



Regulator of  
Social Housing

# Guidance on applying for declassification of a dwelling as social housing

Under Section 76 of the  
Housing and Regeneration Act 2008

September 2023



## Version control

### What updates have been done and why

<b>Version number / name</b>	<b>Date issued</b>	<b>Brief summary of changes from previous version</b>
Version 1	November 2021	
Version 2	September 2023	Amended to reflect the updated wording of section 74A of the Housing and Regeneration Act 2008 brought in by Royal Assent of the 2023 Social Housing (Regulation) Act, and other minor amendments

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## 1. Introduction and interpretation

- 1.1 Section 76 (s76) of the Housing and Regeneration Act 2008, as amended (the HRA 2008) states that the regulator may direct that a specified dwelling ceases to be social housing, following an application from a private registered provider.
- 1.2 This guidance sets out:
- Section 2: the process that should be followed by applicants
  - Section 3: what information and supporting evidence the applicant should supply
  - Section 4: how the regulator will assess any application for declassification
  - Section 5: the regulator's approach to refusal of an application.

### Local authorities

- 1.3 The regulator's power to give a direction under s76 does not apply where the registered provider is a local authority and therefore any reference in this Guidance to a "provider" refers to a private registered provider.

### Declassification

- 1.4 The term 'declassification' is used in this guidance to refer to consideration and use of the regulator's s76 power to direct that a dwelling is to cease to be social housing.

### Applicant

- 1.5 In this guidance, the provider making the application will be referred to as the applicant.

### Applicant's designation

- 1.6 Declassification applies to applicants designated as both non-profit and profit-making.

## 2. Applying for declassification and the process to follow

- 2.1 Providers wishing to apply for a direction that social housing should be declassified should complete the application form APP76 which is available on the regulator's website.
- 2.2 Before deciding to submit an application, you should consider, whether in the light of the points made in this guidance your application is likely to be successful.
- 2.3 The application form requires the applicant to set out a business case for declassification covering the points set out in Section 3 of this guidance.
- 2.4 The application must be supported by documentary evidence. There is more information about this in Section 3 of this guidance.
- 2.5 Wherever possible, applicants should submit all necessary evidence to support their application at the outset.
- 2.6 Applicants may be asked to provide additional information at any stage of the regulator's consideration of the application.
- 2.7 For any enquiries on declassification, please contact the Referrals and Regulatory Enquiries Team. Tel: 0300 124 5225. Email: [enquiries@rsh.gov.uk](mailto:enquiries@rsh.gov.uk).
- 2.8 Electronic applications (which are preferred) should be submitted to [RNTeam@rsh.gov.uk](mailto:RNTeam@rsh.gov.uk). Any paper applications should be posted to:

Referrals and Regulatory Enquiries team  
Regulator of Social Housing  
Level 2  
7-8 Wellington Place  
Leeds  
LS1 4AP

- 2.9 The applicant should note that the Regulator of Social Housing as a public authority is subject to the provisions of the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Data Protection Act 2018. The regulator may also (section 109 of the HRA 2008) share information with a public authority if the regulator thinks the disclosure is necessary for a purpose connected with its functions or the functions or for a purpose connected with the authority's functions.

- 2.10 This form provides a link to the regulator's [privacy notice](#) which explains how the regulator protects and processes personal information. The personal information includes names, contact details and other information contained in registration applications. The regulator may share relevant information with Homes England and other third parties as necessary in order to fulfil its public task. Should you wish to object to the use of personal information for these purposes please contact [enquiries@rsh.gov.uk](mailto:enquiries@rsh.gov.uk).

### 3. Information and supporting evidence to supply

- 3.1 The application form asks you to provide a business case for the declassification. The information in your business case should include information to address the matters which the regulator will take into account (see Section 4 'How the regulator will assess applications...' below) together with any other information you wish to provide.
- 3.2 You must provide evidence to support or confirm all the key facts set out in your business case and the other matters referred to in the application form. Where the regulator requires specific information in particular, this will be made clear in this guidance or on the application form.
- 3.3 As set out in Section 2, applicants may be asked to provide additional information at any stage of the regulator's consideration of the application. This might be to clarify information already provided or because the regulator is unable to form a view on the basis of the information provided.
- 3.4 It is your obligation to provide information. If the regulator's view is that you have not provided sufficient information or assurance, your application will be refused.

## 4. How the regulator will assess applications for declassification of a social housing dwelling

- 4.1 Further information about the regulator's approach to Section 76 of the HRA 2008 can be found in the Appendix to this document.
- 4.2 The regulator will take into account the matters set out in this section of the guidance and in the application form. You should ensure that the information you provide in support of your application (including in your business case) addresses these matters. In considering an application for declassification of social housing dwelling(s) the regulator may also take into account any and all information it already holds about the applicant.
- 4.3 The regulator will approach its decision in line with its usual approach to regulation as set out in Regulating the Standards (which can be found on its website). Similarly, the applicant is expected to apply the approach expected of providers. This includes - in line with the regulator's principles of co-regulation – that the provider must bring to the regulator's attention any adverse issues or events. That includes general issues (such as in relation to your organisation, or regarding compliance with the regulator's standards) or ones specific to your application (such as in relation to the specified dwelling). If you become aware of anything after the submission of the application you must bring this to the regulator's attention.
- 4.4 The regulator can only exercise this power on application from a provider. It will only use its power under Section 76 on an exceptional basis. It is entirely at the regulator's discretion whether or not to issue a direction.
- 4.5 The regulator will not usually agree to give a direction for declassification:
- allowing large scale declassification of dwellings
  - the aim or impact of which is to enable the provider to deal with non-compliance with legal or regulatory requirements (including any breach of the regulator's standards)
  - where the social housing is occupied
  - where the dwelling remains viable social housing
  - where one of the other provisions of the HRA 2008 (Sections 73-75) can be used.



- 4.6 Applicants should set out and substantiate the business case for the direction. The business case should include:
- details of the current use; and if there have been changes, when and how
  - details of the proposed new use of the property
  - the provider's aims or objectives – an explanation of why you want to adopt the proposed new use, including details of how you expect to use the property after declassification. The information you provide should include extracts from Board papers confirming the proposal and the reasons for it
  - why the aims or objectives cannot reasonably be achieved by following one of the other routes outlined under Sections 73 - 75 of the HRA 2008, so that the regulator can consider whether there is any other reasonable way of achieving the provider's stated aim
  - where the social housing is occupied by tenants, the regulator will expect the wider business case and supporting evidence to provide assurance about the protection of tenants in accordance with the regulator's standards and published guidance. The regulator is likely to require applicants to undertake meaningful consultation with residents
  - any other information you want the regulator to consider.
- 4.7 It is a matter for the applicant to decide what supporting documentary evidence it submits with the application.

### **Social Housing with outstanding Public Sector Subsidy**

- 4.8 Where there is outstanding public sector subsidy or funding in the social housing which is the subject of a declassification application, the regulator will expect this to be dealt with, whoever the relevant funder / grant giver was. It is the provider's responsibility to ensure that they comply with any conditions relating to their public sector funding or grant.
- 4.9 Applicants must notify the relevant public funder or grant giver of its intention to change the use of that property. We will expect applicants to provide evidence that such notification has taken place and that the public funder/grant giver has agreed the treatment of any outstanding amount should declassification be granted.
- 4.10 While it is your obligation to provide this information to the regulator, the regulator will check whether you have received any public sector subsidy or funding.

4.11 The matters the regulator will take into account include:

- all public sector funding or subsidy such as capital housing association grant (HAG), social housing grant (SHG), social housing assistance (SHA) or other forms of financial assistance (FA) from Homes England 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. It also includes funds generated from the Recycled Capital Grant Fund (RCGF)
- other capital public subsidy such as any subsidy in the form of land received from a local authority or other public body free or at below market value (including any acquisition of land or property that would be called a "gratuitous benefit" under Section 25(5) of the Local Government Act 1988)
- the treatment of any outstanding public funding. The applicant must make the regulator aware of any outstanding public subsidy or funding. The regulator may decide not to consider the application further until that treatment is agreed by the relevant public funder or grant giver.

4.12 Note that:

- revenue grants are excluded from 'public sector subsidy'
- for most types of public funding or subsidy, such as HAG, SHG or SHA, a change of use is likely to be a "relevant event" that requires notification and potentially, the immediate repayment of grant. For the details of "relevant events" and requirements in relation to a change of use refer to Homes England's or the Greater London Authority's Capital Funding Guides
- the regulator has no part in assessing or agreeing the treatment of outstanding public subsidies. It is the responsibility of the provider to notify the relevant grant giver of their proposed change of use and agree the formal treatment of any outstanding funds should the declassification be granted, before they submit their application to us; and
- the regulator may inform other public bodies that it has received an application for declassification and/or make enquiries of any relevant public body about outstanding public subsidy.

## 5. Refusal of an application for declassification

- 5.1 We take transparent decisions. If we are minded to refuse a declassification application we will write to the provider, setting out the issues and concerns that have led us to consider refusing the application.
- 5.2 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.
- 5.3 We will consider any representations received from the applicant in accordance with this guidance and any relevant guidance published on the regulator's website in deciding what action to take.
- 5.4 Once we have reached a decision, we will notify the applicant, setting out our reasons for making it.

### Appeals

- 5.5 The regulator has established a process whereby an appeal can be made to the regulator against the decision not to declassify property. Details of the process and how to submit an appeal can be found on the regulator's website.

## Appendix A. Legal framework around the declassification of a social housing dwelling

1. This Appendix sets out the regulator’s approach to Section 76. It is not legal advice. Providers should seek their own legal advice if needed
2. All social housing held by a registered provider will retain that status unless and until the social housing has ceased to be social housing in accordance with the provisions of Sections 73-76 of the HRA 2008.
3. Note that various changes to those Sections were made by the Housing and Planning Act 2016, including insertion of a new Section 74A of the HRA 2008. At the time of writing this guidance, those changes do not show up in the HRA 2008 as shown on <http://www.legislation.gov.uk/ukpga/2008/17/contents>.
4. You can find the relevant provisions of the Housing and Planning Act 2016 (<http://www.legislation.gov.uk/ukpga/2016/22/contents>) Part 4 Chapter 4 and Schedule 4.
5. The table below sets out a summary of the relevant provisions of Sections 73-76 of the HRA 2008. As noted above, applicants should not rely on this summary as a definitive statement of the law and, where advice is required, it should be sought from appropriate professionals.

<b>Provision of the Act</b>	
<b>73</b>	In certain circumstances only, the dwelling has been sold to tenants
<b>74</b>	In certain circumstances only, the provider holds a leasehold interest in the dwelling and the leasehold interest determines (whether by effluxion of time or in any other way)
<b>74A</b>	<p>In certain circumstances only, a dwelling is disposed of to a non-registered provider</p> <p><i>Note – if a provider disposes of any social housing (with certain exceptions, and whether a disposal referred to in these Sections or otherwise) the provider must notify the regulator of the disposal.</i></p> <p><i>See Section 176 of the HRA 2008</i></p>
<b>75</b>	<i>Note – this Section is not relevant for this Guidance because it only concerns disposals by local authorities</i>
<b>76</b>	The regulator directs that a specified dwelling is to cease to be social housing

6. A dwelling is defined in Section 275 of the HRA 2008. For the purposes of Section 76, the regulator interprets this to mean that:
- the asset for which the application for declassification as social housing is being made is capable of being let or sold. For a new-build property, we usually take that to be upon reaching practical completion. Practical completion is a term without a standard definition and whether practical completion has been reached may require some professional judgement by the registered provider or its professional advisor. The dwelling should be available for beneficial occupation and use as a dwelling but that may allow for some minor defects to remain which can be corrected without too much disturbance to a residential occupant. We will only consider declassification once that state has been reached.
  - as well as self-contained accommodation, a dwelling includes shared accommodation such as hostels, shared housing and residential care.
  - a dwelling includes a former dwelling or land on which once stood a dwelling.
  - a dwelling includes its curtilage and appurtenances usually enjoyed with the dwelling, such as garden, garage or outbuildings, across which easements such as drains, conduits and rights of way or access may pass.
  - a dwelling includes the subsoil and the airspace above the roof.
7. Former dwellings include land on which dwellings had stood before demolition, buildings constructed on the site of demolished dwellings and dwellings that have been put to a different use. However, ceasing to be a dwelling does not include a void between tenancies, a long term void that is difficult to let, a void awaiting repair, improvement or sale, or where a decision has been made not to re-let a dwelling while its future is decided. The regulator considers that a dwelling cannot be anything other than a dwelling or a former dwelling.



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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.**