



Regulator of
Social Housing

Guidance on applying for voluntary de-registration as a provider of social housing

April 2013



FOREWORD

The Housing and Regeneration Act 2008 ("the Act") establishes the Regulator of Social Housing ("the Regulator").

The Act also establishes the statutory framework within which the Regulator must operate. This framework enables the Regulator to register and regulate providers of social housing. Providers of social housing registered with the Regulator are known as "registered providers". Only registered providers will be regulated.

This guidance provides advice for private registered providers on when they can apply for de-registration, how to apply and how the Regulator will determine whether de-registration is appropriate. Local authorities are not eligible to apply for de-registration but are subject to the compulsory de-registration provisions in the Act.

1. INTRODUCTION

- 1.1 The Homes and Communities Agency ("the HCA") acting through its Regulation Committee is the Regulator of Social Housing ("the Regulator"). The Regulator is responsible for registering and regulating providers of social housing. Any eligible provider of social housing can be registered with the Regulator and only registered providers are subject to regulation. Private registered providers, that is, any provider that is not a local authority, can apply to the Regulator for de-registration at any time. Local authorities that provide social housing are not eligible to apply for de-registration but are covered by the compulsory de-registration provisions of the Act.
- 1.2 Sections 118 and 119 of the Act establish two categories of de-registration: compulsory and voluntary. Compulsory de-registration is where the Regulator can take action, within prescribed circumstances, to remove a registered provider (including a local authority) from the register. The voluntary de-registration provisions of the Act enable private registered providers (ie excluding local authorities) to apply to the Regulator to be de-registered. This guidance is concerned with applications for voluntary de-registration. Under the criteria, effective from April 2010, any private registered provider is eligible to apply for de-registration.
- 1.3 This non-statutory guidance explains the grounds on which a private registered provider can apply for de-registration, including outlining the criteria the Regulator has established under Section 119(2)(c) of the Act for de-registration. It sets out the process that should be followed by applicants, what information should be provided and how we will assess this information. From time to time we will publish information on the Regulator's pages on the HCA's website which will be relevant to applications for de-registration, so applicants should look at this before applying.
- 1.4 We hope that this guidance will help private registered providers understand our de-registration requirements and process. Our aim is to be as helpful as possible and providers can contact the Regulator at any stage to discuss a prospective application.
- 1.5 For any enquiries on de-registration, please contact the Referrals and Regulatory Enquiries Team. Tel: 0300 124 5225 Email: enquiries@rsh.gov.uk
- 1.6 Electronic applications should be submitted to RNTeam@rsh.gov.uk and any paper applications posted to:
- Regulatory Enquiries Team
Regulator of Social Housing
Level 2
7-8 Wellington Place
Leeds
LS1 4AP
- 1.7 Once the de-registration application has been received, the Regulator may request additional documentation to be sent.

2. ELIGIBILITY FOR DE-REGISTRATION

- 2.1 Any private registered provider can apply to the Regulator for de-registration at any time, as long as they have grounds to do so under the Act. There is no restriction on when a de-registered provider can re-apply for registration.
- 2.2 Section 119 of the Act sets out the grounds on which a private registered provider can apply to the Regulator to be de-registered. These are that the private registered provider:
- No longer is or intends to be a provider of social housing in England,
 - Is subject to regulation by another authority whose control is likely to be sufficient, or
 - Meets any relevant criteria for de-registration set by the Regulator.
- 2.3 The de-registration criteria established by the Regulator under Section 119 of the Act are:
- Satisfactory arrangements are in place to ensure the continued protection of tenants and
 - Satisfactory arrangements are in place to ensure there is no misuse of public funds.
- 2.4 In considering the arrangements in place to ensure the continued protection of tenants we will, amongst other things:
- Expect the private registered provider to demonstrate ongoing financial viability,
 - Expect the private registered provider to be achieving a satisfactory level of performance against the Regulatory standards,
 - Take into account any relevant regulatory or other controls that the private registered provider would continue to be subject to after de-registration (including membership of the Housing Ombudsman scheme),
 - Take into account the representations made by tenants and of any local authority in whose area the private registered provider is a landlord, and
 - Take into account the nature and scale of the social housing provision of the private registered provider.
- 2.5 These factors may change over time depending on the nature of the applications we receive and the decisions we take on those applications.
- 2.6 In considering the arrangements for guarding against the misuse of public funds we would consider the amount of any capital public funding outstanding and any current or planned development for which the private registered provider would receive public funding.
- 2.7 Deregistered providers are still subject to regulatory consent rules for disposals unless the Regulator has already directed that any specified dwelling should cease to be social housing. The Regulator does not expect the power to

'declassify' social housing to be widely used. Deregistered providers are also subject to any conditions attached to the public funding imposed by the funder including the HCA (or its predecessor body, the Housing Corporation) the GLA, or any other body from which the provider had received public funding.

- 2.8 Section 119(4) of the Act provides that the Regulator shall not comply with a request for de-registration by a non-profit registered provider if it thinks that removal from the register is sought with a view to enabling that provider to distribute profits to its members. We will expect non-profit providers to demonstrate that this is not the case in any application for de-registration.
- 2.9 Section 119(5) of the Act requires the Regulator, in considering an application for de-registration, to have regard to:
- Any conditions imposed in connection with disposals consents given to the private registered provider under Chapter 5 of the Act, and
 - Any conditions imposed in connection with financial assistance given to the private registered provider under any enactment.
- 2.10 Applicants are required to confirm that any conditions imposed on disposal consents have been and can be met by the provider. We will review relevant disposal consent conditions and may ask for further information on how the conditions have been satisfied.

3. APPLICATION PROCESS

Purpose of this guidance

- 3.1 This guidance provides advice on how to complete the application form, the grounds for de-registration, what information should be provided and how we will assess this information. From time to time we will publish information on the Regulator's pages of the HCA's website which will be relevant to de-registration so applicants should ensure that they look at this before applying.
- 3.2 We hope that this guidance will help private registered providers to understand the grounds on which they can apply for de-registration and the associated process. Our aim is to be as helpful as possible and private registered providers can contact the Regulator at any time to discuss a prospective application.

Application form

- 3.3 Private registered providers wishing to apply for de-registration should complete the de-registration application form. The form is the same for all private registered providers. We expect the amount of information provided to reflect factors such as the size of the applicant, including the significance of an applicant within a given locality and the nature of their future plans.
- 3.4 The application form requires the applicant to set out the grounds on which it is applying for de-registration. Applicants should explain why those grounds are appropriate or, where an applicant is applying under the Regulator's de-registration criteria, set out why it believes it meets the de-registration criteria, with any evidence which supports this.
- 3.5 If the applicant is seeking de-registration on the grounds that it no longer is or intends to be a provider of social housing in England, it should explain why this is the case. A private registered provider can only apply for de-registration in this category if it no longer provides any social housing provision in England. Evidence should be provided to demonstrate that this is the case. If the applicant no longer intends to be a provider of social housing in England, then it should explain why its intention to become a provider is not going to come to fruition. This should include reference to the business plan or other evidence provided when the provider applied for registration.
- 3.6 If the provider is applying for de-registration on the grounds that it is subject to regulation by another authority whose control is likely to be sufficient, the applicant should set out which regulators(s) they wish the Regulator to consider, what other regulation it is subject to and why it believes this is sufficient. In making its case, it should address how the regulation ensures tenants continue to be protected and how any outstanding public funding is protected. If we do agree to de-registration on the ground of sufficient controls by another regulator, we would expect to publish the details of this on the Regulation pages of the HCA's website so that other private registered providers can understand the decision taken.
- 3.7 Finally, if a provider is applying for de-registration because it believes it meets the Regulator's de-registration criteria, it should set out how it believes it meets these. Information on how the Regulator will assess applications against its criteria is included below.

- 3.8 We are happy to discuss a potential application for de-registration at any stage prior to its submission to advise on whether the application is likely to meet our criteria. We can also advise on what type of information applicants should provide to demonstrate how they meet the criteria.
- 3.10 The application form includes a checklist of the information that should be provided.

Additional information

- 3.11 Applicants may be asked to provide additional information at any stage of the de-registration process. This might be to clarify information already provided or because we are unable to form a view on the basis of the information already provided and need additional information.

Decision making process

- 3.12 Section 119(3) of the Act requires that, before deciding whether or not to remove a private registered provider from the register, the Regulator must consult local authorities in whose area the provider operates as the Regulator thinks appropriate. We would expect to undertake such consultation with at least one local authority for any application for de-registration. Where a private registered provider has social housing in more than one local authority area, we would take a view on whether a local authority should be consulted by considering how significant that provider is in each local authority area.
- 3.13 Decisions on the de-registration of private registered providers are taken by the Deputy Director of Regulatory Operations (DDRO), under delegated authority from the Regulation Committee. The DDRO is supported and advised by a team of officers from the Regulator who meet monthly to consider applications including those for de-registration. Our aim is that our decision making is transparent to the applicant and so where we are minded to refuse an application for de-registration we will follow the process set out below:
- If the recommendation to the DDRO is that the application for de-registration be refused, the paper containing that recommendation will be copied to the provider,
 - We will advise the applicant if we are minded to refuse to de-register it, setting out the issues and concerns that have led us to take this view,
 - The applicant will be invited to make representations to us and to give us any information or comments it thinks might help us make a final decision,
 - We will carefully consider any representations received from the applicant in accordance with the principles set out in this guidance and published on the Regulation pages of the HCA website on assessing applications in deciding what action to take,
 - We will notify the applicant of our decision, setting out our reasons for making it.

- We will generally publish a statement about our decision to refuse to de-register the applicant, unless there are good reasons and it is not in the public interest to do so.
- We will tell applicants about any appeal or challenge procedures related to our decision and what the timescales are for these.

Appeal

- 3.14 Section 121 of the Act provides that an applicant may appeal to the High Court if its application for de-registration is refused by the Regulator. In advance of such an appeal, the Regulator will establish a process whereby an appeal can be made to the Regulator against the decision not to de-register the applicant. Details of this process and how to submit an appeal will be found on the Regulation pages of the HCA's website in due course. Applicants are, of course, able to appeal to the High Court without first taking advantage of the Regulator's appeals process.

How long does the application process take?

- 3.15 It is difficult to give a timescale as the nature of each application will vary, but we will advise of how long we expect the application to take when we receive it.

Queries

- 3.16 Any queries on de-registration should be addressed to:
enquiries@rsh.gov.uk or 0300 124 5225

4. ASSESSMENT OF APPLICATION

- 4.1 This section sets out the grounds on which a private registered provider can apply for de-registration and what information applicants should provide. Private registered providers who wish to continue providing social housing but outside the regulation of the Regulator should apply for de-registration either on the grounds that they are subject to sufficient regulatory control by another authority or that they meet the Regulator's de-registration criteria. Applicants should note that, if they wish to seek financial assistance from the HCA in the future, the Act requires that a registered provider of social housing must be the landlord when the property is let.

No longer a provider of social housing

- 4.2 If a provider is applying for de-registration on the grounds that it is no longer a provider of social housing in England, we will expect the applicant to demonstrate either that it is no longer a provider or that the housing it provides is no longer social housing. We would need to be satisfied that any social housing had either been transferred to another provider or ceased to be social housing in accordance with the provisions of Sections 73 - 77 of the Act. This can be because:
- (a) The dwelling has been sold to tenants,
 - (b) The provider holds a leasehold interest in the dwelling and the leasehold interest expires,
 - (c) A dwelling is disposed of with the Regulator's consent, or that of its predecessor bodies, in accordance with Chapter 5 of the Act, Section 171D of the Housing Act 1985 or Section 81 or 133 of the Housing Act 1988,
 - (d) The Regulator directs that a specified dwelling is to cease to be social housing, or
 - (e) The dwelling was owned by a Registered Social Landlord ('RSL') under the provisions of the Housing Act 1996 prior to 1 April 2010 and is within one of the exceptions under Section 77 of the Act.
- 4.3 We would expect to see details of all the social housing provision of the provider, setting out in each case on what grounds it had ceased to be social housing. If (a) applies, then we would need to see evidence of the sale of the dwelling(s). For (b) we would need to see evidence that the relevant leasehold interest(s) had expired.
- 4.4 Private registered providers that were existing RSLs at 1 April 2010, are within a group structure, are non-asset holding and transferred onto the Regulator's register at this date will not be eligible to apply for de-registration on the grounds that they are no longer a provider of social housing unless the Regulator is satisfied that paragraph 1.4 of the governance and viability standard can be met by all registered providers within the group. These non-asset holding providers will continue to be registered and regulated as if they meet the requirements in the Act, whether or not in practice this is the case. Transitional arrangements are in place that support this position. We will work with providers to ensure there is

an orderly transition to new group structures that meets the requirements of the Act, gives regulatory assurance and maintains lender confidence.

No longer intending to be a provider of social housing

- 4.5 If a provider is applying for de-registration on the grounds that it no longer intends to be a provider of social housing, then we will expect to understand why this is the case. We will have registered the provider because we were satisfied of its intent to become a provider so we will need to be satisfied that this intent no longer remains. We would expect to review the business plan in place when the provider sought registration and to review that, understanding why the plans had not or were not expected to come to fruition.
- 4.6 Where an applicant registered as an intending provider of social housing but it has since become a provider, then it will not be eligible to apply for de-registration under this category.

Sufficient regulatory control

- 4.7 If an applicant is applying for de-registration on the grounds that it is subject to sufficient regulatory control by another authority, we will look to understand the level of regulatory control that the applicant is subject to and to take a view on whether this is sufficient, in our opinion, to protect tenants and safeguard any outstanding public funding. Since many private registered providers will be subject to similar controls by the same authorities, we will work with these authorities to understand what regulation applies to different types of organisation and come to a view on whether we believe, and in what circumstances, we can meet our statutory duties to protect tenants and safeguard public funding if we agree to de-registration with these controls in place. As we arrive at any views on this, details will be published on our website.

De-registration criteria: protection of tenants

- 4.8 The Regulator's de-registration criteria are set out above. If a private registered provider is applying for de-registration on the grounds that it meets our criteria, we will review the arrangements the provider has put or will put in place to satisfy the criteria, focusing particularly on the areas set out above.

Financial viability

- 4.9 Private registered providers will be required to demonstrate ongoing financial viability and we would not de-register a provider who was unable to demonstrate this to our satisfaction. This requirement seeks to reduce the likelihood that the de-registered provider will face insolvency, thus endangering tenants' interests and publicly funded assets.
- 4.10 We will need to be satisfied that the applicant operates on a sound and proper financial basis and that it will continue to be able to do so after it has de-registered. We will take into account the current financial strength of the provider and whether it has adequate and appropriate systems of control. We will examine the latest audited accounts and the applicant will be asked to demonstrate its future viability by providing detailed projections for at least one

year ahead. This period may be significantly longer if the nature and scale of the applicant warrants it. We will take into account the circumstances of the applicant and advise over what period the projections should be provided. Any projections provided should normally be validated by an external auditor, but for the very small providers (50 homes and below) this may not always be necessary. The projections should demonstrate that the applicant has adequate resources to maintain its housing stock in the future and should identify any capital funding needs and sources of that capital. We are likely to expect that applicants for de-registration have no current or planned development, unless this is small scale, self-financed development.

- 4.11 We will also need to be satisfied that the provider has assessed likely repair and maintenance needs and can meet them from future rental income or other identifiable resources. We would expect providers with more than 50 homes to have undertaken a stock condition survey within the last two years. For almshouses registered with the Almshouse Association, the most recent five yearly review will be acceptable for these purposes. For providers with less than 50 homes, a stock condition survey undertaken in the past five years will be acceptable. The stock condition survey should generally be undertaken by an independent qualified surveyor but for providers with 50 homes or fewer we may accept a survey that has been carried out by a person who is not independent but has relevant expertise.

Satisfactory level of performance

- 4.12 Private registered providers will be required to demonstrate that they are viable, properly governed and capable of complying with the standards set by the Regulator under Sections 193 and 194 of the Act. If an applicant is subject to increased regulatory oversight we would expect, as a minimum to agree a course of action to tackle any deficiencies and see this implemented before we agreed to de-registration.
- 4.13 We are seeking to ensure, before possible de-registration, that on the evidence of recent performance the applicant is capable of providing adequate future homes and services to its tenants. We will assess the applicant's current performance to ensure that it complies with the Regulator's Economic Standards. We do not intend to allow any provider to de-register while it is subject to increased regulatory oversight. If the applicant does not fully meet our economic regulatory requirements, or if other serious regulatory concerns have not been resolved to our satisfaction, then the applicant may not be able to continue with the de-registration process until it has dealt with any outstanding issues of concern.
- 4.14 We will expect applicants to demonstrate that de-registration will not cause the service received by tenants to deteriorate beyond that required to meet regulatory standards, even though those standards no longer apply to the provider.

Other regulatory controls

- 4.15 Private registered providers should set out any relevant regulatory controls that they would continue to be subject to after de-registration and we will consider these in reviewing the application. We will be particularly interested in any controls that address governance and viability issues and service delivery, from the perspective of tenant protection. As we take decisions on what we believe constitutes sufficient local control by another authority, we will publish these on the Regulation pages of the HCA's website. As a minimum, de-registered providers are required to be members of an Independent Housing Ombudsman Scheme.

Stakeholder views: local authorities

- 4.16 The need to consult local authorities under Section 119 of the Act has already been covered in the section above on the decision making process. We will take account of the view of any local authority (including Social Services) consulted in coming to our decision.
- 4.17 Where relevant we will also seek the views of the appropriate housing, social services and health authorities. This will be where a service may be provided to a specific client group who may have little alternative provision in the area and so the provider may be strategically significant for the local authority.
- 4.18 We may also consult other local authority stakeholders who have provided capital subsidy to the provider.

Stakeholder views: lenders

- 4.19 Applicants will be expected to have repaid all their loans in full, or to have obtained the agreement of lender(s) and demonstrated this to our satisfaction. We will need confirmation that any loans from public or private sector bodies have been redeemed, or that the lender agrees that the provider can be removed from our register. This is necessary as the lender may have made the loans on the understanding that the provider was registered with the Regulator and so any change in status may breach loan covenants. We will wish to ensure that the provider meets its obligations regarding loans and that a lender does not object to the provider being de-registered.

Stakeholder views: tenants

- 4.20 Applicants for de-registration should also consult their tenants prior to applying to the Regulator. We will expect to see evidence that tenants have been properly informed about and involved in the proposal to de-register.
- 4.21 For providers with more than 50 homes, we will require evidence that a majority of the applicant's tenants are content with the proposal to de-register. To meet this requirement, applicants may wish to appoint an external verifier, such as their legal advisor, external auditor, a local authority representative or some other independent person. For providers with less than 50 homes we will need to be satisfied that a consultation process has taken place that is appropriate to the

size and the nature of the applicant's activities. Evidence, such as minutes of meetings with tenants, should be provided.

- 4.22 Applicants must fully inform tenants and residents about any change in their tenancy that may occur on de-registration. This must be supported by legal advice. Tenants and residents must agree to the change(s). Applicants must demonstrate that tenants and residents have been fully informed of any changes in their statutory rights that will result from de-registration. We will expect to see the legal advice commissioned by the provider that it has used as a basis for informing residents of any change to their status that may occur on de-registration.
- 4.23 We will wish to examine the information that the provider has issued to its tenants. We will consider the level and nature of its responses to the consultation, and any action the provider proposes to take to address tenants' concerns. Where applicable, the information provided must clearly explain any loss of statutory rights due to de-registration. The provider must inform tenants whether it will be replacing these by contractual rights on similar terms. We will need to be satisfied that tenants whose tenancies are affected have agreed to the change in their tenancy status.
- 4.24 Tenants should also be made aware that de-registration means that the provider will no longer be regulated by the Regulator and advised of what that means in practice.

Nature and scale of social housing provision

- 4.25 To identify the risks of de-registration and assess their effect on publicly funded assets and services to residents and tenants, we will consider the role, scope and constitution of an applicant. Where an applicant may be a small provider but significant within a local authority area, we will pay particular attention to the views of the relevant local authority.
- 4.26 The size of the provider, measured in terms of the amount of publicly funded assets and the number of tenants affected and the nature of its principal operations are key factors that we would take into consideration in assessing an application for de-registration.

De-registration criteria: misuse of public funds

- 4.27 Our concern here is to ensure the continued safeguarding of social housing and the capital funding provided for that housing.
- 4.28 Other than in exceptional circumstances, we would not expect there to be more than £2.5m public subsidy applicable to properties owned by the relevant body in considering an application for de-registration. Public subsidy includes capital housing association grant (HAG), social housing grant (SHG), social housing assistance (SHA) or other forms of financial assistance (FA) from the HCA or its predecessor the Housing Corporation, from the GLA, from any local authority or any other capital public sector fund for the purchase, development or repair of housing. This also includes funds generated from the Recycled Capital Grant Fund (RCGF) and Disposal Proceeds Fund (DPF).
- 4.29 A provider should be able to confirm the total amount of capital public grant or other capital subsidy applied from public funds to buy, develop or repair housing. We will take into account capital public subsidy from all sources identified above and, in addition, will take into account any subsidy in the form of land received from a local authority free or at below market value. 'Capital public subsidy' therefore includes any acquisition of land or property that would be called a "gratuitous benefit" under Section 25(5) of the Local Government Act 1988. Revenue grants are excluded from 'capital public subsidy'.
- 4.30 The applicant must not have received, applied for or generated any public subsidy within the three financial years before the date of applying for de-registration, except for any funding from the RGCF or RSF which it has applied towards major repairs projects.
- 4.31 Applicants for de-registration must notify the HCA's regional office or GLA and seek guidance as to whether any Housing Association Grant, Social Housing Grant or Social Housing Assistance will be immediately repayable on de-registration. Conditions attached to these grants and any grants from the GLA will continue to apply after de-registration and the HCA and GLA will consider whether grant repayment could be deferred until a future date, or possibly formally 'waived' when the HCA or GLA will not pursue repayment. For details of the repayment of HAG, SHG, SHA and FA following 'relevant events', refer to the HCA's Affordable Housing Capital Funding Guide, Grant Recovery chapter <http://cfq.homesandcommunities.co.uk/recycled-capital-grant-fund-rcgf.htm> The Regulator will take into consideration the requirement for grant repayment in determining applications for de-registration.
- 4.32 Providers must repay uncommitted balances in their RGCF. On de-registration, they must also repay funds held in the Disposal Proceeds Fund, unless the funds have been committed. 'Committed' for this purpose refers to a contractual commitment, as defined in the HCA's guidance as above.
- 4.33 If a private registered provider still owns social housing dwellings at the time of its removal from the register, it will continue to be bound by Section 172 and 186 of the Act (consents to disposals) in respect of those dwellings. We will maintain a register of voluntary de-registrations that will include details of social housing dwellings for which Section 172 consent will be required if the de-

registered provider wishes to dispose of them in future - that is, all the social housing dwellings that it owns at the time of de-registration.

- 4.34 De-registered providers still need to obtain Section 172 consent from the Regulator for the disposal of those social housing dwellings, whether or not they were publicly funded. For further information on disposal consents, please refer to the Regulation pages of the HCA's website.
- 4.35 The Land Registry places a restriction on the titles of property and land owned by private registered providers to indicate that the proprietor's freedom to dispose may be restricted by the need for Regulator's consent. We will expect the applicant to confirm in its application that, where its title is registered, and it is a social housing dwelling, a restriction on title is in place referring to the need for consent under Section 172 of the Act. Where this is not the case, we will require providers to confirm the reasons for this. There may be certain cases, such as some almshouses, where ownership predates the Land Registry and where endowments prevent its disposal. However, in other cases, we may require the land to be registered (if it isn't already) and the restriction added.
- 4.36 Where disposal of land is subject to a requirement for consent under Section 133 of the Housing Act 1988, de-registration does not remove the consent requirement.

5. REMOVAL FROM THE REGISTER

- 5.1 Once the Regulator has agreed to the removal of the provider from its register, it is required, in accordance with Section 120 of the Act, to notify:
- In the case of a registered charity, the Charity Commission,
 - In the case of an industrial and provident society, the Financial Services Authority, and
 - In the case of a registered company (whether or not also a registered charity), the registrar of companies for England and Wales.
- 5.2 Section 119(6) of the Act requires the Regulator to notify any authority consulted on the de-registration proposal.
- 5.3 We will also notify the Housing Ombudsman of de-registration.
- 5.4 The provider will be notified in writing when it has been removed from the register. Providers should note that further information may be needed to satisfy the Regulator that any actions set out in its application have been completed, and the provider may not be removed from the register until we are satisfied that all the necessary action has been taken.

DEFINITIONS

Private registered provider	Means a registered provider that is not a local authority
Registered provider	Means a provider registered by the HCA acting through its Regulation Committee under the Housing and Regeneration Act 2008
Social housing	Means low cost rental accommodation and low cost home ownership accommodation