



Regulator of  
Social Housing

# Guidance for new entrants on applying for registration as a provider of social housing

September 2023



## Version control

### What updates have been done and why

<b>Version number / name</b>	<b>Date issued</b>	<b>Brief summary of changes from previous version</b>
Version 1	December 2020	
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## Foreword

The Housing and Regeneration Act 2008, as amended (HRA 2008) established the Regulator of Social Housing (the regulator). The HRA 2008 also sets out the statutory framework within which the regulator must operate. This framework enables the regulator to register and regulate providers of social housing. Providers of social housing registered with the regulator are known as ‘registered providers’. Only registered providers are regulated.

This non-statutory guidance sets out how new entrants to the regulated sector are to apply for registration with the regulator and the requirements such applicants must meet in order to be registered. Where unincorporated charities have established a corporate body (e.g. a charitable incorporated organisation, CIO) to transfer all of their assets into, and that incorporated body wishes to be registered with the regulator, it must apply as a new entrant (see Section 2 for more details).

This guidance does not cover local authorities who, if they provide social housing, are subject to compulsory registration. It also does not cover registered providers who have statutorily converted from one form of corporate entity to another or statutorily restructured (e.g. through an amalgamation or Transfer of Engagements under the Co-operative and Community Benefit Societies Act 2014.). More on any associated registration decision for those can be found in the ‘*Guidance – Notification of restructures and constitutional changes*’ which can be found on the regulator’s website<sup>1</sup>.

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<sup>1</sup> Restructures and constitutional changes - GOV.UK ([www.gov.uk](http://www.gov.uk))

# 1. Introduction

## Who is the regulator?

- 1.1 The Regulator of Social Housing (the regulator) regulates registered providers of social housing to promote a viable, efficient and well governed social housing sector able to deliver homes that meet a range of needs. The regulator is responsible for registering and regulating registered providers of social housing in England. Any eligible provider of social housing can be registered with the regulator (subject to meeting the registration criteria) and only registered providers are subject to regulation.

## The objectives of the regulator

- 1.2 Parliament has given the regulator two fundamental objectives: an economic regulation objective and a consumer regulation objective.

- 1.3 The economic regulation objective is:

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

- 1.4 The consumer regulation objective is:

- to support the provision of social housing that is well-managed, safe, energy efficient and of appropriate quality
- to ensure that actual or potential tenants of social housing have an appropriate degree of choice and protection
- to ensure that tenants of social housing have the opportunity to be involved in its management and to hold their landlords to account
- to ensure that registered providers act in a transparent manner in relation to their tenants of social housing; and
- to encourage registered providers to contribute to the environmental, social and economic well-being of the areas in which the housing is situated

- 1.5 The regulator is accountable to Parliament and must as a matter of law act in furtherance of its fundamental objectives. The plans to achieve these objectives are set in a way that delivers for key stakeholders by promoting ‘a viable, efficient and well-governed sector able to deliver homes that meet a range of needs’.

### What it means to be registered

- 1.6 Once on the register, the registered provider must comply with the regulator’s standards and is subject to regulatory engagement in accordance with the guidance ‘*Regulating the Standards*’. These obligations of registration include notifying the regulator of certain activities, submitting data returns and providing other information when requested. The registered provider is also required to register with the Housing Ombudsman.

### Who can register

- 1.7 Registration is voluntary for new entrants to the regulated sector. The HRA 2008 requires that applicants are English bodies, provide or intend to provide social housing in England and meet the criteria established by the regulator. Applicants may be profit-making or non-profit.
- 1.8 Those bodies that are placed on the register of social housing providers maintained by the regulator, as well as those organisations which were registered prior to 2010 by the Housing Corporation, are known as ‘private registered providers’ (PRP) of social housing. The term ‘registered providers’ is used to cover all registered providers of social housing i.e. both PRPs and local authorities.
- 1.9 It is a statutory requirement that organisations which receive financial assistance from Homes England or the Greater London Authority (GLA) to provide low cost rental accommodation are the landlords of those homes and must be registered with the regulator
- 1.10 A new entity which arises out of certain registered provider conversions, amalgamations or transfers of engagement is subject to a registration decision pursuant to sections 161 and 163 of the HRA 2008. These are covered in separate guidance, ‘*Guidance - Notification of restructures and constitutional changes*’ which can be found on the regulator’s website<sup>2</sup>.

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<sup>2</sup> Restructures and constitutional changes - GOV.UK ([www.gov.uk](http://www.gov.uk))

- 1.11 New entrants include organisations to which an existing provider transfers its assets in a way that is not captured under sections 161 and 163 of the HRA 2008. Local authorities that provide social housing are subject to compulsory registration under section 114A of the HRA 2008 and this guidance does not apply to them.
- 1.12 Section 112 of the HRA 2008 sets out eligibility conditions that include the regulator's criteria that new entrants applying for voluntary registration must meet. Such applicants must first meet condition 1 of the statutory eligibility requirements (section 112(2) of the HRA 2008) (referred to in this guidance as the 'eligibility requirements') and, once the regulator has established that they meet these requirements, applicants will be assessed against the registration criteria that the regulator has set (pursuant to section 112(3) of the HRA 2008) (referred to in this guidance as the 'registration criteria'). The registration criteria currently in place concern an applicant's financial situation, constitution and other management arrangements in accordance with section 112(3).
- 1.13 Any applicant that makes an application in the required form (section 116(2) of the HRA 2008), meets the eligibility requirements and meets the regulator's registration criteria must be registered by the regulator.
- 1.14 In July 2023, the Social Housing (Regulation) Act (2023 Act) introduced amendments to a number of areas of the HRA 2008, including section 112(3). Those changes included giving the regulator power to set registration criteria for applicants to comply with standards set by the regulator under sections 193, 194, 194A and 194B of the HRA 2008. While the regulator has set economic standards under section 193 and is revising the consumer standards it has set under section 194, the regulator has not set standards under sections 194A and 194B as these are new provisions introduced by the Act<sup>3</sup>.
- 1.15 The regulator is considering how this power may be implemented and will consult on any new registration criteria in due course. In the meantime, the regulator will continue to assess registration applications against the current registration criteria, which was set prior to this new power coming into force. This guidance document (and associated forms) will be updated in the event that any new registration criteria are introduced.

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<sup>3</sup> The power to set standards under sections 194A and 194B comes into force on 21 September 2023.



## **Bodies receiving financial assistance from Homes England or the Greater London Authority**

- 1.16 The HRA 2008 creates a requirement for registration linked to financial assistance from Homes England and the GLA. Section 31 of the HRA 2008 requires that Homes England and GLA must, when providing financial assistance, impose a condition that a registered provider is the landlord of the accommodation when it is let.
- 1.17 Those applying for such financial assistance are not required to be registered at the time of making an application for that assistance. However, some agreements issued by Homes England or the GLA may allow for a payment to be made when a development starts on site. Such agreements will usually require that the organisation is registered before that payment can be made. Applicants should therefore check the terms of any agreement for financial assistance from Homes England or the GLA to determine when to seek registration to ensure that the application is submitted for it to be assessed in sufficient time to meet the conditions of the agreement.

### **Name of registered body**

- 1.18 It should be noted that, the regulator expects applicants to choose a name which is not similar to the name of an existing or previous registered provider if the use of this name may cause confusion. In addition, the regulator expects names to not be inappropriate or misleading.

## 2. Restructure of organisations which are not captured by sections 161 and 163 of the HRA 2008

- 2.1 The regulator has a statutory duty to consider eligibility for registration of bodies resulting from a conversion or restructure within sections 161 and 163 of the HRA 2008 (i.e. conversion of a registered company into a registered society; amalgamations; transfers of engagements and conversion of a registered society into a registered company). More information on these can be found in the '*Guidance - Notification of restructures and constitutional changes*' on the regulator's website.
- 2.2 PRPs may restructure in other ways which will not trigger that duty under the HRA 2008. For example, when
- a PRP that is a registered charity, but is not a registered company, establishes a charitable company, a charitable registered society or a CIO into which it transfers all its assets; or
  - a PRP restructure achieved by asset transfer to a body that is not registered with the regulator (i.e. not another PRP).
- 2.3 The body resulting from these restructures (i.e. at the bullets above) will need to apply for registration as a new entrant and the registration criteria for new entrants apply in these circumstances. However, a simplified version of the registration assessment process for new entrants will be available for these bodies, since the regulator can place reliance on the regulatory record of the existing PRP. More information on this can be found in the detailed application form.

## 3. How to register

- 3.1 This guidance sets out the requirements for voluntary registration as a provider of social housing, namely, meeting the eligibility requirements and the registration criteria. Application for registration is a two-stage process. This guidance covers the two stages – the eligibility conditions, the registration criteria – and the decision-making process. This guidance should be read in conjunction with the application forms which themselves contain guidance on how to complete the forms.

### Fees

- 3.2 Section 117 of the HRA 2008 enables the regulator to charge fees for registration. The current fee requirements are available from the regulator's website<sup>4</sup>.

### Interpretation

- 3.3 Definitions of terms used in this guidance are, unless otherwise indicated, taken from the HRA 2008 (as amended) or other cited legislation, all of which can be found on [www.legislation.gov.uk](http://www.legislation.gov.uk).

### Disclosure of information

- 3.4 It should be noted that the regulator, as a public authority, is subject to the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 3.5 The regulator may also (pursuant to section 109 of the HRA 2008) share information with a public authority if the regulator thinks the disclosure is necessary for a purpose connected with its functions, or the functions or for a purpose connected with the authority's functions.
- 3.6 The application forms request the applicant's consent for the regulator to share relevant information with Homes England or the GLA. It also seeks consent for Homes England or the GLA to share relevant information about the applicant with the regulator.

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<sup>4</sup> Corporate governance and fees

## Equalities

- 3.7 As a public body, the regulator is subject to the general duty set out in section 149 of the Equality Act 2010. This is more commonly known as the Public Sector Equality Duty (PSED) which exists to ensure that public bodies take equality considerations into account when exercising their functions.
- 3.8 To comply with its PSED, the regulator is required to give conscious consideration to its three aims when taking decisions, i.e. the need to eliminate discrimination; to advance equality of opportunity; and foster good relations between those who share a protected characteristic and those who do not when carrying out their activities.
- 3.9 There are specific questions on equalities in the detailed application form. Guidance on this can be found in section 7 below.

## Contacting the regulator

- 3.10 Potential applicants may contact the regulator at any stage to discuss a prospective application. Additional information and any documents referred to in this guidance or within the application forms are available on the regulator's website: <https://www.gov.uk/rsh> or can be provided directly to any applicant upon request.
- 3.11 Any general queries on registration should be directed to the Referrals and Regulatory Enquiries team on:
- Telephone: 0300 124 5225.  
Email: [enquiries@rsh.gov.uk](mailto:enquiries@rsh.gov.uk)
- 3.12 The regulator's preference is for applications to be submitted by email at all stages to the Registry and Notification team: [RNTeam@rsh.gov.uk](mailto:RNTeam@rsh.gov.uk).
- 3.13 If this is not possible, applications should be posted to:
- Referrals and Regulatory Enquiries team  
Level 2  
7-8 Wellington Place  
Leeds  
LS1 4AP

## 4. The registration process

### Two-stage process

- 4.1 There are two stages to the registration process. In the first stage, applicants are required to provide information that will enable the regulator to assess whether the applicant meets the eligibility requirements in section 112(2) of the HRA 2008. This is the preliminary application process.
- 4.2 In the second stage of the process, applicants need to provide information that will enable the regulator to determine whether they meet the registration criteria established under section 112(3) of the HRA 2008. This is the detailed application process.
- 4.3 Applicants should provide the information and evidence that, in their view, will satisfy the regulator that they meet the eligibility requirements and the registration criteria. The amount of information and evidence provided is likely to reflect factors such as the size of the applicant, their constitution and governance structure, their experience in social housing, the nature of their funding and future plans and risks associated with their business models and equalities. The regulator anticipates that the information and evidence required from applicants with straightforward business models will be less than that for more complex or riskier business models.

### Preliminary application

- 4.4 Applicants must first complete a preliminary application form to enable the regulator to assess whether the applicant is capable of being registered under the HRA 2008. Applicants must meet the eligibility requirements for registration set out in section 112(2) of the HRA 2008. The regulator cannot register an applicant that does not meet these requirements.
- 4.5 The regulator will review the information provided by the applicant at this preliminary stage. If the regulator is satisfied that the applicant meets the eligibility requirements, the applicant will be invited to complete the detailed application form. This two-stage process has been designed to ensure that applicants who cannot meet the eligibility requirements do not waste time completing the detailed application.

## Detailed application

- 4.6 The detailed application process requires the applicant to set out how it will meet the registration criteria. The regulator will review this information and determine whether, in its view, the applicant meets the registration criteria. The regulator will not accept a detailed application form from an applicant that has not successfully completed the preliminary application stage.
- 4.7 Applicants will be required to confirm that the information already provided at the preliminary stage, about how they meet the eligibility requirements, remains unchanged. If it has changed, applicants must provide details of the changes. This is because the regulator must satisfy itself that, **at the point of registration**, the applicant meets the eligibility requirements for registration under the HRA 2008 and that no changes have taken place that mean that the applicant is no longer able to proceed to registration.

## How long registration will take

- 4.8 The regulator's aim is to progress registration applications as swiftly as it can, but it must ensure that the registration process is effective. Applications submitted with all of the information required will speed up the process as, inevitably, requests for additional information take time to fulfil.
- 4.9 It is anticipated that the assessment of the **preliminary** application will be shared with the applicant within 15 working days of the application being received by the regulator. The regulator will notify applicants if it is likely to take more than this to assess the preliminary application. This is likely to be the case if the applicant is an intending provider at the time of applying.
- 4.10 It can take more than six months from the time that the regulator receives a complete **detailed** application for the regulator to have the assurance that the applicant has demonstrated whether it meets the registration criteria. The regulator will notify applicants if it is likely to take more than this to process the detailed application.
- 4.11 The time taken will depend on the nature of the application submitted, especially whether it raises any novel issues for the regulator, the responsiveness of the applicant to requests for additional information and the number of other applications under consideration at the same time. Applicants are advised to bear this timescale in mind when preparing their application, particularly if registration is a pre-condition to accessing grant, receiving the transfer of social housing or another transaction.

- 4.12 At any stage, if the regulator does not have any contact with an applicant for six months that provides information showing that the application is clearly progressing, the regulator will write to the applicant advising them that its application has been discontinued. This includes the time lapse between an applicant being advised it has met the eligibility requirements and its submission of a detailed application. The applicant will need to begin the process again if it still wishes to register.
- 4.13 Applicants should think carefully about when the right time is for them to submit an application. The experience of the regulator is that applicants can apply too early when either the organisation is not properly established or the business model is not fully developed, and consequently they find it difficult to demonstrate that they meet the requirements of registration.

### Form of applications

- 4.14 Applications must be made on the application forms for new entrants provided by the regulator on its website and each question on the form must be answered, including the provision of any supporting information or evidence. Any applications that do not meet this requirement will be rejected and the applicant will need to restart the process.

### Additional information

- 4.15 Applicants may be asked to provide additional supporting information or evidence at any stage of the registration process. This might be to clarify information already provided or because the regulator is unable to form a view on the basis of the information provided and needs additional information. As part of its assessment, the regulator may wish to meet with key people identified in an application, visit the applicant or see the applicant's governing body or management team in action. The information gathered in these ways will supplement the information already provided.
- 4.16 Applicants should note that while the regulator may need to ask for further information on an application, it will not enter into an iterative process with an applicant to elicit the assurance it requires to conclude that an applicant meets either the eligibility requirements or the registration criteria. It is up to the applicant to demonstrate that it meets the criteria and not for the regulator to search for assurance.

- 4.17 The regulator will not undertake a 'coaching' role to assist an applicant to demonstrate that it meets the requirements for registration. The regulator will firstly undertake a full assessment of the application and provide feedback to the applicant on all aspects. It is important that applicants give due regard to the regulator's initial assessment feedback and respond accordingly, providing the regulator with a complete response to all of the issues raised.
- 4.18 The regulator may have some follow-up questions for clarification or may need additional evidence. If the regulator has not then been provided with satisfactory assurance that an applicant meets either the eligibility requirements or the registration criteria, it is likely to draw the process to a conclusion by proposing that the application is refused, in accordance with the process set out below.

## Decision process

- 4.19 Following assessment of the application by the Registration team, the decision on whether an applicant meets both the eligibility requirements and the registration criteria and so should be registered, is usually taken by the officer with delegated authority (the Decision Maker).
- 4.20 There may be occasions when the Decision Maker decides it is not appropriate to act under the delegated authority and will refer the registration decision to the Board. This is expected to be an exception and usually arises when the application raises issues that are novel or complex.
- 4.21 The regulator's aim is that its decision-making is transparent to the applicant so it will follow the process set out below (noting that if the decision is referred by the Decision Maker to the Board, the same process will be followed):
- a. If the recommendation of the Registration team to the Decision Maker is to register the applicant, the Decision Maker will, having made a corresponding decision, notify the applicant that its registration has been approved and of its registration details
  - b. If the recommendation to Decision Maker is for the application for registration to be refused, the draft paper containing that recommendation will be copied to the applicant
  - c. The applicant will be given no less than 28 (calendar) days in which to make representations about the proposal to refuse the application. The representations should include any comments about factual inaccuracies and/or additional evidence demonstrating that the applicant meets the eligibility requirements or registration criteria



- d. If the applicant wishes to withdraw the application at this stage it should notify the regulator
- e. The draft paper will be revised to take account of the applicant's representations, and a recommendation will be submitted for consideration by the Decision Maker
- f. The revised paper containing the recommendation will be copied to the applicant
- g. At the preliminary application stage, if the recommendation is to confirm that the applicant has met the eligibility conditions and the Decision Maker makes a corresponding decision, the regulator will notify the applicant of the confirmation and invite the applicant to proceed to the detailed application stage
- h. At the detailed application stage, if the recommendation is to register the applicant and the Decision Maker makes a corresponding decision, the regulator will notify the applicant that its registration has been approved and of its registration details
- i. If the recommendation remains that the applicant does not meet the eligibility requirements (at the preliminary application stage) or not to register the applicant (at the detailed application stage) and the Decision Maker agrees with the recommendation, the regulator will advise the applicant that it is not eligible for registration. In advising the applicant of this, it will set out the reasons that have led the regulator to take this view
- j. If the Decision Maker disagrees with the recommendation, this may mean the Decision Maker has decided either to register the applicant or the Decision Maker has decided to seek clarification to enable the application to be considered further. If the former applies, the regulator will notify the applicant that its registration has been approved and of its registration details. If the latter is the case, the applicant will be given a further period to produce the clarification sought by the Decision Maker, following which the above process will be repeated
- k. The regulator may publish a statement about a decision to refuse to register the applicant
- l. If an applicant wishes to appeal the regulator's decision, it may do so through the High Court in line with section 121 of the HRA 2008.

## Withdrawal of application

- 4.22 Applicants can withdraw their application at any stage during the process by notifying the regulator that they are doing so. Applicants who withdraw their application can re-apply at any time but must start the process again.

## 5. Preliminary assessment

### Assessment form

- 5.1 Applicants should first complete the preliminary assessment form and submit this to the regulator. The regulator will use the information provided to determine whether, subject to meeting the registration criteria, the applicant meets the eligibility requirements for registration as a provider, or intending provider, of social housing in England set out in section 112(2) of the HRA 2008.
- 5.2 The purpose of submission of the preliminary application form is to enable the regulator to be assured that the applicant meets these eligibility requirements and so can move to the second stage of the process where it is assessed against the registration criteria.
- 5.3 In assessing whether an applicant meets the eligibility requirements under the section 112(2) of the HRA 2008, the regulator will need to be satisfied on each of the following grounds:
- the applicant is an English body, as defined in section 79 of the HRA 2008
  - the applicant is a provider, or an intending provider, as defined in section 80 of the HRA 2008
  - the housing that the applicant provides, or intends to provide, is social housing, as defined in Sections 68-71 of the HRA 2008; and
  - the social housing is, or will be, in England.

### Intending providers

- 5.4 Applicants that are not already providers of social housing are able to apply for registration. They will need to provide evidence that satisfies the regulator that they have firm plans in place that will enable them to become a landlord within a reasonable timescale. Applicants should note that the regulator would not expect to register an applicant if their business plan forecast shows a period of longer than 12 months after registration before the applicant will become a provider of social housing. An exception to this might be if this was as a result of the anticipated development period.

- 5.5 If the regulator is not satisfied that the evidence of an applicant's intent is sufficient to proceed to registration (or that it does not meet the eligibility requirements) and the application is refused, a re-application may be made at any time if the applicant's circumstances change.
- 5.6 The position of the intending provider will be kept under review after registration.
- 5.7 In the event that the regulator is not satisfied after registering a provider that there is continued, evidenced intent to provide social housing, the regulator is likely to propose compulsory de-registration under section 118 of the HRA 2008. This action would be taken on the basis that the provider is no longer eligible for registration. Again, if circumstances change after de-registration, applicants can re-apply for registration at any stage.

### Outcome of the assessment of the preliminary application

- 5.8 If the regulator is satisfied that the applicant meets the eligibility requirements, it will notify the applicant that it considers that the applicant meets the eligibility requirements **at that point in time**, that it can proceed to the second stage of the application process and the regulator will invite the applicant to submit the detailed application form. This notification should not be considered to be a decision by the regulator as the final decision on eligibility will be taken at the second stage of the process.
- 5.9 The regulator will review whether the applicant meets the eligibility requirements again at the detailed application stage as it will still need to be satisfied of this at the point of registration. The applicant will, therefore, be required to confirm that the information provided at the preliminary application stage remains correct at the detailed application stage or to provide details if there are any changes.
- 5.10 If the regulator is not satisfied that the applicant is able to proceed to registration, it will notify the applicant giving reasons for it, following the process set out in the 'Decision process' part of Section 4 above.

## 6. Detailed application

- 6.1 This stage of the process is to enable the regulator to assess whether the applicant meets the registration criteria and continues to meet the eligibility requirements.

### Registration criteria

- 6.2 The regulator's registration criteria, established under section 112(3) of the HRA 2008, currently relates to an applicant's:

- financial situation
- constitution; and
- management arrangements.

- 6.3 The registration criteria are linked to the regulatory standards<sup>5</sup> that registered providers have to meet. The regulatory standards mean the economic standards and consumer standards established by the regulator under sections 193 and 194 of the HRA 2008 and are set out in the regulatory framework<sup>6</sup> which is available on the regulator's website. The 2023 Act has amended the HRA 2008 to give the regulator the power to set other standards, which the regulator will consider further.

- 6.4 As mentioned above in Section 1, the regulator has also been given the power to set new registration criteria which will require further consideration. The regulator will consult on any new registration criteria in due course. However, in the meantime, the regulator will continue to assess registration applications against the current registration criteria.

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<sup>5</sup> <https://www.gov.uk/guidance/regulatory-standards>

<sup>6</sup> <https://www.gov.uk/government/collections/regulatory-framework-requirements>

## Registration criteria for new entrants

### **All applicants 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 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.

## Approach to assessing compliance

- 6.5 The regulator will assess the information provided by the applicant in accordance with how it would assess compliance of a registered provider with the standards, consistent with its co-regulatory principles and proactive approach to the economic standards. Mindful of its duty to minimise interference and its fundamental objective of supporting the provision of social housing, the regulator is clear that governing body members are responsible for ensuring that they direct the provider's business effectively and that their organisations are meeting applicable regulatory standards. The onus is on applicants to demonstrate their compliance with the registration criteria to the regulator.
- 6.6 In reviewing the information produced by the applicant and assessing compliance with the registration criteria, the regulator recognises that each applicant will be at different stages in its development and it will take a proportionate approach within this context to assessing compliance.
- 6.7 Further information on the regulator's approach is set out in 'Regulating the Standards'<sup>7</sup>, available on the website.

## Outcome of detailed assessment

- 6.8 If the regulator is satisfied that the applicant meets the eligibility requirements and the registration criteria, it must register the applicant. If the regulator is not satisfied that the applicant meets the registration criteria, it will notify the applicant of its decision not to register the applicant and provide reasons, following the process set out in the 'Decision process' part of Section 4 above.
- 6.9 Applicants must meet the eligibility conditions and the registration criteria before they can be registered. The regulator is not able to conditionally register applicants i.e., set conditions that must be fulfilled for the registration to be effective, even if the applicant can demonstrate that it can meet the criteria within a very short time of any registration.

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<sup>7</sup> <https://www.gov.uk/government/publications/regulating-the-standards>

## 7. Equalities

### Equality duties

- 7.1 The Equality Act 2010 prohibits unlawful discrimination on the basis of protected characteristics. These protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage or civil partnership. As a public body, the regulator must have due regard in the exercise of its functions to the need to:
- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
  - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
  - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it<sup>8</sup>.
- 7.2 The way in which the regulator aims to meet the General Equality Duty and the Specific Equality Duties set out in regulations<sup>9</sup> (of which publishing objectives is one) is set out in the regulator's Equality objectives<sup>10</sup>.
- 7.3 The regulator must perform its functions with a view to achieving (so far as is possible) the economic regulation objective and the consumer regulation objective set out in the HRA 2008. It is to do so in a way that minimises interference and (so far as is possible) is proportionate, consistent, transparent and accountable and in accordance with its PSED.

### Equalities in the registration application process

- 7.4 During the detailed application stage of the registration application process, the regulator gains assurance that the applicant meets requirements of equalities legislation via its constitutional arrangements. It does this by examining equalities-related information as part of the registration process for applicants and addressing any such issues prior to registration in the following way:

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<sup>8</sup> S149 Equality Act 2010

<sup>9</sup> Equality Act 2010 (Specific Duties) Regulations 2011 (SI 2011/2260)

<sup>10</sup> <https://www.gov.uk/government/organisations/regulator-of-social-housing/about/equality-and-diversity>



- The regulator will work with the applicant to address any equalities-related issues identified during the application process, relying on compliance with the Governance and Financial Viability Standard which includes the requirement to abide by all relevant law. Should an applicant not address the equalities-related issues identified during the application process, the regulator is likely to refuse to register the applicant.
- The regulator considers that requiring the applicant to address the equalities-related issues prior to registration demonstrates its own adherence to the General Equality Duty, because actively working with applicants to change their practice is a robust and effective way of tackling the issue for new entrants. This approach enables the regulator to demonstrate through its ongoing regulatory work how it is ‘eliminating unlawful discrimination’, ‘advancing equality of opportunity’ and ‘fostering good relations’ between people who share a protected characteristic and those who do not.

### Assessment against equalities obligations

- 7.5 The detailed application form contains a number of questions about equalities. Applicants are required to answer these in full. The information provided will enable the regulator to determine the extent of the applicant’s compliance with equalities obligations.
- 7.6 The outcome of the regulator’s assessment of the applicant’s compliance with equalities legislation directly influences the registration decision to be taken by the regulator.

### Incorporated charities

- 7.7 For incorporated charities (CIOs or charitable companies) which result from a transfer of an incorporated charity and its assets (into the newly formed incorporated charity), and where the registration requirements for new entrants apply to the incorporated charity, the regulator will, in assessing the incorporated charity’s compliance against the equality legislation, take into account the unique circumstances of the incorporated charity.
- 7.8 The regulator acknowledges that an incorporated charity has a responsibility under charity law to comply with its charitable purposes unless and until there is a lawful mechanism and appropriate consents (e.g. from the Charity Commission (the Commission)) to change the charitable purposes.

- 7.9 In considering an incorporated charity's compliance with equalities legislation, the regulator will take a proportionate approach.
- 7.10 The regulator will expect the incorporated charity to demonstrate it has provided adequate assurance as to how its trustees have satisfied themselves that the incorporated charity meets the requirements under the equalities legislation.

## 8. The register

### Registration details

- 8.1 Upon registration, each provider is given a registration number. This registration number and other information about the provider are recorded on the register. The regulator is required under section 111 of the HRA 2008 to make the register available for inspection by the public.

### Designation

- 8.2 Section 115 of the HRA 2008 requires that entries on the register identify the provider as either:
- a non-profit organisation
  - a profit-making organisation
  - a local authority.
- 8.3 Section 115 sets out how the status of the provider, if it is not a local authority, must be designated, i.e. non-profit or for-profit. Currently a body is designated as non-profit-making if:
- it is a registered or non-registrable charity, or
  - it satisfies the following conditions:
    - i. it does not trade for profit, or is prohibited by its constitution from issuing capital with interest or dividend at a rate exceeding that prescribed under section 1(1)(b) of the Housing Associations Act 1985
    - ii. a purpose of the provider is the provision or management of housing, and
    - iii. any other purposes of the applicant are connected with or incidental to the provision of housing.

- 8.4 These provisions mean that any successful applicant which is a registered or non-registrable charity will be designated as non-profit on the register. Successful applicants that are neither registered charities nor non-registrable charities but meet all three conditions set out above will also be designated as non-profit providers on the register. Successful applicants that do not fall into either of these categories will be designated as profit-making providers on the register.
- 8.5 The 2023 Act has introduced changes so that: registered or non-registrable charities will not automatically be regarded as non-profit-making. Instead, they will have to demonstrate that they do not trade for profit and that one of their purposes is the provision of housing management.
- 8.6 In addition to this, condition (i) above, will be amended so that bodies must not trade for profit. Furthermore, the fact a body is prohibited from trading by its constitution will not necessarily mean it does not trade for profit.
- 8.7 These changes will not come into force until April 2024 and this guidance will be updated prior to this date to reflect such changes.
- 8.8 Applicants should note that some elements of the Governance and Financial Viability Standard are applicable only to profit-making registered providers, and that designation on the register as either non-profit or profit-making will also have an impact on the regulatory arrangements and the extent of the regulator's powers in relation to a provider. More information on this is available on the regulator's website in 'Regulating the Standards' and the 'Guidance on the regulator's approach to intervention, enforcement and use of powers'.
- 8.9 In determining whether an applicant meets the conditions for designation as a non-profit provider, the regulator will take a view on whether the purposes of the applicant are connected with, or incidental to, the provision of housing. In determining whether purposes are connected with, or incidental to, the provision of housing, the regulator will have regard to the matters on which it can set consumer standards under section 193 of the HRA 2008, including a provider's contribution to the environmental, social and economic well-being of the areas in which its property is situated.
- 8.10 The regulator will also have regard to the Code of Practice published by the regulator under section 195 of the HRA 2008 (the Code) which amplifies the requirements in the Governance and Financial Viability Standard<sup>11</sup>. The Code covers non-social housing activity; and the requirements in section 115 of the HRA 2008 relate to activities that are connected with or incidental to the provision of housing and are not confined to social housing.

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<sup>11</sup> <https://www.gov.uk/government/publications/governance-and-financial-viability-standard>

- 8.11 It is possible that the regulator will find that an applicant meets the eligibility requirements and the registration criteria and so must be registered, but that its appropriate designation on the register, in the opinion of the regulator having considered the requirements in section 115 of the HRA 2008, is not in accordance with that stated by the applicant in the application form. In this case, registration will not proceed; nor will it be refused at this stage. The regulator will set out the reasons why it does not agree with the status the applicant has included in its application and seek the applicant's comments on its view. The regulator's aim will be to agree the designation with the applicant. If agreement cannot be reached, the regulator will give the applicant the opportunity to withdraw its application. If it is not withdrawn, the applicant will be registered and designated on the register with the designation the regulator considers appropriate.
- 8.12 Section 115(9) of the HRA 2008 provides that if the regulator thinks that a provider which was a profit-making provider has become a non-profit provider or vice versa, it must change its designation on the register and notify the provider that it has done so.

### Assessing designation

- 8.13 The applicant should also satisfy itself on its designation before completing the detailed application form. Section 115 of the HRA sets out how a body is determined as non-profit or profit-making.

## Section 115 – Profit-making and non-profit organisations

1. Each entry in the register shall designate the body registered as either:
  - a. a non-profit organisation; or
  - b. a profit-making organisation.
2. A body is a non-profit organisation if it is a registered or non-registrable charity.
3. A body is also a non-profit organisation if: it satisfies the following conditions.
4. Condition 1 is that the body:
  - a. does not trade for profit, or
  - b. is prohibited by its constitution from issuing capital with interest or dividend at a rate exceeding that prescribed under section 1(1)(b) of the Housing Associations Act 1985 (c 69).
5. Condition 2 is that a purpose of the body is the provision or management of housing.
6. Condition 3 is that any other purposes of the body are connected with or incidental to the provision of housing.
7. The Secretary of State may make regulations providing that a specified purpose is to be, or not to be, treated as connected with or incidental to the provision of housing.
8. A body which is not a non-profit organisation under subsection (2) or (3) is a profit-making organisation.
9. If the regulator thinks that what was a profit-making organisation has become a non-profit organisation or vice versa, the regulator must change the registered designation accordingly and notify the body it has done so.
10. Subsection (1) does not apply to the entry of a local authority in the register (and, accordingly, references to "profit-making" and "non-profit" in connection with a registered provider do not refer to a local authority).

- 8.14 Some of the registration criteria are linked to the applicant's constitution to enable the regulator to designate the applicant as for profit or non-profit on the register pursuant to section 115 of the HRA 2008.
- 8.15 If the applicant wishes to be designated on the register as non-profit, it should note that the regulatory standards apply to the entirety of the business that it carries out and not just to its provision of social housing. If the applicant wishes to be designated on the register as profit-making, the standards apply only insofar as they relate to its provision of social housing. However, where non-social housing activity is carried out by a profit-making applicant, the regulator will expect to understand the nature of that activity, the risks it may pose to the social housing assets and how these risks are managed, to ensure that it does not place social housing assets, activities relating to the provision of social housing or the applicant's own financial viability at undue risk.
- 8.16 The 2023 Act introduced the ability to appeal the regulator's designation decision through the High Court in line with section 121 of the HRA 2008.

## 9. Actions after the registration decision

- 9.1 Once registered, the registration certificate and other relevant information will be sent to the applicant. The registration certificate confirms an applicant's registration, notifies it of the registration number under which it is registered and sets out the designation of the applicant (profit-making, non-profit or local authority).
- 9.2 In accordance with section 120 of the HRA 2008, the regulator is required to notify the following bodies of a registration. In the case of a:
- registered charity – the Charity Commission
  - registered society – the Financial Conduct Authority
  - registered company (whether or not also a registered charity) or a limited liability partnership – the Registrar of Companies for England and Wales.
- 9.3 The regulator will also notify the Housing Ombudsman as registered providers are required to register with the office of the Housing Ombudsman. The Housing Ombudsman can investigate complaints relating to the housing activities (not just social housing) of a registered provider.
- 9.4 The regulator will write to any intending providers confirming the agreed timescale for becoming a landlord of social housing. It will keep the provider's progress under review and, if there appears to be no prospect of the provider becoming a landlord of social housing within the 12 months of registration, it would expect to decide that compulsory de-registration was appropriate as the provider no longer meets the eligibility requirements for registration. Further information on de-registration can be found on the website.





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**The Regulator of Social Housing regulates registered providers of social housing to promote a viable, efficient and well-governed social housing sector able to deliver and maintain homes of appropriate quality that meet a range of needs.**