



Regulator of
Social Housing

Consultation on statutory guidance under Section 215 of the HRA 2008 Decision Statement

February 2024



OFFICIAL

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Introduction

- 1.1 It is a requirement under section 215(1)(b) of the Housing and Regeneration Act 2008 as amended (the '2008 Act') for the regulator to publish guidance on how it uses and intends to use powers under Chapters 6 and 7 of the Act. Where the regulator intends to publish updates to its guidance it is also a requirement that it consults on these changes.
- 1.2 On 7 November 2023, the Regulator of Social Housing published a consultation on revisions to its statutory guidance under section 215(1)(b) ('S215 guidance') of the 2008 Act to reflect amendments introduced by the Social Housing (Regulation) Act 2023 ('2023 Act'). This consultation closed on 16 January 2024.
- 1.3 This document provides a summary of the key areas of feedback and sets out our decision on the final S215 guidance. This document is not intended to cover all the responses received (all of which have been considered in reaching the conclusions set out in this Decision Statement), but a summary of the key issues and comments made. A list of respondents to the consultation, where they have given permission to be named, is provided at Annex 1.
- 1.4 As a result of the consultation, limited changes are proposed to Guidance Notes 2,16 & 19 and these guidance notes can be found at Annex 2,3 & 4 of this document.
- 1.5 The final version of the S215 guidance will come into effect on 1 April 2024 can be found at Annex 5
- 1.6 The Business Engagement Assessment with equality analysis has also been reviewed. The final version is provided in Annex 6.

Executive summary

- 1.7 The Government published the Social Housing Green Paper, 'A new deal for social housing' in 2018 and subsequently the Social Housing White Paper, 'The charter for social housing residents' in 2020 all with the aim of improving how social housing is regulated. This culminated with the introduction of the 2023 Act having received Royal Assent and becoming law on 20 July 2023.
- 1.8 The 2023 Act amends the 2008 Act, which sets the framework in which the RSH must operate and regulate the social housing sector. The 2023 Act introduces changes to our approach to consumer regulation, by giving us a new proactive role in the regulation of consumer standards which will build on our proactive role in economic regulation and help to ensure that landlords continue to deliver good quality homes and services to all their tenants and leaseholders.
- 1.9 In addition to these changes, the 2023 Act introduced new powers and made a number of amendments to our existing powers, which required us to update our S215 guidance. At the same time, we also decided to refresh the style, format and detail contained in the S215 guidance. The consultation comprised of one substantive question around the S215 guidance and a further question on our Business Engagement Assessment (including the equality analysis). This document presents the results of that consultation and questions it asked.
- 1.10 In total we received 98 responses to our consultation and a positive response that our revised guidance is a reasonable basis on which to use the powers contained in the guidance.
- 1.11 As a result of the consultation no changes have been proposed to Guidance Notes 1, 3 to 15, 17 and 18.
- 1.12 There are limited changes to Guidance Note 2,16 and 19. These guidance notes can be found at Annex 2,3 and 4 of this decision statement respectively.

Overview

- 1.13 The consultation was the result of a number of legislative changes brought in by the 2023 Act. Most of the changes to the powers which this consultation concerns do not come into effect until 1 April 2024. The consultation provided an important opportunity for stakeholders to provide feedback to us in relation to the S215 Guidance.
- 1.14 The consultation presented the regulator's proposed updated S215 Guidance. The guidance is divided into different guidance notes and is intended to replace the current version of the guidance in force.
- 1.15 The S215 Guidance was updated to:
- reflect new powers that have been introduced and changes to the existing powers; and
 - refresh the style, format and detail.
- 1.16 The regulator continues to incrementally adapt and improve its general approach to intervention and enforcement. We consider that the approach in the current version of the guidance which has been brought forward in the updated S215 Guidance gives the regulator flexibility to modify its approach depending on the circumstances of the case and to apply the most appropriate regulatory and enforcement strategy on a case-by-case basis in furtherance of our statutory objectives.
- 1.17 As set out in the consultation, in most cases the use of powers will be following a period of intensive engagement with a registered provider, and therefore the provider will be sighted on the fact that the regulator is going to exercise powers. However, the regulator recognises there will be circumstances where it will need to act urgently and that may mean it is not possible to notify providers ahead of time. Therefore, the S215 Guidance does not impose a requirement to notify registered providers before exercising powers, other than where it is a statutory requirement. As a public body, the regulator will be guided by public law principles.
- 1.18 The refresh to the S215 Guidance sets out general guidance as to the circumstances that may lead to the use of powers; and makes the guidance notes clearer and more succinct.

Summary of responses received

- 1.19 In total, we received 98 responses to the consultation. Overall, we received a positive response that the approach as set in the consultation was a reasonable basis on which to use our powers.
- 1.20 Of the 98 responses, 85 were received via the online survey and 13 were in writing, predominantly via email.
- 1.21 Of the 98 responses received:
- 79% (77 responses) were from registered providers of social housing
 - 10% (10 responses) were from social housing tenants
 - 8% (8 responses) were from sector representative bodies
 - 3% (3 responses) were from others
- 1.22 Some registered providers and sector representative bodies sought tenants' views on the proposals and included tenant feedback within their responses.
- 1.23 This Decision Statement includes the overall numerical response to the consultation questions. Percentages have been rounded to the nearest whole number and refer to the percentage of those who answered each question (rather than the total number of respondents to the consultation). Some responses were in narrative form and not all responses answered the specific questions asked. Therefore, the numerical analysis only includes those where the response can be attributed to a question asked.
- 1.24 This Decision Statement is not intended to summarise all of the comments received but will address key themes which emerged in consultation responses having considered all responses received.

Consultation Analysis

- 1.25 The consultation posed two questions for people to respond to.
- 1.26 The focus of the consultation was to seek views as to whether the approach as set out in the consultation was a reasonable basis on which to use our powers and not to seek views on the individual powers. The 2023 Act has already received Royal Assent and so the Regulator has not considered changes to guidance in relation to comments linked to legislative changes that have happened and would require further changes to legislation.

Overview of response to consultation question 1

Consultation question 1

Does the proposed approach set out in the Statutory Guidance seem a reasonable basis on which to use these powers?

- Agree
- Disagree.

- 1.27 Question 1: 94 respondents answered this question. Overall, the majority of respondents (85 respondents) agreed with nine respondents disagreeing.
- Agree 85 (90%)
 - Disagree 9 (10%)
- 1.28 Four respondents did not answer whether they agreed or not, so are not accounted for in these figures.
- 1.29 For these four responses, we have examined them and allocated them to either 'agree' or 'disagree' depending on the overall content of the response. Of these four responses, three responses clearly indicated an agreement with our approach and one response has been taken as a disagreement with our approach. If these four responses are added into the overall response figures the final numerical response is as follows:
- Agree 88 (90%)
 - Disagree 10 (10%)

Issues raised by the response to consultation question 1 and the regulator's response

- 1.30 69 respondents provided comments as part of their response to this question. Many of these focused on the legislative powers, rather than the S215 guidance, which was not the focus of the consultation. As mentioned above, the regulator has not considered changes to the guidance in relation to comments linked to the legislative changes that have received Royal Assent. However, we have addressed these comments as part of our analysis and have set out below the main themes arising from these comments.
- 1.31 As a whole, the comments received were very supportive of the new format of our S215 guidance. Comments indicated that the changes we had made helped to make it clear when and how we would use our powers.
- 1.32 The following sections will address the main themes from the comments received.

Survey (Guidance Note 1) and Emergency Remedial Action (Guidance Note 6)

- 1.33 A large majority of the responses highlighted that they welcomed the stronger proactive focus on consumer regulation. These comments whilst not focused on the consultation question itself were aimed at the inclusion of the new powers given to the regulator allowing it to take action where there is a serious risk of harm.
- 1.34 24 responses highlighted concerns that the emergency remedial action and survey powers may adversely affect tenants, particularly vulnerable tenants should authorised persons attend to undertake a survey or emergency repairs without sufficient notice or regard to tenants' individual needs. Some respondents suggested that when using these powers, a representative of the registered provider should be in attendance with the person authorised to undertake the survey or carry out the emergency remedial action to reassure the tenant and act as a point of reference for the tenant. It was also suggested that this may help if any follow-up activity was needed following a survey or emergency remedial action being carried out. Some respondents suggested that further detailed guidance and/or criteria should be provided by the regulator as to when it would use these powers.
- 1.35 The regulator anticipates that these powers will be used in circumstances where the health and safety of tenants is at imminent or serious risk. Where the regulator exercises these powers without a warrant, a pre-entry notice must be given to both the registered provider and tenant(s); in the case of a survey, at least 48 hours' notice is required and in the case of emergency remedial action, 24 hours' notice must be given. Where these powers are exercised with a warrant, this requires an application to Court and the registered provider will be aware of this. The regulator considers that this will allow a registered provider sufficient time to liaise with the tenant(s) concerned and

make any necessary arrangements to ensure their needs are addressed, including having a representative from the registered provider or other appropriate person attend during the survey or emergency remedial action.

- 1.36 The regulator has considered the request for further detailed guidance and/or criteria as to when these powers will be used. However, we do not think it would be appropriate to be too prescriptive as this could fetter the regulator's ability to use its powers and consider the individual circumstances of each case to help it achieve the most appropriate solution in each case.

Compensation (Guidance Note 8)

- 1.37 Ten respondents commented on this power. The most common request was for further clarity and/or guidance as to the levels of compensation that may be awarded and the circumstances it may be used in.
- 1.38 In addition, there were requests for co-ordination between the regulator and the Housing Ombudsman (which also has the power to award compensation) to avoid circumstances where registered providers have to pay double compensation for the same issue. There were also calls to ensure that the amounts of compensation set by both organisations were in the same range.
- 1.39 We do not consider it would be appropriate to be too prescriptive in relation to the amounts of compensation we may award, as we will need to consider the individual circumstances of each case, which requires us retaining the flexibility to make awards dependent upon the circumstances.
- 1.40 Section 239(1) of the 2008 Act, which is reiterated in Guidance Note 8, makes it clear that the regulator may not award compensation for a matter where the Housing Ombudsman has already made an award. We work closely with the Housing Ombudsmen under a Memorandum of Understanding and will continue to communicate and share information with them, including where we are considering making an award of compensation.

Penalties (Guidance Note 7)

- 1.41 This power received the most feedback from the consultation with 25 respondents commenting on it. Whilst much of the feedback was in relation to the reasonableness of the power itself, and as such outside the scope of the consultation, there were requests for guidance about the circumstances in which this power would be used.
- 1.42 The main theme expressed by respondents was around the fact that the legislation allows the regulator to impose penalties that can be unlimited in amount. Some providers commented that any penalties imposed would indirectly be paid for by the

tenants through their rent and would take away much needed funds from the upkeep and development of their social housing.

- 1.43 In contrast to this, some providers reacted positively to this power and acknowledged that it has been available to the regulator since 2008. It was also acknowledged that the increase in the amount of penalty that can be imposed from a maximum of £5000 to unlimited would have a deterrent effect.
- 1.44 The regulator acknowledges the range of views expressed in the consultation. However, as set out in Guidance Note 7, the regulator will consider the individual circumstances of the case in deciding the amount of the penalty to impose, thereby ensuring it is being proportionate and fair.
- 1.45 We also consider that the pre-penalty notice, and the ability for providers to make representations, along with the statutory right of appeal provide the appropriate and necessary routes for a provider to voice any concerns as to the amount of penalty and whether it should be imposed.
- 1.46 Where the regulator considers issuing a penalty, there will be a unique set of individual circumstances taken into consideration (as set out, but not limited to those in the guidance note). As a result, at this stage, we do not propose to take a formulaic approach when it comes to determining penalty amounts and do not intend to issue a schedule detailing penalty amounts that will be imposed in different scenarios.

Performance Improvement Plans ('PIP') (Guidance Note 4)

- 1.47 There was a range of feedback in the consultation responses relating to this new power. Again, much of this feedback was in relation to the introduction of the power itself and not the guidance note concerning it.
- 1.48 The feedback on PIPs was mainly very positive with the majority of providers welcoming their introduction. The main area where providers wanted further clarity was in relation to the circumstances where PIPs will be used. A small number of respondents wanted more clarity on the interaction between PIPs and voluntary undertakings.
- 1.49 As we have stated throughout this decision statement, we will take into account the individual circumstances of each case. As a result, we do not propose to include further detail about the circumstances where we will require a provider to produce a PIP, as we do not wish to restrict our ability to use this power. Neither do we propose to include detail about the interaction between PIPs and voluntary undertakings, as different circumstances will dictate using this power over accepting a voluntary undertaking and vice versa.

- 1.50 There was specific feedback on the text of paragraph 4 of Guidance Note 4 where it states:
- ‘Once a performance improvement plan is submitted, the regulator will consider it, and either approve or reject the performance improvement plan. If rejected, the regulator must give its reasons for doing so and this will be considered as a failure to comply with the PIP notice.’*
- 1.51 Two respondents considered that following the rejection of a PIP by the regulator there should be a further period of time built into the process to enable the provider to address the regulator’s concerns.
- 1.52 In most circumstances, the regulator will have engaged with a provider prior to using this power, and so it is highly likely a provider will be aware of the issues which need to be addressed, which should therefore help to reduce the likelihood of a PIP being rejected. Furthermore, as a public body, the regulator is guided by public law principles and is required by its statutory objectives to be proportionate; as a result, should there be any areas in a PIP notice which a provider requires clarity on, it will have the opportunity to raise this with the regulator.
- 1.53 There were a number of calls from providers that all PIPs be published (with an inference that this should be done by the regulator). We have considered this point and are satisfied the 2008 Act will ensure that all providers subject to a PIP will be required to publish their PIP in the manner specified by us. We consider that it is only right and proper that a registered provider should be responsible for publishing a PIP, given that their stakeholders including tenants are most likely to access their website rather than the regulator’s. As is clear from the introduction to the S215 guidance, the regulator may choose to publish a statement where we use our powers and therefore may choose to publish information about a PIP.
- 1.54 There was also a call for the regulator to specify a timeframe during which it would approve or reject a PIP. We do not consider it helpful to impose further requirements beyond those specified in the 2008 Act, as some PIPs will require lengthier consideration by the regulator than others. With this in mind, we will always endeavour to approve or reject a PIP at the earliest opportunity and will deal with each case and provider on an individual basis so they are clear when they can expect a response.
- 1.55 There were 22 comments inquiring about the process around the regulator informing the Charity Commission where it has required a provider also regulated by them to submit a PIP and how this interacts with the Charity Commission’s duties in their regulation of registered providers in the charitable sector.
- 1.56 It is acknowledged that as with the use of any power by the regulator in respect of a provider also regulated by the Charity Commission, the Charity Commission may need

to investigate to decide if regulatory action under their framework is necessary where the regulator decides to require a PIP. Currently, the regulator works closely with the Charity Commission to ensure we are communicating with them and sharing important information with them. We intend to continue this ongoing dialogue.

Inspections

1.57 Whilst we did not receive any material comments in relation to this specific power, we have made some changes which are highlighted in Annex 2 to ensure that the language used in this guidance note is consistent with the regulator's inspection plan and other published guidance.

Extension of powers to charities which have not received public assistance

1.58 There was some limited feedback in the consultation about some of the regulator's enforcement powers being extended to charities which have not received public assistance. Along with this, the 2023 Act imposed a requirement on the regulator to notify the Charity Commission where it exercises certain enforcement powers.

1.59 Two of the responses indicated that they felt it was disproportionate to extend these powers to charities where they had not received public assistance, whilst a respondent welcomed the extension of these powers in this way.

1.60 Whilst we acknowledge the views of the respondents, the extension of the powers in this way is a matter of legislation and not within scope of this consultation.

1.61 We will work closely with the Charity Commission to explore the notification requirements for these extended powers in detail.

Wording of the guidance

1.62 Three respondents suggested that the wording of the S215 guidance could be amended to make it more accessible to all people with an interest in social housing, whilst acknowledging that the guidance is primarily aimed at registered providers of social housing and their advisors. We have considered this in detail and have concluded that we cannot further simplify the language used in the S215 guidance.

1.63 The S215 guidance is written to reflect the powers as set out in the 2008 Act. Due to this, the regulator has tried to keep the language in line with the wording used in the legislation to avoid any misinterpretation. The regulator acknowledges that some of the language used in the S215 guidance is technical, but given the intended audience of this document, we feel that it strikes the right balance for providers and their advisors.

- 1.64 The S215 guidance is part of the suite of documents published by the regulator which sets out the framework under which we will regulate. Further publications issued by the regulator such as ‘Regulating the Standards’ are aimed at a wider audience and as such, are less technical in nature.
- 1.65 It is important to note that a number of consultation responses highlighted how they considered that the S215 guidance was clearer, more succinct and easier to understand than the version currently in force and last updated in December 2019. The regulator welcomes such feedback, as this was our intention in refreshing the document.

Insolvency and moratorium powers (Guidance Note 19)

- 1.66 We have received very detailed feedback on Guidance Note 19 (‘GN19’) which relates to insolvency and moratorium powers. These are set out in the table below:

Comment/ paragraph	Suggestion	Response
Paragraph 9 of GN19 says "a moratorium ends when 28 days has passed beginning with the day on which the regulator is given notice by the PRP pursuant to sections 104-108 of the HPA 2016".	We believe this is inaccurate as the notice may have to be given by a party other than the PRP The Regulator may therefore wish to delete " <i>by the PRP</i> ".	We accept this change and will delete ‘by the PRP’
‘...the 28 day period begins on the relevant day specified in section 145(2B) of the Act which we take to mean when the notice is received by the Regulator in the requisite form (e.g. as specified in section 104(2A) of the HPA 2016). We note the Regulator can choose to treat a non-compliant purported notice as given correctly and start the time running from the date of receipt of the purported notice (e.g. under section 104(2C) of the HPA 2016).’	We believe it would be helpful if the Regulator could give an indication in GN19 of what its approach would be to treating a non-compliant purported notice as given correctly and starting the time running from the date of receipt of the purported notice. This could clarify for PRPs and secured creditors when the "28 day" moratorium would be likely to end.	Paragraph 10 makes it clear that notices must comply with the requirements of 104-108 of the Housing and Planning Act 2016 (HPA 2016). These sections provide further detail about the form notices must take. As we state in the introduction to the S215 guidance, the guidance should be read in conjunction with the 2008 Act and any referenced legislation. It is not intended to be a substitute. Those providing notice are expected to be aware of the legislative requirements to ensure their notice is

		<p>compliant and seek legal advice if they consider necessary.</p> <p>The regulator does not consider it necessary to set out the approach it will take where it decides to treat a non-compliant notice as being given correctly, or when time starts to run. This is because the relevant sections of the HPA 2016 make it clear that if the regulator decides to treat a non-compliant notice as having been validly given (which it can do by giving notice in writing), time will start to run from when the non-compliant notice was given. In any event, the regulator will communicate with the provider concerned when it deems the moratorium to end. It will be for the provider to ensure this is communicated to its secured creditors.</p>
<p>Mortgagee exclusion clauses put in place before housing administration was introduced or put in place since then where the parties were not aware of the issue, do not cover a disposal by a housing administrator (other than those in section 106 agreements by virtue of section 103 of the HPA 2016).</p> <p>So there is a risk that if a housing administrator disposed of a property, that disposal would not release the property from affordable housing restrictions, and this might reduce the value of the property from MVSTT to EUVSH. In some parts of the country this</p>	<p>We believe it would be helpful to expressly state this in the "Housing administration order" section of GN19 (noting this could be caveated by the Regulator stating this was only an indicative example and decisions would be made on a case-by-case basis). This could give secured creditors more confidence that the full value of their security could be realised in the housing administration process.</p>	<p>We have considered this, but do not propose to add the suggested text to GN19.</p> <p>As we make it clear in GN19, we will consider each case on its precise facts when deciding whether to make an application for housing administration.</p> <p>Where an application for housing administration is made by the regulator, the housing administrator will be in control of the process, and it will be for them to decide the appropriate course of action in each specific case.</p> <p>It is worth highlighting that as part of the housing administration application, the</p>

<p>reduction would be significant, and any such down-value would impact on asset cover so less money could be secured and ultimately less money may be available for investment in housing stock.</p>		<p>regulator will identify the person they propose to appoint as housing administrator who must be a qualified insolvency practitioner. Factors such as professional expertise and experience will all be considered in the selection process. As such, we would expect that any housing administrator appointed will be aware of such issues.</p>
<p>Notice of housing administration</p>	<p>We presume the RSH would in fact make efforts to give notice to secured creditors of a housing administration order (even when not expressly required under the HPA 2016) as it would of a moratorium and believe it would be helpful if this could be stated in GN 19.</p>	<p>This is not a requirement of the 2008 Act or the HPA 2016, therefore we do not propose to add this to GN19.</p> <p>In practice, we would of course seek to inform all secured creditors so far as is reasonably possible.</p>
<p>Paragraph 2 of GN 19</p>	<p>Might the Regulator like to add "<i>(save certain exempted disposals)</i>" after "PRP's land" in the penultimate line for clarity.</p> <p>We note the Regulator has referred to these exempted disposals in paragraph 8.</p>	<p>We will add this.</p>
<p>Paragraph 8 of GN19 - first bullet paragraph (i)</p>	<p>We think some text may have been omitted from the end of the paragraph (perhaps "<i>an amount specified by the GLA or Homes England (as applicable)</i>")</p>	<p>We will add this.</p>
<p>Paragraph 8 third bullet [of GN19]</p>	<p>Might the Regulator like to add "<i>by a not-for-profit PRP</i>" after "single dwelling" in the penultimate line as section</p>	<p>We will make this change.</p>

	150(2) of the Act applies only to non-profit registered providers	
Paragraph 9 [of GN19]	Was it intended that there should be a bullet before the existing one, saying " <i>a housing administration order is made; or</i> "?	We will make this change and also have also included another bullet point to make it clear, that a moratorium may be extended by the regulator.
Paragraph 40 [of GN19]	Might the Regulator like to amend along the following lines noting section 147(1)(b) of the Act refers to a further notice being given rather than an insolvency event occurring: <i>'...and further notice of an insolvency event under section 145(2) occurs <u>is given</u> within 3 years...</i>	The Social Housing (Regulation) Act 2023 (Consequential and Miscellaneous Amendments) Regulation 2024 has been laid before Parliament and is proposing to amend section 147(1)(b) of the 2008 Act to refer to an insolvency event in section 145(2) occurring, rather than further notice of an insolvency event being given. We do not yet know when it will receive approval. However, we do not propose to make this amendment, given the proposed change will ensure section 147 is in line with section 145. We will keep the position under review.
Paragraph 41 [of GN19]	We think there is some duplication so " <i>have been located</i> " could be deleted from the penultimate line	We will make this change

1.67 The feedback received above has led to some minor changes to GN19. Which appears at Annex 5 with the tracked changes highlighted.

Miscellaneous issues

1.68 There were a number of other issues raised during the consultation and these are set out in the table below with our response.

Issue (paraphrased where necessary for brevity)	Response
<p>We believe the thrust of the powers undermines confidence in the Regulator’s ability to maintain co-regulatory approach to regulation and creates a more confrontational dynamic</p>	<p>We do not consider that the amendments to the existing powers and introduction of new powers undermine the regulator’s co-regulatory approach.</p> <p>As is made clear in the introduction to the S215 guidance, in line with the co-regulatory approach we take, in most circumstances where the regulator decides to use its powers, there will have been a period of intensive engagement with the provider, so as to allow them to make self-improvements. However, this will not always be possible in circumstances where there are serious or urgent issues, which require swift attention.</p>
<p>Sections 206-210A – Inquiry and extraordinary audit (regulatory power)</p> <p>We feel that the wording of paragraph 7 (fourth bullet point) ‘there may have been a fraud’ could be more precise.</p>	<p>We have considered this point, but do not propose to expand further on this as we consider the term ‘fraud’ to be self-explanatory.</p> <p>The wording below this paragraph makes it clear that the list on which this point features is non-exhaustive and there may be other circumstances which justify an extraordinary audit being carried out.</p> <p>As has been stated throughout this decision statement, we will consider the individual circumstances of each case.</p>
<p>We would welcome acceptance by the Regulator that a timely review will be undertaken within say the first 24 months of these new powers going live to ensure that such new powers have indeed been introduced proportionately.</p>	<p>As set out in the introduction to the S215 guidance, the regulator has robust internal processes to ensure that checks and balances are applied before a decision is made to use its powers. We are also mindful of our fundamental objectives to exercise our functions in a way that minimises interference and (so far as possible) is proportionate, consistent, transparent and accountable.</p>

	<p>We are confident this will ensure we are using our powers proportionately.</p>
<p>We are concerned that considering the complexity of some of the changes to the Statutory Guidance that a shortened consultation with two questions is not a true reflection of what is required.</p>	<p>The majority of the amendments made to the S215 guidance have been to reflect changes introduced by the 2023 Act. As explained above and in the consultation document, the scope of the consultation document was to comment on whether the approach as set out in the S215 guidance was a reasonable basis upon which to use our powers. The legislative changes introduced by the 2023 Act have received Royal Assent and were not within scope of the consultation.</p> <p>We also made other amendments to the S215 guidance to refresh the content to make it more succinct and clearer.</p> <p>The consultation questions are in line with the approach we have taken on past consultations in relation to previous updates of the S215 guidance, as was the timeframe during which the consultation was open.</p> <p>The consultation document and consultation process has been developed to adhere to the Consultation Principles issued by the Cabinet Office.</p>
<p>Need to take VFM into account when using powers – since new fees approach.</p>	<p>The regulator undertakes a number of checks and balances before a decision is made to use its powers, which helps the regulator to assure itself that it is acting proportionately.</p>
<p>Is the power of Inquiry and Extraordinary Audit applicable to both economic and consumer regulation?</p>	<p>Amongst other grounds, the power to hold an inquiry is available where a registered provider has failed to meet or is at risk of failing to meet either economic or consumer standards.</p> <p>The nature of the extraordinary audit power means that it will be used where</p>

	<p>there are concerns in relation to financial matters.</p>
<p>We would welcome further guidance of when it is expected we would self-report an issue to the regulator or clear criteria for when to make a self-report</p>	<p>The circumstances in which a provider needs to self- report is set out in Regulating the Standards. It is for boards/councillors to make the decision about when to self-report based on this guidance.</p>
<p>It may be the case that a duty and obligation for an RP to publish details of certain types of engagement with/by the Regulator would be useful. Commercial and personal confidentiality considerations would of course need to apply, but we suggest that publicising details of matters such as self-referrals or the use of enforcement powers would not be unreasonable</p>	<p>Whilst we understand the rationale for publicising matters such as self-referrals or the use of all regulatory and enforcement powers, this is not the subject of this consultation.</p> <p>From time to time, we will publish statements where we use our powers. However, we will consider this comment further internally.</p>
<p>The word 'Officer', as defined in section 270 of the Housing and Regeneration Act 2008, would appear to mean board member /trustee / company director, but Guidance Note 17 says it can include director, secretary, trustee, manager and member among others - this same text should be in note 16.</p>	<p>This is correct. Section 270 of the 2008 Act cites provisions of the Co-operative and Community Benefit Societies Act 2014 and Companies Act 2006, which expand on the definition of 'Officer.'</p> <p>Footnote 1 in Guidance Note 16 cites section 270 of the 2008 Act, where the definition of officer can be found. Notwithstanding this, for ease of reference, we shall include the same text in Guidance Note 16 which can be found at Annex 3.</p> <p>It should be noted, however, that as is made clear in the introduction to the S215 guidance, it should be read in conjunction with the 2008 Act and other referenced legislation, as it is not intended to be a substitute.</p>
<p>Guidance Note 17 states that Board members are defined in section 269, 1A of the Housing and</p>	<p>The reference to section 269(1A) is correct. It is a new provision which has been inserted into the 2008 Act by the</p>

<p>Regeneration Act but we are not sure that is the correct reference.</p>	<p>2023 Act. Such provision comes into force on 1 April 2024.</p>
<p>The Guidance Note provides clarity on when a moratorium ends - 28 days after the RSH is given notice by the RP of trigger event, unless the RSH has cancelled the moratorium in the meantime. However, the note does not provide clarity in relation to extending or imposing a further moratorium.</p>	<p>We have updated Guidance Note 19, under the 'ending a moratorium' to make it clear that a moratorium may be extended.</p> <p>Guidance Note 19 does refer to the fact the regulator may impose further moratorium.</p> <p>Due to the fact we will consider each case on its individual circumstances it would not be possible to provide an exhaustive list as to the circumstances in which the regulator would extend or impose a further moratorium.</p> <p>Moratoriums are complex in their nature, and we have made it clear that the 2008 Act and any referenced legislation referred to should be read in conjunction with the S215 guidance.</p>
<p>“Section 218A(1) of the Act sets out the grounds under which the regulator can use this power. These grounds are:</p> <p style="padding-left: 40px;">a. where the registered provider has failed to meet a standard under sections 193, 194, 194A or 194C of the Act”</p> <p>Could the standards referenced in this paragraph be listed in the guidance instead of or as well as the relevant sections of the Act?</p>	<p>We do not consider that it is necessary to add each standard into the document. This is particularly given that sections 194A and 194C are new provisions introduced by the 2023 Act.</p> <p>The economic standards under section 194 are readily available on our website. The consumer standards under section 193 have recently been subject to a consultation-see outcome¹.</p> <p>As standards could change over time, their inclusion may cause the S215 guidance to be out-of-date pending</p>

¹ <https://gov.uk/government/publications/decision-statements/decision-statement-consumer-standards-consultation-reshaping-consumer-regulation-2024>

	<p>revision. Mirroring the drafting of the 2008 Act enables us to avoid this issue.</p>
<p>The proposals weaken the independent status of housing associations and may trigger reclassification as public entities.</p>	<p>The classification of housing associations as public or private bodies is a matter for government and outside the scope of this consultation.</p>
<p>As it currently reads, the regulator has the power to order an amalgamation with no right of appeal – this cannot be fair or equitable</p>	<p>This power can only be exercised as a result of an inquiry under section 206, or extraordinary audit under section 209 of the 2008 Act. Where these powers are exercised, a provider will have the opportunity to respond to any findings before the regulator considers what further action may be required. This helps to provide additional accountability.</p> <p>Of course, as a public body, the regulator will also be guided by public law principles and will have regard to its fundamental objectives should it choose to exercise this power.</p>
<p>One response fundamentally disagreed with the regulator’s ability to use the new powers as set out in statute. The response called for our authority to use the powers to be constrained via a range of suggestions set out in the response.</p>	<p>The legislative changes introduced by the 2023 Act have already received Royal Assent and are therefore outside the scope of the consultation.</p> <p>However, as has been made clear, the regulator will be mindful of its fundamental objectives and public law principles when deciding whether to exercise its powers.</p>

1.69 As stated earlier in this decision statement, we have not been able to respond individually to all comments received in response to the consultation but are confident we have addressed all pertinent issues raised and considered all comments received.

Overview of response to consultation question 2 – Business Engagement Assessment ('BEA')

Consultation question 2

Do you have any comments on business engagement assessment (including the equality analysis) at Annex 3?

- Yes– please explain
- No

- 1.70 20 respondents answered this question. Overall, the majority of respondents' comments were fully supportive of the BEA as presented.
- 1.71 Two respondents highlighted that they considered the new powers would have a large financial impact on registered providers and that the BEA should have taken these financial burdens into account. Our assessment looked at the impact of our guidance and not the legislative changes themselves, given this was outside the scope of the consultation. As such, we stand by our assessment that we believe there to be negligible impact on the regulatory burden because the changes do not fundamentally alter existing regulatory expectations in this area.
- 1.72 There were also two respondents who questioned the assertion in the equality analysis that the regulator had not identified any equalities implications as a result of the changes set out in the consultation. These respondents pointed out that how the regulator implements the new powers certainly has equality implications and that these should have been addressed in the form of an Equality Impact Assessment.
- 1.73 We maintain that we do not consider there to be any equality impacts arising from the update of our S215 guidance. However, we are mindful that equality impacts may arise where we exercise our powers and can confirm that this is considered, on a case-by-case basis as part of the checks and balances we undertake before a decision is made to use our powers.

The regulator's response to the consultation feedback and final position

- 1.74 The previous sections set out and sought to address the main areas of feedback that we received as a result of the consultation. It also outlines any areas of change to the S215 guidance following the consultation.
- 1.75 There have been only a limited number of comments that have resulted in changes to the S215 guidance that we consulted on. All changes as a result of the consultation are presented as tracked changes in Annexes 2-5. We have made no changes to the other sections of the S215 guidance. A final version of the s215 guidance appears at Annex 6.
- 1.76 We received a positive response to the BEA and there were no additional relevant issues identified with the equalities analysis. As a result of this, no changes are being proposed to the BEA, other than to update it to reflect the current position and make it clear consultation responses have been considered. The final BEA can be found in Annex 7.
- 1.77 The revised final S15 guidance, as set out at Annex 5, will take effect from 1 April 2024.

Annex 1: List of respondents to the consultation

The table below shows the respondents to the consultation. Where the response was on behalf of an organisation and the respondent used a corporate email address, the organisation's name is given rather than the individual officer who completed the response.

Addleshaw Goddard LLP	Irwell Valley Homes	Red Kite Community Housing
Babergh and Mid Suffolk District Councils	ISHA Islington and Shoreditch Housing Association	Rochdale Boroughwide Housing
Beyond Housing Limited	Islington Council	Royal Borough of Kensington and Chelsea
Birmingham City Council	Karbon Homes	Runnymede Borough Council
Bolsover District Council	Lancaster City Council	Sanctuary
bpha	LiveWest Homes	SNG
Breckland Council	London Borough of Lambeth	South Holland District Council
Broadening Choices for Older People	London Borough of Camden	South Liverpool Homes
Bromford Housing Group	London Borough of Hammersmith and Fulham	South Oxfordshire District Council and Vale of the White Horse
Cambridge Housing Society (CHS Group)	London Borough of Haringey	South Tyneside Council
Campbell Tickell	Magenta Living	Southern Housing
Charity Commission	Mid Suffolk District Council	Southway
Chartered Institute of Housing (CIH)	Midland Heart	Stevenage Borough Council
Citizen Housing	Muir Group Housing	Stroud District Council
City of Wolverhampton Council	National Federation of ALMOs	Sustain (UK) Ltd
Clarion Housing Group	National Housing Federation (NHF)	Taunton Heritage Trust
Dimensions (UK) Ltd	North Yorkshire Council	The Almshouse Association
Epping Forest District Council	Norwich City Council	The Housing Ombudsman Service
Exeter City Council	Norwich Consolidated Charities t/a Doughty's	Trent & Dove Housing
First Priority Housing Association	Orbit	Tuntum Housing Association
Folkestone & Hythe District Council	Orwell Housing Association Limited	Wandle Housing Association
ForHousing	Papworth Trust	Waverley BC
Gentoo Group	Peterborough City Council	WDH Homes

Grand Union Housing Group	Phoenix Community Housing	Wealden District Council
Great Places Housing Group	Places for People	West Suffolk Council
Greatwell Homes	Policy Connect	Wirral Borough Council
Home Group	Progress Housing group	Yorkshire Housing
HQN	Radcliffe Housing Society	Your Housing Group Limited
Inclusion Group		

In addition, there were tenant individual tenant responses and three responses classed as other. In these cases, we have not published the names of these respondents.

Annex 2: Guidance Note 2 as amended following the consultation (tracked changes)

Guidance Note 2: Sections 201 - 203A – Inspections.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	✓

Type of Power: regulatory power

Scope

1. This power enables the regulator to arrange for an inspection of a registered provider. Such inspections may be carried out by a member of the regulator’s staff, or person external to the regulator such as a suitably qualified professional expert (‘inspector’). Registered providers will be subject to ~~regular~~ **programmed** inspections in accordance with the regulator’s inspection plan and, in the circumstances set out in that inspection plan², may be subject to ~~non-routine~~ inspections **which are not programmed**.
2. It is an offence to obstruct an inspector exercising its powers under section 203(4)-(8) of the Act, which may be punishable by fine.

When the regulator will use this power

3. Section 201(1) of the Act provides that the regulator may arrange for a person to inspect:
 - a registered provider’s performance of its functions in relation to the provision of social housing; or
 - the financial or other affairs of a registered provider.
4. Inspections will be carried out in accordance with the inspection plan.

²<https://www.gov.uk/guidance/inspection-plan>

Process for using the power

5. The regulator will decide whether an inspection is required in accordance with the inspection plan.
6. The regulator will share with the registered provider:
 - the scope of the inspection; and
 - the proposed dates for the start and completion of the inspection.
7. ~~The regulator will provide the registered provider with a copy of the scope for the inspection.~~ The regulator will reserve the right to modify the scope during the course of the inspection if this becomes necessary.
8. The inspection will be carried out in accordance with the scope. The inspector will have the following powers as set out under section 203 of the Act:
 - to require a person to provide specified documents or information – the inspector can use powers under section 107-108 of the Act, where the registered provider refuses to provide this voluntarily;
 - to enter premises occupied by the registered provider at any reasonable time;
 - to inspect, copy or take away documents found on the premises including documents stored on computers;
 - to inspect any computer or electronic storage device on which documents may have been created; and
 - to require any person on the premises to provide such facilities or assistance as the inspector reasonably requests.
9. Whilst the Act gives the power for the inspector to enter the premises at any reasonable time, it is our expectation that in most cases this will be agreed between the parties.
10. The inspector will produce a written summary of its findings, a copy of which will be provided to the registered provider. In specific circumstances, the inspector will be required to produce a report.
11. The regulator may publish all or part of the summary of the inspector's findings and report (where relevant) along with any related information it considers relevant.
12. The regulator will decide if further powers need to be exercised as a result of the findings of the inspection.

Appeal Process

13. There is no statutory right of appeal or appeals' process in accordance with the Regulator's Appeals Scheme.

Annex 3: Guidance Note 16 as amended following the consultation (tracked changes)

Guidance note 16: Sections 266 to 268 – Removal of officers.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	X

Type of Power: enforcement power

Scope

1. This power enables the regulator to remove officers from a private registered provider ('PRP').

“Officer” is defined in section 270 of the Act. Depending on the PRP’s legal structure or whether it is a registered charity, it can include a director, secretary, trustee, manager and member amongst others.

When the regulator will use this power

2 - Section 266 of the Act sets out the circumstances where the regulator may use this power. These circumstances are where an officer:

- has been made bankrupt
- has made an arrangement with his or her creditors
- is subject to a disqualification order or a disqualification undertaking under the Company Director’s Disqualification Act 1986 or equivalent legislation in Northern Ireland
- is subject to an order under section 429(2) of the Insolvency Act 1986
- is disqualified under section 178 of the Charities Act 2011 from being a charity trustee
- is incapable of acting by reason of mental disorder
- is impeding the proper management of the PRP by reason of absence or failure to act
- is obstructing the regulator, or failing to co-operate with the regulator, in the performance of the regulator’s functions under Part 2 the Act.

3 - Indicators that an officer is impeding proper management of a PRP, or is obstructing or failing to co-operate with the regulator include:

- the absence of officers means that the governing body fails to hold quorate meetings, and this puts the financial viability of the PRP, services to tenants, or tenants at risk.
- there is evidence that an officer or officers are deliberately misleading or withholding information from the regulator and/or other stakeholders and this puts the safety of tenants and social housing assets at risk.

4 - It may be necessary for the regulator to exercise this power against more than one officer of a PRP.

Process for using the power

5 - If the regulator is satisfied that at least one of the grounds as set out under section 266 of the Act has been met, it will take all reasonable steps to give at least 14 days' notice of its intention to remove the officer to both the officer concerned and the PRP (section 267(1) of the Act).

6 - Where the regulator decides to make an order removing the officer, it will:

- take reasonable steps to notify the person removed;
- notify the PRP; and
- notify the Charity Commission where the PRP is a registered charity.

7 - The regulator will consider if a new officer should be appointed under section 269(1)(a) of the Act to replace the removed person.

Appeal process

8 - There is a statutory right of appeal to the High Court, which must be brought within the period of 28 days beginning with the day on which the PRP is notified of the removal.

Annex 4: Guidance Note 19 as amended following the consultation (tracked changes)

Guidance Note 19: Sections 144-159 the Act and Chapter 5 of Part 4 of the Housing and Planning Act 2016- Insolvency and Moratorium Powers³

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	X

Scope

1. These provisions will be of relevance to cases where a private registered provider ('PRP') identifies a potential problem with, or threat to, its viability. Where this is the case, PRPs are expected to give the regulator early warning of such issues.
2. The moratorium provisions are set out at sections 145 to 159 of the Act. A moratorium is automatically triggered by an insolvency event (as detailed in 7 below). During a moratorium, the disposal of a PRP's land (*save certain exempted disposals*) requires the regulator's prior consent.
3. The purpose of the moratorium is to create a period of time to seek a solution to a PRP's viability problem in order to protect the social housing assets and the interests of the PRP's tenants. This may involve the regulator making proposals or taking steps to apply for a housing administration order. Decisions will always be made by the regulator on a case-by-case basis and the regulator does not guarantee to underwrite a registered provider's financial position in any way.
4. Where it appears to the regulator that a PRP's viability problems may mean it is unable to pay its debts and that housing administration offers an appropriate route to achieving the regulator's objectives, it may (with the Secretary of State's consent) apply for a housing administration order. 17
5. The housing administration order provisions and the power of the regulator to apply to court for a housing administration order are set out in Chapter 5 of Part 4 of the Housing and Planning Act 2016 (including schedules) ('HPA 2016').
6. Housing administration permits arrangements to be put in place to allow a PRP to continue operating until it is either rescued as a going concern, sold, or its assets transferred to other PRPs or third parties.

Moratorium

³ 'These provisions are outside of Chapters 6 and 7 of the Act. As such, the regulator is not obliged to consult in relation to them in accordance with sections 215- 216 of the Act. '

Triggers

7. A moratorium will be automatically triggered on the occurrence of one of the following events as defined at section 145(2) of the Act (each an 'insolvency event'). These events are:
- a petition is presented under section 124 of the Insolvency Act 1986, by a person other than the Secretary of State, for the winding up of the PRP;
 - an application is made by the PRP under section 105(3) of the HPA 2016 for permission to pass a resolution for voluntary winding up;
 - an application is made in accordance with paragraph 12 of Schedule B1 to the Insolvency Act 1986, by a person other than the Secretary of State, for an administration order in respect of the PRP;
 - a notice of the appointment of an administrator of the PRP under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 is filed with the court under paragraph 18 or 29 of that Schedule;
 - notice of intention to enforce a security over property of the PRP is given under section 108(2)(a) of the HPA 2016 or the requirement to give such notice is waived under section 108(2)(b) of the HPA 2016.

Effect

8. The effects of a moratorium are:
- GLA and Homes England may not:
 - give the PRP a direction under section 32(4) of the Act – under these provisions a PRP may be required to apply or appropriate grant for specified purposes, or pay to GLA or Homes England **an amount specified by the GLA or Homes England (as applicable)**; or
 - take steps to enforce such a direction against the registered provider.
 - The PRP cannot dispose of land without the prior consent of the regulator. However, the regulator's consent is not required for the disposals as set out under section 149 of the Act. This includes specific types of lettings, right to buy and right to acquire.
 - A disposal by a PRP during a moratorium without the regulator's consent will be void unless it is permitted under section 149 of the Act or it is disposal of a single dwelling **by a not for profit** PRP and they reasonably believe that the buyer intends to use the property as their principal residence under section 150(2) of the Act.

Ending of moratorium

9. Under section 146 of the Act, a moratorium ends when 28 days has passed beginning with the day on which the regulator is given notice **by the PRP** pursuant to sections 104-108 of the HPA 2016 of one of the events under section 145(2) unless:
- **the moratorium is extended – the regulator may extend a moratorium if it has made reasonable enquiries to locate secured creditors of the registered provider, and each of the secured creditors it has located consents; or**
 - **a housing administration order is made; or**
 - **the moratorium is cancelled – the regulator may cancel a moratorium for any reason, but as a public body, it will be guided by public law principles, when it comes to making such a decision. One example, and there would be many other circumstances, so this is just**

one illustrative example, is where a PRP arranges a partnership deal with another financially strong PRP. In such scenario, the regulator would assess such a proposal including the capability and capacity of the PRP for continued ownership and management of the land, and, if it is satisfied that this is the most appropriate course, cancel the moratorium.

10. Notice to the regulator must comply with requirements as detailed in sections 104-108 of the HPA 2016, and the regulator must provide the Secretary of State with a copy.
11. Under section 146(7) where a moratorium ends, the regulator will notify the PRP, any secured creditors it is able to locate after making reasonable enquiries, the GLA (where relevant) and Homes England.

The regulator's powers during a moratorium

Interim manager

12. Pursuant to section 151(1), during a moratorium the regulator may appoint an interim manager to assist with the management of a PRP's affairs and maintenance of services to tenants. The regulator will decide:
 - the scope of the interim manager's role i.e. whether they are required to manage the entirety of the PRP's social housing affairs, or specific aspects of them;
 - specific powers that the interim manager will be given – the interim manager will have any power specified in the terms of appointment and those required for the purposes of the appointment (including entering into agreements and taking other action on behalf of the PRP);
 - the terms and conditions under which the interim manager will be appointed including remuneration There is no provision in the Act as to who will meet the costs of an interim manager. The regulator anticipates that those costs will be met by the PRP, but in cases where this is clearly not possible the regulator may consider underwriting the costs of an interim manager in whole or in part; and
 - who is to be appointed as the interim manager – factors including professional expertise, experience and availability will be considered.
13. In accordance with section 151(6) of the Act, an interim manager may not:
 - dispose of land; or
 - grant security over land.
14. An interim manager's appointment will come to an end at the earliest of the following:
 - the end of the moratorium;
 - when the regulator notifies the interim manager that there are proposals under section 152 of the Act which are agreed proposals – further details regarding proposals are set out below; or
 - a date specified in the appointment.

The power to make proposals

Making and agreeing proposals

15. Section 152 of the Act permits the regulator to make proposals about the future ownership and management of the PRP's land with a view to ensuring that the property will be properly managed by a registered provider.
16. In most cases, the regulator's objective in drawing up proposals is likely to be to seek to avoid the formal insolvency of the PRP, while recognising that it may be difficult to satisfy the competing interests of all stakeholders and that the regulator has a wide range of obligations pursuant to its statutory objectives. The regulator will seek to ensure that any proposals do not cause a conflict of duties for any appointed insolvency holder. In many cases where a moratorium is in place, other registered providers may be able to assist with a solution. The regulator may hold discussions with other registered providers it believes may have the capacity and capability to provide the necessary assistance.
17. In making proposals, the regulator shall:
 - have regard to the interests of the PRP's creditors as a whole under section 152(2)(a) of the Act;
 - so far as is reasonably practicable, avoid worsening the position of unsecured creditors under section 152(2)(b) of the Act;
 - ensure proposals comply with section 152(4) of the Act which contains provisions for protecting the status quo in relation to preferential creditors;
 - comply with specific requirements where the PRP is a charity under section 152(5) of the Act. These provisions state that proposals:
 - may not require the charity to act outside its trusts; and
 - may provide for the disposal of accommodation only to another charity whose objects the regulator thinks are similar to the PRP.

When considering the interests and position of creditors, the regulator's primary concern will be to ensure that property will be properly managed by a registered provider.

18. The procedure for making proposals is set out under section 153 of the Act. Before making any proposals the regulator will consult:
 - the PRP
 - tenants (so far as is reasonably practicable);
 - any secured creditors of the PRP that the regulator has located after making reasonable enquiries;
 - the Financial Conduct Authority or Charity Commission (where relevant).

If no secured creditors are located, the proposals made by the regulator following the consultation are agreed proposals. This means that if a PRP has no secured creditors, such proposals made by the regulator after consulting with those required will be agreed proposals.

19. Where the regulator locates one or more secured creditors, the regulator must send a copy of the draft proposals to:
 - the PRP;
 - each of the secured creditors located after the regulator's reasonable enquiries;
 - any liquidator, administrator, administrative receiver, or receiver appointed in respect of the PRP or its land.
20. The regulator must also bring those draft proposals to the attention of the PRP's
 - members;
 - tenants; and
 - any unsecured creditors.
21. Where the regulator locates secured creditors, draft proposals will only become agreed proposals if each secured creditor whom the regulator was able to locate agrees to them.
22. Draft proposals may be agreed with modifications if each secured creditor to whom the draft proposals were required to be sent consents by notice to the regulator, and the regulator consents.
23. The regulator shall send a copy of the agreed proposals to:
 - the PRP;
 - any secured creditors to whom the draft proposals were sent;
 - any liquidator, administrator, administrative receiver, or receiver appointed in respect of the PRP or its land; and
 - the Financial Conduct Authority or Charity Commission (where relevant).
24. The regulator must also bring the agreed proposals to the attention of:
 - the PRP's members;
 - its tenants; and
 - its unsecured creditors, if any.

Amending proposals

25. The regulator may make proposals amending agreed proposals. In such circumstances, the same process for the original proposals must be followed.

Implementing proposals

26. Under section 154(1) of the Act, the regulator, the PRP, its creditors and any appointed insolvency office holder must implement agreed proposals.
27. In accordance with sections 154(2) to (3) of the Act, the directors, committee members, members, charity trustees or trustees of the PRP are required to co-operate with the implementation of agreed proposals, with the proviso that they are not required or permitted to commit a breach of a fiduciary or other duty to the PRP.
28. The regulator may take enforcement action through the courts against any persons who do not comply with their obligations in respect of agreed proposals.
29. Under section 159(4) of the Act, a person bound by agreed proposals may apply to the High Court if they think that action taken by another person breaches section 154 of the Act. The High Court may:
- confirm, annul or modify the action; or
 - grant relief by way of injunction, damages or otherwise.

Appointment of a manager

30. Section 155 of the Act enables the regulator to appoint a manager where agreed proposals make provision for such appointment, and for the payment of the manager's reasonable remuneration and expenses.
31. Under section 155(4) of the Act, the regulator may give the manager general or specific directions. Where the provider is a charity, the regulator must notify the Charity Commission that a manager has been appointed under section 155(6) of the Act.
32. Section 156 of the Act sets out a non-exhaustive list of powers conferred on the manager. Additional powers for managers appointed in respect of a PRP which is a registered charity are set out under section 157 of the Act.
33. In accordance with section 156(3) of the Act, a manager shall so far as is reasonably practicable, consult and inform the PRP's tenants about an exercise of powers likely to affect them.
34. Sections 159(1)-(2) of the Act enable a PRP or a creditor of a PRP to apply to the High Court where they think action taken by a manager is not in accordance with agreed proposals. The High Court may:
- confirm, annul or modify an act of the manager;
 - give the manager directions; or
 - make any other order.

Financial assistance

35. Under section 158 of the Act, the regulator may give financial or other assistance to:
- the PRP for the purpose of preserving its position pending the regulator deciding whether to exercise the power under section 152 of the Act to make proposals and (if proposals are made), such proposals becoming agreed proposals; or
 - the PRP, or a manager appointed under section 155 of the Act to facilitate implementation of agreed proposals.
36. In particular, the regulator may lend staff and may arrange for payment of the manager's remuneration and expenses under section 158(3) of the Act.
37. Under section 158(4) of the Act the regulator's power to provide financial assistance is restricted by the need to obtain the consent of the Secretary of State to make grants or loans, to indemnify a manager, to make payments in connection with secured loans, or to guarantee payments in connection with secured loans. Whilst the regulator will consider each case on its own individual circumstances, the regulator anticipates that it would be very rare to seek the consent of the Secretary of State to such forms of financial assistance as, generally speaking, to do so could mean public funds being deployed to protect the commercial risks of existing creditors.

Directions to Homes England and GLA

38. Where an insolvency event has occurred in relation to a PRP, the regulator will consider giving directions to Homes England and the GLA (where relevant) **not to give financial assistance** under section 100G of the Act and section 333ZG of the Greater London Authority Act 1999 respectively.
39. The circumstances of each case will be different, and the regulator will be mindful of its objective of protecting public funds. However, the general rule is that the regulator will not generally make such directions where to do so might worsen the financial position of the PRP thus hastening the onset of insolvency.

Further moratorium

40. Under section 147(1) of the Act, where a moratorium ends otherwise than by cancellation and an insolvency event under section 145(2) occurs within 3 years beginning with the end of that moratorium, it does not automatically trigger a further moratorium.
41. The regulator may impose a further moratorium for a specified period if it has made reasonable enquiries to locate secured creditors and where the regulator has located secured creditors ~~have been located~~, each one of them has consented to a further moratorium.
42. Where a further moratorium is imposed the regulator will inform:
- the PRP;
 - any liquidator, administrator, administrative receiver, or receiver appointed in respect of the PRP or its land;
 - Homes England; and

- GLA (where relevant).

Housing administration order

43. Section 99 of the HPA 2016 sets out that an application to the court for a housing administration order may be made either by the Secretary of State or the regulator with the Secretary of State's consent.
44. The HPA 2016 does not prescribe the circumstances under which a housing administration order may be applied for, but section 100(2) of the HPA 2016 sets out that the court may only make a housing administration order if it is satisfied that one of the two grounds exist:
- the PRP is unable, or is likely to be unable, to pay its debts; or
 - on a petition by the Secretary of State under section 124A of the Insolvency Act 1986, it would be just and equitable (disregarding the objectives of the housing administration) to wind up the PRP in the public interest.
45. In accordance with section 100(4) of the HPA 2016, the Court has no power to make a housing administration order in relation to a PRP which:
- is in administration under Schedule B1 to the Insolvency Act 1986 (an 'ordinary administration'); or
 - has gone into liquidation (within the meaning of section 247(2) of the Insolvency Act 1986).
46. This guidance note is intended to provide very general guidance; we will always make the best decision in our judgement in line with our statutory objectives and will consider each case on its precise facts. However, it is envisaged that some of the instances where the regulator may make an application for a housing administration order are in circumstances where it appears to the regulator that it is likely the PRP will be unable to pay its debts, and that housing administration offers an appropriate route to achieving the regulator's objectives. This may be where the regulator has been notified of an insolvency event under section 145(2) of the Act and the regulator:
- considers that there is a significant risk that it will not be possible to agree acceptable proposals via the moratorium process;
 - considers a better outcome is unlikely to be achieved via an ordinary administration (if available); or
 - has been unable to make proposals or get agreement to proposals made during moratorium.
47. If a moratorium is triggered pursuant to section 145(2)(c) of the Act by a person making an application for an ordinary administration order in respect of a PRP, the regulator will consider whether to make proposals in accordance with section 152 of the Act, apply for a housing administration order, or allow an ordinary administration to proceed. The regulator will normally seek to resolve the situation through making proposals within a moratorium, unless it considers that housing administration offers a better chance of satisfactory resolution in line with the regulator's objectives.

48. In making the application to court for a housing administration order, the regulator will identify the person they propose to appoint as the housing administrator, who must be qualified to act as an insolvency practitioner in accordance with section 101(3) of the HPA 2016. Factors including professional expertise, experience, availability and cost will all be considered in the selection process.

In circumstances where the PRP has already engaged an insolvency practitioner to support it in resolving its problems, the regulator will consider whether it would be appropriate in all the circumstances to put forward that person for appointment as the housing administrator.

49. A housing administration order can be made by the court in relation to a PRP that is either:

- a company,
- a limited liability partnership
- a registered society; or
- a charitable incorporated organisation.

50. Once appointed, the housing administrator has two statutory objectives as set out under sections 97 to 98 of the HPA 2016:

- Objective 1:
 - rescue the PRP as a going concern;
 - achieve a better result for the PRP's creditors as a whole than would be likely if the PRP were wound up (without first being in housing administration); or
 - realise property in order to make a distribution to one or more secured or preferential creditors.

Section 97 of the Act sets out further details about objective 1.

- Objective 2:
 - ensure that the PRP's social housing remains in the regulated housing sector (i.e. owned by a PRP)

51. While the housing administrator must work towards achieving both objectives, Objective 1 takes priority over Objective 2. The housing administrator must also aim to achieve these objectives as quickly and efficiently as possible.

52. Where a housing administration order has been made, the Secretary of State has powers available under sections 109 to 113 of the HPA 2016 to provide financial support which include the ability:

- to make grants or loans to the PRP;
- to provide indemnities in respect of liabilities incurred or loss or damage sustained in connection with the housing administrator carrying out their functions; and

- to provide guarantees in respect of financial obligations of the PRP.

The Secretary of State may require the PRP to make repayments in connection with any financial support provided.

53. The Secretary of State, the regulator (with the consent of the Secretary of State) or the housing administrator can make an application to court to end the housing administration.

Annex 5: Final s.215 Guidance



Regulator of
Social Housing

Statutory Guidance under section 215 of the Housing and Regeneration Act 2008

April 2024



Statutory Guidance under section 215 of the Housing and Regeneration Act 2008

Introduction

1. In publishing this document, the regulator is meeting its statutory duty under section 215(1)(b) of the Housing and Regeneration Act 2008 as amended (the 'Act'), which requires the regulator to publish guidance about how it uses and intends to use its powers under chapters 6 and 7 of the Act. The regulator has also identified other relevant provisions outside of these chapters, which are featured in this guidance. As required by section 215(3) of the Act, the regulator must have regard to this guidance.
2. Being a Registered Provider of social housing is a serious undertaking and that registration brings with it significant obligations including the requirement to meet the Regulatory Standards on an ongoing basis. The Regulatory Framework can be found on our website together with the Registration Criteria, Regulatory Standards and our publications explaining how we regulate; 'Regulating the Standards. This section 215 guidance forms part of that framework and explains the statutory powers the regulator may utilise when things do, on occasion, go wrong.
3. The regulator expects registered providers to identify problems and take appropriate corrective action to resolve them. If a registered provider takes responsibility for self-improvement and we conclude that it has the capacity, capability and willingness to respond to the problems, we will generally work with it to achieve the necessary corrective actions. Working with a registered provider may include instances where the regulator will deem it appropriate to use its powers, in order to support the improvement.
4. However, it is more likely that we will use our powers in circumstances where self-improvement has not succeeded, or where a registered provider is unable or unwilling to respond positively (in each case, within an appropriate timeline), or where the regulator concludes that such an approach is not appropriate (for instance, where urgent action is necessary or there is an immediate and significant risk to a registered provider's tenants). The regulator also has a general duty to maintain the register and the ability to compulsory de-register providers, including where providers have failed to meet the Regulatory Standards under sections 193, 194 or 194C of the Act. This guidance does not specifically cover the approach to de-registration.
5. The linked guidance notes 1-19 should be read in conjunction with this introductory section and set out further detail and information about how the regulator uses, and intends to use, its statutory regulatory and enforcement powers and also certain general powers. The guidance notes use some examples, to illustrate how powers could be used. In all instances examples should not be taken as exhaustive, nor to restrict the regulator's discretion to use its powers as appropriate on a case-by-case basis.
6. Unless a contrary intention is indicated in the guidance, the regulator uses the term private registered provider ('PRP') to refer to not for profit organisations and for-profit organisations. The term registered provider encompasses both PRPs and local authorities.
7. Throughout these guidance notes, we refer to the Homes and Communities Agency as Homes England, as this is its current trading name. The Greater London Authority will be referred to as the GLA.

8. References to stakeholders mean persons with an interest or concern in a registered provider's activities. This may include tenants, secured or unsecured creditors, Homes England, GLA, local authorities, other regulators and central government.
9. In the event of any conflict between (i) the guidance notes and (ii) the Act or other legislation, the latter will prevail.
10. This guidance should be read in conjunction with the Act and/or other referenced legislation. It is not intended to be a substitute. In the event that the Act and other legislation referred to is amended, the guidance should be read, so far as possible, and unless otherwise indicated, as referring to the updated legislation.

Legislative requirements underpinning the use of our powers

11. The regulator's powers are set out in the Act, and the Act requires the regulator to:
 - perform our functions with a view to achieving (so far as possible) the economic and consumer regulation objectives⁴;
 - exercise our functions in a way that minimises interference and (so far as possible) is proportionate, consistent, transparent and accountable;⁵
 - comply with any specific requirements set out in the Act.
 - set standards and regulate registered providers against those standards.
12. Before exercising a regulatory or enforcement power, the regulator must have regard to any voluntary undertaking offered or given by a registered provider. Some enforcement and regulatory powers specifically require the regulator to inform a registered provider whether it would accept a voluntary undertaking in place of, or in mitigation of it exercising the power. In considering whether a voluntary undertaking will be acceptable, the regulator will:
 - assess whether or not the terms of a voluntary undertaking are satisfactory, giving reasons for the decision;
 - consider the registered provider's past conduct such as how it has addressed past issues raised by the regulator; and
 - consider the seriousness and urgency of the matter, which the voluntary undertaking seeks to address.

Where the regulator accepts a voluntary undertaking, it will monitor the registered provider's progress with it. If the regulator is not satisfied with progress made, it may need to consider exercising its powers. Where the regulator rejects a voluntary undertaking, it will provide reasons for this.

13. Under section 218 of the Act, the regulator must also consider some specific matters before exercising an enforcement power which are:

⁴ As set out at s.92K(1)-(3) of the Act.

⁵ As set out at s.92K(5) of the Act

- the desirability of a registered provider being free to choose how to provide services and conduct business;
- the speed with which the failure or other problem needs to be addressed; and
- whether the failure or other problem is serious or trivial.

14. The Act sets out the specific types of registered provider that the regulator's powers can be used in relation to and further information about this is contained within the guidance notes.

15. It is a requirement of the Legislative and Regulatory Reform Act 2006 that the regulator must have regard to the Regulators' Code⁶ when developing policies and procedures that guide its regulatory activities. The code does not apply to the exercise by a regulator of any specific regulatory function in individual cases.

The Regulator's objectives in using its powers

16. Registered providers are expected to comply with the regulatory standards and legislative requirements. Where registered providers fail to do so, the regulator's aim will be to ensure that they return to compliance.

17. In order to achieve this aim, the regulator may use its powers but its specific objectives for doing so may vary from case to case or change during the course of a case.

18. However, broadly speaking we would want to:

- protect the interests and safety of tenants;
- ensure that registered providers address and resolve the presenting problems and any related or contributory problems;
- ensure that registered providers address and seek to resolve any additional relevant and material matters that come to light while they are subject to our regulatory, enforcement or general powers;
- ensure that providers maintain their financial viability and meet acceptable standards of organisational effectiveness;
- ensure that providers use intervention as a catalyst for change and sustain any improvements in performance in the long term;
- reassure lenders and encourage investment in social housing;
- retain social housing assets in the regulated sector, as far as is possible;
- protect the reputation of registered providers of social housing as a whole; and
- co-ordinate the approach with other regulatory bodies where necessary.

⁶ Regulators' Code - GOV.UK (www.gov.uk)

General approach to use of powers

19. In most circumstances, where the regulator decides to use its enforcement powers, there will have been a period of intensive engagement with the registered provider and they will have had the opportunity to make self-improvements.
20. However, this may not always be possible, for example where there is a need for the regulator to act more promptly, such as an imminent risk to tenants, social housing assets or where the registered provider has shown a lack of co-operation with the regulator and/or unwillingness to make the requisite self-improvements.
21. Our general approach to exercising our powers is to apply the most appropriate power, or combination of powers available, taking into account the seriousness of the issue(s) under consideration.
22. The regulator will seek to balance the interests of the registered provider, its tenants, its key stakeholders and the impact on public funds when responding to the circumstances of each individual case.
23. We may use our powers either singly or in combination, depending on the circumstances of the case.

Process for using powers

24. The regulator has robust internal processes to ensure that a number of checks and balances are applied before a decision is made to use its powers.
25. We will ensure that any decision to use our powers is made by the person who has the authority to make such decisions within the regulator.
26. Where the regulator uses its powers, in each case, we will give reasons for this. We will also keep our decisions about the use of powers under regular review and will, as necessary, change our approach to deal with the circumstances of the case.

General guidance as to when the Regulator may use its powers

27. The regulator may elect to use its powers for a range of reasons. Whilst this is not an exhaustive list, nor shall it limit the way in which the regulator uses its powers, the types of issues which may lead to the regulator using its powers include:
 - Serious failings or problems that may put tenants and or their homes at risk;
 - Financial viability problems (e.g. those which disrupt or threaten to disrupt the delivery of services to tenants or place social housing assets at risk; reliance on third parties for continued trading);
 - Failures by registered providers to act on issues raised by the regulator including not honouring commitments set out in voluntary undertakings, or failing to comply with previous exercises of regulatory, enforcement or general powers;
 - Serious probity concerns such as: entering into transactions which inappropriately advance third-party interests; failing to declare and appropriately deal with conflicts of interest; or misuse of assets or funds;

- Lack of robust governance arrangements (e.g. failure to comply with chosen codes of governance and internal policies; insufficient risk and control frameworks);
- Lack of evidence that the governing body and executive has sufficient skill, expertise and/or willingness to make the required changes.
- Failure to meet the Regulatory Standards

Expectations of registered providers

28. The regulator has an expectation that registered providers will work with the regulator to support the successful deployment of powers. This will include as a minimum:

- not obstructing the use of powers;
- co-operating with the regulator in the use of its powers;
- providing the regulator and any persons appointed by the regulator with information and documents where requested;
- keeping the regulator informed about progress;
- co-operating with persons appointed by the regulator;
- liaising with key stakeholders where necessary; and
- sharing any communication or statement to be issued publicly by the registered provider with the regulator ahead of time.

Communications

29. The regulator may decide to issue a public statement about its decision to use powers in a particular case, and the reasons for its decision.

Regulatory Powers

Guidance Note 1: Sections 199 – 200 – Survey.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	✓

Type of power: regulatory power

Scope

1. This power enables the regulator to authorise a person ('authorised person') to enter a registered provider's social housing with or without a warrant to carry out a survey of the condition of premises. The regulator may require the registered provider to pay some or all of the costs of the survey and associated report.
2. An authorised person may be a member of the regulator's staff or other person who has been given written authorisation by the regulator.
3. An offence will be committed where an authorised person is obstructed from exercising its powers by a registered provider, its officers or other persons (including tenants).
4. Whilst 'premises' is not defined in the Act, the scope of the survey can include both dwellings⁷ and any common parts⁸.

When the regulator will use this power

5. Section 199(1) of the Act provides that the regulator can use this power when it suspects that a registered provider may be failing to maintain premises in accordance with standards under section 193 of the Act.
6. Circumstances where the regulator may use this power include:
 - a potential problem in design, construction or condition which may impact across a registered provider's social housing stock where there are reasonable grounds to suspect this represents a safety risk to tenants; or
 - a survey is necessary as part of the exercise of the regulator's wider regulatory or investigatory powers such as an inspection;
 - a scenario where the regulator may use this power is in cases where the registered provider has been unable or unwilling to provide adequate assurance to the regulator.

⁷ Dwelling is defined in s.275 of the Act and means:

- a house, flat or other building or part of a building occupied or intended to be occupied as a separate dwelling; and
- includes any garden, yard, outhouse or other appurtenance belonging to, or usually enjoyed with, the dwelling.

⁸ The regulator considers 'common parts' is included within the definition of 'dwelling.' It is defined in s.199(10): 'Common parts' in relation to a building includes the structure and exterior of that building and any common facilities provided (whether or not in the building) for persons who occupy the building.

Process for using the power

Power to enter without a warrant (section 199A)

7. If the regulator is satisfied that the requirements at section 199(1) of the Act have been met, it will make arrangements for a survey to be undertaken, this will include:
 - identifying the authorised person who will undertake the survey and providing them with written authorisation; and
 - briefing the authorised person on its concerns in relation to the condition of the social housing.
8. The authorised person will be permitted to enter premises at any reasonable time, or times, to undertake a survey without a warrant provided they have given at least 48 hours' notice to both the registered provider and the occupier(s) where the premises are occupied, unless this is waived. Notice to occupiers may be given by attaching it to a conspicuous part of the premises.
9. The authorised person may, if they consider necessary to carry out the survey, be accompanied by other persons and take onto the premises equipment and materials. Such equipment and materials can be left in a place on the premises provided that:
 - leaving the equipment or the materials in that place does not significantly impair the ability of an occupier to use the premises (including any common parts); or
 - leaving the equipment on the premises is necessary for carrying out the survey and it is not possible to leave it in a place that does not significantly impair the ability of an occupier to use the premises (including common parts).
10. The authorised person will provide a report to the regulator, and, in turn, the regulator will provide the registered provider with a copy.
11. Upon receipt of the report, the regulator will consider whether emergency remedial action is necessary, or whether other enforcement powers, regulatory powers or general powers should be exercised.

Power to enter without a warrant (section 199B)

12. Section 199(B) of the Act sets out the circumstances where a justice of the peace may issue a warrant allowing an authorised person to enter the premises to carry out a survey. These circumstances are:
- where entry to the premises has been sought under section 199A is refused;
 - where the premises are unoccupied or the occupier is temporarily absent; or
 - where there are reasonable grounds to believe that the authorised person will not be able to obtain entry without a warrant.

Appeal process

13. There is no statutory right of appeal under the Act. However, a registered provider can appeal a decision to require it to pay the costs of a survey, under the regulator's appeals scheme ('Regulator's Appeals Scheme'). Appeals must be made within the timescales set out in the Regulator's Appeals Scheme. Further details about the appeal process are set out in the Regulator's Appeals Scheme.

Guidance Note 2: Sections 201 - 203A – Inspections.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	✓

Type of Power: regulatory power

Scope

1. This power enables the regulator to arrange for an inspection of a registered provider. Such inspections may be carried out by a member of the regulator’s staff, or person external to the regulator such as a suitably qualified professional expert (‘inspector’). Registered providers will be subject to programmed inspections in accordance with the regulator’s inspection plan and, in the circumstances set out in that inspection plan⁹, may be subject to inspections which are not programmed.
2. It is an offence to obstruct an inspector exercising its powers under section 203(4)-(8) of the Act, which may be punishable by fine.

When the regulator will use this power

3. Section 201(1) of the Act provides that the regulator may arrange for a person to inspect:
 - a registered provider’s performance of its functions in relation to the provision of social housing; or
 - the financial or other affairs of a registered provider.
4. Inspections will be carried out in accordance with the inspection plan.

Process for using the power

5. The regulator will decide whether an inspection is required in accordance with the inspection plan.
6. The regulator will share with the registered provider:
 - the scope of the inspection; and
 - the proposed dates for the start and completion of the inspection.
7. The regulator will reserve the right to modify the scope during the course of the inspection if this becomes necessary.
8. The inspection will be carried out in accordance with the scope. The inspector will have the following powers as set out under section 203 of the Act:

⁹ <https://www.gov.uk/guidance/inspection-plan>

- to require a person to provide specified documents or information – the inspector can use powers under section 107-108 of the Act, where the registered provider refuses to provide this voluntarily;
 - to enter premises occupied by the registered provider at any reasonable time;
 - to inspect, copy or take away documents found on the premises including documents stored on computers;
 - to inspect any computer or electronic storage device on which documents may have been created; and
 - to require any person on the premises to provide such facilities or assistance as the inspector reasonably requests.
9. Whilst the Act gives the power for the inspector to enter the premises at any reasonable time, it is our expectation that in most cases this will be agreed between the parties.
10. The inspector will produce a written summary of its findings, a copy of which will be provided to the registered provider. In specific circumstances, the inspector will be required to produce a report.
11. The regulator may publish all or part of the summary of the inspector's findings and report (where relevant) along with any related information it considers relevant.
12. The regulator will decide if further powers need to be exercised as a result of the findings of the inspection.

Appeal Process

13. There is no statutory right of appeal or appeals' process in accordance with the Regulator's Appeals Scheme.

Guidance Note 3: Sections 206 – 210A - Inquiry and extraordinary audit.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	✓

Type of power: regulatory power

Scope

1. For local authorities, for profit registered providers and registered charities, the scope of the inquiry is limited to affairs relating to social housing.
2. An inquiry may consider affairs of a body which at the material time was a subsidiary or associate¹⁰ of the registered provider.
3. An extraordinary audit of accounts may be required as part of an inquiry. In relation to local authorities and registered charities, it is limited to the extent to which the accounts relate to the provision of social housing.
4. The regulator will meet the costs of the inquiry. Where the registered provider is a local authority, it may contribute to the regulator's expenses under section 207(7) of the Act.
5. The registered provider shall pay the costs of the extraordinary audit under sections 210(5) and 210A(4) of the Act.

When the regulator will use this power

6. Section 206(1) of the Act sets out the grounds under which the regulator can hold an inquiry. These grounds are if the regulator suspects that:
 - the affairs of the registered provider may have been mismanaged¹¹
 - the registered provider has failed to meet a standard under section 193, 194 or 194C of the Act; or
 - there is a risk that, if no action is taken by the regulator or the registered provider, the registered provider will fail to meet a standard under section 193, 194 or 194C of the Act.
7. If a registered provider meets the grounds for an inquiry, no additional grounds must be satisfied for an extraordinary audit. However, the following circumstances may indicate an extraordinary audit is required:
 - there is a material mis-statement in the accounts;
 - the accounts have been qualified;
 - a PRP's solvency is in doubt;

¹⁰ 'Subsidiary' and 'associate' are defined in section 271 of the Act.

¹¹ Mismanagement has a specific meaning in the Act and is defined in section 275 of the Act.

- there may have been a fraud; or
 - auditors have raised matters of serious concern, for example in their management letter.
- This is not an exhaustive list, nor shall it limit the way in which the regulator uses this power as there may be other circumstances where an extraordinary audit is considered necessary.

Process for using the power

8. If the regulator is satisfied that the grounds under section 206(1) of the Act are met, it will produce a brief for the inquiry, which will set out:
 - scope of the inquiry;
 - information about the registered provider and its operations;
 - matters to be investigated;
 - timetable for the inquiry;
 - powers, responsibilities and duties of the person conducting the inquiry;
 - arrangements for reporting to the regulator including whether any interim reports are required;
 - whether forensic auditors or other professional services are required; and
 - any other relevant matters.
9. The regulator will appoint someone to undertake the inquiry ('inquirer'). The inquirer can be an individual or individuals. In deciding who to appoint as an inquirer, the regulator will:
 - ensure the inquirer meets the requirements of section 206(3)-(4) of the Act which are that they are independent of the regulator. A person will be independent if they and the members of their family:
 - are not members or employees of the regulator; and
 - have not been members or employees of the regulator within the previous five years.
 - consider the skills and experience required; and
 - ensure that appropriate safeguards are taken to ensure that there are no conflicts of interest.
10. The regulator will notify the registered provider of the inquiry.
11. Where the regulator has decided to hold an inquiry, it will inform key stakeholders, including the Charity Commission where the registered provider is a registered charity.

12. The inquirer will undertake the inquiry and may require persons including the registered provider to provide specified documents or information under section 208 of the Act.
13. The regulator will oversee the activities of the inquirer.
14. The inquirer may provide interim reports to the regulator, and will be required to produce a final report on matters specified by the regulator.
15. Once received, the regulator will consider the report and provide a copy to the registered provider. The regulator will consider next steps such as allowing the registered provider to respond to the report. Following this, the regulator will decide whether to exercise any enforcement or general powers.
16. There are some powers which can only be exercised during or following an inquiry. These are:
 - direct a transfer of management (sections 249 -250 of the Act);
 - direct a transfer of land (sections 253-254 of the Act);
 - making and executing an instrument of amalgamation for a Registered Society (section 255 of the Act);
 - restrictions on dealings, including the powers: to suspend or remove an officer, employee or agent of a registered provider; to direct a bank not to part with money or security and to restrict payments and transactions (sections 256-265 of the Act);
 - censuring a local authority employee (sections 269A -269B of the Act);
 - directing Homes England and/or GLA not to provide financial assistance (section 100G of the Act and section 333ZG of the GLA Act 1999).
17. The regulator will notify key stakeholders including the Charity Commission where the registered provider is a registered charity of the outcome of the inquiry.
18. The regulator may publish any interim or final report in full or part, or a summary of such reports.

Extraordinary Audit

19. The regulator may as part of an inquiry require a registered provider's accounts and balance sheets to be audited.
20. The regulator will appoint a qualified auditor as defined in section 210(2) of the Act for PRPs, or a local auditor as defined in section 210A(1A) and (5) of the Act for local authorities (the 'auditor').
21. Specific provisions set out at section 209 of the Act apply to registered charities, and specific provisions set out at sections 210A of the Act apply to local authorities.
22. On completion of the audit, the auditor shall report to the regulator and the regulator will provide a copy to the registered provider. In conjunction with the inquiry, the regulator will consider the report and consider next steps such as allowing the registered provider to respond to the report.

Following which the regulator will decide whether to exercise any enforcement or general powers.

Appeal Process

23. There is no statutory right of appeal or appeals' process in accordance with the Regulator's Appeals Scheme.

Enforcement Powers

Guidance Note 4: Sections 218A - D – Performance improvement plans.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	✓

Type of power: enforcement power

The power

1. This power enables the regulator to require a registered provider to submit a performance improvement plan for approval by the regulator to address identified issues.

When the regulator will use this power

2. Section 218A(1) of the Act sets out the grounds under which the regulator can use this power. These grounds are:
 - where the registered provider has failed to meet a standard under sections 193, 194, 194A or 194C of the Act;
 - where there is a risk that, if no action is taken by the regulator or the registered provider, the registered provider will fail to meet a standard under section 193, 194, 194A or 194C of the Act;
 - where the registered provider has failed to comply with directions or a request relating to performance information under section 198C of the Act;
 - where the interests of the social housing tenants of the registered provider require protection; or
 - where the registered provider has given a voluntary undertaking under section 125 of the Act and failed to comply with it.

Process for using the power

3. If the regulator is satisfied that one or more of the grounds as set out in section 218A(1) of the Act apply, as set out at 218A(2) of the Act, the regulator will serve a performance improvement plan notice ('PIP notice') on the registered provider which will:
 - specify the ground(s) on which the PIP notice is being given;
 - identify the issues;
 - require the registered provider to prepare and submit a performance improvement plan setting out the action the registered provider will take to address the issues identified by a particular date;
 - set requirements in relation to the publication of the performance improvement plan;

- explain that the registered provider has a statutory right of appeal to the High Court;
 - explain that the regulator can either approve the performance improvement plan or reject it, and set out the registered provider's duties in connection with an approved performance improvement plan;
 - explain that the regulator may withdraw the PIP notice by giving further notice to the registered provider;
 - explain that the regulator can cancel a performance improvement plan which it has approved and the effects of this;
 - explain that should a registered provider fail to comply with the PIP notice that the regulator will consider exercising another power.
4. Once a performance improvement plan is submitted, the regulator will consider it, and either approve or reject the performance improvement plan. If rejected, the regulator must give its reasons for doing so and this will be considered as a failure to comply with the PIP notice.
 5. Where the performance improvement plan is approved, the registered provider has duties under section 218C(4) to:
 - implement the performance improvement plan;
 - publish the performance improvement plan (in the manner directed by the regulator); and
 - provide a copy of the performance improvement plan to tenants upon written request.

Appeal process

6. There is a statutory right of appeal to the High Court, which must be brought within the period of 28 days beginning with the day on which the registered provider is given the PIP notice.
7. The requirement to prepare and submit a performance improvement plan is suspended during the appeal period as defined in section 218D(4) of the Act.
8. Where the performance improvement plan has been approved by the regulator, an appeal does not suspend the provider's duty to publish and implement the performance improvement plan, or provide a copy of the performance improvement plan to tenants.

Guidance note 5: Sections 219 – 225 - Enforcement Notices.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	✓

Type of power: enforcement power

The power

1. This power enables the regulator to require a registered provider to take a particular action or actions, which will be set out in an enforcement notice.

When the regulator will use this power

2. Section 220(2) of the Act sets out a number of specific grounds under which the regulator can use this power. These grounds are:
 - where the registered provider has failed to meet a standard under section 193, 194 or 194C of the Act.
 - where the affairs of the registered provider have been mismanaged in relation to social housing;¹²
 - where the registered provider has failed to comply with an earlier enforcement notice;
 - where the registered provider has failed to publish information in accordance with a requirement under section 228(3) or 240(3) of the Act;
 - where the interests of tenants of the registered provider require protection;
 - where the registered provider is a PRP and its assets require protection;
 - where the registered provider has given an undertaking under section 125 of the Act and failed to comply with it;
 - where the registered provider has failed to pay an annual fee under section 117(1)(b) of the Act;
 - where an offence under Part 2 of the Act has been committed by a registered provider;
 - where the registered provider has failed to comply with an Order made by the housing ombudsman;

¹² Mismanagement has a specific meaning in the Act and is defined in section 275: 'Mismanagement in relation to the affairs of a registered provider' means managed in breach of any legal requirements (imposed by or under an Act or otherwise).

- where the registered provider:
 - does not have a health and safety lead designated under section 126A of the Act, or
 - has failed to meet a requirement under section 126C of the Act, or
 - the functions of the health and safety lead are not being carried out;
- where the registered provider has failed to comply with directions or a request under section 198C of the Act.
- where the registered provider has failed to comply with a performance improvement plan notice.
- where the registered provider has a performance improvement plan which has been approved by the regulator and has failed to implement it in full.

Process for using the power

3. If the regulator is satisfied that one or more of the grounds as set out in section 220 of the Act apply, as set out at section 221 of the Act, the regulator will send a notice ('enforcement notice') to the registered provider which will:
 - specify grounds on which the enforcement notice is being given;
 - specify actions the registered provider is required to take;
 - specify timescales for the completion of those actions – the regulator will aim to impose reasonable timescales considering the actions which must be completed, however where the registered provider is required to take urgent action, the timescales will be commensurate with this;
 - explain that the registered provider has a statutory right of appeal to the High Court;
 - explain the regulator may withdraw the enforcement notice by giving notice to the registered provider;
 - explain that if the registered provider does not comply with the enforcement notice the regulator may consider exercising other regulatory or enforcement powers.
4. The regulator will notify the following bodies by sending them a copy of the enforcement notice:
 - Homes England;
 - GLA (where the registered provider owns land in Greater London);
 - the Secretary of State (where the registered provider is a local authority).

Appeal process

5. There is a statutory right of appeal to the High Court, which must be brought within the period of 28 days beginning with the day on which the registered provider is given the enforcement notice.

Guidance Note 6: Section 225A to 225H - Emergency Remedial Action.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	✓

Type of power: enforcement power

Scope

1. This power enables the regulator to authorise an appropriate person ('authorised person') to enter social housing premises to undertake emergency remedial action.
2. An authorised person may be a member of the regulator's staff or another person that has been given written authorisation by the regulator. An authorised person may enter the premises with or without a warrant.
3. Whilst 'premises' is not defined in the Act, emergency remedial action can be taken in relation to dwellings¹³ and common parts¹⁴.
4. An offence will be committed if a registered provider or an officer, of a registered provider or other persons (including tenants) obstructs an authorised person in exercising their powers (section 225F of the Act).

When the regulator will use this power

5. Section 225B(2)-(4) of the Act sets out the conditions which must be met to use this power:
 - a survey of the condition of the premises has been carried out under section 199 of the Act;
 - the regulator is satisfied that the registered provider has failed to maintain the premises in accordance with standards under section 193 of the Act and that failure has caused an imminent risk of serious harm to the health or safety of the occupiers of those or other premises; and
 - the registered provider has failed to comply with an enforcement notice requiring it to take action to address these failures.
6. Emergency remedial action is defined in section 225B(5) of the Act and are such works the authorised person considers immediately necessary to remove the imminent risk of serious harm.

¹³ Dwelling is defined in section 275 of the Act and means:

- a house, flat or other building or part of a building occupied or intended to be occupied as a separate dwelling; and
- includes any garden, yard, outhouse or other appurtenance belonging to, or usually enjoyed with, the dwelling.

¹⁴ As defined in section 225C(8): 'Common parts' in relation to a building includes the structure and exterior of that building and any common facilities provided (whether or not in the building) for persons who occupy the building.

7. The regulator expects registered providers to resolve issues raised by their tenants or the regulator in a timely manner appropriate to their level of risk. The regulator is mindful of its duties to minimise interference and so far as possible to be proportionate. As such, the regulator only anticipates using this power in exceptional circumstances where the health and safety of tenants is at imminent or serious risk.

Process for using the power

Emergency remedial action: power to enter without warrant (sections 225C and 225D)

8. Where the regulator is satisfied the conditions under section 225B(2)-(4) of the Act have been met, it will identify an authorised person based on the findings of the survey to take emergency remedial action.
9. The regulator will brief the authorised person on the findings of the survey.
10. As set out at section 225C(2) and (6) of the Act, before taking emergency remedial action, the authorised person must give a pre-entry notice least 24 hours (unless consent is obtained to earlier entry) before they propose to enter the premises to:
 - the occupier, or any one of the occupiers (where the premises are occupied);
 - if the premises include common parts of a building and there are occupied dwellings in the building that have use of those common parts, the occupier (or any one of the occupiers) of each of those dwellings;
 - the registered provider; and
 - each proprietor of a registered estate in the premises (within the meaning of the Land Registration Act 2002).
11. Under section 225D(1) of the Act the pre-entry notice to the occupier or occupiers may be given by fixing it to a conspicuous part of the premises.
12. The pre-entry notice must comply with section 225C(4). It must:
 - identify the premises to be entered;
 - identify the failure to maintain the premises which has caused the imminent risk of serious harm;
 - state that the authorised person intends to enter the premises and has been authorised by the regulator;
 - specify the date (or the first date) that the authorised person proposes to enter the premises to take emergency remedial action;
 - specify the power under which the authorised person intends to enter the premises; and
 - explain that the registered provider has a statutory right of appeal (as set out in section 225H of the Act).

13. The authorised person will be able to enter the premises at any reasonable time, or times, to take emergency remedial action and must produce a copy of their authorisation from the regulator on request by an occupier (sections 225C(1) and 225D(3) of the Act).
14. The authorised person may be accompanied by other persons and take onto the premises such equipment or materials as they think necessary for the purposes of taking emergency remedial action (section 225D(4) of the Act).
15. Under section 225D(5) of the Act, equipment or materials taken onto the premises may be left until the emergency remedial action has been taken provided that:
 - leaving the equipment or materials in that place does not significantly impair the ability of an occupier to use the premises (including common parts where present); or
 - leaving the equipment or materials on the premises is necessary for taking the emergency remedial action and it is not possible to leave it or them in a place that does not significantly impair the ability of an occupier to use the premises (including common parts where present).
16. Under section 225E of the Act, the regulator can consider applying for, and then entering the property under a warrant if entry to the premises is refused or other circumstances mean it is necessary.

Emergency remedial action: power to enter with warrant (section 225E of the Act)

17. Under section 225E(1) of the Act, the regulator may apply for a warrant from a justice of the peace ('justice') to enter premises to carry out emergency remedial action. In order to do so, it will need sworn written information from an authorised person that entry is reasonably required to take emergency remedial action.
18. Section 22E(2) of the Act provides that a justice may grant such an application where they are satisfied one of the following grounds have been met:
 - entry to the premises has been sought under section 225C of the Act but has been refused;
 - the premises are unoccupied or that the occupier is temporarily absent; or
 - there are reasonable grounds to believe that the authorised person will not be able to obtain entry to the premises without a warrant.
19. Under section 225(6) of the Act, a warrant may authorise persons ('accompanying persons') to accompany the authorised person. Accompanying persons will have the same powers as the authorised persons and can only exercise those powers whilst with and under the supervision of the authorised person.
20. A warrant authorises an authorised person to take onto the premises such equipment or materials as they consider necessary for taking emergency remedial action. The same rules in relation to leaving such equipment on the premises, as set out above, apply (section 225E(5) of the Act).
21. Where entering pursuant to a warrant, an authorised person must produce a copy of the warrant and the written authorisation from the regulator upon request (section 225E(8) of the Act).
22. A warrant will continue in force until the emergency remedial action has been taken (section 225E(9)) of the Act).

Costs

23. Under section 225G of the Act, the regulator may, by notice ('cost notice') require the registered provider to pay relevant expenses and any interest on such expenses within 28 days beginning with the day on which the regulator provides such cost notice. Relevant expenses are:

- expenses reasonably incurred by the regulator in deciding to take emergency remedial action and making those arrangements; and
- the authorised person's costs in taking emergency remedial action and costs reasonably incurred by the regulator in connection with this.

Appeal process

24. Under section 225H of the Act, there is a statutory right of appeal to the High Court which can be brought against the decision of the regulator:

- to make arrangements for an authorised person to take emergency remedial action; and
- to give a cost notice.

Appeals in relation the regulator's decision to make arrangements for emergency remedial action

25. Such appeals must be brought within the period of 28 days beginning with:

- the day on which the registered provider is given the pre-entry notice; or
- the day on which the premises were first entered under a warrant obtained under section 225E of the Act (only where the warrant was not obtained on the ground that entry to the premises had been sought under section 225C of the Act but was refused).

Appeals in relation to the regulator's decision to issue a costs notice in connection with the emergency remedial action

26. Such appeals must be brought within the period of 28 days beginning with the day on which the registered provider was given the cost notice.

27. Where a registered provider's appeal relates to the regulator's decision to issue a costs notice, it may not cover the regulator's decision to arrange for emergency remedial action.

28. The requirement to pay such expenses set out in the cost notice and any interest accrued is suspended during the appeal period (as defined in section 225H(5) of the Act) and no interest accrues during this period.

Guidance Note 7: Sections 226 – 235 – Penalties.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	✓

Type of power: enforcement power

Scope

1. This power enables the regulator to issue penalties to registered providers to penalise specific failures. The amount of such penalties can be unlimited, apart from where a penalty is imposed in response to an offence committed by a registered provider under Part 2 of the Act.

When the regulator will use this power

2. Section 227 of the Act sets out the grounds where the regulator can use this power, which are:
 - the registered provider has failed to meet a standard under section 193, 194 or 194C of the Act;
 - the affairs of the registered provider have been mismanaged¹⁵;
 - the registered provider has failed to comply with an enforcement notice;
 - the registered provider has given an undertaking under section 125 of the Act and failed to comply with it;
 - the registered provider has failed to pay an annual fee under section 117(1)(b) of the Act;
 - an offence under Part 2 of the Act has been committed by the registered provider;
 - the registered provider:
 - does not have a health and safety lead designated under section 126A of the Act; or
 - has failed to meet a requirement under section 126C of the Act; or
 - the functions of the health and safety lead are not being carried out;
 - the registered provider has failed to comply with directions or a request under section 198C of the Act;

¹⁵ Mismanagement has a specific meaning in the Act and is defined in section 275: 'Mismanagement in relation to the affairs of a registered provider' means managed in breach of any legal requirements (imposed by or under an Act or otherwise).

- the registered provider has failed to comply with a performance improvement plan notice; and
 - the registered provider has failed to comply with the duty in section 218B(4) of the Act to provide a copy of a performance improvement plan.
3. Along with being satisfied that one of the above circumstances applies, the regulator will consider whether it is appropriate to issue a penalty. This will involve considering all the relevant circumstances of the case including but not limited to whether other powers should be exercised at the same time, or instead of imposing a penalty.

Process for using the power

4. If the regulator is satisfied that one or more of the grounds in section 227 of the Act have been met, it will decide the amount of the penalty taking into account the circumstances of the case including but not limited to:
- the registered provider's financial situation;
 - whether the amount will impact on the registered provider's ability to provide services;
 - whether multiple issues led to the regulator's decision to impose a penalty;
 - the seriousness of the issue(s) that led to the regulator's decision to impose a penalty;
 - the impact that the issue(s) that led to the regulator's decision to impose a penalty has had on tenants, or has the potential to have;
 - the number of tenants affected or likely to be affected;
 - duration of the issue(s) that led to the regulator's decision to impose a penalty;
 - whether reasonable efforts were made to address the issue(s) that led to the regulator's decision to impose a penalty;
 - the approach that the registered provider has taken to resolving the issue(s) that led to the regulator's decision to impose a penalty, for example whether they have been co-operative and sought to remedy the issue(s); and
 - whether the issues that led to the regulator's decision to impose a penalty could undermine confidence in the sector.
5. Before imposing a penalty, the regulator must issue a pre-penalty warning to the registered provider as detailed in section 230 of the Act the pre-penalty warning must set out:
- that the regulator is considering imposing a penalty;
 - the grounds on which the regulator thinks a penalty could be imposed;
 - any indication the regulator is able to give of the likely amount of the penalty;
 - details about the representations process (set out in section 231 or the Act) including:

- the period during which the registered provider may make representations to the regulator, which must be at least 28 days and begin on the date the provider receives the pre-penalty warning notice; and
 - that representations may relate to whether the penalty should be imposed, or the amount of any penalty that may be imposed.
- an indication whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, imposing a penalty.
 - details about enforcement of the penalty (as set out at section 234 of the Act).
 - explain that if the regulator decides to issue the penalty notice the registered provider has a statutory right of appeal to the High Court (as set out at section 235 of the Act.)
6. As required by section 230(2) and (3) of the Act, the regulator will inform Homes England, the GLA (where the registered provider owns land in Greater London) and any other relevant stakeholders that a pre-penalty warning has been issued.
7. The regulator will consider any representations made by the registered provider, provided they comply with the process as set out in the pre-penalty warning.
8. After considering any representations made, should the regulator decide to impose a penalty, it will issue a penalty notice to the provider as set out at section 228(2) of the Act, the penalty notice will include the following:
- the grounds on which the penalty is imposed;
 - the amount of the penalty- the regulator will consider whether there should be a discount if the penalty is paid before or on the date specified in the penalty notice in accordance with section 234(5) of the Act;
 - how the penalty must be paid;
 - the period within which the penalty must be paid;
 - any interest or additional penalty which is payable in the event of late payment;
 - whether the registered provider is required to publish information about the
 - penalty and the manner of that publication;
 - details about enforcement of the penalty (as set out at section 234 of the Act).
 - explain that the registered provider has a statutory right of appeal to the High Court (as set out at section 235 of the Act.)
9. The regulator will send a copy of the penalty notice to Homes England and the GLA (where relevant).

How the proceeds of penalties will be used by the regulator

10. The regulator may retain a sum representing the direct costs associated with imposing and enforcing the penalty along with a reasonable share of expenditure incurred by the regulator in connection with this as set out at section 233(2) of the Act as set out at section 233(2) of the Act.
11. As set out at Section 233(3) of the Act any remainder of the monies received by way of penalty will be paid to Homes England for it to be used for purposes which appear to it to amount to investment in social housing.

Appeal process

12. There is a statutory right of appeal to the High Court, which must be brought within the period of 28 days beginning with the day on which the registered provider is given the penalty notice.
13. The appeal may relate to the amount of the penalty, its imposition or both.
14. The requirement to pay the penalty is suspended during the appeal period (as defined in section 235(5) of the Act) and the regulator may not charge interest or impose additional penalties during this period.

Guidance Note 8: Sections 236 - 245- Compensation.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	X

Type of power: enforcement power

Scope

1. This power enables the regulator to require that a private registered provider ('PRP') pays compensation to a tenant or tenants.
2. Compensation may be awarded to:
 - a specified tenant of social housing provided by the PRP;
 - each member of a specified class of tenants of social housing provided by the PRP; or
 - all social housing tenants of a PRP.
3. Compensation may not be awarded to a person in respect of a matter where the Housing Ombudsman has already awarded compensation.

When the regulator will use this power

4. Section 237 sets out the grounds where the regulator can require a PRP to pay compensation, which are:
 - where the PRP has failed to meet a standard under section 193, 194 or 194C;
 - where the PRP has given an undertaking under section 125 and failed to comply with it;
 - where the PRP has failed to comply with a performance improvement plan notice;
 - where the PRP has failed to comply with the duty in section 218B(4) to provide a copy of a performance improvement plan.
5. Along with being satisfied that one of the above grounds applies, the regulator will consider whether it is appropriate to use this power. This will involve considering all the circumstances of the case, including the factors under section 241(2)-(4) which are:
 - the financial situation of the PRP;
 - the likely impact of compensation on the PRP's ability to provide services;
 - the regulator must aim to avoid:
 - jeopardising the PRP's financial viability;

- preventing the PRP from honouring financial commitments; and
- preventing the PRP from taking action to remedy the matters on the grounds of which compensation may be awarded.

Process for using the power

6. If the regulator is satisfied that one or more of the grounds in section 237 of the Act have been met and it is appropriate to use this power, it will consult the Housing Ombudsman in accordance with section 242(2) of the Act.
7. The regulator will consider the amount of compensation to be awarded taking into account all circumstances of the case including but not limited to:
 - the seriousness of the issue that gave rise to the grounds for awarding compensation;
 - the impact that the issue that gave rise to the grounds for awarding compensation, had on the tenant or tenants;
 - the number of tenants affected;
 - duration of the issue that gave rise to the grounds for awarding compensation;
 - whether reasonable efforts were made to address the issue that gave rise to the grounds for awarding compensation; and
 - the factors under sections 241(2)-(4) of the Act.
8. Before issuing a compensation notice, the regulator must give the PRP a pre-compensation warning explaining that the regulator is considering awarding compensation as detailed in section 242 of the Act the pre-compensation warning must set out:
 - that the regulator is considering awarding compensation;
 - the grounds on which the regulator believes compensation can be awarded;
 - the likely amount of the compensation award;
 - details about the representations process (set out in section 243 of the Act) including:
 - the period during which the PRP may make representations to the regulator, which must be at least 28 days and begin on the date the provider receives the pre-compensation warning; and
 - that representations may relate to whether compensation should be awarded, or the amount of the compensation that may be awarded.
 - an indication as to whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, awarding compensation (section 242(5) of the Act).

- details about the enforcement and if compensation is awarded, the statutory right of appeal (as set out at sections 244 and 245 of the Act)
9. As required by section 242(3) and (4) of the Act, the regulator will inform Homes England, the GLA (where the provider owns land in Greater London) and any other relevant stakeholders including the Housing Ombudsman that a pre-compensation warning has been issued.
10. The regulator will consider any representations made by the PRP, provided they comply with the process as set out in the pre-compensation warning.
11. After considering any representations made, should the regulator decide to award compensation, it will issue a compensation notice to the PRP and provide a copy to the tenant (or tenants) being compensated. As set out at section 240(2) of the Act, the compensation notice will set out the following:
- the grounds on which the compensation is awarded;
 - the amount of the compensation;
 - the tenant to be compensated;
 - the period within which compensation must be paid;
 - any interest or additional compensation which is payable in the event of late payment in accordance with section 244(2) of the Act;
 - whether the PRP is required to publish information about the compensation and the manner of that publication;
 - details about enforcement of the compensation award under section 244 of the Act;
 - explain that the PRP has a statutory right of appeal in accordance with section 245 of the Act.
12. The regulator will notify the Housing Ombudsman, Homes England and the GLA (where relevant) that it has issued a compensation notice.

Appeal process:

13. There is a statutory right of appeal to the High Court, which must be brought within the period of 28 days beginning with the day on which the PRP is given the compensation notice. The appeal may relate to the award of compensation, the amount or both.
14. The requirement to pay the compensation is suspended during the appeal period (as defined in section 245(5) of the Act) and the regulator may not charge interest or award additional compensation during this period.

Guidance Note 9: Sections 247, 248 and 250a – Management Tender.

	Applicable
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PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	✓

Type of power: enforcement power

The power

1. This power enables the regulator to require a registered provider to tender some, or all, of its management functions that relate to social housing.

When the regulator will use this power

2. Section 247(1) of the Act sets out the grounds under which the regulator can use this power which are:
 - where a registered provider has failed to meet a standard under section 193, 194 or 194C of the Act;
 - where a registered provider:
 - does not have a health and safety lead designated under section 126A of the Act, or
 - has failed to meet a requirement under section 126C(1) of the Act;
 - where the functions of the health and safety lead are not being carried out;
 - where the affairs of a registered provider have been mismanaged in relation to social housing¹⁶; or
 - where a registered provider has failed to comply with a performance improvement plan notice.

Process for using the power

3. If the regulator is satisfied that one or more the grounds set out in section 247(1) of the Act has been met, before imposing the requirement to tender management functions, the regulator will give notice to the registered provider, as set out in section 248 of the Act ('warning notice'), which will:
 - specify the grounds on which the regulator is proposing to take action;
 - warn that the regulator is proposing to take action;

¹⁶ Mismanagement has a specific meaning in the Act and is defined in s.275: Mismanagement in relation to the affairs of a registered provider means managed in breach of any legal requirements (imposed by or under an Act or otherwise).

- set out the scope of the management functions which the regulator is proposing should be tendered (i.e. whether it is the entirety of the registered provider's social housing affairs or specific aspects of them);
 - explain the effect of section 248 of the Act;
 - explain that the registered provider may make representations to the regulator within the period of 28 days beginning with the day on which the registered provider receives the warning notice;
 - indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, the registered provider being required to tender its management functions;
 - explain that the registered provider has a statutory right of appeal in accordance with section 248(10) if the regulator requires it to tender management functions.
4. The regulator will also provide a copy of this warning notice to key stakeholders as set out in 248(4) of the Act.
 5. The regulator will implement a process so as to ascertain the views of those set out in section 248(7) of the Act, which include relevant tenants.
 6. The regulator will consider any representations and/or voluntary undertakings offered and the views of stakeholders ahead of deciding to impose a requirement to tender its management functions.
 7. Where the regulator decides to proceed with imposing the requirement to tender management functions, it will serve a notice on the registered provider covering the areas as set out in section 247(2)-(4) of the Act ('tender notice'). The tender notice will set out:
 - the process to be used in relation to:
 - inviting persons to apply to undertake management functions;
 - selecting from those applications; and
 - making the appointment;
 - the scope of the management functions which must be tendered;
 - requirements as to the constitution of the selection panel which must include provision for ensuring representation of tenants' interests;
 - provision for ensuring that the procurement process follows best practice and is consistent with any applicable procurement law; and
 - the terms and conditions under which the appointment should be made, including provision about setting, monitoring and enforcing performance standards and resources.
 8. The regulator will notify the following bodies by sending them a copy of the tender notice imposing the requirement:

- Homes England;
- GLA (where the registered provider owns land in Greater London); and
- the Secretary of State (where the registered provider is a local authority)

Specific requirements relating to local authorities

9. The regulator may exercise this power even if the local authority already has a management agreement in place covering the same functions which the regulator requires to be tendered. In such circumstances, the local authority may not implement any new or separate management agreement it has in place.
10. Any duty the local authority may have to consult in relation to its management functions does not apply where it is acting in accordance with a requirement imposed on it under section 247 of the Act.

Appeal process

11. There is a statutory right of appeal to the High Court, which must be brought within the period of 28 days beginning with the day on which the regulator notifies the registered provider of the imposition of requirement under section 247(2)

Guidance Note 10: Sections 249, 250 and 250a - Management Transfer.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	✓

Type of power: enforcement power

The power

1. This power enables the regulator to require a registered provider to transfer some, or all, of its management functions that relate to social housing to a specified person (transferee manager).

When the regulator will use this power

2. Section 249(1) of the Act sets out the grounds under which the regulator can use this power. They are where, as a result of an inquiry under section 206 of the Act or an extraordinary audit under section 210 of the Act, the regulator is satisfied:
 - the affairs of a registered provider have been mismanaged in relation to social housing¹⁷;
 - a transfer of certain of a registered provider's management functions would be likely to improve the management of some or all of its social housing; or
 - the registered provider has failed to meet a standard under section 193, 194 or 194C of the Act.

Process for using the power

3. If, after an inquiry or extraordinary audit has been carried out, the regulator is satisfied that the grounds under section 249(1) of the Act have been met, it will decide the scope of the management functions to be transferred including:
 - whether it will relate to all of the provider's management functions in relation to social housing, or specific functions; and
 - whether it will relate to all of the registered provider's social housing, or social housing located in a specific geographical or defined area.
4. Before requiring the management functions to be transferred, the regulator will give the provider a notice ('warning notice'), as set out in section 250 of the Act, which will:
 - specify the grounds on which the regulator is proposing to take action;

¹⁷ Mismanagement has a specific meaning in the Act and is defined in s.275: Mismanagement in relation to the affairs of a registered provider means managed in breach of any legal requirements (imposed by or under an Act or otherwise).

- warn that the regulator may take action;
 - set out the scope of the management functions which may be transferred;
 - explain the effect of section 250 of the Act;
 - explain that the registered provider may make representations to the regulator about the warning notice within the period of 28 days beginning with the day on which the provider receives the warning notice;
 - indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, requiring the provider to transfer its management functions;
5. The regulator will also provide a copy of the warning notice to key stakeholders as set out in 250(4) of the Act.
6. The regulator will implement a process so as to ascertain the views of those set out in section 250(7) of the Act, which include relevant tenants.
7. The regulator will consider any representations, any voluntary undertakings offered and the views of stakeholders ahead of deciding to impose a requirement to transfer management functions.
8. If the regulator decides to impose a requirement to transfer management functions, it will identify the transferee manager – this could be a person or organisation, including another registered provider and will consider a number of factors which may include, but is not limited to:
- capability and capacity to deliver efficient and effective management;
 - quality and management of the transferee manager's service delivery in relation to the functions to be transferred;
 - where the transferee manager proposed is a registered provider its:
 - financial viability;
 - governance; and
 - management and financial capacity to deliver these functions.
 - determine the terms and conditions under which the management functions will be transferred including remuneration; and
 - seek consent from the Secretary of State in relation to the transfer and terms.
9. The regulator will provide the registered provider with notice of the requirement to transfer management functions ('TMF notice') setting out:
- the matters as set out in section 249 (4)-(5) of the Act which are the scope of the management transfer, and terms and conditions;
 - the transferee manager's powers in accordance with section 249(6) of the Act;

- its proposals for subsequent liaison with the registered provider to ensure compliance with the requirement to transfer management functions.

10. The regulator must send a copy of the TMF notice to Homes England, the GLA (where the registered provider owns land in Greater London) and the Secretary of State (where the registered provider is a local authority).

Specific requirements relating to local authorities

11. The regulator may require a local authority to transfer its management functions even if the local authority already has a management agreement in place covering the same management functions which the regulator requires to be transferred.
12. Where the regulator requires a local authority to transfer management functions, the local authority may not implement any new or separate management agreement it has in place covering the same management functions which the regulator has required to be transferred.
13. Any duty the local authority may have to consult in relation to the exercise of its management functions does not apply where it is acting in accordance with a requirement imposed by the regulator.

Appeal process

14. There is a statutory right of appeal to the High Court, which must be brought within the period of 28 days beginning with the day on which the regulator notifies the registered provider of the imposition of requirement under section 249(2).

Guidance Note 11: Sections 251- 252 – Appointment of a Manager.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	X

Type of power: enforcement power

The power

1. This power enables the regulator to appoint, or require a private registered provider ('PRP') to appoint, a manager to manage the entirety of their affairs relating to social housing or specific aspects of social housing.
2. The manager can be an individual or a corporate body.

When the regulator will use this power

3. Section 251(1) of the Act sets out the grounds under which the regulator can use this power. These grounds are:
 - where a PRP has failed to meet a standard under section 193, 194 or 194C of the Act; or
 - where the affairs of a PRP been mismanaged¹⁸ in relation to social housing.

Process for using the power

4. If the regulator is satisfied that one or more of the grounds as set out in section 251(1) of the Act apply, the regulator will decide whether to make the appointment itself, or to require the PRP to make the appointment. In making this decision, the regulator will consider all the circumstances of the case including but not limited to:
 - the PRP's ability and willingness to make the appointment;
 - whether the circumstances require the appointment to be made urgently.
5. The regulator will also decide:
 - the scope of the manager's role i.e. whether they are required to manage the entirety of the registered provider's social housing affairs, or specific aspects of them; and
 - specific powers that the manager will be given.

¹⁸ Mismanagement has a specific meaning in the Act and is defined in s.275. Mismanagement in relation to the affairs of a registered provider means managed in breach of any legal requirements (imposed by or under an Act or otherwise).

6. Depending on whether the regulator is making the appointment itself or requiring the PRP to make the appointment, the regulator will either decide itself or determine the process for agreeing:
 - the terms and conditions under which the manager will be appointed including remuneration;
 - who is to be appointed as the manager – factors including professional expertise, experience and availability will be considered.
7. Before appointing the manager or requiring the PRP to appoint the manager, the regulator will give the PRP a pre-appointment notice as required by section 252 of the Act which will:
 - specify the matters referred to at 5 above.
 - where known, specify the matters referred to above at 6 or the process to be used to agree such matters;
 - specify the grounds under which the appointment of the manager or requirement to appoint the manager is being proposed;
 - explain the effect of section 252 of the Act;
 - warn that the regulator may take action;
 - explain that the registered provider may make representations to the regulator within the period of 5 days beginning with the day on which the PRP receives the pre-appointment notice; and
 - indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation to taking the proposed action.
 - explain that the registered provider has a statutory right of appeal in accordance with section 252(10) if the regulator requires it to appoint a manager, or imposes such a requirement.
8. The regulator will also provide a copy of this pre-appointment notice to key stakeholders as set out in 252(4) of the Act.
9. The regulator will consider any representations and/or voluntary undertakings offered ahead of notifying the PRP of its decision to appoint the manager or require the PRP to appoint a manager ('appointment notice').
10. The regulator will notify Homes England, the GLA (where the PRP owns land in Greater London) and other stakeholders (where appropriate) where it has appointed a manager, or required the PRP to appoint a manager.
11. The manager will report to the regulator on matters relating to its appointment.

Appeal process

12. There is a statutory right of appeal to the High Court, which must be brought within the period of 28 days beginning with the day on which the regulator notifies the PRP of an appointment of a manager under section 251(2)(a) or the imposition of the requirement to appoint a manager under section 251(2)(b).

Guidance Note 12: Section 252A – Appointment of Advisers to local authorities.

	Applicable
PRP (For Profit)	X
PRP (Not For Profit)	X
PRP (Registered Charity)	X
Local Authority	✓

Type of power: enforcement power

The power

1. This power enables the regulator to appoint, or require the local authority to appoint, one or more advisers to provide advice to assist the local authority to manage the entirety of its social housing affairs or specific aspects of its social housing.

When the regulator will use this power

2. Section 252A(2) of the Act sets out a number of grounds under which the regulator can use this power. These grounds are:
 - that it is necessary to exercise it for the proper management of the local authority's affairs so far as they relate to the provision of social housing;
 - that it is desirable to exercise it in the interests of securing better services for the local authority's tenants;
 - that the local authority
 - does not have a health and safety lead designated under section 126A of the Act, or
 - has failed to meet a requirement under section 126C(1) of the Act;
 - that the functions of the health and safety lead are not being carried out;
 - that the local authority has failed to meet a standard under section 193, 194 or 194C of the Act; or
 - that the local authority has failed to comply with a performance improvement plan notice.

Process for using the power

3. If the regulator is satisfied that one or more of the grounds as set out in section 252A(2) of the Act apply, the regulator will decide whether to make the appointment itself, or to require the local authority to make the appointment. In making this decision, the regulator will consider all the circumstances of the case including but not limited to:
 - the local authority's ability and willingness to make the appointment;

- whether the circumstances require the appointment to be made urgently.
4. The regulator will also decide the scope of the role (i.e. whether they are required to manage the entirety of the registered provider's social housing affairs, or specific aspects of them).
 5. Depending on whether the regulator is making the appointment itself or requiring the local authority to make the appointment, the regulator will either decide itself or determine the process for agreeing:
 - the terms and conditions under which the adviser(s) will be appointed including remuneration - the local authority will be expected to remunerate the adviser(s), however in agreeing such costs, the regulator will act reasonably, and take into account relevant factors including market rates for such advisory services;
 - who is to be appointed as the adviser(s) - factors including professional expertise, experience and availability will be considered.
 6. The regulator will provide written notification to the local authority of its decision to make the appointment(s) or require the local authority to make the appointments(s). Such notification will provide details of the matters referred to at 5 and 6 above, or the process for agreeing the matters at 6 above where the local authority is required to make the appointment.

Appeal process

7. There is no statutory right of appeal under the Act. However, a local authority can appeal a decision of the regulator to appoint adviser(s) or require the local authority to do so, under the Regulator's Appeals Scheme. Appeals must be made within the timescales set out in the Regulator's Appeals Scheme. Further details about the appeal process are set out in the Regulator's Appeals Scheme.

Guidance Note 13: Sections 253 - 254 Transfer of Land.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	X
Local Authority	X

Type of Power: enforcement power

Scope

1. This power enables the regulator to require a private registered provider ('PRP') to transfer land either to the regulator or another PRP where an inquiry under section 206 or extraordinary audit under section 210 has been carried out.
2. This power cannot be used in relation to registered charities. However, it can be used in relation to charities which are not registered, provided such transfers of land are to another charity whose objects the regulator thinks are similar (section 253(6)-(7)) of the Act.
3. The regulator cannot require a not for profit PRP to transfer land to a for profit PRP under section 253(5) of the Act.
4. Under section 253(3)-(4) of the Act, the power can be applied to a for profit PRP only in relation to its social housing and associated land. Land is associated with social housing if the regulator thinks that it is used in connection with the social housing¹⁹ or its management.

How will the regulator use this power

5. Section 253(1) of the Act provides that this power may be used where the regulator is satisfied that:
 - the affairs of a PRP have been mismanaged in relation to social housing²⁰;
 - a transfer of land by a PRP would be likely to improve the management of the land; or
 - the PRP has failed to meet a standard under section 193, 194 or 194C of the Act.

Process for using the power

6. If the regulator is satisfied that the grounds as set out at section 253(1) of the Act have been met, it will decide the identity of the transferee.

Where land is to be transferred to the regulator, this will be a temporary measure pending onward transfer to another PRP.

7. Where land is to be transferred to another PRP in assessing their suitability, the regulator will consider all relevant factors including but not limited to:

¹⁹ As defined in section 68 of the Act.

²⁰ Mismanagement has a specific meaning in the Act and is defined in s.275: Mismanagement in relation to the affairs of a registered provider means managed in breach of any legal requirements (imposed by or under an Act or otherwise).

- the requirements under section 253(5)-(7) of the Act regarding the identity of the transferee are met (as set out under the heading 'scope' above);
- the quality and management of their services to residents;
- the quality of their governance systems,
- their financial viability;
- their general regulatory compliance; and
- their management and financial capacity.

8. The regulator will decide the terms of the transfer including:

- the land to be transferred including whether it will be all the PRP's land, or part of it - if the former, the terms of the transfer will make provision for all assets and liabilities of the provider to be passed to the recipient PRP.
- the price of the transfer – the regulator will commission and pay for valuations and will ensure that the price at which the transfer takes place is not less than the amount the property would fetch if sold by a willing seller to another PRP (section 254(2) of the Act).
- provision as to the payment of any debts or liabilities in respect of the land, whether or not secured (section 254(3) of the Act). This will be relevant where only part of the PRP's land is to be transferred. The regulator will seek to:
 - reach a fair solution in terms of apportionment of any assets and liabilities; and avoid giving preferential treatment to a creditor who is not lawfully entitled to such treatment.

9. The regulator will consider if there are any relevant stakeholders and consult with them as necessary.

10. The regulator will obtain the consent of the Secretary of State to:

- the transfer of land; and
- the terms under which that transfer of land will take place.

Appeal Process

11. There is no statutory right of appeal or appeals' process in accordance with the Regulator's Appeals Scheme.

Guidance Note 14: Section 255 – Amalgamation.

	Applicable
PRP (For Profit)	X
PRP (Not For Profit)	✓
PRP (Registered Charity)	X
Local Authority	X

Type of Power: enforcement power

Scope

1. This power enables the regulator to require two not for profit private registered providers which are registered societies ('NPRP') to amalgamate.

When the regulator will use this power

2. Section 255(1) of the Act sets out three specific grounds under which the regulator may exercise this power. They are where, as a result of an inquiry under section 206 of the Act or an extraordinary audit under section 210 of the Act, the regulator is satisfied that:
 - the affairs of a NPRP have been mismanaged in relation to social housing²¹;
 - the management of social housing owned by a NPRP would be improved if the NPRP were amalgamated with another NPRP; or
 - the NPRP has failed to meet a standard under section 193, 194 or 194C of the Act.

Process for using the power

3. If, after considering findings following a statutory inquiry or extraordinary audit of a registered society ('NPRP1'), the regulator is satisfied that the grounds in section 255(1) of the Act are met, the regulator will identify a suitable NPRP which is a registered society ('NPRP2') for NPRP1 to amalgamate with.
4. In assessing NPRP2's suitability, the regulator will consider all relevant factors including but not limited to:
 - the quality and management of NPRP2's services to residents;
 - the quality of NPRP2's governance systems;
 - NPRP2's financial viability;
 - NPRP2's general regulatory compliance; and
 - NPRP2's management and financial capacity.
5. NPRP2 will be expected to take the amalgamation forward and this shall be overseen by the regulator. This process will involve but is not limited to:
 - NPRP2 undertaking due diligence;

²¹ Mismanagement has a specific meaning in the Act and is defined in s.275: Mismanagement in relation to the affairs of a registered provider means managed in breach of any legal requirements (imposed by or under an Act or otherwise).

- both NPRP1 and NPRP2 consulting with relevant stakeholders and obtaining any necessary consents;
 - NPRP2 preparing a business plan and the governing document ('rules') for the registered society created by the amalgamation ('NPRP3') for approval by NPRP1 and the regulator;
 - both NPRP1 and NPRP2 preparing a report setting out all the details for the amalgamation, which also covers the outcome of the consultation and due diligence, business and operational planning for NPRP3 and the new rules for NPRP3.
6. If the regulator agrees to the proposal for amalgamation, it will seek the Secretary of State's consent.
 7. Following receipt of the Secretary of State's consent, the regulator will prepare an instrument of amalgamation ('instrument') and send it to the Financial Conduct Authority for registration in accordance with section 255(5) to (7) of the Act.
 8. The amalgamation does not take effect until the instrument is registered by the Financial Conduct Authority. The regulator will notify NPRP3 of the registration of the instrument.
 9. NPRP3 must be registered with the regulator and designated as non-profit. Pending registration, it shall be treated as registered and designated non-profit.

Appeal process

10. There is no statutory right of appeal or appeals' process in accordance with the Regulator's Appeals Scheme.

Guidance Note 15: Sections 256 to 265 - Powers available during or following an inquiry.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	X

Type of power: enforcement power

Scope

1. This power enables the regulator to take the following actions during or following an inquiry or extraordinary audit under sections 206 and 210 of the Act:
 - restrict dealings of a PRP; or
 - suspend or remove an officer, employee or agent of a private registered provider ('PRP').
2. In particular, the regulator may conclude that it is necessary to suspend or remove officers, employees or agents of the PRP in order to ensure the proper conduct of the inquiry and/or the proper management of the PRP's functions, including the delivery of services to its tenants.
3. Where a person is removed from their position following a statutory inquiry or extraordinary audit, the regulator may conclude that it would not be appropriate for that person to serve as an officer of another registered provider and so the regulator may disqualify that person.

Restrictions on dealings during or following an inquiry

When the regulator will use these powers

4. The regulator envisages that this power will be utilised in circumstances to protect a PRP's assets and public investment, although this does not preclude the regulator using it in other circumstances.
5. Section 256 (1) - (3) of the Act sets out the circumstances under which the regulator can make an order restricting dealings during an inquiry under section 206 of the Act. These circumstances are that:
 - the regulator is satisfied that:
 - the affairs of the PRP have been mismanaged²², and
 - the interests of tenants of the PRP, or its assets, require protection; or
 - if as a result of an inquirer's interim report under section 207 of the Act, the regulator is satisfied that:
 - the affairs of the PRP have been mismanaged; or

²² Mismanagement has a specific meaning in the Act and is defined in 275 of the Act.

- the PRP has failed to meet a standard under section 194 of the Act.
6. Section 257 (1) of the Act sets out the circumstances under which the regulator can make an order restricting dealings following an inquiry under section 206 of the Act or an extraordinary audit under section 210 of the Act. These circumstances are:
- the regulator is satisfied that:
 - the affairs of the PRP have been mismanaged; or
 - a PRP has failed to meet a standard under section 194 of the Act.

Process for using the powers

7. If the regulator is satisfied that the circumstances in section 256(1)-(3) or section 257(1) of the Act have been met, it will consider whether the order should restrict:
- the transactions that may be entered into by the PRP; or
 - the nature and amounts of payments that may be made by the PRP.
- In accordance with sections 256(6) and section 257(4) of the Act, such order may provide that transactions or payments may not be made without the regulator's consent.
8. The regulator will also consider whether to order a bank or other person who holds money or securities on behalf of the PRP not to part with them without the regulator's consent pursuant to section 256(4) or 257(2) of the Act.
9. In accordance with section 258(1) of the Act, before making an order, the regulator must take all reasonable steps to give notice to:
- the PRP; and
 - any person to whom it directs an order restricting the parting with money or securities held by them on behalf of the PRP under section 256(4) or section 257(2) of the Act.
10. An order made:
- whilst the inquiry is still ongoing ceases to have effect at the end of the period of 6 months beginning with the day on which the inquirer's final report under section 207 of the Act is made. However, the regulator may revoke the order before this, or extend it for a specified period of up to 6 months;
 - following an inquiry has effect until revoked by the regulator.
11. Where the regulator has decided to utilise the powers linked to an inquiry, it will inform key stakeholders, including the Charity Commission where the PRP is a registered charity.
12. A person who contravenes an order under section 256(4) or 257(2) of the Act commits an offence.

Suspension of officers, employees or agents during an inquiry

When the regulator will use this power

13. Section 259(1) to (3A) of the Act sets out the circumstances under which the regulator may make an order to suspend an officer, employee or agent of the PRP whilst an inquiry under section 206 of the Act is in progress. These circumstances are that:

- the regulator is satisfied that:
 - the affairs of the PRP have been mismanaged; and
 - the interests of tenants of the PRP, or its assets, require protection.
- if as a result of an interim inquiry report under section 207 of the Act, the regulator is satisfied that either:
 - the affairs of the PRP have been mismanaged; or
 - the PRP has failed to meet a standard under section 193, 194 or 194C of the Act. In such circumstances, the regulator may suspend the person who it thinks has contributed to the mismanagement or failure.
- the regulator is satisfied that an officer, employee or agent of the registered provider is obstructing, or failing to co-operate with, the inquiry.

In such circumstance, the regulator may suspend the person who it thinks is obstructing, or failing to co-operate with, the inquiry.

Process for using the power

14. If the regulator is satisfied that the circumstances at section 259(1) to (3A) of the Act exist, in accordance with section 259(7A) of the Act, if the regulator makes an order, it must take all reasonable steps to notify the person suspended and notify the PRP.
15. Where the regulator has decided to suspend a person, it will inform key stakeholders, including the Charity Commission where the PRP is a registered charity.
16. In accordance with section 259(6) of the Act, an order made suspending a person will cease to have effect at the end of the period of 6 months beginning with the day on which the inquirer's final report under section 207 of the Act is made. However, the regulator may revoke an order before the end of that period.

Removal or suspension of officers, employees or agents following an inquiry

When the regulator will use these powers

17. Section 260(1) to (2) of the Act provides that if as a result of an inquiry under section 206 or an extraordinary audit under section 210 of the Act, the regulator is satisfied that the affairs of a PRP have been mismanaged, or the PRP has failed to meet a standard under section 193, 194 or 194C, it may remove an officer, employee or agent who it thinks has:

- contributed to the mismanagement or failure; or

- obstructed, or failed to co-operate with the inquiry under section 206 of the Act.

Process for using the powers

18. Pending a decision to remove a person, the regulator will consider whether the person should be suspended and the length of that period of suspension. In accordance with section 260(3) of the Act, such period may be for up to 6 months.
19. If the regulator considers it necessary to suspend or remove a person, before doing so, it must take all reasonable steps to give 14 days' notice to:
 - the PRP; and
 - the person.
20. Where the regulator has decided to suspend or remove a person, it will:
 - take all reasonable steps to notify the person removed or suspended;
 - notify the PRP; and
 - inform key stakeholders, including the Charity Commission where the PRP is a registered charity.

Actions following a suspension or removal

Directions

21. Following a suspension of an officer, employee or agent of a PRP under section 259 or 260, pursuant to section 261 of the Act the regulator can give directions to the PRP about:
 - the performance of the suspended person's functions; and
 - any other matter arising from the suspension.
22. The regulator may appoint someone to undertake the function of the suspended person(s). In this case the regulator would consider factors including but not limited to:
 - the scope of the appointment;
 - the terms and conditions under which someone will be appointed including remuneration;
 - who is to be appointed– factors including professional expertise, experience and availability will be considered.

isqualification of a removed person

25. In accordance with section 262(1) of the Act where a person is removed under section 260 of the Act, or pursuant to other provisions under the Housing Acts 1964 and 1996 or the Housing Associations Act 1985, this person will be disqualified from acting as an officer of a registered provider.
26. A disqualified person can apply to the regulator to waive their disqualification. In determining their application, the regulator will consider factors including but not limited to the seriousness of issues that led to them being removed. If the regulator does waive a disqualification, this can be generally or in relation to a particular registered provider or class of registered providers.
27. In accordance with section 262(5) of the Act, if a disqualified person acts as an officer of a registered provider, their acts are not invalid by reason only of the disqualification. However:
 - under section 264 of the Act, it is an offence to act as an officer of a registered provider in respect of which the person is disqualified; and
 - under section 265 of the Act, if a person acts as an officer of a registered provider in respect of which they have been disqualified and in doing so receives payments or other benefits, the regulator may require them to repay the sum, or an amount specified representing the whole or part of the value of the benefit. The registered provider can recover the sum or specified amount as a debt if there is a failure to comply with this.
28. The regulator will maintain a register of people who have been disqualified from acting as an officer of a registered provider under section 262 of the Act. This register will include details of any waivers granted; and be available for inspection by the public.

Appeal Process

29. There is no statutory right of appeal or appeals' process in accordance with the Regulator's Appeals Scheme. Where the regulator restricts dealings of a PRP.
30. There is a statutory right of appeal to the High Court where a person is removed or suspended under section 259 or 260 of the Act. Such appeal must be brought within the period of 28 days beginning with the day on which the PRP is notified of the removal or suspension.

Guidance Note 16: Sections 266 to 268 - Removal of Officers.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	X

Type of Power: enforcement power

Scope

1. This power enables the regulator to remove officers from a private registered provider ('PRP').

"Officer" is defined in section 270 of the Act. Depending on the PRP's legal structure or whether it is a registered charity, it can include a director, secretary, trustee, manager and member amongst others.

When the regulator will use this power

2. Section 266 of the Act sets out the circumstances where the regulator may use this power. These circumstances are where an officer:
 - has been made bankrupt;
 - has made an arrangement with his or her creditors;
 - is subject to a disqualification order or a disqualification undertaking under the Company Director's Disqualification Act 1986 or equivalent legislation in Northern Ireland;
 - is subject to an order under section 429(2) of the Insolvency Act 1986;
 - is disqualified under section 178 of the Charities Act 2011 from being a charity trustee;
 - is incapable of acting by reason of mental disorder;
 - is impeding the proper management of the PRP by reason of absence or failure to act;
 - is obstructing the regulator, or failing to co-operate with the regulator, in the performance of the regulator's functions under Part 2 the Act.
3. Indicators that an officer is impeding proper management of a PRP, or is obstructing or failing to co-operate with the regulator include:
 - the absence of officers means that the governing body fails to hold quorate meetings, and this puts the financial viability of the PRP, services to tenants, or tenants at risk;
 - there is evidence that an officer or officers are deliberately misleading or withholding information from the regulator and/or other stakeholders and this puts the safety of tenants and social housing assets at risk.

4. It may be necessary for the regulator to exercise this power against more than one officer of a PRP.

Process for using the power

5. If the regulator is satisfied that at least one of the grounds as set out under section 266 of the Act has been met, it will take all reasonable steps to give at least 14 days' notice of its intention to remove the officer to both the officer concerned and the PRP (section 267(1) of the Act).
6. Where the regulator decides to make an order removing the officer, it will:
 - take reasonable steps to notify the person removed;
 - notify the PRP; and
 - notify the Charity Commission where the PRP is a registered charity.
7. The regulator will consider if a new officer should be appointed under section 269(1)(a) of the Act to replace the removed person.

Appeal process

8. There is a statutory right of appeal to the High Court, which must be brought within the period of 28 days beginning with the day on which the PRP is notified of the removal.

Guidance Note 17: Section 269 – Appointment of new officers.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	X

Type of power: enforcement power

The power

1. This power enables the regulator to appoint one or more persons as an officer of a private registered provider ('PRP').

'Officer' is defined in section 270 of the Act. Depending on the PRP's legal structure or whether it is a registered charity, it can include a director, secretary, trustee, manager and member amongst others.

When the regulator will use this power

2. Section 269(1) of the Act sets out the circumstances where the regulator may appoint an officer, which are:
 - to replace an officer removed by order under section 266 of the Act;
 - where there are no officers;
 - in the case of a PRP which is a registered charity, registered society, or registered company, if none of the officers is a board member²³;
 - if the regulator is satisfied that the PRP has failed to meet a standard under section 193, 194 or 194C of the Act; or
 - if the regulator is satisfied an additional officer is necessary to ensure that the PRP's affairs are managed in accordance with legal requirements (imposed by or under an act or otherwise).

Process for using the power

3. If the regulator is satisfied that one or more of the circumstances in section 269(1) of the Act have been met, it will:
 - consider the appropriate number of officers to be appointed taking into account the requirements regarding numbers set out in section 269(2) of the Act; and
 - identify persons with the appropriate skills, knowledge and experience.

4. Once the regulator has decided the number and persons to be appointed as officer, it will issue an order to the PRP and such persons to be appointed specifying:
 - the circumstances under which the appointment is being made;
 - the period of the appointment;
 - that the appointed officer(s) will have the same rights, powers and obligations as officers appointed by the PRP under its constitution – the regulator does not provide remuneration to appointed officers;
 - that the appointed officer(s) can resign at any point within the rules of the PRP's constitution; and
 - that the regulator can renew the appointment.
5. The regulator will notify any relevant stakeholders, including the Charity Commission where the PRP is a registered charity.
6. As with all powers, the regulator will consider whether it is necessary to exercise any other powers. Specifically, where an officer has been appointed and they have not vacated, the regulator will usually consider whether, in the circumstances of the case to direct:
 - Homes England; and/or
 - GLA not to give financial assistance to the PRP; under section 100G of the Act and section 333ZG of the Greater London Authority Act 1999 respectively.

Appeal process

7. There is no statutory right of appeal under the Act. However, a PRP can appeal a decision to appoint an officer under the Regulator's Appeals Scheme. Appeals must be made within the timescales set out in the Regulator's Appeals Scheme. Further details about the appeal process are set out in the Regulator's Appeals Scheme.

Guidance Note 18: Sections 269a – 269b - Censure of local authority employees.

	Applicable
PRP (For Profit)	X
PRP (Not For Profit)	X
PRP (Registered Charity)	X
Local Authority	✓

Type of power: enforcement power

The power

1. This power enables the regulator to issue a censure notice to a local authority identifying an employee or agent who has contributed to failures during or following an inquiry under Section 206 of the Act. The local authority can then decide whether to take action against such individuals, as this is outside of the regulator's remit.
The regulator may issue more than one censure notice in relation to the same failure, but only one employee or agent can be named in each censure notice.

When the regulator will use this power

2. Section 269A(1)-(4) of the Act sets out the circumstances where the regulator may issue a censure notice, which are:
 - an inquiry under section 206 of the Act is in progress and the regulator is satisfied that the affairs of the local authority have been mismanaged²⁴ and the interests of tenants of the local authority or its assets require protection; or
 - the regulator is satisfied that the affairs of the local authority have been mismanaged or the local authority has failed to meet a standard under section 193, 194 or 194C of the Act where:
 - the inquiry is in progress and the inquirer has issued an interim report; or
 - the inquiry has concluded.

Process for using this power

3. If the regulator is satisfied that the circumstances in section 269A (1)-(4) of the Act have been met, it will issue a censure notice identifying the employee or agent it concludes has contributed to the local authority's failure or mismanagement stating the reasons.
4. Section 269B of the Act requires the local authority to respond to the regulator in writing within 28 days of receiving the censure notice. The response must:

²⁴ Mismanagement has a specific meaning in the Act and is defined in s.275: Mismanagement in relation to the affairs of a registered provider means managed in breach of any legal requirements (imposed by or under an Act or otherwise).

- explain what action (if any) the local authority has taken or proposes to take in relation to the employee or agent;
 - explain why the local authority does not think that the employee or agent has contributed to the failure or mismanagement; or
 - explain why the local authority does not think that its affairs have been mismanaged or that it has failed to meet a standard (as the case may be).
5. The regulator will consider whether the local authority's response to the censure notice is satisfactory taking into account all the circumstances of the case. Where the:
- local authority has confirmed it will take specific actions and the regulator is satisfied with this, it will monitor progress.
 - regulator may consider exercising other powers in the event that the progress made is not satisfactory.
 - regulator may consider exercising its other powers at any time throughout the process if it considers it necessary.

Appeal Process

6. There is no statutory right of appeal or appeals' process in accordance with the Regulator's Appeals Scheme.

Guidance Note 19: Sections 144-159 the Act and Chapter 5 of Part 4 of the Housing and Planning Act 2016- Insolvency and Moratorium Powers.

	Applicable
PRP (For Profit)	✓
PRP (Not For Profit)	✓
PRP (Registered Charity)	✓
Local Authority	X

Scope

1. These provisions will be of relevance to cases where a private registered provider ('PRP') identifies a potential problem with, or threat to, its viability. Where this is the case, PRPs are expected to give the regulator early warning of such issues.
2. The moratorium provisions are set out at sections 145 to 159 of the Act. A moratorium is automatically triggered by an insolvency event (as detailed in 7 below). During a moratorium, the disposal of a PRP's land (save certain exempted disposals) requires the regulator's prior consent.
3. The purpose of the moratorium is to create a period of time to seek a solution to a PRP's viability problem in order to protect the social housing assets and the interests of the PRP's tenants. This may involve the regulator making proposals or taking steps to apply for a housing administration order. Decisions will always be made by the regulator on a case-by-case basis and the regulator does not guarantee to underwrite a registered provider's financial position in any way.
4. Where it appears to the regulator that a PRP's viability problems may mean it is unable to pay its debts and that housing administration offers an appropriate route to achieving the regulator's objectives, it may (with the Secretary of State's consent) apply for a housing administration order.
5. The housing administration order provisions and the power of the regulator to apply to court for a housing administration order are set out in Chapter 5 of Part 4 of the Housing and Planning Act 2016 (including schedules) ('HPA 2016').
6. Housing administration permits arrangements to be put in place to allow a PRP to continue operating until it is either rescued as a going concern, sold, or its assets transferred to other PRPs or third parties.

Moratorium

Triggers

7. A moratorium will be automatically triggered on the occurrence of one of the following events as defined at section 145(2) of the Act (each an 'insolvency event'). These events are:
 - a petition is presented under section 124 of the Insolvency Act 1986, by a person other than the Secretary of State, for the winding up of the PRP;

- an application is made by the PRP under section 105(3) of the HPA 2016 for permission to pass a resolution for voluntary winding up;
- an application is made in accordance with paragraph 12 of Schedule B1 to the Insolvency Act 1986, by a person other than the Secretary of State, for an administration order in respect of the PRP;
- a notice of the appointment of an administrator of the PRP under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 is filed with the court under paragraph 18 or 29 of that Schedule;
- notice of intention to enforce a security over property of the PRP is given under section 108(2)(a) of the HPA 2016 or the requirement to give such notice is waived under section 108(2)(b) of the HPA 2016.

Effect

8. The effects of a moratorium are:

- GLA and Homes England may not:
 - give the PRP a direction under section 32(4) of the Act – under these provisions a PRP may be required to apply or appropriate grant for specified purposes, or pay to GLA or Homes England an amount specified by the GLA or Homes England (as applicable); or
 - take steps to enforce such a direction against the registered provider.
- The PRP cannot dispose of land without the prior consent of the regulator. However, the regulator's consent is not required for the disposals as set out under section 149 of the Act. This includes specific types of lettings, right to buy and right to acquire.
- A disposal by a PRP during a moratorium without the regulator's consent will be void unless it is permitted under section 149 of the Act or it is disposal of a single dwelling by a not for profit PRP and they reasonably believe that the buyer intends to use the property as their principal residence under section 150(2) of the Act.

Ending of moratorium

9. Under section 146 of the Act, a moratorium ends when 28 days has passed beginning with the day on which the regulator is given notice pursuant to sections 104-108 of the HPA 2016 of one of the events under section 145(2) unless:

- the moratorium is extended – the regulator may extend a moratorium if it has made reasonable enquiries to locate secured creditors of the registered provider, and each of the secured creditors it has located consents; or
- a housing administration order is made; or
- the moratorium is cancelled – the regulator may cancel a moratorium for any reason, but as a public body, it will be guided by public law principles, when it comes to making such a decision. One example, and there would be many other circumstances, so this is just one illustrative example, is where a PRP arranges a partnership deal with another financially strong PRP. In such scenario, the regulator would assess such a proposal including the capability and capacity of the PRP for continued ownership and management of the land, and, if it is satisfied that this is the most appropriate course, cancel the moratorium.

10. Notice to the regulator must comply with requirements as detailed in sections 104-108 of the HPA 2016, and the regulator must provide the Secretary of State with a copy.

11. Under section 146(7) where a moratorium ends, the regulator will notify the PRP, any secured creditors it is able to locate after making reasonable enquiries, the GLA (where relevant) and Homes England.

The regulator's powers during a moratorium

Interim manager

12. Pursuant to section 151(1), during a moratorium the regulator may appoint an interim manager to assist with the management of a PRP's affairs and maintenance of services to tenants. The regulator will decide:
- the scope of the interim manager's role i.e. whether they are required to manage the entirety of the PRP's social housing affairs, or specific aspects of them;
 - specific powers that the interim manager will be given – the interim manager will have any power specified in the terms of appointment and those required for the purposes of the appointment (including entering into agreements and taking other action on behalf of the PRP);
 - the terms and conditions under which the interim manager will be appointed including remuneration. There is no provision in the Act as to who will meet the costs of an interim manager. The regulator anticipates that those costs will be met by the PRP, but in cases where this is clearly not possible the regulator may consider underwriting the costs of an interim manager in whole or in part; and
 - who is to be appointed as the interim manager – factors including professional expertise, experience and availability will be considered.
13. In accordance with section 151(6) of the Act, an interim manager may not:
- dispose of land; or
 - grant security over land.
14. An interim manager's appointment will come to an end at the earliest of the following:
- the end of the moratorium;
 - when the regulator notifies the interim manager that there are proposals under section 152 of the Act which are agreed proposals – further details regarding proposals are set out below; or
 - a date specified in the appointment.

The power to make proposals

Making and agreeing proposals

15. Section 152 of the Act permits the regulator to make proposals about the future ownership and management of the PRP's land with a view to ensuring that the property will be properly managed by a registered provider.
16. In most cases, the regulator's objective in drawing up proposals is likely to be to seek to avoid the formal insolvency of the PRP, while recognising that it may be difficult to satisfy the competing interests of all stakeholders and that the regulator has a wide range of obligations pursuant to its statutory objectives. The regulator will seek to ensure that any proposals do not cause a conflict of duties for any appointed insolvency holder. In many cases where a moratorium is in place, other registered providers may be able to assist with a solution. The regulator may hold discussions with other registered providers it believes may have the capacity and capability to provide the necessary assistance.
17. In making proposals, the regulator shall:
- have regard to the interests of the PRP's creditors as a whole under section 152(2)(a) of the Act;
 - so far as is reasonably practicable, avoid worsening the position of unsecured creditors under section 152(2)(b) of the Act;
 - ensure proposals comply with section 152(4) of the Act which contains provisions for protecting the status quo in relation to preferential creditors;
 - comply with specific requirements where the PRP is a charity under section 152(5) of the Act. These provisions state that proposals:
 - may not require the charity to act outside its trusts; and
 - may provide for the disposal of accommodation only to another charity whose objects the regulator thinks are similar to the PRP.

When considering the interests and position of creditors, the regulator's primary concern will be to ensure that property will be properly managed by a registered provider.

18. The procedure for making proposals is set out under section 153 of the Act. Before making any proposals the regulator will consult:
- the PRP
 - tenants (so far as is reasonably practicable);
 - any secured creditors of the PRP that the regulator has located after making reasonable enquiries;
 - the Financial Conduct Authority or Charity Commission (where relevant).

If no secured creditors are located, the proposals made by the regulator following the consultation are agreed proposals. This means that if a PRP has no secured creditors, such proposals made by the regulator after consulting with those required will be agreed proposals.

19. Where the regulator locates one or more secured creditors, the regulator must send a copy of the draft proposals to:
- the PRP;
 - each of the secured creditors located after the regulator's reasonable enquiries;
 - any liquidator, administrator, administrative receiver, or receiver appointed in respect of the PRP or its land.
20. The regulator must also bring those draft proposals to the attention of the PRP's
- members;
 - tenants; and
 - any unsecured creditors.
21. Where the regulator locates secured creditors, draft proposals will only become agreed proposals if each secured creditor whom the regulator was able to locate agrees to them.
22. Draft proposals may be agreed with modifications if each secured creditor to whom the draft proposals were required to be sent consents by notice to the regulator, and the regulator consents.
23. The regulator shall send a copy of the agreed proposals to:
- the PRP;
 - any secured creditors to whom the draft proposals were sent;
 - any liquidator, administrator, administrative receiver, or receiver appointed in respect of the PRP or its land; and
 - the Financial Conduct Authority or Charity Commission (where relevant).
24. The regulator must also bring the agreed proposals to the attention of:
- the PRP's members;
 - its tenants; and
 - its unsecured creditors, if any.

Amending proposals

25. The regulator may make proposals amending agreed proposals. In such circumstances, the same process for the original proposals must be followed.

Implementing proposals

26. Under section 154(1) of the Act, the regulator, the PRP, its creditors and any appointed insolvency office holder must implement agreed proposals.
27. In accordance with sections 154(2) to (3) of the Act, the directors, committee members, members, charity trustees or trustees of the PRP are required to co-operate with the implementation of agreed proposals, with the proviso that they are not required or permitted to commit a breach of a fiduciary or other duty to the PRP.
28. The regulator may take enforcement action through the courts against any persons who do not comply with their obligations in respect of agreed proposals.
29. Under section 159(4) of the Act, a person bound by agreed proposals may apply to the High Court if they think that action taken by another person breaches section 154 of the Act. The High Court may:
 - confirm, annul or modify the action; or
 - grant relief by way of injunction, damages or otherwise.

Appointment of a manager

30. Section 155 of the Act enables the regulator to appoint a manager where agreed proposals make provision for such appointment, and for the payment of the manager's reasonable remuneration and expenses.
31. Under section 155(4) of the Act, the regulator may give the manager general or specific directions. Where the provider is a charity, the regulator must notify the Charity Commission that a manager has been appointed under section 155(6) of the Act.
32. Section 156 of the Act sets out a non-exhaustive list of powers conferred on the manager. Additional powers for managers appointed in respect of a PRP which is a registered charity are set out under section 157 of the Act.
33. In accordance with section 156(3) of the Act, a manager shall so far as is reasonably practicable, consult and inform the PRP's tenants about an exercise of powers likely to affect them.
34. Sections 159(1)-(2) of the Act enable a PRP or a creditor of a PRP to apply to the High Court where they think action taken by a manager is not in accordance with agreed proposals. The High Court may:
 - confirm, annul or modify an act of the manager;
 - give the manager directions; or
 - make any other order.

Financial assistance

35. Under section 158 of the Act, the regulator may give financial or other assistance to:
- the PRP for the purpose of preserving its position pending the regulator deciding whether to exercise the power under section 152 of the Act to make proposals and (if proposals are made), such proposals becoming agreed proposals; or
 - the PRP, or a manager appointed under section 155 of the Act to facilitate implementation of agreed proposals.
36. In particular, the regulator may lend staff and may arrange for payment of the manager's remuneration and expenses under section 158(3) of the Act.
37. Under section 158(4) of the Act the regulator's power to provide financial assistance is restricted by the need to obtain the consent of the Secretary of State to make grants or loans, to indemnify a manager, to make payments in connection with secured loans, or to guarantee payments in connection with secured loans. Whilst the regulator will consider each case on its own individual circumstances, the regulator anticipates that it would be very rare to seek the consent of the Secretary of State to such forms of financial assistance as, generally speaking, to do so could mean public funds being deployed to protect the commercial risks of existing creditors.

Directions to Homes England and GLA

38. Where an insolvency event has occurred in relation to a PRP, the regulator will consider giving directions to Homes England and the GLA (where relevant) not to give financial assistance under section 100G of the Act and section 333ZG of the Greater London Authority Act 1999 respectively.
39. The circumstances of each case will be different, and the regulator will be mindful of its objective of protecting public funds. However, the general rule is that the regulator will not generally make such directions where to do so might worsen the financial position of the PRP thus hastening the onset of insolvency.

Further moratorium

40. Under section 147(1) of the Act, where a moratorium ends otherwise than by cancellation and an insolvency event under section 145(2) occurs within 3 years beginning with the end of that moratorium, it does not automatically trigger a further moratorium.
41. The regulator may impose a further moratorium for a specified period if it has made reasonable enquiries to locate secured creditors and where the regulator has located secured creditors, each one of them has consented to a further moratorium.
42. Where a further moratorium is imposed the regulator will inform:
- the PRP;
 - any liquidator, administrator, administrative receiver, or receiver appointed in respect of the PRP or its land;
 - Homes England; and

- GLA (where relevant).

Housing administration order

43. Section 99 of the HPA 2016 sets out that an application to the court for a housing administration order may be made either by the Secretary of State or the regulator with the Secretary of State's consent.
44. The HPA 2016 does not prescribe the circumstances under which a housing administration order may be applied for, but section 100(2) of the HPA 2016 sets out that the court may only make a housing administration order if it is satisfied that one of the two grounds exist:
- the PRP is unable, or is likely to be unable, to pay its debts; or
 - on a petition by the Secretary of State under section 124A of the Insolvency Act 1986, it would be just and equitable (disregarding the objectives of the housing administration) to wind up the PRP in the public interest.
45. In accordance with section 100(4) of the HPA 2016, the Court has no power to make a housing administration order in relation to a PRP which:
- is in administration under Schedule B1 to the Insolvency Act 1986 (an 'ordinary administration'); or
 - has gone into liquidation (within the meaning of section 247(2) of the Insolvency Act 1986).
46. This guidance note is intended to provide very general guidance; we will always make the best decision in our judgement in line with our statutory objectives and will consider each case on its precise facts. However, it is envisaged that some of the instances where the regulator may make an application for a housing administration order are in circumstances where it appears to the regulator that it is likely the PRP will be unable to pay its debts, and that housing administration offers an appropriate route to achieving the regulator's objectives. This may be where the regulator has been notified of an insolvency event under section 145(2) of the Act and the regulator:
- considers that there is a significant risk that it will not be possible to agree acceptable proposals via the moratorium process;
 - considers a better outcome is unlikely to be achieved via an ordinary administration (if available); or
 - has been unable to make proposals or get agreement to proposals made during moratorium.
47. If a moratorium is triggered pursuant to section 145(2)(c) of the Act by a person making an application for an ordinary administration order in respect of a PRP, the regulator will consider whether to make proposals in accordance with section 152 of the Act, apply for a housing administration order, or allow an ordinary administration to proceed. The regulator will normally seek to resolve the situation through making proposals within a moratorium, unless it considers that housing administration offers a better chance of satisfactory resolution in line with the regulator's objectives.

48. In making the application to court for a housing administration order, the regulator will identify the person they propose to appoint as the housing administrator, who must be qualified to act as an insolvency practitioner in accordance with section 101(3) of the HPA 2016. Factors including professional expertise, experience, availability and cost will all be considered in the selection process.

In circumstances where the PRP has already engaged an insolvency practitioner to support it in resolving its problems, the regulator will consider whether it would be appropriate in all the circumstances to put forward that person for appointment as the housing administrator.

49. A housing administration order can made by the court in relation to a PRP that is either:

- a company,
- a limited liability partnership;
- a registered society; or
- a charitable incorporated organisation.

50. Once appointed, the housing administrator has two statutory objectives as set out under sections 97 to 98 of the HPA 2016:

- Objective 1:
 - rescue the PRP as a going concern;
 - achieve a better result for the PRP's creditors as a whole than would be likely if the PRP were wound up (without first being in housing administration); or
 - realise property in order to make a distribution to one or more secured or preferential creditors.

Section 97 of the Act sets out further details about objective 1.

- Objective 2:
 - ensure that the PRP's social housing remains in the regulated housing sector (i.e. owned by a PRP)

51. While the housing administrator must work towards achieving both objectives, Objective 1 takes priority over Objective 2. The housing administrator must also aim to achieve these objectives as quickly and efficiently as possible.

52. Where a housing administration order has been made, the Secretary of State has powers available under sections 109 to 113 of the HPA 2016 to provide financial support which include the ability:

- to make grants or loans to the PRP;
- to provide indemnities in respect of liabilities incurred or loss or damage sustained in connection with the housing administrator carrying out their functions; and

- to provide guarantees in respect of financial obligations of the PRP.

The Secretary of State may require the PRP to make repayments in connection with any financial support provided.

53. The Secretary of State, the regulator (with the consent of the Secretary of State) or the housing administrator can make an application to court to end the housing administration.

Annex 6: Final Business engagement assessment (including equality analysis)

Business Engagement Assessment	
Title of proposal	Consultation on changes to Statutory Guidance under section 215 of the Housing and Regeneration Act 2008
Lead Regulator	<i>Regulator of Social Housing</i>
Contact for enquiries	<i>Referrals and Regulatory Enquiries team</i> <i>0300 124 5225</i>

Date of assessment	August 2023	Stage of assessment	Final
Net cost to business (EANCB)	None	Commencement date	1 April 2024 (some provisions came into force on 20 September 2023)
Which area of the UK would be affected by the change(s)?	England	Is this directly applicable EU or other international legislation?	No

The Regulator has made changes to its Statutory Guidance under section 215 of the Housing and Regeneration Act 2008. These changes are a direct result of a number of legislative changes introduced to the Housing and Regeneration Act 2008 by the Social Housing (Regulation) Act 2023.

We believe there to be negligible impact on the regulatory burden because the changes are principally related to wording and do not fundamentally alter existing regulatory expectations in this area.

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

The changes to the Statutory Guidance are intended to ensure it reflects the legislative position and provides appropriate guidance on our approach to the use of our powers. These changes have been made to ensure the guidance is up to date.

We have also made some more general amendments to the content to improve the clarity of the guidance. The Statutory Guidance is an important document that explains the Regulator's approach to the use of its powers, and it is important that it is correct and reflects recent changes.

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

The Statutory Guidance is relevant to all registered providers of social housing, however the different powers apply to certain types of registered provider. This is reflected in the individual guidance notes. As such, all registered providers are affected by the legislative changes enacted by the Social Housing (Regulation) Act 2023.

How would the change impact these businesses?

The changes should have a positive impact on registered providers as they update our guidance, which should ensure that providers continue to have a clear understanding of how the Regulator will use its powers and the process it will take.

Impact on small businesses

The regulator has specifically considered the impact of our proposals on small businesses. Only PRPs are classed as businesses and small PRPS are those with 1,000 homes or less.

The amendments to the guidance will help to ensure that the Regulator is exercising its functions in a way that is transparent, by helping small, registered providers to understand the regulatory framework around the use of our powers

Equality and diversity analysis

The Regulator is mindful of its statutory equality duties under section 149 of the Equality Act 2010 and has not identified any equalities implications as a result of the changes set prior to the consultation or from any feedback received.

As a result of this, a full equality impact assessment has not been completed. Equality and diversity considerations will continue to be considered during the roll out of the guidance and in any future iterations of the guidance.

Although there are no apparent impacts arising from the changes, registered providers are responsible under their own equality duties to ensure that any decisions they may take support the requirements of the Equality Act 2010.



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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.