

## Decision Instrument

Instrument number: 9

Title of Instrument: **Decision by the social housing regulator about private registered providers' disposal proceeds funds**

### Introduction

- A The Homes and Community Agency acting through its Regulation Committee ('the Committee') is responsible for regulation of social housing. The Committee has made policy decisions regarding the Regulator's exercise of its powers about the operation by private registered providers of social housing ('PRPs') of their disposal proceeds funds ('DPF'). Those powers arise under sections 177 and 178 of the Housing and Regeneration Act 2008 ('the Act').
- B The Committee has delegated to the Director of Regulation the decision to give a direction to PRPs relating to DPF ('the Requirements') under sections 177 and 178 of the Act.
- C A direction about the use or allocation of funds in a DPF may only be given with the approval of the Secretary of State. On 27<sup>th</sup> March 2015 the Secretary of State approved the proposed terms of the Requirements in relation to use or allocation of funds in a DPF.
- D The Director of Regulation has taken a decision to direct PRPs on the following issues relating to DPF, in the terms set out in the Requirements:
- Specification of proceeds of sale which must be shown in a DPF
  - Determination of eligible deductions to arrive at net proceeds of sale
  - Determination of interest payable on DPF balances
  - Direction on how PRPs must constitute and present a DPF in their accounts
  - Direction on how sums in DPF must be used or allocated
  - Specification of the time limits after which the return of unused sums in DPF to the HCA or GLA may be required.

### Decision

Date decision made: 31<sup>st</sup> March 2015

Decision made by: The Director of Regulation

- 1 The Social Housing Regulator decides that it requires PRPs to operate a DPF in relation to the issues listed at a - f below in accordance with the Schedule (Disposal Proceeds Fund Requirements of the Social Housing Regulator 2015).
  - a. Specification of proceeds of sale which must be shown in a DPF
  - b. Determination of eligible deductions to arrive at net proceeds of sale
  - c. Determination of interest payable on DPF balances
  - d. Direction on how PRPs must constitute and present a DPF in their accounts
  - e. Direction on how sums in DPF must be used or allocated
  - f. Specification of the time limits after which the return of unused sums in DPF to the HCA or GLA may be required.
- 2 This decision comes into force on 1 April 2015.
- 3 The Schedule (Disposal Proceeds Fund Requirements of the Social Housing Regulator 2015) replaces the Disposal Proceeds Fund General Determination 2008.

### **Authentication**

Name: Matthew Bailes

Position: Director of Regulation

Signature:

A handwritten signature in black ink, appearing to read 'M R Bailes', written in a cursive style.

## **Schedule to Decision Instrument 9**

### **Disposal Proceeds Fund Requirements of the Social Housing Regulator 2015**

(note: page numbers will be inaccurate as this material has been pasted from a standalone document)

### **Disposal Proceeds Fund Requirements of the social housing regulator**

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# 1. Overview

- 1.1 Private registered providers of social housing (PRPs) are required by Section 177 (1) of the Housing and Regeneration Act 2008 (the 2008 Act) to show the net proceeds of certain types of disposal, payments of grant and repayments of discount (together referred to in this document as Net Disposal Proceeds) separately in their accounts as a Disposal Proceeds Fund (DPF). They must then use or allocate the sums in the DPF only as directed by the Regulator. The Regulator has power under s177 and s178 of the 2008 Act to:
- Specify proceeds of sale which must be shown in a DPF
  - Determine eligible deductions to arrive at net proceeds of sale
  - Determine interest payable on DPF balances
  - Direct how PRPs must constitute and present a DPF in their accounts
  - Direct how sums in DPF must be used or allocated
  - Specify the time limits after which it may require the return of unused sums in DPF to the HCA or GLA
- 1.2 This document 'Disposal Proceeds Fund Requirements of the Social Housing Regulator 2015' sets out the Regulator's decisions on how it will require PRPs to operate a DPF and is published in exercise of its powers under sections 177 and 178 of the 2008 Act and all other related powers. The Regulator as required by Sections 177(5) and 127(6) of the 2008 Act has consulted with such bodies who appear to the Regulator to represent the interests of PRPs as a whole in relation to the constitution of the DPF. This has been done as part of consultation on the Accounting Direction 2015. The Secretary of State has given his approval under Section 178(2) of the 2008 Act to the Regulator's direction in this document as to how sums in the DPF must be used or allocated.
- 1.3 This document has effect from 1 April 2015. It replaces the 'Disposal Proceeds Fund General Determination 2008'. The requirements are imposed without prejudice to the Regulator's power to make specific determinations under the provisions of the 2008 Act.
- 1.4 This document applies to a DPF whether that DPF was constituted before or after the 1 April 2015.
- 1.5 The Regulator also publishes 'Disposal Proceeds Fund Guidance' to assist providers in fulfilling its requirements. This is available from the HCA pages of the .GOV.UK website.
- 1.6 The terms in this document commencing with capital letters are explained in the Glossary in Annex 1.

## **2. Net Disposal Proceeds to be shown in DPF**

- 2.1 The proceeds of sale, payments of grant and repayments of discount which shall comprise the Net Disposal Proceeds of a PRP for the purposes of section 177(1) of the 2008 Act (amounts to be shown separately as a "disposal proceeds fund" in the accounts of a PRP) are all those Net Disposal Proceeds referred to in section 177(2)(a) to (j) of the 2008 Act. These are:
- 2.1.1 (a) Net Proceeds of Sale to a tenant in pursuance of the Right to Acquire (RTA) conferred by section 180 of the 2008 Act
- (b) Net Proceeds of Sale to a tenant in pursuance of the RTA conferred by section 16 of the Housing Act 1996
- (c) Net Proceeds of Sale of property in respect of which a grant was made under section 21 of the Housing Act 1996 (Voluntary Purchase Grant (VPG))
- (d) Net Proceeds of Sale of property in respect of which a grant was made under section 19 of the 2008 Act in respect of discounts given by a PRP on disposals of dwellings to tenants (RTA and Social Home Buy (SHB))
- (e) Grant received under section 20 or 21 of the Housing Act 1996 (VPG)
- (f) Grant received under section 19 of the 2008 Act in respect of discounts given by a PRP on disposals of dwellings to tenants (RTA and SHB)
- (g) Repayments of discount in respect of which grant was received under section 20 or 21 of the Housing Act 1996 (VPG)
- (h) Repayments of discount in respect of which grant was received under section 19 of the 2008 Act in respect of discounts given by a registered provider on disposals of dwellings to tenants (RTA and SHB) and
- 2.1.2 In addition, a PRP must show in a DPF the following proceeds of sale which are specified by the Regulator under Section 177(2)(i) and Section 177(2)(j) of the 2008 Act:
- (a) Net Proceeds of Sale received by a Profit Making PRP arising from a Disposal of a Dwelling which that PRP or another Profit Making PRP had previously acquired from a Non Profit PRP or Local Authority Registered Provider
- (b) Net Proceeds of Sale received by a Profit Making PRP arising from a Disposal of a Dwelling acquired, constructed, converted or otherwise provided, in whole or in part, with sums from the DPF of that PRP or any other Profit Making PRP
- (c) Net Proceeds of Sale of a Dwelling by a PRP to a sitting tenant following the exercise of the Preserved Right to Buy (PRTB) conferred by Section 171A of the Housing Act 1985 where the PRP acquired the Dwelling by way of a stock transfer from a Local Authority after 31 December 2014
- (d) All sums derived from proceeds of sale or other grants received by a PRP from another PRP and which sums immediately before receipt were held in the DPF of that other PRP
- 2.2 Each PRP will make arrangements such that all sums representing Net Disposal Proceeds in the DPF arising in respect of Disposals of Dwellings situated in Greater

London can be identified separately from sums representing Net Disposal Proceeds arising in respect of the disposals of Dwellings situated outside of Greater London.

### **3. Amounts to be deducted in determining Net Proceeds of Sale from Disposals**

3.1 The Regulator determines under Section 177(3) of the 2008 Act that the amounts which may be deducted by a PRP from the Gross Proceeds of Sale to arrive at the Net Proceeds of Sale are the sums of the items set out below in this section 3.1; save that the Net Proceeds of Sale transferred into the DPF may not be a negative amount.

- (a) The following expenses of sale:
  - (i) Reasonable valuation fees incurred by the PRP
  - (ii) Reasonable legal fees incurred by the PRP
  - (iii) Reasonable survey fees incurred by the PRP
  - (iv) In relation to disposals under or involving the RTA, VPG or SHB only, an administration allowance which is to be the same amount as set out in the relevant capital funding guide published by HCA or GLA
  - (v) In relation to disposals under SHB, when a further Portioned Percentage is acquired by a lessee the PRP may deduct an administration allowance which is to be the same amount set out to cover staircasing in the relevant capital funding guide published by the HCA or GLA
- (b) In relation to disposals under or involving the RTA, VPG or SHB only, an amount representing that proportion of the cost of providing the Dwelling which was not financed by Capital Grant or an amount representing the Attributable Loan Debt for that Dwelling at the time of the stock transfer from a Local Authority
- (c) In relation to PRTB sales of Dwellings acquired by a stock transfer from a Local Authority after 31 December 2014, a sum representing the net present value of rent foregone due to the sale

### **4. Interest to be added**

4.1 PRPs are required by section 177(7) of the 2008 Act to add to the DPF amounts in relation to interest on sums held in the DPF as determined by the Regulator. The Regulator determines that the interest shall be calculated and added to the DPF as follows:

#### **Principles for adding interest**

4.2 Sums added to the DPF in relation to interest are to be used for the same purposes as other sums in the DPF.

#### **Period during which interest accrues**

- 4.3 Interest shall be accrued during the following periods of time:
- (a) On sales, from the date of completion of that sale and for as long as the proceeds remain in the DPF
  - (b) On payments of VPG, from the date when VPG is received and for as long as the VPG remains in the DPF
  - (c) On receipt of repayment of discount (where RTA, SHB or VPG purchasers sell on within the prescribed timescales), from the date when the repayment is received and for as long as the repaid discount remains in the DPF

#### **Rate of interest to be applied**

- 4.4 During such period that the sums in the DPF stand at £250,000 or less, the rate of interest is that which a PRP would obtain by placing those sums in the highest interest deposit account operated by its own clearing bank. (Each PRP must keep a record of these rates available from time to time for its auditor).
- 4.5 During such period that the sums in the DPF stand above £250,000, the rate of interest is linked to the Bank of England's base lending rate, as follows:

Size of Fund	Rate of Interest
£250,001 to £500,000	Base lending rate minus 75 basis points
£500,001 to £750,000	Base lending rate minus 50 basis points
£750,001 to £1,000,000	Base lending rate minus 25 basis points
Over £1,000,000	Base lending rate

- 4.6 A floor of 0% is applicable to interest calculations. Therefore, if the base lending rate is at such a level as to produce a nil or negative amount of notional interest, then no interest should be added for the relevant period.

## **5. Constitution and presentation of DPF in accounts**

- 5.1 PRPs are required by section 177(4) of the 2008 Act to constitute and present the DPF and show it in their statutory accounts in accordance with the Regulator's direction to PRPs under section 127 of the Act about the preparation of their accounts.

## **6. Use and allocation of sums in DPF**

- 6.1 PRPs are required by section 178(1) of the 2008 Act to use or allocate sums in the DPF only in accordance with the Regulator's direction. The Regulator's direction, (to which it has obtained the consent of the Secretary of State), is that sums in the DPF may be used or allocated only as set out in Section 6.2, 6.3 and 6.4 below.
- 6.2 For all permitted uses and allocations, sums in the DPF arising from Net Disposal Proceeds in respect of Disposals of Dwellings situated in Greater London must be used

or allocated in Greater London and sums arising from Net Disposal Proceeds in respect of Disposals of Dwellings situated outside of Greater London must be used or allocated outside of Greater London.

6.3 For all PRPs the permitted uses and allocations are:-

- (a) acquisition of Dwellings for letting as Low Cost Rental Accommodation let at Social (Formula) Rent or Affordable Rent by a PRP;
- (b) acquisition and improvement, conversion, or repair of Dwellings for letting as Low Cost Rental Accommodation let at Social (Formula) Rent or Affordable Rent by a PRP;
- (c) acquisition of land (and dwellings) followed by (demolition and) construction, on that land, of Dwellings for letting as Low Cost Rental Accommodation let at Social (Formula) Rent or Affordable Rent by a PRP;
- (d) repairs to, or improvement of, Dwellings which have been vacant for at least six months to enable those Dwellings be let again as Low Cost Rental Accommodation let at Social (Formula) Rent or Affordable Rent by a PRP;
- (e) repairs to, or improvement of, Dwellings that a PRP would otherwise demolish, to enable those Dwellings to continue to be used as Low Cost Rental Accommodation let at Social (Formula) Rent or Affordable Rent by a PRP;
- (f) construction of Dwellings for letting as Low Cost Rental Accommodation let at Social (Formula) Rent or Affordable Rent on land owned by a PRP;
- (g) in relation to those sums in the DPF comprising the proceeds of sales under SHB (including interest associated with those sums), in addition to (a)-(f) above, the improvement of dwellings used as Low Cost Rental Accommodation let at Social (Formula) Rent or Affordable Rent by a PRP in such a way as to address homelessness or overcrowding.

6.4 For Profit Making PRPs only an additional use and allocation is:-  
in relation to those sums in the DPF comprising the Net Proceeds of Sale received from Shared Ownership Arrangements (including those from a disposal of a Portioned Percentage to a lessee or the disposal of an equity interest by the landlord), the construction or conversion of accommodation to be made available for occupation in accordance with Shared Ownership Arrangements.



## **7. Time limits after which payment may be required**

- 7.1 The Regulator may specify, under s178(3) of the 2008 Act, a time period after which it may require that any Net Disposal Proceeds in the DPF (together with interest accrued) which have not been used or allocated as mentioned in Section 178(1) of the 2008 Act, are paid either to the HCA or GLA as indicated in section 7.3 below.
- 7.2 The time period specified by the Regulator is three years from the date the Net Disposal Proceeds were first shown in a DPF (whether the DPF of the PRP currently holding the Net Disposal Proceeds or the DPF of another PRP in which the Net Disposal Proceeds originally accrued) or if earlier immediately after
- (a) the date upon which a PRP has informed the Regulator that it is unable to use or allocate the sums for such purposes and in such manner as the Regulator has directed.
  - (b) the date upon which the Regulator has notified a PRP in writing that, in the opinion of the Regulator, the PRP has applied sums from the DPF to a purpose not permitted.
  - (c) the date upon which the Regulator has served a notice on a PRP of removal from the register of providers of social housing pursuant to Section 118 of the 2008 Act.
  - (d) the date upon which a PRP has made an application for removal from the register of providers of social housing under section 119 of the 2008 Act.
- 7.3 Any payments required by this section 7 should be made by the PRP to
- (a) in the case of sums representing Net Disposal Proceeds in the DPF arising in respect of Disposals of Dwellings situated outside Greater London, the HCA, and
  - (b) in the case of sums representing Net Disposal Proceeds in the DPF arising in respect of Disposals of Dwellings situated in Greater London, the Greater London Authority.

## Annex 1

### Glossary of Terms

2008 Act	is the Housing and Regeneration Act 2008.
Affordable Rent	is where, as set out in the regulator's Rent Standard (including Rent Standard Guidance), a delivery agreement for new supply of Social Housing has been entered into between a PRP and the HCA or GLA under the Affordable Homes Programme Framework (or equivalent) but it does not include any other form of intermediate rent.
Assured Tenancy	has the meaning given by Section 1 of the Housing Act 1988.
Attributable Loan Debt	is the proportion of the whole of the Private Finance Facilities advanced to the PRP at the time of a stock transfer (of which the Dwelling forms part) which can be fairly and reasonably attributed to the Dwelling.
Capital Grant	is the grants listed in Section 77(3) of the 2008 Act and grants under Section 27A of the Housing Act 1996.
Disposal	<p>is:</p> <p>(a) the disposal of any property by:</p> <ul style="list-style-type: none"><li>(i) selling it;</li><li>(ii) leasing it;</li><li>(iii) disposing of it, or any interest in it, in any other way</li></ul> <p>with the exception of</p> <ul style="list-style-type: none"><li>(iv) an Assured Tenancy (unless such comprises a Shared Ownership Lease);</li><li>(v) granting a Security Interest which secures, or is given on terms that may in future secure Private Finance Facilities;</li></ul> <p>and</p> <p>(b) the disposal of a Portioned Percentage pursuant</p>

to a Shared Ownership Lease

The granting of an option to require a disposal shall be treated as making a disposal.

DPF	is the Disposals Proceeds Fund shown separately in a PRPs account as required by Section 177(1) of the 2008 Act.
Dwelling	has the meaning given to it in Section 275 of the 2008 Act and includes self-contained or shared housing, hostels and supported housing.
GLA	is the Greater London Authority as established by the Greater London Act 1999.
Greater London	the administrative area of the GLA.
Gross Proceeds of Sale	is the sum which represents the proceeds of sale from a Disposal of a Dwelling or if greater the sum which represents the best consideration that would have been reasonably obtained on a Disposal of a Dwelling.
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.
Local Authority	has the meaning given to it by section 275 of the 2008 Act.
Low Cost Rental Accommodation	has the meaning given to it in Section 69 of the 2008 Act.
Net Disposal Proceeds	are the sums referred to in Section 2.1.
Net Proceeds of Sale	are the sums arrived at in accordance with Section 3.
Portioned Percentage	means at any relevant time the percentage interest in leasehold premises held under a Shared Ownership Lease or SHB Lease which a leaseholder proposes to acquire pursuant to the stair casing provisions in the Shared Ownership Lease or SHB Lease.
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, including facilities made available

	through Lease Finance; and
	(ii) interest rate hedging including arrangements embedded with loan agreements or those documented separately; and
	(iii) issuance of loan notes, loan stock and bonds; and
	(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).
Profit Making and Non-Profit Private Registered Providers	are those organisations so designated under Section 115 of the 2008 Act on the register of providers of social housing maintained by the regulator.
PRP	is a Private Registered Provider as described in Section 80(3) of the 2008 Act which means (for the ease of reference) that none of the following are Private Registered Providers: <ul style="list-style-type: none"> <li>(a) a local authority as referred to in Section 113 of the 2008 Act;</li> <li>(b) a former Private Registered Provider which has been de-registered under the provisions of Sections 118 or 119 of the Act;</li> <li>(c) a registered social landlord removed from the register of the Housing Corporation before 1 April 2010; and</li> <li>(d) a housing association removed from the register of the Housing Corporation before 1 April 2010.</li> </ul>
PRTB	is the right conferred by Part V of the Housing Act 1985 as it applies in a case where the tenant right to buy is preserved under Section 171A of the Housing Act 1985 on the disposal of a Dwelling to a person who is not an authority or body within Section 80 of the Housing Act 1985.
Registered Provider	has the meaning given to it in Section 80(2) of the 2008 Act;
Regulator	is the Homes and Communities Agency carrying out its functions as the regulator of social housing contained in Part 2 of the 2008 Act or in any other

	statutory power.
RTA	is the Right to Acquire comprising the right for a sitting tenant to buy their home at a discount as set out in Section 16 of the Housing Act 1996 or Section 180 of the 2008 Act.
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 2008 Act.
Shared Ownership Lease	means a lease of the type described in Section 70(4) of the 2008 Act and includes such a lease whether granted before, on or after 1 April 2010.
SHB	is Social Home Buy that is the scheme approved by the 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 grant or other financial assistance from the HCA.
Social (Formula) Rent	is a rent conforming to the pattern produced by the formula set out in the regulator's Rent Standard (including Rent Standard Guidance).
Social Housing	has the meaning given in Sections 68 and 77 of the 2008 Act.
Social Housing Dwelling	a Dwelling which is Social Housing and includes a Prior Dwelling.
VPG	is Voluntary Purchase Grant and is the grant paid under either of sections 20 and 21 of the Housing Act 1996 or Section 19 of the 2008 Act in respect of the discount given by a PRP on the disposal of a Social housing Dwelling to a tenant.

## **EXPLANATORY NOTE**

The Regulation Committee has decided to make revisions to the regulatory framework for registered social housing providers 2012 with effect from 1 April 2015.

The Regulation Committee's ability to direct registered providers of social housing about their disposal proceeds funds is set out in the Housing and Regeneration Act 2008 sections 177 and 178. The Regulation Committee's decision about the revisions to the regulatory framework included decisions on the principles to be applied to changes to the regulator's 2008 direction about disposal proceeds funds.

This decision sets out the Director of Regulation's delegated decision on the detail of the direction about disposal proceeds funds.