

# THE REGULATORY FRAMEWORK FOR SOCIAL HOUSING IN ENGLAND FROM APRIL 2012

March 2012

# The regulatory framework for social housing in England from April 2012

## Contents

	Page
Summary of key terms	3
1. Executive summary	4
2. Principles of co-regulation	8
3. Economic standards:	11
a) Governance and Financial Viability	14
b) Value for Money	15
c) Rent	17
Consumer standards:	17
d) Tenant Involvement and Empowerment	20
e) Home	22
f) Tenancy	26
g) Neighbourhood and Community	30
4. Regulating the economic standards	36
5. Regulating the consumer standards	43
6. Principles for use of intervention and enforcement powers	50
7. Registration and deregistration	50

Bound separately:

- Annex A. Rent Standard Guidance
- Annex B. Guidance notes on use of the regulator's powers

## Summary of key terms

The following provides a summary of the main terms used in this document:

- The Localism Act 2011 (the Localism Act) - This legislation significantly amends parts of the Housing and Regeneration Act 2008 (the 2008 Act) which established the objectives and certain powers of the social housing regulator. The provisions of the Localism Act that make these changes come into effect on 1<sup>st</sup> April 2012.
- The Regulator of Social Housing in England (the regulator) – under the Localism Act, responsibility for social housing regulation passes to the Homes and Communities Agency (HCA) Regulation Committee from 1 April 2012. Prior to 1<sup>st</sup> April 2012, the regulator was the Tenant Services Authority.
- Social housing – this includes low-cost rented housing (including Affordable Rent properties), low-cost home ownership and “legacy” stock owned by social landlords that were registered prior to 1 April 2010 (social housing is defined in sections 68 to 77 of the 2008 Act)<sup>1</sup>
- Tenant – a resident in social housing, whose provider could be a local authority, housing association or any other registered provider. In this framework, the term does not include leaseholders<sup>2</sup>
- Provider – this means a registered provider within the definition in the 2008 Act. All providers registered with the TSA as of 31 March 2012 continue to be registered as providers with the regulator after 1 April 2012. This includes existing registered local authority landlords and private registered providers (such as not-for-profit housing associations and for-profit bodies)
- ALMO – an Arm’s-Length Management Organisation established by local authorities as management agents of their stock. ALMOs that own stock and are already registered under the 2008 Act will continue to be registered with the regulator. Those who do not own stock will not be registered and hence will not be the legal entity responsible for meeting the standards (it will apply to the sponsoring local authority). The same principle applies to Tenant Management Organisations (TMOs)

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<sup>1</sup> Section 68 of the 2008 Act results in some leasehold properties being included within the legal definition of ‘social housing’. These are mainly shared ownership properties. It also includes (1) some “legacy” housing stock - those properties (owned by social landlords that were registered prior to 1 April 2010) where grant (including as defined in section 77(3) of the Act) has been paid and where the leaseholder owns 100% of the equity in their dwelling as at 1 April 2010 or (2) stock owned under equity percentage arrangements. None of the standards under section 193 apply to these two groups; nor does the Rent standard. They are called “100% ownership leaseholders” for the purpose of this document.

<sup>2</sup> 100% ownership leaseholders are not ‘tenants’ for the purposes of this framework. Relevant powers in the 2008 Act focus on the tenants of low cost rented accommodation and low cost home ownership, who are covered by the term ‘tenants’

## 1. Executive Summary

- 1.1 This document, taken together with the documents listed below comprises the regulatory framework for social housing in England applicable from 1 April 2012. This replaces the regulatory framework that came into effect on 1 April 2010.
- 1.2 Additional documents comprising the regulatory framework are:
- Annex A: Rent Standard Guidance
  - Annex B: Guidance notes on use of powers
  - The TSA's Consent to Disposals (published separately as part of the 2010 regulatory framework and continuing in effect after 1 April 2012)
  - Disposal Proceeds Fund (the regulator's requirements continue to be based on the Disposals Proceeds Fund General Determination 2008 issued by the Housing Corporation, as stated in the 2010 regulatory framework<sup>3</sup>)
  - The Accounts Direction<sup>4</sup>
- 1.3 This framework implements the amendments to the Housing and Regeneration Act 2008 introduced by the Localism Act 2011 and the Secretary of State's directions on specific standards. Under this framework the regulator has distinct roles in relation to economic regulation and consumer regulation. Economic regulation applies to private registered providers only and is a proactive form of regulation. Consumer regulation is a more reactive, 'backstop' form of regulation and is applicable to all registered providers.

### The principles of co-regulation (chapter two)

- 1.4 The co-regulatory principles underpin the regulatory approach. Registered providers are required to meet the relevant standards. Boards and councillors who govern providers' service delivery are responsible for meeting the standards and being transparent and accountable for their organisation's delivery of its social housing objectives. It is for providers to support tenants both to shape and scrutinise service delivery and to hold boards and councillors to account. In cases where breach or potential breach of a consumer standard leads to risk of serious detriment to tenants, the regulator may

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<sup>3</sup> The validity of the General Determination 2008 was continued in relation to registered social landlords by the Housing and Regeneration Act 2008 (Commencement No. 7 and Transitional and Saving Provisions) Order 2010, Schedule, paragraph 33(2). The 2010 regulatory framework applied those provisions also to registered providers registered after 1 April 2010.

<sup>4</sup> Section 127 of the 2008 Act enables the regulator to give directions to registered providers about the preparation of their accounts. Accounting requirements for registered providers were previously subject to general determinations issued by the Housing Corporation, the last of which was issued in 2006 pursuant to section 218 of schedule 11 of the Housing Act 2004 and section 7 and part 111 of schedule 1 of the Housing Act 1996, this determination was continued when the previous framework came into force in April 2010. The social housing regulator consulted between December 2011 and March 2012 on a new Accounting Direction and intends to publish a revised direction shortly. The revised direction, when published, will apply to reports due after year end 2012/13.

intervene (in addition to its proactive role in the economic standards for non local authority providers).

### **Standards for registered providers (chapter three)**

- 1.5 Regulatory standards contain the outcomes that providers are expected to achieve and the specific expectations of the regulator. The standards are classified as either 'economic' or 'consumer'<sup>5</sup>. Some have changed significantly from the 2010 framework, notably:
- A new Value for Money standard is introduced for private registered providers, which places an increased onus on boards to develop and deliver a clear strategy to drive value for money improvements
  - In the Tenant Involvement and Empowerment standard there is more focus on local mechanisms to resolve complaints and disputes, and an increased scope for more tenant involvement in repairs and maintenance. The principles of 'local offers' and annual reporting to tenants are retained
  - The Tenancy standard reflects changes in government policy, allowing different lengths of tenancy and setting out expectations to promote mutual exchange arrangements<sup>6</sup>

### **Regulating the economic standards (chapter four)**

- 1.6 The purpose of economic regulation is to protect historic government subsidy, promote access to private finance, and help address the lack of competitive pressures on providers which might otherwise put pressure on service quality and efficiency.
- 1.7 The regulator will proactively assure itself that private registered providers are well-governed and financially viable. Following amendment in the Localism Act, there is new focus on value for money and the standard on rent now forms part of the group of economic standards.
- 1.8 Regulation will be carried out in a risk-based and proportionate way. The regulator has a new statutory duty to minimise interference so there is a continuing focus on regulatory burdens, consistent with meeting the regulator's overall objectives. The key features of the approach to economic regulation are set out in chapter four. More practical information about the regulation of economic standards will be published in "Regulating the Standards", available from the regulator's website during April 2012.

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<sup>5</sup> 'Economic' standards are those set under s.194 of the Housing and Regeneration Act 2008, 'consumer' standards are those set under s.193 of that Act.

<sup>6</sup> Changes in the s.193 regulatory standards follow Directions consulted on by DCLG and issued to the regulator, available from their website.

## **Regulating the consumer standards (chapter five)**

- 1.9 Boards and councillors who govern service delivery remain responsible for ensuring providers meet the consumer standards. Under the new arrangements for regulation others, such as tenant panels, MPs and elected councillors have a more prominent role in scrutinising landlords overall. The Tenant Involvement and Empowerment standard reflects these objectives. Further information about what the changes mean for users of these local mechanisms will be provided by DCLG<sup>7</sup>. Under the Localism Act, the regulator no longer has an active role in monitoring providers' service performance.
- 1.10 The regulator's intervention powers are restricted to circumstances where it is satisfied that the requirements of the 'serious detriment test' have been met. Chapter five sets out the regulator's guidance on this, which describes how it defines and operates the serious detriment threshold. The guidance includes the arrangements for how consumer matters may be referred to the regulator for it to consider if the threshold has been passed. If this is the case, the regulator will then consider the most appropriate means of intervention, including the use of its powers for both private and local authority providers.

## **Intervention and enforcement (chapter six)**

- 1.11 The Localism Act retains all the regulatory, enforcement and general powers that the regulator might use to intervene to deal with poor performance. These will continue to be used in a proportionate, consistent and transparent way. The general principles underlying the way the regulator uses its powers have been updated where appropriate for the serious detriment threshold.
- 1.12 Detailed guidance notes on how the regulator uses certain of its powers have also been updated to reflect the serious detriment threshold. The guidance notes are published in Annex B.

## **Registration of social housing providers (chapter seven)**

- 1.13 The regulator continues to maintain a register of private and local authority providers. The Localism Act makes no changes to the definition of social housing or the eligibility criteria for registration. In respect of its consumer regulation role, the regulator's discretionary registration criteria are now compatible with how it is able to regulate after registration. Chapter 7 also notes some areas of the framework that will be subject to further development during 2012-13.

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<sup>7</sup> 'Implementing social housing reform: Directions to the social housing regulator – summary of responses' published by DCLG in November 2011, available from their website. See also "Tenant Panels: Options for Accountability", the National Tenant Organisations, published March 2012 and available from DCLG website.

## **Decision Statement**

The Regulator of Social Housing has consulted widely in the sector on this document and Annexes A and B through the conduct of a statutory consultation between November 2011 and February 2012. The publication of the consultation documents was accompanied by a programme of formal and informal stakeholder engagement, with discussion meetings held with representatives of providers, tenants and industry experts. 250 written responses to the statutory consultation were received. An analysis document, published separately, contains a summary of these responses and how the regulator has taken them into account in coming to its decisions on the final form of the framework. The analysis document is not designed to be exhaustive and all non-confidential individual responses can be viewed on the regulator's website. The format and content of the framework are the result of decisions made having considered all responses.

## **2. The principles of co-regulation**

### I. Boards and councillors who govern providers are responsible and accountable for delivering their organisation's social housing objectives

- 2.1 Good governance is the bedrock of every organisation's ability to run itself effectively and efficiently. Primary responsibility for achieving their organisation's social housing<sup>8</sup> aims lies with the boards of private registered providers and the councillors who govern local authority housing services. The governing bodies are also accountable to their stakeholders, including to their tenants, for services delivered and for dealing with potential or actual problems.
- 2.2 This principle is the foundation of co-regulation. For both private and local authority providers, governance arrangements should be fit for purpose, and reflect the complexity and risk-profile of the organisation. Boards and councillors need to set clear objectives and develop a forward-looking strategy that enables their organisation to make the most of future opportunities and mitigate potential risks. There should be a continuous focus on effective financial management and improving value for money.

### II. Providers must meet the regulatory standards

- 2.3 All registered private and local authority providers are subject to the regulatory framework and must all meet the applicable regulatory standards.
- 2.4 Standards are classified as either:
- standards relating to economic matters, or
  - standards relating to consumer matters
- 2.5 Consumer standards apply to all registered providers, including local authorities. Boards and councillors are responsible for ensuring the standards are met, and others, such as tenant panels, MPs and elected representatives have a role in scrutinising that this is delivered. The regulator sets the consumer standards so that tenants, landlords and stakeholders know the outcomes that are expected. In this way, co-regulation is supported by the standards. The regulator does not have a proactive role in monitoring compliance with these standards, and will only intervene in cases of serious detriment.
- 2.6 Economic standards apply only to private registered providers. For profit-making providers, the economic standards apply to the

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<sup>8</sup> 'Social housing' is defined in sections 68-77 of the 2008 Act. The term covers low cost rented housing (including Affordable Rent properties), low cost home ownership housing and 'legacy' stock owned by social landlords that were registered prior to 1 April 2010.

management of their affairs only so far as they relate to the provision of social housing. The regulator has a proactive role on these standards, and will engage with providers to obtain assurance that these standards are being met.

- 2.7 In setting all standards, the regulator must have regard to the desirability of registered providers being free to choose how to provide services and conduct business<sup>9</sup>. Standards are set largely with a focus on outcomes, avoiding detailed prescription wherever possible.

### III. Transparency and accountability is central to co-regulation

- 2.8 Providers and their boards and governing bodies should be transparent with their tenants, service users and other stakeholders. Providers' approaches to co-regulation should be honest and robust, and include evidence-based self assessment, external challenge, and regular reporting to tenants.
- 2.9 All providers should run their businesses with a presumption of openness and co-operation with stakeholders, including the regulator. Some of the regulatory standards rely on transparency to tenants as the means of giving explicit effect to a co-regulatory approach. This includes the reporting requirements in both the Tenant Involvement and Empowerment and Value for Money standards.

### IV. Tenants should have opportunities to shape service delivery and to hold the responsible boards and councillors to account

- 2.10 Providers are expected to engage meaningfully with their tenants and offer them opportunities to shape the tailoring of services to reflect local priorities. Tenants should have the ability to scrutinise their provider's performance, identify areas for improvement and influence future delivery. Providers will also need to continue to support tenants in developing their skills and capacity so that engagement and scrutiny are effective.
- 2.11 This principle is of fundamental importance in the system of consumer regulation envisaged by the Government's review of social housing regulation in 2010. In the regulatory standards, it is articulated in the revised Tenant Involvement and Empowerment standard.

### V. Providers should demonstrate that they understand the particular needs of their tenants

- 2.12 Providers' governance arrangements and approaches to management and service delivery must incorporate and demonstrate principles of equality and diversity, and apply them in a way that is relevant to their organisation's purpose and context. It is essential that providers

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<sup>9</sup> Sections 193(3) and 194(3), Housing and Regeneration Act 2008.

understand tenants' needs including those within the equality strands<sup>10</sup>. This requirement is retained from the previous standards framework as a cross-cutting element of the Tenant Involvement and Empowerment standard, which applies throughout the way providers should deliver services and engage with their tenants.

VI. Value for money goes to the heart of how providers ensure current and future delivery of their objectives

- 2.13 Providers should have a strategy for optimising value for money, and systems to ensure that this strategy is delivered.
- 2.14 For private providers, the regulator has set a new Value for Money standard. Boards are expected to develop and deliver a strategy to achieve continuous improvement in their performance on running costs and the use of their assets. They are expected to be transparent and to enable scrutiny of their performance. The regulator will comment in regulatory judgements on the assurance it has obtained on this standard. The regulator will also carry out and publish sector and provider level analyses of the performance of the sector as a whole, with the aim of adding to the available body of contextual information that can inform boards and stakeholders.

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<sup>10</sup> The Equality Act 2010 gives public bodies responsibilities in relation to: race, age, gender reassignment, pregnancy and maternity, religion or belief, sex, sexual orientation, disability and marriage and civil partnership; in policy making, delivery of services and public sector employment.

### **3. Standards for registered providers**

#### **Economic standards**

These standards apply to all registered providers except for local authorities. Providers' boards are responsible for ensuring their organisation meets the economic standards. The regulator has a proactive role in relation to economic standards and will engage with providers to obtain assurance that they are being met.

#### **Governance and Financial Viability standard**

##### **Required outcomes**

###### **1 Governance**

Registered providers shall ensure effective governance arrangements that deliver their aims, objectives and intended outcomes for tenants and potential tenants in an effective, transparent and accountable manner. Governance arrangements shall ensure they:

- adhere to all relevant legislation
- comply with their governing documents and all regulatory requirements
- are accountable to tenants, the regulator and relevant stakeholders
- safeguard taxpayers' interests and the reputation of the sector
- have an effective risk management and internal controls assurance framework

###### **2 Financial viability**

Registered providers shall manage their resources effectively to ensure their viability is maintained.

##### **Specific expectations**

###### **1 Governance**

- 1.1 Registered providers shall adopt and comply with an appropriate code of governance. Governance arrangements should establish and maintain clear roles, responsibilities and accountabilities for their board, chair and chief executive and ensure appropriate probity arrangements are in place. Areas of non-compliance with their chosen code of governance should be explained. Providers' boards should assess the effectiveness of their governance arrangements at least once a year.
- 1.2 Registered providers shall ensure that they operate an appropriate strategic planning and control framework that identifies and manages risks to the delivery of their objectives and compliance with regulatory standards. Providers shall communicate in a timely manner with the regulator on material issues that relate to non compliance with the economic standards.

- 1.3 Registered providers shall provide accurate and timely returns to the regulator, including an annual report on any losses from fraudulent activity, in a form determined by the regulator.
- 1.4 Where there is a non-regulated element<sup>11</sup>, the registered provider shall demonstrate to the regulator that it has in place effective mechanisms (such as commitments, undertakings or other assurances between itself and the non-regulated element) which ensure that:
- 1.4.1 It is and will be able to comply with the regulator's standards and other regulatory requirements.
- 1.4.2 Its ability to meet the regulator's standards and other regulatory requirements is not and cannot be prejudiced by the activities or influence of the non-regulated element.
- 1.4.3 In the event that the registered provider does not or may not be able to comply with the regulator's standards or other regulatory requirements:
- a. the non-regulated element will give any necessary support or assistance to enable compliance, and
  - b. the registered provider has the ability to require the support or assistance of the non-regulated element to enable compliance

In some situations it may be appropriate for the regulator to be a party to such arrangements.

## **2 Financial viability**

- 2.1 Registered providers shall ensure that:
- effective controls and procedures are in place to ensure security of assets and the proper use of public funds
  - effective systems are in place to monitor and accurately report delivery of their plans
  - the risks to delivery of financial plans are identified and effectively managed
- 2.2 Registered providers shall ensure that they have a robust and prudent business planning and control framework. Through this framework they will ensure:
- there is access to sufficient liquidity at all times

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<sup>11</sup> A "non-regulated element" refers to the activities, organisations or parts of organisations carrying out non-social housing activity within an organisation:

- (1) which is a registered provider and which also carries out activities which are not regulated by the social housing regulator.
- (2) which is not a registered provider but which has as part of its organisation, corporate structure or group of organisations, a registered provider, or
- (3) which is a registered provider and is controlled or substantially influenced by another organisation which is not a registered provider

- financial forecasts are based on appropriate and reasonable assumptions
- planning sufficiently considers the financial implications of risks to the delivery of plans
- they monitor, report on and comply with their funders' financial covenants

## **Value for Money standard**

### **Required outcomes**

Registered providers shall articulate and deliver a comprehensive and strategic approach to achieving value for money in meeting their organisation's objectives. Their boards must maintain a robust assessment of the performance of all their assets and resources (including for example financial, social and environmental returns). This will take into account the interests of and commitments to stakeholders, and be available to them in a way that is transparent and accessible. This means managing their resources economically, efficiently and effectively to provide quality services and homes, and planning for and delivering on-going improvements in value for money.

### **Specific expectations**

1.1 Registered providers shall:

- have a robust approach to making decisions on the use of resources to deliver the provider's objectives, including an understanding of the trade offs and opportunity costs of its decisions
- understand the return on its assets, and have a strategy for optimising the future returns on assets – including rigorous appraisal of all potential options for improving value for money including the potential benefits in alternative delivery models - measured against the organisation's purpose and objectives
- have performance management and scrutiny functions which are effective at driving and delivering improved value for money performance
- understand the costs and outcomes of delivering specific services and which underlying factors influence these costs and how they do so.

1.2 Registered providers' boards shall demonstrate to stakeholders how they are meeting this standard. As part of that process, on an annual basis, they will publish a robust self assessment which sets out in a way that is transparent and accessible to stakeholders how they are achieving value for money in delivering their purpose and objectives. The assessment shall:

- enable stakeholders to understand the return on assets measured against the organisation's objectives
- set out the absolute and comparative costs of delivering specific services
- evidence the value for money gains that have been and will be made and how these have and will be realised over time

## Rent standard

### Required outcomes

Registered providers shall charge rents in accordance with the objectives and framework set out in the Government's direction to the regulator of November 2011.

### Specific expectations

- 1.1 Registered providers shall ensure they meet the following requirements, which derive from the Government's direction to the regulator of November 2011, and the 'key requirements' set out in the Rent Standard Guidance that accompanies this standard.
- 1.2 Subject to paragraphs 1.3 and 1.5, registered providers shall set rents with a view to achieving the following so far as possible:
  - 1.2.1 Rents conform with the pattern produced by the rent formula set out in rent influencing regime guidance<sup>12</sup> ('target rents') with a 5% tolerance in individual rents (10% for supported and sheltered housing) ('rent flexibility level') but subject to the maximum rent levels specified in that guidance ('rent caps').
  - 1.2.2 Weekly rent for accommodation increases each year by an amount which is no more than RPI<sup>13</sup> + 0.5% + £2 until it reaches the upper limit of the rent flexibility level or the rent cap, whichever is lower.
  - 1.2.3 Weekly rent for accommodation that has reached or is above the upper limit of the rent flexibility level increases each year by an amount that is no more than the increase to the target rents.
  - 1.2.4 Rent caps increase annually by RPI + 1%.
  - 1.2.5 Target rents increase annually by RPI + 0.5%.
- 1.3 The requirements of paragraph 1.2 do not apply to homes let on Affordable Rent terms. Subject to paragraph 1.5, where accommodation is let on Affordable Rent terms, registered providers shall set rents with a view to achieving the following, so far as possible:
  - 1.3.1 Rent for accommodation (inclusive of service charges) is set at a level which is no more than 80% of the estimated market rent for the accommodation (inclusive of service charges), based on

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<sup>12</sup> 'rent influencing regime guidance' is contained within the regulator's Rent Standard Guidance. That Rent Standard Guidance is 'guidance issued in relation to' and consolidates the previous documents, particularly: the Rent Influencing Regime Guidance issued by the Housing Corporation in October 2001; the Rents guidance in the Explanatory Note to Decision Instrument 5 (Revision to the Tenancy Standard: Affordable Rent); and any other guidance issued by the Housing Corporation or TSA, or its successors, in relation to those documents.

<sup>13</sup> 'RPI' means the general index of retail prices (for all items) published by the Office of National Statistics or, if that index is not published for any month, any substituted index or index figures published by that office.

a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors.

- 1.3.2 Rent for accommodation increases each year by an amount which is no more than RPI + 0.5%.
- 1.3.3 Rent for accommodation is re-set, based on a new valuation, each time the accommodation is:
  - (i) let to a new tenant, or
  - (ii) re-let to the same tenant (but where a probationary tenancy comes to an end and the registered provider re-lets the accommodation to the same tenant the provider is not required to re-set the rent).
- 1.4 Affordable Rent terms can only be used where a delivery agreement for new supply of social housing has been agreed under a new supply agreement entered into between a private registered provider and the Homes and Communities Agency (HCA) or the Greater London Authority (GLA) under the 2011-15 Affordable Homes Programme Framework.
- 1.5 Where the application of the Rent standard would cause registered providers to be unable to meet other standards, particularly in respect of financial viability including the risk that a reduction in overall rental income causes them to risk failing to meet existing commitments such as banking or lending covenants, the regulator may allow extensions to the period over which the requirements of the rent standard are met.
- 1.6 Registered providers shall provide clear information to tenants that explains how their rent and any service charge is set, and how it is changed, including reference to the RPI benchmark to which annual changes to rents should be linked (except where rents are controlled under different legislation).

## **Consumer standards**

These standards apply to all registered providers. Providers' boards and councillors are responsible for ensuring their organisation meets the consumer standards. The regulator's role is limited to setting the consumer standards and intervening only where failure of the standard could lead to risk of serious harm to tenants (the 'serious detriment test') as described in chapter five.

## **Tenant Involvement and Empowerment standard**

### **Required outcomes**

#### **1 Customer service, choice and complaints**

Registered providers shall:

- provide choices, information and communication that is appropriate to the diverse needs of their tenants in the delivery of all standards
- have an approach to complaints that is clear, simple and accessible that ensures that complaints are resolved promptly, politely and fairly

#### **2 Involvement and empowerment**

Registered providers shall ensure that tenants are given a wide range of opportunities to influence and be involved in:

- the formulation of their landlord's housing related policies and strategic priorities
- the making of decisions about how housing related services are delivered, including the setting of service standards
- the scrutiny of their landlord's performance and the making of recommendations to their landlord about how performance might be improved
- the management of their homes, where applicable
- the management of repair and maintenance services, such as commissioning and undertaking a range of repair tasks, as agreed with landlords, and the sharing in savings made, and
- agreeing local offers for service delivery

#### **3 Understanding and responding to the diverse needs of tenants**

Registered providers shall:

- treat all tenants with fairness and respect
- demonstrate that they understand the different needs of their tenants, including in relation to the equality strands and tenants with additional support needs

## **Specific expectations**

### **1 Customer service, choice and complaints**

1.1 Registered providers shall provide tenants with accessible, relevant and timely information about:

- how tenants can access services
- the standards of housing services their tenants can expect
- how they are performing against those standards
- the service choices available to tenants, including any additional costs that are relevant to specific choices
- progress of any repairs work
- how tenants can communicate with them and provide feedback
- the responsibilities of the tenant and provider
- arrangements for tenant involvement and scrutiny

1.2 Providers shall offer a range of ways for tenants to express a complaint and set out clear service standards for responding to complaints, including complaints about performance against the standards, and details of what to do if they are unhappy with the outcome of a complaint. Providers shall inform tenants how they use complaints to improve their services. Registered providers shall publish information about complaints each year, including their number and nature, and the outcome of the complaints. Providers shall accept complaints made by advocates authorised to act on a tenant's/tenants' behalf.

### **2 Involvement and empowerment**

2.1 Registered providers shall support their tenants to develop and implement opportunities for involvement and empowerment, including by:

- supporting their tenants to exercise their Right to Manage or otherwise exercise housing management functions, where appropriate
- supporting the formation and activities of tenant panels or equivalent groups and responding in a constructive and timely manner to them
- the provision of timely and relevant performance information to support effective scrutiny by tenants of their landlord's performance in a form which registered providers seek to agree with their tenants. Such provision must include the publication of an annual report which should include information on repair and maintenance budgets, and
- providing support to tenants to build their capacity to be more effectively involved

2.2 Registered providers shall consult with tenants on the scope of local offers for service delivery. This shall include how performance will be

monitored, reported to and scrutinised by tenants and arrangements for reviewing these on a periodic basis.

2.3 Registered providers shall consult with tenants, setting out clearly the costs and benefits of relevant options, if they are proposing to change their landlord or when proposing a significant change in their management arrangements.

2.4 Registered providers shall consult tenants at least once every three years on the best way of involving tenants in the governance and scrutiny of the organisation's housing management service.

### **3. Understanding and responding to diverse needs**

3.1 Registered providers shall demonstrate how they respond to tenants' needs in the way they provide services and communicate with tenants.

## Home standard

### Required outcomes

#### 1 Quality of accommodation

Registered providers shall:

- ensure that tenants' homes meet the standard set out in section five of the Government's Decent Homes Guidance<sup>14</sup> and continue to maintain their homes to at least this standard
- meet the standards of design and quality that applied when the home was built, and were required as a condition of publicly funded financial assistance<sup>15</sup>, if these standards are higher than the Decent Homes Standard
- in agreeing a local offer, ensure that it is set at a level not less than these standards and have regard to section six of the Government's Decent Homes Guidance

#### 2 Repairs and maintenance

Registered providers shall:

- provide a cost-effective repairs and maintenance service to homes and communal areas that responds to the needs of, and offers choices to, tenants, and has the objective of completing repairs and improvements right first time
- meet all applicable statutory requirements that provide for the health and safety of the occupants in their homes

### Specific expectations

#### 1 Quality of accommodation

1.1 Registered providers may agree with the regulator a period of non-compliance with the Decent Homes Standard, where this is reasonable. Providers shall ensure their tenants are aware of the reasons for any period of non-compliance, their plan to achieve compliance and then report on progress delivering this plan.

#### 2 Repairs and maintenance

2.1 Registered providers shall ensure a prudent, planned approach to repairs and maintenance of homes and communal areas. This should demonstrate an appropriate balance of planned and responsive repairs, and value for money. The approach should include: responsive and cyclical repairs, planned and capital work, work on empty properties, and adaptations.

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<sup>14</sup> 'Decent Homes Guidance' means A Decent Home: Definition and Guidance for Implementation, published by the Department for Communities and Local Government in June 2006, and any guidance issued by the department or its successors, in relation to that document.

<sup>15</sup> 'Financial assistance' is assistance given by the Homes and Communities Agency (HCA) under section 19(3) of the Housing and Regeneration Act, 2008; and (with effect from 1 April 2012) given by the Greater London Authority (GLA). For the purpose of this standard, it includes financial assistance provided by predecessor bodies to the HCA.

2.2 Registered providers shall co-operate with relevant organisations to provide an adaptations service that meets tenants' needs.

## **Tenancy standard**

### **Required outcomes**

#### **1 Allocations and mutual exchange**

1.1 Registered providers shall let their homes in a fair, transparent and efficient way. They shall take into account the housing needs and aspirations of tenants and potential tenants. They shall demonstrate how their lettings:

- make the best use of available housing
- are compatible with the purpose of the housing
- contribute to local authorities' strategic housing function and sustainable communities

There should be clear application, decision-making and appeals processes.

1.2 Registered providers shall enable their tenants to gain access to opportunities to exchange their tenancy with that of another tenant, by way of internet-based mutual exchange services.

#### **2 Tenure**

2.1 Registered providers shall offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.

2.2 They shall meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements or terms of occupation.

### **Specific expectations**

#### **1 Allocations and mutual exchange**

1.1 Registered providers shall co-operate with local authorities' strategic housing function, and their duties to meet identified local housing needs. This includes assistance with local authorities' homelessness duties, and through meeting obligations in nominations agreements.

1.2 Registered providers shall develop and deliver services to address under-occupation and overcrowding in their homes, within the resources available to them. These services should be focused on the needs of their tenants, and will offer choices to them.

1.3 Registered providers' published policies shall include how they have made use of common housing registers, common allocations policies

and local letting policies. Registered providers shall clearly set out, and be able to give reasons for, the criteria they use for excluding actual and potential tenants from consideration for allocations, mobility or mutual exchange schemes.

- 1.4 Registered providers shall develop and deliver allocations processes in a way which supports their effective use by the full range of actual and potential tenants, including those with support needs, those who do not speak English as a first language and others who have difficulties with written English.
- 1.5 Registered providers shall minimise the time that properties are empty between each letting. When doing this, they shall take into account the circumstances of the tenants who have been offered the properties.
- 1.6 Registered providers shall record all lettings and sales as required by the Continuous Recording of Lettings (CORE) system.
- 1.7 Registered providers shall provide tenants wishing to move with access to clear and relevant advice about their housing options.
- 1.8 Registered providers shall subscribe to an internet based mutual exchange service (or pay the subscriptions of individual tenants who wish to exchange), allowing:
  - a tenant to register an interest in arranging a mutual exchange through the mutual exchange service without payment of a fee
  - the tenant to enter their current property details and the tenant's requirements for the mutual exchange property they hope to obtain
  - the tenant to be provided with the property details of those properties where a match occurs
- 1.9 Registered providers shall ensure the provider of the internet based mutual exchange service to which they subscribe is a signatory to an agreement, such as *HomeSwap* Direct, under which tenants can access matches across all (or the greatest practicable number of) internet based mutual exchange services.
- 1.10 Registered providers shall take reasonable steps to publicise the availability of any mutual exchange service(s) to which it subscribes to its tenants.
- 1.11 Registered providers shall provide reasonable support in using the service to tenants who do not have access to the internet.

## **2 Tenure**

- 2.1 Registered providers shall publish clear and accessible policies which outline their approach to tenancy management, including interventions

to sustain tenancies and prevent unnecessary evictions, and tackling tenancy fraud, and set out:

- 2.1.1 The type of tenancies they will grant.
  - 2.1.2 Where they grant tenancies for a fixed term, the length of those terms.
  - 2.1.3 The circumstances in which they will grant tenancies of a particular type.
  - 2.1.4 Any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five years in general needs housing following any probationary period.
  - 2.1.5 The circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property.
  - 2.1.6 The way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term.
  - 2.1.7 Their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability.
  - 2.1.8 The advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy.
  - 2.1.9 Their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.
- 2.2 Registered providers must grant general needs tenants a periodic secure or assured (excluding periodic assured shorthold) tenancy, or a tenancy for a minimum fixed term of five years, or exceptionally, a tenancy for a minimum fixed term of no less than two years, in addition to any probationary tenancy period.
  - 2.3 Before a fixed term tenancy ends, registered providers shall provide notice in writing to the tenant stating either that they propose to grant another tenancy on the expiry of the existing fixed term or that they propose to end the tenancy.
  - 2.4 Where registered providers use probationary tenancies, these shall be for a maximum of 12 months, or a maximum of 18 months where reasons for extending the probationary period have been given and where the tenant has the opportunity to request a review.
  - 2.5 Where registered providers choose to let homes on fixed term tenancies (including under Affordable Rent terms), they shall offer reasonable advice and assistance to those tenants where that tenancy ends.

- 2.6 Registered providers shall make sure that the home continues to be occupied by the tenant they let the home to in accordance with the requirements of the relevant tenancy agreement, for the duration of the tenancy, allowing for regulatory requirements about participation in mutual exchange schemes.
- 2.7 Registered providers shall develop and provide services that will support tenants to maintain their tenancy and prevent unnecessary evictions.
- 2.8 Registered providers shall grant those who were social housing tenants on the day on which section 154 of the Localism Act 2011 comes into force, and have remained social housing tenants since that date, a tenancy with no less security where they choose to move to another social rented home, whether with the same or another landlord. (This requirement does not apply where tenants choose to move to accommodation let on Affordable Rent terms).
- 2.9 Registered providers shall grant tenants who have been moved into alternative accommodation during any redevelopment or other works a tenancy with no less security of tenure on their return to settled accommodation.

## **Neighbourhood and Community standard**

### **Required outcomes**

#### **1 Neighbourhood management**

Registered providers shall keep the neighbourhood and communal areas associated with the homes that they own clean and safe. They shall work in partnership with their tenants and other providers and public bodies where it is effective to do so.

#### **2 Local area co-operation**

Registered providers shall co-operate with relevant partners to help promote social, environmental and economic wellbeing in the areas where they own properties.

#### **3 Anti-social behaviour**

Registered providers shall work in partnership with other agencies to prevent and tackle anti-social behaviour in the neighbourhoods where they own homes.

### **Specific expectations**

#### **1 Neighbourhood management**

- 1.1 Registered providers shall consult with tenants in developing a published policy for maintaining and improving the neighbourhoods associated with their homes. This applies where the registered provider has a responsibility (either exclusively or in part) for the condition of that neighbourhood. The policy shall include any communal areas associated with the registered provider's homes.

#### **2 Local area co-operation**

- 2.1 Registered providers, having taken account of their presence and impact within the areas where they own properties, shall:
- identify and publish the roles they are able to play within the areas where they have properties
  - co-operate with local partnership arrangements and strategic housing functions of local authorities where they are able to assist them in achieving their objectives

#### **3 Anti-social behaviour**

- 3.1 Registered providers shall publish a policy on how they work with relevant partners to prevent and tackle anti-social behaviour (ASB) in areas where they own properties.

3.2 In their work to prevent and address ASB, registered providers shall demonstrate:

- that tenants are made aware of their responsibilities and rights in relation to ASB
- strong leadership, commitment and accountability on preventing and tackling ASB that reflects a shared understanding of responsibilities with other local agencies
- a strong focus exists on preventative measures tailored towards the needs of tenants and their families
- prompt, appropriate and decisive action is taken to deal with ASB before it escalates, which focuses on resolving the problem having regard to the full range of tools and legal powers available
- all tenants and residents can easily report ASB, are kept informed about the status of their case where responsibility rests with the organisation and are appropriately signposted where it does not
- provision of support to victims and witnesses

## **How the standards are applied**

- 2.1 Each standard is defined in terms of required outcomes and some specific expectations. The standards have regard to the desirability of providers being free to choose how they conduct business and deliver services. For the consumer standards, the specific expectations are not intended to describe entirely how to meet or comply with the outcomes. The consumer standards are subject to 'backstop' regulation only, in circumstances where there is evidence of or risk of serious detriment as detailed in chapter five of this regulatory framework.
- 2.2 The regulator can issue a Code of Practice which relates to any matter addressed by an economic standard or amplifies an economic standard. These Codes of Practice can be taken into account in considering whether economic standards have been met. No Codes of Practice have been issued since the previous standards framework was introduced in April 2010.
- 2.3 Table 1 sets out the way in which the standards apply in respect of different types of provider and different types of social housing.

**Table 1: How the standards apply to different types of provider social and housing**

<b>Standard</b>	<b>Apply to local authorities?</b>	<b>Apply to not-for-profit registered providers (RPs)?</b>	<b>Apply to for-profit RPs?</b>	<b>Apply to low-cost rental?</b>	<b>Apply to low-cost home ownership?</b> <small>See note 3</small>
<b>Economic standards<sup>16</sup></b>					
Governance and Financial Viability	No	Yes	Yes	Yes	Yes
Value for Money	No	Yes	Yes	Yes	Yes
Rent	No	Yes	Yes	Yes	No
				<small>See note 1</small>	
<b>Consumer standards</b>					
Tenant Involvement and Empowerment	Yes	Yes	Yes	Yes	Yes
Home	Yes	Yes	Yes	Yes	Yes
Tenancy	Yes	Yes	Yes	Yes	No
				<small>See note 2</small>	
Neighbourhood and Community	Yes	Yes	Yes	Yes	Yes

**Notes<sup>17</sup>**

- 1 Some types of property, including intermediate rent, are excluded from the Rent standard. These are detailed in the associated Rent Standard Guidance in Annex A.
- 2 The Tenancy standard does not apply to intermediate rent properties.
- 3 None of the consumer standards, nor the Rent standard, apply to 100% ownership leaseholders (see Summary of key terms used in this framework (page 3)). For other low cost home ownership, the standards listed in this column apply.

<sup>16</sup> The economic standards do not apply to local authorities in recognition that oversight of their responsibilities in these areas are subject to other arrangements.

<sup>17</sup> The notes bring forward arrangements established in the April 2010 framework.

## 4. Regulating the economic standards

- 4.1 The regulator will take a proactive approach to obtaining assurance that the economic standards are being met. The economic standards apply only to private registered providers (not local authority providers). For profit making providers, regulation of the economic standards applies to the management of their affairs only so far as it relates to the provision of social housing.
- 4.2 The regulator's approach will recognise that boards are primarily responsible for their organisation's performance. The regulator will seek assurance that the provider is delivering its objectives effectively and properly managing its financial and other affairs. The approach will take into account the regulator's future statutory duty to minimise interference.
- 4.3 The regulator's approach to economic regulation is designed to give it adequate assurance that arrangements in the sector:
- a) protect public investment in social housing
  - b) maintain confidence of private investors to invest into the sector
  - c) ensure that social housing<sup>18</sup> continues to be available to current and future tenants
  - d) enable landlords to be able to invest in new social housing, assuming other conditions are in place
  - e) are open and transparent, to allow tenants and other stakeholders to form views on and influence the services delivered by providers
  - f) enable providers to meet the regulatory standards and statutory requirements
  - g) deliver value for money improvements to support providers to deliver their social housing objectives
  - h) protect the reputation of the sector as a whole
- 4.4 More information about regulation of the economic standards in practice will be set out in the forthcoming publication 'Regulating the Standards'. The regulator also intends to review certain aspects of the regulatory framework during 2012 with a view to clarifying the expectations and approach to the regulation of for-profit landlords as well as considering the impact on not-for profit landlords where this is relevant. The aim will be to gain deeper understanding, following consultation, of managing the risks and opportunities that for-profit providers generate, and may lead to the regulator proposing changes to the framework for example in relation to certain elements of the economic standards, such as arrangements under paragraph 1.4 of the Governance & Financial Viability standard, and the Rent standard in so far as it relates to changes in social housing type and the applicable rent regime.

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<sup>18</sup> 'Social housing' is defined in sections 68-77 of the 2008 Act. The term covers low cost rented housing (including Affordable Rent properties), low cost home ownership housing and 'legacy' stock owned by social landlords that were registered prior to 1 April 2010.

## The risk based approach to economic regulation

- 4.5 Boards are expected to ensure that their organisations are well governed, understand their financial risks and remain financially viable, deliver value for money in all their activities and comply with the rent requirements for social housing properties.
- 4.6 These standards are so fundamental to maintaining the confidence of key stakeholders, including government, taxpayers and funders that the regulator will need to obtain assurances on compliance. Boards are primarily responsible for dealing with issues or emerging indications of regulatory concern. Where the regulator considers boards to be unable or unwilling to do this effectively, it will review its options for proportionate intervention including the use of its regulatory powers<sup>19</sup>.
- 4.7 In general, the regulator will gain assurance through an overall approach to risk assessment which combines:
- an understanding of providers' operating environment, including the financial, economic, social and constitutional risks that could cause them to fail the economic regulation standards
  - sector level profiling and data analyses to enable the regulator to identify and assess major risks and issues affecting providers as a whole
  - dialogue with providers and other relevant stakeholders to test and discuss potential risks at sector and sub-sector levels
  - engagement with individual providers, the nature of which will reflect the potential impact on them of sector-wide risks and other risks specific to them (for example, risks identified from intelligence or existing concerns about compliance)
- 4.8 This approach ensures that regulatory resources are deployed so as to ensure the regulator focuses proportionately on those organisations most exposed to risk. It recognises providers' fundamental responsibility to manage their own businesses, and the regulator's duty to minimise interference while obtaining the necessary level of assurance to meet its objectives.
- 4.9 For larger providers, i.e. those that own more than 1,000 homes, this means:
- those organisations where there are no indications of risk of failure on economic standards, and about whom there are no other contra-indications giving regulatory concern, can expect to be subject to minimal levels of regulatory engagement necessary for the regulator to gain assurance and to issue public judgements that maintain the confidence of stakeholders in the sector

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<sup>19</sup> Where this may also be impacted by consumer issues, the regulator's intervention on those will be subject to the serious detriment test as described in chapter 5.

- those providers where there is information suggesting cause for concern, or where there is other evidence of risk of failure on economic standards, can expect an increased level of regulatory engagement, based on the presumption that this will initially be a dialogue to support the provider's self-improvement approach, prior to any further regulatory intervention. However, where the regulator considers such an approach to be ineffective or inappropriate, it is able to deploy the full range of its powers in a proportionate manner.
- 4.10 Minimum levels of assurance-based regulatory engagement on the economic standards are described below.
- 4.11 Larger private providers have a named individual who will act as a point of contact for dealing with queries and who involves other staff with specialist expertise, where necessary. Regulators will at all times be clear why engagement is considered necessary. Specific engagement is led by staff with relevant technical expertise, in conjunction with the designated lead contact.
- 4.12 Further details of the regulator's broader strategic approach to engagement on sector risk, to inform regulatory analyses and risk assessment, will be set out in 'Regulating the Standards'. In addition, the regulator will continue to publish quarterly surveys and global accounts analyses.

### **Information requirements for providers**

- 4.13 Providers are expected to be open and transparent in their relationship with the regulator. They must provide timely and relevant information to the regulator, including on significant events that relate to current or future non-compliance with the economic standards. If providers fail to do this, the regulator will regard that failure as a relevant factor in its opinion of the governance of the organisation.
- 4.14 The regulator will require data from providers to enable it to regulate the economic standards, whilst minimising the administrative burden placed on providers. The regulator will not ask routinely for performance information on the consumer standards as it does not monitor compliance with these standards<sup>20</sup>. However, providers should provide information to tenants to enable them to scrutinise performance, in line with requirements in the Tenant Involvement and Empowerment standard, which includes the publication of an annual report. The Value for Money standard requires providers to publish information for their stakeholders. Whilst providers may legitimately seek to ensure that this information does not breach commercial

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<sup>20</sup> Also, the regulator will no longer issue guidance on or collect an annual report by providers about performance against the consumer standards, as this power has been repealed by the Localism Act (Sections 204 and 205 of the Housing and Regeneration Act 2008 as amended by the Localism Act 2011).

confidentiality, it should be sufficient to allow tenants to form a view of the performance of the organisation.

4.15 To further minimise the burdens of data collection from 1 April 2012, the regulator collects all financial and statistical data from private providers through one consolidated administrative system, NROSH+. NROSH+ provides a single web-based portal for providers to submit the documents and information required – both those with a standardised format and other documents required to enable regulation of the economic standards including business plans and associated documents.

4.16 The requirements comprise:

- financial data to support the regulator's routine assessments of viability and enable it to prioritise and focus work on key areas of financial risk, and
- data and information to help the regulator understand the context and the environment in which providers operate, for example: the type of homes owned by providers, how these are managed and stock movement into and out of the sector

4.17 The form determined by the regulator in respect of its data requirements (as referred to in the Governance and Financial Viability standard) currently<sup>21</sup> includes:

- Financial forecast returns for larger providers (those that own 1,000 or more homes)
- Annual account returns for larger providers
- Quarterly financial risk survey for larger providers, which focus on key areas of financial and economic risk
- Annual report on net losses from fraudulent activity
- Annual return about providers' social housing and its use (for all providers but with a very limited data requirement for the smallest providers)
- Annual return setting out (limited) organisational and administrative detail

4.18 These returns are supplemented by the regulator's review of larger providers' business plan (or similar) and associated documents to enable it to understand the organisation's business strategy and context and planning and control frameworks.

### **Regulating financial viability, governance and value for money**

4.19 The regulator will carry out annual engagement with larger providers to enable it to achieve a minimum level of assurance that economic

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<sup>21</sup> The regulator will notify providers from time to time if there are changes.

standards are being met, and to make public judgements on governance and financial viability.

4.20 Information available to the regulator will be considered in the round to build an overall assessment of compliance with these standards. For example:

- the regulator's conclusion on viability must include an opinion on the ability of management to deliver the underlying assumptions in the business plan
- the ability of a board to manage the risks to its viability is a good indicator (amongst others) of the quality of governance
- the ability of a provider to demonstrate its compliance with the Value for Money standard provides strong evidence on the quality of governance arrangements and helps demonstrate how its viability will be ensured for the longer term

4.21 The starting point for the regulator's overall assessment of providers is the financial position. The regulator's financial analysis team carries out a comprehensive annual programme of viability reviews for all providers over 1,000 units<sup>22</sup> to assess financial viability. Prioritisation within the programme, and the depth of analysis for individual providers, is determined according to risk. This review is based upon:

- financial returns submitted to the regulator
- the business plan (and other relevant documents) for the organisation, and
- the regulator's existing knowledge and discussions with key staff at the provider

4.22 The regulator's consideration of the quality of governance takes into account a range of factors including the effectiveness of the provider's financial management and its ability to deliver business plan assumptions successfully and manage the risks to delivery. Annual engagement with providers also examines the assurance obtained by boards and the level of probity and control.

4.23 The provider's ability to drive value for money across its operations and asset base will also be taken into account by the regulator as a key indicator of the quality of governance. In its consideration of a provider's approach to value for money, the regulator will review how boards assure themselves that they are delivering value for money in an appropriate manner for their business. The regulator will reflect the level of its assurance on boards' engagement with the Value for Money standard in its governance judgements, where appropriate.

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<sup>22</sup> For some low risk associations with over 1,000 units, a financial health check will be conducted rather than a viability review.

- 4.24 Where routine engagement gives cause for concern or new adverse information comes to light, regulators would expect to have further contact with the provider to enable resolution of the issues identified. This further contact could include the regular receipt of additional monitoring information (including financial information) to allow the regulator to assess how well the presenting issue has been addressed. Similarly, there may be implications for the regulator's view of private providers' governance arising from reactive work on referrals relating to consumer standards.
- 4.25 Whilst the regulator will look to the provider to address concerns, the regulator will take a view on the materiality of issues arising and reserve the right to use its full range of statutory powers as appropriate to address a presenting issue, where the provider may be unable or unwilling to do so.

### **Publishing regulatory assessments**

- 4.26 The regulator is committed to being transparent in its approach by publishing assessments of providers' performance on the economic standards. This will help inform lenders, tenants and other stakeholders, drive up performance of individual providers and provide assurance on the regulator's global perspective of the sector.
- 4.27 The regulator will continue to publish graded assessments in relation to viability and governance as these are key areas where lenders, boards and others value assessments. The regulatory judgment will also comment on the assurance obtained with regard to the Value for Money standard.

### **Requirements for smaller private providers (that own fewer than 1,000 homes)**

- 4.28 All the standards apply to small providers. In general, smaller providers should expect to have little regulatory engagement. The regulatory arrangements for smaller providers include review by the regulator of:
- annual accounts audited or reviewed by an independent accountant, if appropriate
  - auditor's management letter (not required if accounts are independently reviewed)
  - a shortened regulatory return
- 4.29 Regulatory judgements are not published for smaller providers. Direct regulatory engagement is by exception and usually only in response to specific problems. Ongoing development plans that would see providers owning in the near future more than 1,000 properties may mean that those providers are subject to increased reporting requirements.

## 5. Regulating the consumer standards

- 5.1 The Localism Act specifies the regulator's role in, and its approach to, regulating the consumer standards. The regulator's responsibilities are limited to setting standards and intervening when there is, or is a risk of, serious detriment to tenants (called the 'serious detriment test' which is explained in detail in this chapter).

### Setting consumer standards

- 5.2 In this regulatory framework the regulator has set clear service standards on:
- a. Tenant Involvement and Empowerment
  - b. Home
  - c. Tenancy
  - d. Neighbourhood and Community
- 5.3 The regulator sets consumer standards so that tenants, landlords and stakeholders know the outcomes that are expected. This is crucial if tenants are to be able to hold landlords to account effectively. These standards therefore support co-regulation. Where necessary, they reflect directions issued to the regulator by Government<sup>23</sup>.
- 5.4 Boards and councillors that govern providers' services are responsible for ensuring that their organisation meets the consumer standards. Performance issues should be resolved by providers through their complaints procedures, scrutiny arrangements and/or local routes to resolution and without reference to the regulator.
- 5.5 The regulator has no role in monitoring providers' performance or routine compliance with the consumer standards. Government policy on which the Localism Act is founded advocates a localist approach to the resolution of service delivery problems, and an enhanced role in the complaints process for designated tenant panels, MPs and elected councillors. Further information about what it means for users of these local mechanisms will be provided by DCLG<sup>23</sup>.
- 5.6 In relation to the Home standard, there is a provision established by the direction from Government that the regulator may agree temporary periods of non-compliance where providers do not meet the Decent Homes standard (DHS). The regulator's normal expectations are that, where providers do not meet DHS, they should have regard to their co-regulatory accountabilities as reflected in the Tenant Involvement & Empowerment standard. They should consult with tenants on the approach that they propose to take to meeting the Home standard, particularly with tenants who may be directly affected, and to

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<sup>23</sup> 'Implementing social housing reform: Directions to the social housing regulator – summary of responses' published by DCLG in November 2011, available from their website.

communicate clearly to them the timescale and approach that they will adopt to meet the standard. Where this is done, a formal temporary DHS exemption from the regulator will not be required.

- 5.7 As the regulator does not actively monitor compliance with the Home standard, nor DHS compliance, it will not routinely discuss temporary exemptions with providers where they do not meet the standard. The regulator's approach will be to consider formal temporary exemptions where there is a particular reason to do so. We envisage that this will be an exceptional requirement and may arise in relation to conditions attached to funding, whether public or private, or where it arises as a result of the regulator finding serious detriment and where a temporary exemption may be part of a strategy agreed with providers following resolution of the matters giving rise to serious detriment.
- 5.8 In respect of the consumer standards more generally, the regulator's regulatory and enforcement powers will only be used where it is necessary to address failures against these standards that give rise to actual or potential serious detriment to tenants (or potential tenants). Any action by the regulator will be reactive in nature in response to referrals or other information received. The regulator's judgement about the need for further intervention will be based on the approach to intervention and enforcement set out in chapter six of this regulatory framework and in guidance notes on the use of powers in Annex B.
- 5.9 The remainder of this chapter sets out the regulatory arrangements that reflect the serious detriment test in the Localism Act. It comprises the regulator's guidance on the submission of information to it about the performance of registered providers, as required by section 215(1)(a) of the 2008 Act as amended by the Localism Act.

### **The serious detriment test**

- 5.10 The Localism Act places a restriction on the regulator's ability to use its powers in relation to a provider failing to meet a consumer standard. The regulatory and enforcement powers may be used if the regulator thinks that a standard has been failed and there are reasonable grounds to suspect that:
- The failure has resulted in a serious detriment to the provider's tenants (or potential tenants), or
  - There is a significant risk that, if no action is taken by the regulator, the failure will result in a serious detriment to the provider's tenants (or potential tenants)
- 5.11 This is the basis of what is called the 'serious detriment test'. Regulatory powers in Chapter 6 of the 2008 Act can be used to investigate where the regulator thinks that there is risk of failing a standard, and has reasonable grounds to suspect that - if the failure

- 5.12 The regulator is required to issue guidance about how it applies and intends to apply the 'serious detriment test', as follows.
- 5.13 In defining serious detriment, it is clear that the threshold for regulatory intervention is intended to be significantly higher than that in relation to the economic standards. Failure to meet one or more of the consumer standards does not in itself lead directly to a judgement of serious detriment by the regulator. The regulator considers that the meaning of serious detriment is when there is risk of, or actual, serious harm to tenants.
- 5.14 The regulator will judge whether actual or potential serious detriment exists depending on the circumstances of each case based on an evaluation of the harm or potential harm to tenants. It is not feasible or desirable for the regulator to attempt to produce a prescriptive list of issues that would constitute this. Such a list would inevitably fail to cover all current or potential eventualities and would need frequent updating to reflect changes in the policy and operational environment of providers. In addition, the same issue might have very different implications in different circumstances, leading to the risk of a disproportionate regulatory response. In order to ensure it uses its powers proportionately, the regulator must take the circumstances of each case into consideration.

### **Assessing serious detriment**

- 5.15 The regulator's assessment of serious detriment is based on the degree of harm or potential harm that may be caused to tenants by a breach of standards. The judgement will be formed on the regulator's opinion of the actual or potential impact on tenants, irrespective of the nature of the issue that gives rise to the concern.
- 5.16 In assessing whether to consider if there could be serious detriment or reasonable grounds to suspect this may be the case, the regulator will consider four initial questions. They are:
- Does the issue raised relate to a matter within the regulator's remit?
  - If the issue raised were true, is it likely that there has been, or could be, a breach of a consumer standard?
  - If the issues raised were true would there be any impact on tenants which would cause actual harm or potential harm?
  - If the issues raised are true is the actual harm or potential harm likely to be serious?
- 5.17 If the regulator is satisfied that there could be serious detriment or that there are reasonable grounds to suspect this, it will then seek to

determine whether this is the case through examining the evidence and the nature and extent of the impact or potential impact on tenants. In reaching this assessment, the regulator will require evidence of harm or potential harm, in particular but not exclusively in relation to:

- health and safety
- loss of home
- unlawful discrimination
- loss of legal rights
- financial loss

5.18 Irrespective of from where and how information is received, the regulator is ultimately responsible and accountable for the decisions it takes. Therefore, the regulator retains the right to conduct, or agree that the provider commissions, appropriate investigations in order to determine whether there is evidence of a breach of standard and serious detriment.

5.19 Ultimately, decisions on serious detriment are a matter of judgement by the regulator, based on the evidence available and its published approach. It is also possible that issues under one consumer standard may result in problems under one or more of the other standards, indicating a systemic failure.

### **Intervention and enforcement in cases of serious detriment**

5.20 The circumstances of each case will inform the regulator's response. In some cases, the regulator may need to intervene directly to address the problem(s) identified. The regulator's approach to intervention and enforcement and the specific implications in relation to the threshold for serious detriment are set out in chapter six of this regulatory framework. The regulator's approach to the use of its regulatory, enforcement and general powers is set out in separate guidance notes in Annex B to this framework.

5.21 Where the regulator believes the serious detriment threshold has been crossed in relation to consumer standards, or may be crossed if effective remedial action is not taken, for private registered providers the regulator will also assess the implications of the issue against the economic standards (particularly the governance element of the Governance and Financial Viability standard) in accordance with its published approach. The regulator will implement a strategy for investigating the issues, determining what assurances on governance may be required of the provider's board, and whether any further regulatory action is required.

5.22 In the case of serious detriment being identified in a local authority housing service the regulator may still use relevant powers. The economic standards do not apply to local authorities however the investigation of a case of serious detriment may raise concerns about

governance issues. In these circumstances, as well as taking any necessary action to deal with the presenting serious detriment problem, it may also be necessary for the regulator to refer concerns about governance to the authority's monitoring officer and others where relevant, such as its auditors, chief executive and lead councillor, and DCLG.

- 5.23 It is possible in some cases of serious detriment that other agencies or regulators will have responsibility for dealing with the presenting issue. The (social housing) regulator may refer the issue directly to the relevant authority if this has not already been done. However, in such cases the regulator may also act in anticipation of, or at the same time as, other agencies, with particular reference to implications for the provider's governance that may arise from the problem.
- 5.24 The regulator will give reasons for its decisions to intervene or investigate, or for not taking any action. Where a referral does not, in the regulator's opinion, constitute serious detriment, the regulator will advise the referring party of alternative routes to take, if applicable. If the referral appears to the regulator to be a misdirected complaint, it will advise the referring party of the options that should be available to them. If the referring party has explored this route but without a response, the regulator will signpost them to agencies that may be able to provide appropriate advice.
- 5.25 As with the regulator's existing procedures, for those cases that the regulator decides to follow up, it will give the referring party an indication of its anticipated timetable. The regulator will, in general terms, keep the referring party informed of the action that is being taken and the outcomes.
- 5.26 The regulator will publish information relating to its findings of serious detriment. It will set out how it will do this as part of a wider approach to publicising its intervention and enforcement actions, in due course.

#### **Referrals on serious detriment: what the regulator will and won't consider**

- 5.27 The main sources of intelligence about potential cases of serious detriment will be information referred to the regulator by third parties.
- 5.28 In considering whether failure of a consumer standard has or may lead to serious detriment, the regulator is obliged to have regard to information received from a number of authorities, representative bodies and individuals that are specified in the Localism Act. These include the housing ombudsman, tenant representative bodies, MPs, local authority councillors, the Health and Safety Executive or a fire and rescue authority. Information received in this context from these specified bodies are known as statutory referrals.

- 5.29 Additionally, the regulator will consider relevant information it receives from all sources, including during the course of routine regulatory activity in connection with its economic regulation remit. Such information will be assessed in the same way as information received through the statutory referral routes.
- 5.30 The regulator does not have a statutory mandate to deal with individual complainants and cannot mediate in disputes between landlords and tenants. The regulator has no locus in the contractual relationship between a provider and its employees and cannot become involved in disputes between them or in any other contractual disputes.
- 5.31 Providers have principal responsibility for dealing with, and being accountable for, complaints about their service, and the Tenant Involvement and Empowerment standard requires that they have clear and effective mechanisms for responding to tenant complaints. A tenant with a complaint against their landlord should raise it with their landlord in the first instance and, should the complaint remain unresolved consider contacting the relevant Ombudsman via the route(s) available at that time.<sup>24</sup>
- 5.32 The authorities who are able to make statutory referrals to the regulator include parties who may be or could become involved in local complaints resolution processes. Where the regulator receives a referral from one of these specified authorities (or any other party), the regulator's role will not be to seek redress for an individual complainant. Rather, the regulator will assess whether, in its judgement, the serious detriment test has been met in accordance with the approach set out above.
- 5.33 Although the regulator will not become involved in the resolution of individual complaints, it does not exclude the possibility that assessments of serious detriment might originally stem from an individual tenant complaint which indicated a more far-reaching problem causing harm or potential harm to tenants.

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<sup>24</sup> The Localism Act changes the Ombudsman arrangements relevant to social housing. When brought into force these provisions will mean that the Housing Ombudsman's jurisdiction is expanded to include complaints about local authority landlords. There will then be a single Ombudsman for social housing. Arrangements for accessing this Ombudsman are set out in the Localism Act. Until the single housing Ombudsman provisions are brought into force, council tenants must continue to refer complaints to the Local Government Ombudsman, and tenants of other registered providers to the Housing Ombudsman.

5.34 Information can be referred to the regulator in a number of ways:

- Telephoning 0300 1234 500 to speak to the regulator's Referrals and Regulatory Enquiries Team
- Writing to:  
Referrals and Regulatory Enquiries Team  
The Social Housing Regulator  
Second Floor  
Lateral  
8 City Walk  
Leeds  
LS11 9AT
- Emailing: [mail@homesandcommunities.co.uk](mailto:mail@homesandcommunities.co.uk)

## **6. Intervention and enforcement**

- 6.1 The regulator expects providers to identify problems and take effective action to resolve them. If a provider takes responsibility for self-improvement and the regulator concludes that the provider has the capacity and capability to respond to the problems, the regulator will work with the provider to achieve the necessary corrective actions. However, in circumstances where self-improvement has not succeeded, or where a provider is unable or unwilling to respond positively, or where the regulator concludes that such an approach is not appropriate, for example where urgent action is necessary or there is an immediate and significant risk of serious detriment to a provider's tenants in relation to consumer matters, the regulator may need to consider the use of its regulatory, enforcement and general powers.

### **Guidance on use of powers**

- 6.2 This section sets out the regulator's general approach to intervention and enforcement and presents the high level objectives and principles that underpin its approach to dealing with poor performance.
- 6.3 Annex B to this regulatory framework contains guidance notes on the use of the regulatory powers in chapter five, the enforcement powers in chapter six and the general powers in chapters two and four of the 2008 Act, updated where necessary to reflect the provisions of the Localism Act. Each guidance note sets out the scope of the power, its applicability in relation to different types of provider, the circumstances in which it might be exercised and the potential triggers to its use. Each guidance note should be read in conjunction with the general approach set out in this section.

### **Approach to use of powers**

- 6.4 The Localism Act sets out the regulator's economic regulation objectives and consumer regulation objectives. The standards are now classified as either standards relating to economic matters or standards relating to consumer matters.
- 6.5 The thresholds set for the use of regulatory and enforcement powers under the economic standards are unchanged as the regulator can exercise those powers where it suspects or has evidence of a failure against a standard or where the provider has mismanaged its affairs. Additionally, the regulator may exercise a regulatory power where there is a risk that if no action is taken by a private provider or the regulator, the provider will fail to meet a standard.
- 6.6 The threshold for intervention by the regulator is made significantly higher in relation to consumer standards by the introduction of the serious detriment test. Failure to meet one or more of the consumer standards will not in itself lead directly to a judgment of serious

detriment by the regulator. However, the regulator may consider whether evidence of failures on consumer standards calls into question a provider's capacity to meet the governance requirements of the economic standards. Such evidence may arise from a variety of sources, including routine regulatory activity, whistleblowing and complaints.

- 6.7 The regulator's approach to use of powers is underpinned by five key components: the economic regulation objectives, the consumer regulation objectives, the statutory duty to minimise interference, the standards and any specific requirements set out in the 2008 Act as amended by the Localism Act.
- 6.8 The regulator may consider the use of its regulatory powers to investigate where it suspects there may have been a failure to meet the economic standards or that the affairs of a provider have been mismanaged. Where there is a potential failure in relation to consumer standards, the regulator may seek information in order to inform the serious detriment test. In such circumstances it may be necessary to use regulatory powers to investigate where:
- there are reasonable grounds to suspect a failure to meet a consumer standard has resulted in serious detriment to the provider's tenants or potential tenants, or
  - there is a significant risk that, if no action is taken by the regulator, a failure to meet a consumer standard will result in a serious detriment to the provider's tenants or potential tenants or
  - there is a risk that if no action is taken by the provider or by the regulator, the provider will fail to meet a consumer standard and cause a serious detriment to tenants or potential tenants
- 6.9 When such investigations have been completed, the regulator will consider whether further action is necessary and, if it is, what action is most appropriate to the particular circumstances of the case. This may include the use of enforcement powers.
- 6.10 The regulator is not required to use its regulatory powers before exercising its enforcement powers. However, the regulator's general approach is to apply the most appropriate and least intrusive power available taking into account proportionality, the statutory duty to minimise interference and the seriousness of the issue under consideration.
- 6.11 The regulator will keep the use of its powers under regular review, and may decide to exercise them if the circumstances of the case make it necessary to do so. The regulator may use its powers either singly or in combination depending on the circumstances and issues of the case.

## **Principles underpinning the approach: what providers can expect**

6.12 Providers can expect the regulator to apply the following principles in relation to intervention and enforcement. The regulator:

- will consider any proposals for self-improvement made by the provider before using its powers, but in cases where this is either not appropriate, for example, where it is necessary to protect tenants from immediate harm or to protect public funds, or has not been successful, the regulator will consider how best to address the issue
- will adopt a graduated approach to the use of enforcement powers where possible, but given the high threshold for intervention in relation to consumer standards, the materiality of the problem may mean the regulator cannot do so. In these circumstances, the regulator will aim to use the least intrusive powers that are appropriate, but the provider is likely to be subject to one or more enforcement powers with little or no advance warning
- will have regard to the economic regulation and consumer regulation objectives when considering any individual case and will seek to balance the interests of the provider, its tenants, its key stakeholders and the impact on public funds when responding to the circumstances of each individual case
- will be proportionate and consistent in making judgements, accountable for its actions, and transparent in relationships with the provider, its tenants and other stakeholders, but there may be occasions where the circumstances of the case will limit how transparent the regulator can be with third parties
- will explain the grounds and give reasons for taking action, and will usually give notice of any action - in some cases this is a requirement of the 2008 Act - unless to do so would undermine the regulator's ability to act
- will assess the most appropriate course of action taking account of the particular circumstances of the provider, the level of risk and the potential impact associated with the provider, tailor the regulatory engagement accordingly and always take action which is commensurate with the materiality of the breach or failure
- will give careful consideration to any remedial strategies proposed by the provider, including any relevant voluntary undertakings, and seek to agree the way forward with the provider when it is prepared to resolve the presenting issues and the regulator concludes that it has the capacity, the capability and all the resources necessary to do so
- will take account of any significant changes in circumstances and adapt the approach accordingly

6.13 The regulator may need to react and respond as a matter of urgency to unanticipated and exceptional events that happen from time to time. In circumstances where it is necessary and expedient to do so, the regulator may adjust the intensity of its engagement with a provider, or exercise one or more of its powers with little or no notice, particularly in circumstances where giving notice would defeat the purpose of taking

the proposed action or where it is necessary to protect tenants from immediate harm or to protect public funds.

### **How the regulator will engage with providers**

6.14 The regulator wants to be transparent in its relationship with a provider when considering the use of powers. The use of some powers requires the regulator to follow detailed procedures which are specified in the 2008 Act and set out in the relevant guidance notes. While the regulator will always follow the procedures established in the 2008 Act, its approach must have regard to the circumstances of the case, particularly where the regulator concludes that urgent or immediate action is necessary and it has to use its powers with little or no notice. As far as practicable, the regulator will apply the following principles when considering the use of powers. The regulator:

- will have dialogue with the provider before, during and following the process in accordance with the regulator's usual approach to regulatory engagement in order to protect tenants, social housing assets and public funding. This includes informing a provider when the regulator is minded to use a power, explaining the issues and concerns and giving the provider an opportunity to respond
- will give notice to a provider when proposing to use a power. The regulator will explain the power and the issues or concerns that have led to the possibility of using it
- will invite the provider to make representations in response to the notice within a reasonable timescale, and to give the regulator any information or comments, including any relevant voluntary undertaking, it thinks might help make the decision about whether or not to use the power
- will carefully consider any representations, information and comments, including any relevant voluntary undertakings received from the provider in coming to a decision about the action the regulator intends to take
- will notify the provider of the decision and give reasons for making it
- will inform providers about the protocol that the regulator has developed that allows a provider to appeal against decisions on the use of some of our powers. Additionally, the guidance notes set out details of those powers where statutory appeals processes are specified in the 2008 Act

### **Factors that may lead to the use of powers**

6.15 In broad terms, any decision will be based on:

- the seriousness of the failure or problem identified, including harm or potential harm to tenants
- the urgency with which the problem or failure needs to be addressed
- the level of risk associated with the provider and the potential impact of its failure

- the degree of assurance given by the provider to the regulator in relation to action it is taking or will take to resolve the issue. The regulator may take into account the provider's history in dealing with relevant issues
  - the resources available to the provider to resolve the problems
  - proportionate use of resources that need to be applied to the regulator's regulatory engagement with the provider
- 6.16 In order to bring about improvements, the regulator may propose an action plan setting out the key corrective actions it requires the provider to take and the milestones and timetable in which they should be achieved. In such circumstances, the regulator will work with the provider to agree how best to implement the plan and will carefully consider any remedial plan submitted by the provider, including any voluntary undertaking it offers. When the regulator is satisfied that the key corrective actions have been completed it will notify the provider. Given the high threshold for intervention in relation to the consumer standards, the materiality of the problem may provide grounds for the regulator not to follow a self-improvement approach.
- 6.17 The regulator's aims will always be underpinned by its economic regulation and consumer regulation objectives and the standards. The regulator's specific objectives may vary from case to case or change during the course of a case, but broadly speaking it would want to:
- address and resolve the presenting problems and any related or contributory problems
  - maintain the financial viability of private providers and require the provider to meet acceptable standards of organisational effectiveness
  - act as a catalyst for change within the provider and ensure that any improvements in performance are sustained in the long term
  - protect public expenditure and guard against the misuse of public funds
  - reassure lenders
  - protect the interests of tenants
  - protect the reputation of providers of social housing as a whole
  - address and seek to resolve any additional relevant and material matters that come to light while a provider is subject to regulatory, enforcement or general powers, particularly in relation to governance issues
  - where necessary, co-ordinate the approach with other regulatory bodies

### **Checks and balances on the use of our powers**

- 6.18 There are a number of checks and balances which must be applied to the use of powers.

### Duty to minimise interference

6.19 The regulator has a duty under the 2008 Act as amended by the Localism Act to exercise its functions in a way that minimises interference and (so far as is possible) is proportionate, consistent, transparent and accountable. These requirements overlay how the regulator carries out all its functions.

### Regulators' Compliance Code

6.20 The regulator must also comply with the Regulators' Compliance Code<sup>25</sup>. The Code does not apply to the exercise by a regulator of any specific regulatory function in individual cases.

### Consideration before exercising a power

6.21 The regulator must consider some specific matters before exercising an enforcement power:

- the desirability of a 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, before exercising an enforcement power in relation to economic standards:

- whether the failure or other problem is serious or trivial
- whether the failure or other problem is a recurrent or isolated incident

### Voluntary undertakings

6.22 A provider can give the regulator a voluntary undertaking in respect of any matter concerning social housing<sup>26</sup>. The circumstances in which such a voluntary undertaking can be given are widely drawn. For example, a provider may offer a voluntary undertaking whilst subject to regulatory, enforcement or general powers. In exercising some powers, the regulator must have regard to any voluntary undertaking offered or given by a provider.

6.23 The regulator may take into account whether a sufficient voluntary undertaking has been offered and honoured. In considering a voluntary undertaking, the regulator will:

- assess whether or not the terms of a voluntary undertaking are satisfactory, giving reasons for the decision

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<sup>25</sup> By virtue of the Legislative and Regulatory Reform (Regulatory functions) (Amendment) Order 2009.

<sup>26</sup> Section 125 of the Housing and Regeneration Act 2008

- monitor the provider's progress towards meeting its voluntary undertaking and assess whether the provider has honoured the voluntary undertaking, giving reasons for the decision
- 6.24 Although giving a voluntary undertaking will always be a matter for the provider, the regulator will respond in the event a provider asks whether a voluntary undertaking would address matters that have necessitated enhanced scrutiny by the regulator.
- 6.25 While the regulator must have regard to any voluntary undertaking offered or given by a provider, there may be circumstances where the existence of a voluntary undertaking may not prevent further enforcement activity. This might include circumstances in which the regulator considers that the voluntary undertaking is unsatisfactory or insufficient to resolve the problems or where urgent or immediate action is necessary.

## 7. Registration and deregistration

- 7.1 This section outlines the registration and deregistration arrangements from 1 April 2012. The registration arrangements apply to non local authority applicants only, since local authority providers are registered without the need to apply<sup>27</sup>. Other than for local authorities, these arrangements and the regulator's associated guidance on registration processes (available from its website) apply to both for-profit and not-for-profit applicants.
- 7.2 During 2012, the regulator intends to consider its approach to parts of the regulatory framework that will enable it to both facilitate the registration of new entrants more effectively and to manage risks to the delivery of its statutory objectives. It intends to review certain aspects of this regulatory framework with a view to clarifying the expectations and approach to the regulation of for-profit landlords, as well as considering the impact on not-for-profit landlords where this is relevant. The aim will be to gain deeper understanding, following consultation, of managing the risks and opportunities that for-profit providers generate and may lead to the regulator proposing changes to the framework for example in relation to the registration and deregistration criteria and the regulator's associated guidance, the consents regime and elements of the economic standards as noted in chapter 4 of this regulatory framework. Further information will be available in due course on the regulator's website.

### The eligibility criteria and conditions for new entrants

- 7.3 Applicants eligible for registration will need to meet registration conditions that reflect the 2008 Act. The regulator, consistent with its fundamental objectives, wants to encourage increasing numbers of providers to register to support an increased supply of social housing and to provide greater choice to tenants.

#### Eligibility criteria

- 7.4 Applicants must:
- **be English bodies**
  - **be, or intend to be, providers of social housing in England**
  - **satisfy the criteria established by the regulator**
- 7.5 To be an English body, applicants do not have to be any particular type or status and could, for example, be a partnership. However, the regulator requires that an applicant has a legal presence in England. This enables the regulator to exercise any necessary statutory functions and similarly provides tenants with the legal presence they

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<sup>27</sup> Any local authority that becomes a provider of social housing and is not already registered must notify the regulator of this change in its position.

will require. 'Social housing' means low-cost rental or low-cost home ownership as defined in sections 68 to 77 of the 2008 Act; the meaning of 'provider' is defined in section 80 of the Act.

- 7.6 In considering an application from an intending provider, the regulator requires a strongly evidenced business plan that clearly sets out the plan for market entry (including any organisational changes) and demonstrates how funding or land ownership will be secured to put the plan into action. Evidence either of existing homes or land, or of financial provision for buying or developing homes, provides assurance of the intent to provide social housing. This is likely to be evidence of land ownership and planning permissions or loan or other financing arrangements. Once the regulator is satisfied of the applicant's intent, the applicant will be assessed in accordance with the registration criteria established.
- 7.7 A pragmatic approach will be taken to assess the 'intention to provide', setting a timeframe to review the intending provider's position based on the applicant's business plan. At the point of review, if there appears to be no prospect of the business plan coming to fruition the regulator will discuss deregistration with the registered provider. This discussion may result in either continuing consideration of the registered provider as an intending provider, or the regulator's decision that deregistration is appropriate as the registered provider is no longer eligible for registration.
- 7.8 For all providers that automatically transferred to the register on 1 April 2010 transitional provisions<sup>28</sup> put in place by the Government mean that these providers will continue to be registered and regulated as if they meet the requirements for registration in the 2008 Act, whether or not in practice this is the case (for example as with a non-stock holding parent of a social housing provider subsidiary).
- 7.9 For new applicants the requirement in the 2008 Act is that a registered provider must be a 'landlord'. Since April 2010, applications for registration are considered from organisations including:
- subsidiary organisations of both non-profit and profit-making organisations where the parent is not eligible for registration, and
  - profit-making providers where the regulator needs to consider the practical effect of the requirement in Section 194(2) of the 2008 Act that allows standards to be set under this section only so far as they relate to the provision of social housing
- 7.10 Where an application for registration is made, including one from an applicant falling into either of these circumstances, the regulator expects to be satisfied that the applicant can demonstrate its structure

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<sup>28</sup> Transitional arrangements in secondary legislation that supported the introduction of the 2008 Act in April 2010.

and governance arrangements afford effective and enduring regulatory assurance. This may involve agreeing with the regulator appropriate ring-fencing agreements, which have been used in other sectors where the regulator regulates a subsidiary or part of an entity. Such an applicant will not be registered unless the regulator receives this assurance. The regulator's requirements are set out in the Governance and Financial Viability standard (1.4) and are not therefore duplicated in the registration criteria.

- 7.11 The 2008 Act provides for the registration of landlords of social housing. An ALMO or TMO that is not a landlord but a property manager does not meet the eligibility conditions in the Act and so is not capable of registration. However, ALMOs and TMOs that are themselves landlords are eligible for registration, although there is no requirement for them to register unless it is a condition of funding agreements with the HCA or the Greater London Authority (GLA) and they wish to remain as landlord of the property. Unlike for a local authority, if an ALMO or TMO is registered they are subject to the full range of economic and consumer regulatory standards in relation to the social housing that they own.

#### Legislative basis

- 7.12 Once the regulator is satisfied that an applicant is eligible for registration, the applicant will be assessed against any registration criteria set by the regulator. The regulator **must** register any applicant that is eligible and meets its registration criteria.
- 7.13 The regulator's registration criteria are based on:
- an applicant's financial situation
  - its constitution
  - other arrangements for its management

#### **Registration Criteria**

- 7.14 Financial viability is an absolute requirement. The regulator expects all applicants to demonstrate that they meet this part of the standard at the point of registration and will continue to meet it over a period of time. An applicant will not be registered if it is unable to satisfy the regulator of this.
- 7.15 The regulator will assess applicants against the governance requirements, but will not always expect compliance with this standard at the point of registration, accepting a reasonable path to compliance that will be subject to regular review.
- 7.16 The governance assessment will also take into account the management arrangements in place within an applicant's organisation, to see whether these provide a reasonable indication of capacity to

achieve compliance with the other regulatory standards. The registration process will not directly assess compliance with these other standards.

- 7.17 In judging what is a 'reasonable path', the regulator will take a risk-based view on the level of compliance already achieved, the nature of the actions needed to achieve compliance and the proposed timescale for completing these actions. Following registration, a registered provider will be subject to the regulatory approach published in the regulatory framework.
- 7.18 Non-profit making organisations are required to have within their objects:
- the provision of social housing
  - not-for-profit status
  - non-distribution of assets to members
- 7.19 There are no requirements in the registration criteria about the objects of profit-making organisations as the regulator has no subsequent oversight of changes to these objects.
- 7.20 Other than on an organisation's objects, the registration criteria are the same for both non-profit and profit-making applicants. This is because the standards are the same for all private registered providers.
- 7.21 Figure 2 sets out a summary of the registration criteria. The registration criteria can be reviewed and, following consultation, adjusted at any time. The regulator plans to do this periodically.

### **Figure 2 The Registration Criteria**

- An applicant must meet the financial viability requirements within the Governance and Financial Viability standard at the point of registration and demonstrate it can sustain this on an ongoing basis
- An applicant must meet, or demonstrate a reasonable path to meeting, the governance requirements of the Governance and Financial Viability standard
- An applicant must have in place management arrangements that enable it to demonstrate the capacity to meet the other regulatory standards
- A non-profit applicant must have within its objects the provision of social housing, not-for-profit status and non-distribution of assets to members

## Registration process

7.22 The registration process is influenced by a number of objectives including:

- a proportionate registration process, seen in the context of the size of the social housing portfolio and risk profile of the potential entrant. Size of portfolio could be in absolute terms and related to geographic concentration
- when handling applications from, for example, large organisations, such as an ALMO, that own only a limited number of social housing properties, the regulator's assessment against the criteria will reflect the risk profile of the applicant and its size in terms of the number of social housing properties it has or intends to have, but the assessments against the Governance and Financial Viability standard will take account of the wider organisation within which these properties rest
- where an organisation seeking grant funding from the HCA or GLA indicates that it expects to retain ownership of the property when it is let, the regulator maintains close liaison with the relevant investment team during the registration process
- in the event of the creation of a new organisation out of an existing registered provider, perhaps as a result of a merger, the regulator takes a proportionate approach having regard to the knowledge it has of the relevant registered provider(s).

## Deregistration criteria

7.23 There are a limited number of defined circumstances set out in the 2008 Act that may lead to the compulsory deregistration by the regulator of a registered provider (e.g. they have ceased to exist).

7.24 A registered provider can apply for voluntary deregistration on the grounds that it:

- 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 (such as, for example, the Charity Commission)
- meets any relevant criteria for deregistration set by the regulator

7.25 In considering an application for voluntary deregistration, the regulator considers the following relevant criteria:

- the arrangements to ensure the continued protection of tenants
- the arrangements to ensure there is no misuse of public funds

7.26 In looking at the continued protection of tenants, the regulator:

- expects the registered provider to demonstrate ongoing financial viability
- expects the registered provider to be achieving a satisfactory level of performance
- takes into account any relevant regulatory or other controls that the registered provider would continue to be subject to after deregistration (including membership of the Housing Ombudsman scheme)
- takes into account any representations made by tenants and any local authority in whose area the registered provider lets housing
- takes into account the nature and scale of the social housing provision of a registered provider

7.27 In considering arrangements for guarding against the misuse of public funds, the regulator considers the amount of capital public funding outstanding and any current or planned development for which the registered provider had received or would receive public funding. Deregistered providers are still subject to the regulator's 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 HCA (or the predecessor body, the Housing Corporation).

7.28 Deregistered providers can apply again for registration at any time.

### **The register**

7.29 The regulator must maintain a register of providers of social housing, available for public inspection, that shows whether an organisation is profit-making or not. Some of the regulator's powers, for example consent on changes to objects, relate only to non-profit registered providers so this is an important distinction. Any registered and non-registrable charities are designated as non-profit making. For other organisations registering after April 2010, the 2008 Act requires the regulator to designate them as non-profit making if:

- the organisation does not trade for profit or is prohibited by its constitution from issuing capital with interest or dividend at a rate exceeding that prescribed under section 1(1)(b) of the Housing Associations Act 1985
- a purpose of the organisation is the provision or management of housing
- any other purposes are connected with, or incidental to, the provision of housing

7.30 If a new registered provider does not meet these requirements in the regulator's assessment then it will be designated profit making.

7.31 The Secretary of State can make regulations providing that a specified purpose is or is not incidental to the provision of housing, but has indicated that no such regulations will be issued in the medium term so the regulator sets out how it will decide what is “connected with or incidental to the provision of housing”. Permissible purposes were established prior to 1 April 2010 under Section 2(4) of the Housing Act 1996 and subsequent statutory instruments. The regulator proposes to have regard to the list of permissible purposes but will clarify over time the purposes it considers are connected with or incidental to the provision of housing.

### **Fees**

7.32 The 2008 Act makes provision for the regulator to charge fees to providers for initial registration and/or continued registration. Any future decisions on charging fees are a matter for the HCA Regulation Committee.

## Our offices

Central Business Exchange II  
406-412 Midsummer Boulevard  
Central Milton Keynes  
MK9 2EA

For the Referrals and Regulatory Enquiries Team, contact us at:

Tel: 0300 1234 5000

Fax: 0113 233 7101

Email: [mail@homesandcommunities.co.uk](mailto:mail@homesandcommunities.co.uk)

homesandcommunities.co.uk  
mail@homesandcommunities.co.uk  
0300 1234 500



**Homes and Communities Agency**  
7<sup>th</sup> Floor  
Maple House  
149 Tottenham Court Road  
London W1T 7BN  
mail@homesandcommunities.co.uk

The Homes and Communities Agency is committed to providing accessible information where possible and we will consider providing information in alternative formats such as large print, audio and Braille upon request.

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