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

Schedule 2 to Decision Instrument 11

Extracts showing changes to “Guidance on the Regulator’s approach to intervention, enforcement and use of powers”

Guidance note 10

Guidance on sections 219 to 225: enforcement notices

Purpose

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

Scope

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

Background and context to the use of the power

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

Potential triggers to the exercise of the power

- 4 Section 220 of the HRA 2008 includes eleven specific circumstances in which the Regulator may exercise the power of enforcement notices. They are:
 - 4.1 where the registered provider has failed to meet an economic standard or failed to meet a consumer standard and there are reasonable grounds to suspect there has been or there is a risk of serious detriment to tenants
 - 4.2 where the affairs of the registered provider have been mismanaged
 - 4.3 where the registered provider has failed to comply with an earlier enforcement notice
 - 4.4 where the registered provider has failed to publish information in accordance with a requirement under section 228(3) or 240(3) of the HRA 2008

- 4.5 where the interests of tenants of the registered provider require protection
 - 4.6 where the assets of the registered provider require protection
 - 4.7 where the registered provider has given an undertaking under section 125 of the HRA 2008 and failed to comply with it
 - 4.8 where the registered provider has failed to pay an annual fee under section 117(2) of the HRA 2008
 - 4.9 where an offence under part 2 of the HRA 2008 has been committed by a registered provider
 - 4.10 where the registered provider has failed to comply with an order made by an ombudsman appointed by virtue of section 124 of the HRA 2008
 - 4.11 where the registered provider has failed to comply with relevant provisions of the Welfare Reform and Work Act 2016 (WRWA) or with regulations made by the Secretary of State under the WRWA.
- 5 Except in cases where urgent action is required, the Regulator will attempt to secure the voluntary agreement of the provider to take the necessary action before issuing an enforcement notice. In reaching a decision to issue a notice, the Regulator will have regard to the willingness, capacity and resources available to the provider to undertake the necessary action.

Process

- 6 Where the Regulator considers that the circumstances may require use of the power, it will advise the provider accordingly and seek information on the provider's intended response. The Regulator will take account of this intended response in considering whether an enforcement notice is needed. If the Regulator considers that an enforcement notice is required, it will be issued in writing to the provider.
- 7 When issuing an enforcement notice, the Regulator will:
- specify the grounds on which an enforcement notice is given
 - specify the action the Regulator requires the registered provider to take
 - specify when the action is to be taken
 - specify what information the registered provider must provide to the Regulator to demonstrate that the required action has been completed
 - explain that a registered provider who is given an enforcement notice may appeal to the High Court
 - explain that the Regulator may withdraw the enforcement notice by giving notice to the registered provider

- explain that if a registered provider does not comply with the enforcement notice the Regulator may consider exercising other regulatory or enforcement powers

8 The Regulator expects the provider to:

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

Notification

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

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

Guidance note 11

Guidance on sections 226 to 235: penalties

Purpose

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

Scope

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

Background and context to the use of the power

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

Potential triggers to the exercise of the power

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

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

Process

Warning

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

Representations

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

Imposition

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

Notifying the GLA

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

Amount

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

Destination

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

Enforcement

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

Appeal

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

Guidance note 12

Guidance on sections 236 to 245: compensation

Purpose

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

Background and context to the use of the power

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

Potential triggers to the exercise of the power

- 3 Section 237 of the HRA 2008 includes three specific circumstances in which the Regulator may exercise the power on awarding compensation. They are:
 - 3.1 where the registered provider has failed to meet an economic standard, or failed to meet a consumer standard and there are reasonable grounds to suspect there has been, or there is a risk of, serious detriment to tenants
 - 3.2 where the registered provider has given an undertaking under section 125 of the HRA 2008 and failed to comply with it
 - 3.3 where the registered provider has failed to comply with relevant provisions of the Welfare Reform and Work Act 2016 (WRWA) or with regulations made by the Secretary of State under the WRWA.
- 4 The Regulator is most likely to find it appropriate to exercise the power in circumstances where a breach of the standards has resulted in serious detriment to a tenant, or tenants, as a result of a failure against a standard, or if the provider has failed to pay compensation that has been awarded by an ombudsman.

Scope

- 5 The power may be exercised in relation to a non-profit registered provider or a for-profit registered provider. It cannot be applied to a local authority.
- 6 Awards of compensation may be made to persons who have suffered as a result of the failure provided that they are tenants of the provider.

- 7 If the Housing Ombudsman has already awarded compensation to a particular person on a particular matter, the Regulator may not award compensation to that person on that matter unless the provider has not made the payment directed by the Ombudsman.

Process

Warning

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

Representations

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

Award of compensation

- 12 Compensation is awarded by the Regulator giving a compensation notice to the provider and the person(s) to be compensated. The Regulator will establish and publish a methodology for determining when an award of compensation would be appropriate and for setting the level of compensation to be awarded.

- 13 The notice will set out the grounds on which the award is made, the amount, to whom it must be paid, the payment period, the interest to be charged on any late payment and the means of appeal. The notice may require the provider to publish information about the award and may set out the manner of that publication.

Impact

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

Enforcement

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

Appeal

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

Guidance note 13

Guidance on sections 251 to 252: appointment of manager

Purpose

- 1 This document gives general advice and guidance on how the Regulator may exercise the power of appointment of a manager. This is an enforcement power and is set out in Part 2 Chapter 7 sections 251 to 252 of the Housing and Regeneration Act 2008 (the HRA 2008).

Scope

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

Background and context to the use of the power

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

Potential triggers to the exercise of the power

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

- is failing to adequately address serious deficiencies in the delivery of services where there are reasonable grounds to suspect there has been, or there is, a risk of serious detriment to some or all of a provider's tenants
- 6 Key factors in a decision to appoint a manager will include the Regulator's assessment of the seriousness of the problem, the need for additional professional support, and the provider's willingness and ability to take effective action without the need for the Regulator to use this power.

Appointment process

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

Terms of appointment

- 10 The Regulator will normally require the registered provider to appoint the manager. In exceptional cases, for example, where it has serious concerns about the performance of the governing body, the Regulator may appoint the manager itself.
- 11 Managers will be individuals, rather than corporate bodies, although the individual may work for a corporate body. The individual will be selected by the Regulator on the basis of relevant professional experience. The appointment may relate to the provider's affairs generally in regard to social housing or in relation to a specific aspect of social housing.
- 12 The manager's terms and conditions (including remuneration, which will be paid by the provider) will be specified by the Regulator and included in the notice of appointment. In setting the remuneration level, the Regulator will have regard to market rates for the specified work and the financial circumstances of the provider.

- 13 The manager will have any power specified in the notice of appointment and any other additional power he or she requires to achieve the purposes of the appointment. Where the manager considers that additional powers are required, he or she will discuss and agree these with the Regulator.
- 14 The Regulator may require the manager to report to it on the affairs specified in the appointment notice.

Notification to the GLA

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

Appeal

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

Guidance note 18

Guidance on section 269: appointment of new officers

Purpose

- 1 This document gives general advice and guidance on how the Regulator may exercise the power on the appointment of a new officer. This is an enforcement power and is set out in Part 2 Chapter 7 section 269 of the Housing and Regeneration Act 2008 (the HRA 2008).

Scope

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

Background and context to the use of the power

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

Potential triggers to the exercise of the power

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

- 7.1 to replace an officer removed under section 266 of the HRA 2008, that is the removal of an officer in certain specified circumstances such as bankruptcy
- 7.2 where there are no officers
- 7.3 to ensure that the registered provider's affairs are managed in accordance with legal requirements (imposed by or under an act or otherwise).

8 The Regulator is most likely to exercise the power to appoint an officer where one or more of the following circumstances apply:

- the provider's affairs have been mismanaged in accordance with the definition in section 275 of the HRA 2008
- there has been a failure against one or more economic standards
- there has been a failure against one or more consumer standards where there has been serious detriment to tenants
- it is necessary to replace an officer removed in accordance with the provisions of section 266 of the HRA 2008
- where there are no officers

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

9 When the Regulator exercises its power to remove an officer under section 266, it will always consider whether it is necessary to replace the officer who has been removed. It will make its decision in the light of the circumstances of the provider. In particular, it will assess whether the governing body has the capability, expertise and skills in sufficient depth to resolve any failure against standards or mismanagement.

10 It is most unusual for there to be no officers on the governing body of a provider, so the Regulator expects to have to exercise its power to appoint a person as an officer in these circumstances on very rare occasions

The power

The restrictions on the number of appointed officers

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

The period and the terms of an appointment

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

The rights, powers and obligations of an appointed officer

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

Recommendation to the Homes and Communities Agency

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

Direction to the Greater London Authority

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

Who can be an appointed officer?

- 17 While the HRA 2008 places no restrictions on who can be an appointed officer, the Regulator will always aim to match the best and most suitable people to the provider and to the particular circumstances of each case. The Regulator will appoint people with relevant knowledge, skills and expertise.

Notification and initial contact

- 18 The Regulator will notify the provider about the appointments by a letter addressed to the chair or company secretary or other suitable person. The Regulator will serve an order on the provider for each appointed officer and the orders will be copied to the appointed officers. The Regulator will issue a news release to announce the appointed officers. The provider will usually be given an opportunity to comment on the factual accuracy of any such news release.
- 19 The Regulator will provide the appointed officers with the relevant background and briefing material they will need to carry out their duties. As a minimum, such background material is likely to include:
- the provider's constitution
 - the most recent audited accounts and auditor's management letter
 - the most recent regulatory judgement
 - the most recent in depth assessment or stability check report
 - key correspondence between the Regulator and the provider
 - the terms of any public statement that the Regulator asks the provider to make
 - a draft news release to announce the appointed officers
- 20 The Regulator will hold a meeting with the provider, usually with its governing body and senior staff, in order to:
- introduce the appointed officer(s)

- explain the reasons for making the appointment
- explain the Regulator's expectations of the provider
- explain the implications of the provider's regulatory status and the actions that the Regulator expects the provider to take to overcome the failure against the standards or mismanagement
- agree lines of communication between the Regulator and the provider

Expectations

What appointed officers can expect from the Regulator

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

What the Regulator expects from appointed officers

- 22 The Regulator expects an appointed officer to:
- work in the best interests of the provider
 - act in the knowledge that they have the same rights, powers and obligations as any other officer of the provider's governing body, and to exercise their judgement accordingly
 - work within the constitution, code of conduct, standing orders, policies and procedures of the provider or, where these are not properly documented, to exercise their judgement to comply with generally accepted good practice
 - to act within the provider's rules on confidentiality but also to act in a manner consistent with the Regulatory Standards
 - refer any media enquiries to the provider and to act within the provider's communications strategy

What the Regulator expects from the provider

- 23 The Regulator expects the officers and staff of the provider to:
- co-operate fully with the Regulator
 - co-operate with an appointed officer
 - facilitate the full involvement of an appointed officer in the affairs of the provider
 - provide copies of all documents, codes of conduct, standing orders, policies and procedures relevant to their membership of the governing body to an appointed officer

- send copies of all notices, agendas and papers for meetings to an appointed officer
- consult an appointed officer about the dates and times of meetings that they will be required to attend
- inform any other relevant authority, for example, Companies House in the case of a registered company, that an appointed officer has joined the governing body as it is required to do when any new member joins the governing body
- provide details of the liability insurance cover it provides for all members of its governing body to an appointed officer, and to inform the insurers that an appointed officer has joined the governing body if it is required to do so under the terms of the insurance
- admit the appointed officer to membership and issue a share certificate where the provider has a shareholding membership
- reimburse an appointed officer for all reasonable expenses they incur in accordance with the established policy and practice for all members of the governing body
- offer to pay appointed officers where the provider pays members of its governing body - it will be for each appointed officer to decide whether or not to accept the offer

Guidance note 19

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

Purpose

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

Scope

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

Background and context to the use of the power

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

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

The power of management tender

- 6 The power of management tender is set out in sections 247, 248 and 250A of the HRA 2008. The Regulator may require a provider to put out to tender some or all of its management functions in relation to some or all of its social housing. The Regulator may exercise the power of management tender if it is satisfied that:
- a registered provider has failed to meet a standard applicable to it
 - the affairs of a registered provider have been mismanaged in relation to social housing – “mismanagement” in relation to the affairs of a registered provider is defined in the section 275 of the HRA 2008 as managed in breach of any legal requirements (imposed by or under an act or otherwise)
 - the registered provider has failed to comply with relevant provisions of the Welfare Reform and Work Act 2016 (WRWA) or with regulations made by the Secretary of State under the WRWA
- 7 In such circumstances, the Regulator may issue a requirement to a provider. A requirement is a direction which sets out certain actions that the provider must take in order to tender out the specified management functions. In particular, the requirement will specify a process that the provider must implement to invite applications to undertake the relevant management functions and to select and appoint a new manager.

Potential triggers to the power of management tender

- 8 The three specific circumstances in which the Regulator may exercise its discretion to use the power to tender management functions are set out in paragraph 6 of this guidance. The Regulator is most likely to exercise the power where there has been a failure against a standard or the affairs of the provider have been mismanaged and one or more of the following circumstances apply:
- there has been persistent poor performance in some or all of a provider’s social housing management functions
 - there has been persistent poor performance in the delivery of services where there has been serious detriment to tenants
 - the provider is unable or unwilling to bring about necessary improvements through its own voluntary action
 - the provider has failed to honour a relevant voluntary undertaking to the satisfaction of the Regulator

This is not an exhaustive list and the Regulator may conclude that it is necessary to consider exercising the power in other circumstances to those set out above.

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

Additional provisions for local authority providers

- 10 Section 250A of the HRA 2008 sets out some additional statutory provisions which apply where the Regulator exercises the power of management tender in relation to a local authority provider. These are that:
- the Regulator can exercise the power of management tender even if the local authority already has a management agreement covering the same management functions in place
 - the local authority may not give effect to a new or separate management agreement relating to those management functions of the authority that are the subject of the Regulator's requirement in the period that the requirement is in force
 - any duty the local authority may have to consult on changes to the exercise of any relevant management functions does not apply in circumstances where the authority is acting in respect of a requirement imposed by the Regulator
 - a requirement imposed by the Regulator is not a management agreement within the definition set out in section 27 of the Housing Act 1985, but the local authority remains responsible for anything done or not done by or to the new manager as if the requirement was a management agreement, except where the terms of any relevant management agreement provide otherwise or in relation to criminal proceedings against the new manager
- 11 In addition, the provisions of The Housing Management Agreements (Break Clause) (England) Regulations 2010 (the Regulations) imposed an obligation on all local authority providers to include a break clause in any management agreement entered into after 1 April 2010. This is intended to ensure that local authority providers have a suitable break clause that allows the management agreement to be terminated and the management functions tendered in circumstances where a requirement to tender management functions is imposed by the Regulator.

- 12 The position may not be clear in relation to any management agreements that were in place before 1 April 2010. Although many will include a clause providing for termination where there is serious under-performance, it is possible that some will not. It would not be tenable to defer a requirement to tender management functions until an existing management agreement had expired or had reached a previously agreed review point. In such circumstances, it would be for the provider to take any steps it considers necessary to comply with the requirement put in place by the Regulator.

Additional expectations for private providers

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

Best practice in procurement

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

The potential for increased costs

- 15 It is possible that the management tender process may result in efficiencies or savings that might benefit the provider and its tenants. However, such efficiencies or savings are not specific objectives of the process and the provider should not assume that they will result from it. Neither should the provider assume that the tender process and new management arrangements will be cost neutral. The Regulator will expect the provider to draw up financial projections and budgets based on the requirement and to make reasonable assumptions about any possible additional or increased costs. The nature and extent of these will depend on the particular circumstances of the case and on

the provider's existing arrangements for the delivery of services in those management functions that are the subject of the requirement. Factors that may result in additional or increased costs could include:

- the costs associated with the administration of the tender process
- the costs of any expert or legal advice the provider considers it necessary to commission in relation to the tender process
- the costs associated with resolving any outstanding matters in relation to the previous standards of performance in the relevant management function
- the costs associated with addressing previous under-investment or under-performance in the management function by the provider
- an improved or extended specification for the future delivery of the management function to balance any previous under-investment or poor performance
- a new liability for Value Added Tax (VAT) in circumstances where a non-profit or a for-profit private provider that previously used its own staff to deliver the management function (where there would be no liability for VAT) subsequently purchases that management function from a third party (where there would be a liability for VAT)

- 16 Any additional or increased costs must ultimately be borne by the provider. In considering whether or not to impose a requirement for a management tender, the Regulator will take account of any representations made by the provider in respect of the potential adverse impact on its management costs and its overall business. The Regulator may work with the provider in order to explore how best to manage and mitigate these, but it will remain the provider's responsibility to decide on and take any action it considers necessary in order to do so.

Process

Notice

- 17 If the Regulator is minded to exercise this power, it must give the provider notice and seek representations in accordance with the provisions set out in section 248 of the HRA 2008. The notice must:
- set out the grounds on which the Regulator might take action
 - warn the provider that the Regulator is considering action
 - explain the effect of section 248 of the HRA 2008
 - specify a period of at least 28 days beginning on the day the provider receives the notice in which the provider may make representations to the Regulator

- refer the provider to the provisions of section 125 of the HRA 2008, by which the provider may give a voluntary undertaking to the Regulator. The Regulator must indicate whether, and to what extent, it would accept a voluntary undertaking instead of, or in mitigation of, any action to require the provider to tender management functions

18 The HRA 2008 specifies that the Regulator must send a copy of the notice to:

- the GLA in a case where the requirement would be imposed on a provider owning land in Greater London
- the Secretary of State, in a case where the requirement would be imposed on a local authority provider
- any other persons or organisations the Regulator thinks appropriate depending on the circumstances of the case

The possible use of other enforcement powers

19 The HRA 2008 specifies that the Regulator may combine this notice with one or more notices relating to the possible use of certain other enforcement powers. In particular, the HRA 2008 makes reference to:

- a pre-penalty warning (section 230 of the HRA 2008)
- a pre-compensation warning (section 242 of the HRA 2008)
- a management transfer (section 250 of the HRA 2008)
- an appointment of a manager (section 252 of the HRA 2008)

20 In circumstances where the Regulator decides to issue more than one notice, it will do so in accordance with the terms of each relevant section of the HRA 2008 and of each relevant guidance note on the use of the specific power. It follows that the Regulator will only do so where the circumstances of the case make it appropriate and where the specific power is applicable to the particular type of provider. In addition, the Regulator may also consider whether it would be appropriate to exercise any of its other enforcement powers either singly or in combination.

Seeking views on a requirement

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

- relevant tenants: the Regulator recognises that in any situation where some or all of the provider's management functions might be subject to tender, tenants may have concerns about the potential impact on the services they receive. The Regulator will ensure, as far as it is reasonably practicable to do so, that tenants are informed about the proposed changes and the potential implications for both them and the provider.

The nature of the information given to tenants will depend on the circumstances of the case and the timescales involved. It may not be practicable in all situations to make direct contact with each individual tenant, and, in seeking tenants' views, the Regulator may work through the provider or any recognised tenant representative groups or an appointed tenant adviser

- the registered provider: the Regulator recognises that in any situation where some or all of the provider's management functions might be subject to tender, those involved in the delivery of the functions, including employees, agents and contractors may have concerns about how the proposals might impact on the provider, on their organisations or on them as individuals. The Regulator will seek the views of the provider. The Regulator will expect the provider to keep its employees, agents and contractors fully informed about how the requirement to tender management functions might impact on them throughout the process. Since the Regulator is not required to have regard to the views of the provider's employees, agents or contractors, it will not seek their views and, if any such views are offered, it will not take them into account in reaching its decision
- the GLA where the requirement relates to a provider owning land in Greater London
- the Secretary of State in a case where the requirement is to be imposed on a local authority provider
- any relevant local authority in circumstances where the Regulator thinks it appropriate to do so. The Regulator will seek the views of the local authority in its strategic housing role in the area in which the registered provider that is subject to the requirement operates. However, the Regulator will not usually seek the views of a local authority in its strategic role if it is considering the use of this power against the same local authority in its landlord role. In such circumstances, the Regulator will usually only seek the views of the local authority in its role as the registered provider

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

Considering views, representations and voluntary undertakings

- 23 Before making its decision on whether or not to impose a requirement, the Regulator will consider all the views submitted to it by those individuals and organisations listed in paragraph 21. While the Regulator must have regard to these views, it will not necessarily be bound by them. In particular, it may not be possible to reconcile all the various views in circumstances where some of them suggest a fundamentally different approach to others.

The Regulator's approach will depend on the nature of the various views submitted to it, on the specific circumstances of each case and on whether the Regulator is satisfied that any necessary improvements or changes to relevant management functions will be achieved in a timely manner.

- 24 The Regulator will also consider any representations and any proposals for voluntary undertakings submitted by the provider in response to the notice in accordance with its general approach to such undertakings set out in the first section of this document. The acceptability, or otherwise, of any such undertaking will depend on the circumstances of the case. The Regulator will consider the provider's capacity to honour the undertaking and whether the terms of the undertaking are sufficient to bring about the necessary improvements to relevant management functions in a timely manner.
- 25 Where the Regulator is satisfied with the proposed terms of the voluntary undertaking, it may decide not to impose the requirement with immediate effect, but to allow the provider a period of time to implement its proposals. In such circumstances, the Regulator will monitor and review the provider's progress on a regular basis and at key milestones in order to assess whether or not the provider has honoured the undertaking. The Regulator will give reasons for any decisions it makes in relation to such monitoring or review. In circumstances where the Regulator subsequently concludes that a provider has failed to honour the undertaking or has failed to deliver any obligations at key milestones, it may decide to impose the requirement to tender management functions without delay.
- 26 Alternatively, where the Regulator is not satisfied with the proposed terms of the voluntary undertaking, it may decide to impose the requirement without delay. The Regulator is likely to take such action where it considers that the terms of the undertaking are unsatisfactory or insufficient to resolve the problems or where urgent or immediate action is necessary.

The requirement

- 27 In circumstances where the Regulator decides to impose a requirement, the Regulator will specify a process that the provider must implement to:
- invite applications to undertake the relevant management functions
 - select from the applications
 - appoint a new manager

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

Notification of a requirement

- 32 The Regulator will inform those individuals and organisations that provided views on the proposed requirement about the Regulator's final decisions on the matter. The HRA 2008 specifies that in circumstances where the Regulator imposes a requirement to tender management functions, it must send a copy of it to:
- the GLA in a case where the requirement is to be imposed on a provider owning land in Greater London
 - the Secretary of State, in a case where the requirement is to be imposed on a local authority provider

Appeal

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

Complying with a requirement

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

Expectations

What the provider can expect from the Regulator

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

What the Regulator expects from the provider

- 36 The Regulator expects the provider to:
- co-operate with the Regulator at all stages of the management tender process
 - take any step it considers necessary to comply with the terms of any requirement that is imposed by the Regulator
 - take any steps it considers necessary to ensure that the new manager can perform its duties
 - ensure an effective transition between managers and maintain continuity of service during the process

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